



INDONESIA'S CHANGE OF PRESIDENT AND PROSPECTS FOR CONSTITUTIONAL REFORM

**A Report on the July 2001 Special Session of the People's Consultative Assembly
and the Presidential Impeachment Process**

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Executive Summary

On July 23, 2001, Indonesia's fourth president, Abdurrahman Wahid, was removed from office and replaced by his vice president, Megawati Soekarnoputri. This transfer of power ended at least nine months of political brinkmanship, conflict and uncertainty that began in September 2000 with a legislative inquiry into two cases involving the alleged mishandling of public funds. Reflecting a clash of personalities and institutions during a period of democratic transition, the entire process was fundamentally political. While serious constitutional and legal questions about it were raised, the removal of a democratically elected president before the end of his term has established an unmistakable precedent, clearly demonstrating the supremacy of the People's Consultative Assembly (Majelis Permusyawaratan Rakyat or MPR) over the president. With relatively few exceptions, Indonesian scholars, political elites and the public have evidently found the process acceptable. It remains to be seen what impact this precedent will have on future political stability and the ongoing deliberations about further constitutional changes to the structure of the Indonesian state.

The Confrontation between the President and the Legislature. President Wahid's removal was the culmination of numerous conflicts between himself and the national legislature, the People's Representative Assembly (Dewan Perwakilan Rakyat or DPR), that began within weeks of his election in October 1999. As his legislative support waned over time, the position of the government became increasingly tenuous. Because the MPR can remove the president and because the 500 members of the DPR make up nearly three quarters of the 695-member MPR, the stability of the government is greatly dependent in practice on continual legislative support.

The 1945 Constitution establishes a fixed five-year term of office for the president. The Annotations to the Constitution provide that if the DPR believes the president has violated "state policy," as the term is understood in the Constitution, the MPR may convene a Special Session in order to call the President to account. In the absence of further details in the Constitution, a 1978 MPR decree elaborates on the standard and establishes a complex process for calling a Special Session with power to remove the president before the end of his or her term. The standard does not appear to authorize removal of the president merely because he has lost the confidence of the legislative branch, but the MPR nonetheless has essentially plenary powers to interpret what constitutes a violation of "state policy" and to remove the president.

Calling the MPR Special Session. When the president was accused of involvement in two cases of mishandling of public money in late 2000, the DPR established a Special Committee to investigate. While the allegations were vague and largely unsubstantiated, the Special Committee concluded that there was reason to suspect presidential involvement. On that basis, the DPR voted on February 1, 2001, to accept the Special Committee report and send the president a "first memorandum" warning him that he had violated "state policy," which formally opened the possibility of impeachment.

On March 28, the president formally responded to the first memorandum in a speech at the DPR in which he questioned the legality of the work of the Special Committee and argued that his actions in any event could not have violated "state policy." On April 30, judging the president's response to be unsatisfactory, the DPR voted to send a second memorandum to the president, in accordance with the established procedure. On May 30, the legislature again found the president's response unsatisfactory and voted to request the People's Consultative Assembly to call a Special Session, which was subsequently set for August 1.

The President's Emergency Declaration. After a standoff in June over whether the president could remove the national police chief, the president threatened to declare a state of emergency. On July 21, 2001, the MPR convened a "plenary session," which is not recognized under the MPR's rules, and agreed to move up the date of the Special Session, with the power to remove the president from office. Declaring the Special Session illegal, the president declined to attend the MPR session or to give an "accountability speech." At 1:10 a.m. on July 23, the president announced that he was declaring a state of civil emergency. The president's order purported to dismiss the MPR and DPR, called for new elections within a year, and claimed to suspend Golkar until the Supreme Court resolved the pending case on alleged Golkar financial irregularities during the 1999 general elections.

Early the same morning, in response to an immediate request from DPR Speaker Akbar Tandjung, the chief justice of the Supreme Court announced an advisory opinion that the presidential order was unconstitutional. According to the chief justice, the president did not have the power to suspend the MPR, the holding of elections was a question for the legislature, and the possible suspension of Golkar was a matter for the courts.

Actions of the Special Session. During the course of the day on July 23, the MPR took several momentous steps. First, it voted to refuse the validity of the president's order, which all factions present agreed violated the constitution. Then, declaring the president's refusal to appear before the MPR and his state of emergency order as against "state policy," it voted to immediately dismiss the president. The MPR immediately appointed the vice president to serve as president for the remainder of the 1999-2004 term of office. Megawati Soekarnoputri was sworn in as president soon after 5:00 p.m. on July 23, 2001.

After three ballots over the next two days, the Assembly elected Muslim political leader Hamzah Haz as vice president over four other candidates. Even though Megawati and Hamzah come from different sides of the nationalist/Islamic divide of Indonesian politics and, indeed, Hamzah was among those who rejected a woman president in principle in 1999, it became increasingly clear that Hamzah was Megawati's choice, and her party appeared to support that choice. By reaching out to Islamic forces, Megawati appeared to be building a broad base of support.

The Validity of the President's Impeachment. The MPR did not ultimately rest its case on the president's alleged involvement in two corruption cases, which might not have

met the constitutional standard for impeachment. The president's attempt to declare a state of emergency and dismiss the MPR and DPR, at least, appears to provide unassailable grounds for his removal.

Procedurally, the impeachment process did appear to violate the rules when the Special Session was moved ahead to July 21, which meant the requisite two months' notice had not been provided. MPR members rationalized this violation as technical and necessary to prevent the president from doing further damage. In any event, a wide range of political forces, the military and police, and the society at large appear to have accepted the president's removal from office.

The Renewed Assertiveness of the Military Faction. The military-police faction in the DPR and MPR played an important role throughout the proceedings that resulted in President Wahid's removal. Because of the overwhelming opposition to the president, the military faction never had to cast a decisive vote. In February the military faction voted with the majority in the DPR to accept the Special Committee report on President's Wahid's alleged involvement in financial misconduct and joined the consensus to send the first memorandum to the president. While the military abstained on the votes in April and May to send the second memorandum and to request that the MPR hold a Special Session, its votes were hardly crucial. In July, after the standoff between the legislature and the president over Wahid's attempts to replace the national police chief, the military-police faction again voted with the overwhelming majority to advance the Special Session and remove the president. The military's apparent opposition to the president throughout the process seemingly continued a trend of the military's renewed assertiveness in politics.

Prospects for Constitutional Reform. The impeachment of the president and related events in recent months have undoubtedly changed the constitutional landscape of Indonesia and affected the prospects for constitutional reform. Soon after taking office, President Megawati announced her support for a thorough constitutional review, including a constitutional commission that would report back to the MPR General Session in 2004. The new president's announcement of support for a constitutional commission has energized the debate about the process of constitutional change.

Constitutional issues that the MPR has yet to debate include fundamental questions of state structure, checks and balances, and the possible separation of powers. These include proposals on the role, sovereignty and composition of the MPR, for direct election of the president and vice president, and for the possible establishment of a bicameral legislature (with a second chamber made up of regional representatives, which may or may not have limited legislative powers). They also include possible revision of constitutional provisions governing the judiciary, including proposed introduction of a constitutional court and some form of judicial review of legislation and conflicts between higher state bodies. The constitutional reform process may also address difficult issues about the society more broadly, including the role of religion in the constitution.

The Special Session and the removal of President Abdurrahman Wahid have reaffirmed the MPR's constitutional superiority in the Indonesian system of government.

Accordingly, it may now be less likely that the MPR's powers over the president will be significantly reduced, at least in the short term. At the same time, new momentum for the direct election of the president may be building, which would be hard to reconcile with MPR supremacy.

The role of the MPR, however, like other fundamental constitutional issues, remains open for debate. Faith in the current system will be tested by the success or failure of the Megawati presidency. Until Indonesia can establish working institutions and clear, agreed upon rules of the political game, it will face the threat of further instability.

Introduction

On July 23, 2001, Indonesia's fourth president, Abdurrahman Wahid, was removed from office and replaced by his vice president, Megawati Soekarnoputri. This transfer of power ended at least nine months of political brinkmanship, conflict and uncertainty that began in September 2000 with a legislative inquiry into two cases involving the alleged mishandling of public funds. Reflecting a clash of personalities and institutions during a period of democratic transition, the entire process was fundamentally political. While serious constitutional and legal questions about it were raised, the removal of a democratically elected president before the end of his term has established an unmistakable precedent, clearly demonstrating the supremacy of the People's Consultative Assembly (Majelis Permusyawaratan Rakyat or MPR) over the president. With relatively few exceptions, Indonesian scholars, political elites and the public have evidently found the process acceptable. It remains to be seen what impact this precedent will have on future political stability and the ongoing deliberations about further constitutional changes to the structure of the Indonesian state.

This report reviews the impeachment process, culminating in the July 2001 Special Session of the MPR, and considers some implications for the structure of governmental institutions and democratization in Indonesia. First, the report describes and analyzes the confrontation between the president and the legislative branch, beginning after the 2000 MPR session. Next, it offers important background about the complex, ambiguous relationship between the president and the legislative branch under the Indonesian constitution and about the established legal process for presidential impeachment.¹ Third, the report reviews the process of calling a Special Session of the MPR, which has the power to remove the president, and analyzes the legal and political issues involved. Fourth, the report describes the proceedings of the Special Session and the president's attempt to declare a state of emergency, dismiss the national legislature and MPR, and call new elections. It provides a detailed chronology of the removal of President Wahid and the election of President Megawati and describes and analyzes the election of Muslim party leader Hamzah Haz as vice president. Subsequently, the report considers the legal validity of the president's impeachment and analyzes the increasing assertiveness of the military faction. Finally, it reviews the constitutional landscape in light of the MPR's removal of a democratically constituted president and its unquestionable supremacy, and lays out the present procedural and substantive issues in the constitutional reform process.

This report was prepared on the basis of direct observation of the Special Session of the MPR; discussions with legislators, political party leaders, observers and others; review of press accounts; and analysis of documents, including the Constitution and constitutional amendments, MPR decrees, laws, legal arguments and other documents.

¹ The term "impeachment" may be inapt because it suggests a legal or quasi-judicial process, while the process is actually more political than legal and does not actually call for the MPR to hold any kind of trial. Nevertheless, following common usage in Indonesia, this report uses "impeachment" to refer to the process of removing a president before the expiration of his or her term of office.

The Confrontation between the President and the Legislative Branch

President Wahid's removal was the culmination of numerous conflicts between himself and the national legislature that began within weeks of his election in October 1999. As his support in the legislature waned over time, the position of the government became increasingly tenuous. Because the 500 members of the People's Representative Assembly (Dewan Perwakilan Rakyat or DPR) make up nearly three quarters of the 695-member MPR, the stability of the government is greatly dependent in practice on continual legislative support from the DPR itself. Both President Wahid and President Megawati relied for their election on the support of a number of parties other than their own.

President Wahid's troubles with the DPR began soon after his election when he announced that three unidentified members of his so-called "national unity" cabinet were under investigation for alleged corruption. Although none of the three was ever officially identified, Coordinating Minister for Public Welfare and Poverty Alleviation Hamzah Haz resigned. Haz was the national chairman of the United Development Party (Partai Persatuan Pembangunan or PPP, the largest party in the loose coalition of Muslim-based parties that was instrumental in engineering Wahid's election. (Hamzah Haz was elected vice president in July 2001.) Many members of this coalition felt that Wahid had betrayed them. When the DPR demanded President Wahid come to the legislature to explain his actions, he argued that the legislature had no power to summon him and likened the legislators to "kindergarteners."

In April 2000, Wahid alienated many in the country's two largest parties, Megawati's nationalist Indonesian Democratic Party – Struggle (Partai Demokrasi Indonesia–Perjuangan or PDI-P) and the former ruling party Golkar, when he fired two more cabinet members: Laksamana Sukardi, State Minister of Investment and State-Owned Enterprises, and Jusuf Kalla, Minister of Industry and Trade. Wahid cited a "lack of cooperation" with others in the government, although in a subsequent closed-door meeting with legislative leaders he raised allegations of corruption. These charges seemed particularly unfounded in the case of Sukardi, a well-respected economist and former banker.

There was widespread dissatisfaction in the legislative branch as well with the government's performance under President Wahid. Despite being a religious leader committed to tolerance and with a mass base of support, a long-time leader of the democracy movement and a president committed to liberal, internationalist policies, Abdurrahman Wahid as president increasingly alienated legislators and political leaders, including many who had supported him for the presidency. Legislators and political leaders criticized his frequent foreign trips, erratic statements and mismanagement of economic policy, separatist challenges, threats to law and order, and the relationship with the military. Wahid also antagonised political rivals with controversial proposals such as rescinding the 1966 MPR decree banning the Indonesian Communist Party and opening trade ties with Israel.

There was much speculation in the preceding months that the MPR's Annual Session in August 2000 might be transformed into a so-called Special Session with the power to remove Wahid from office, even though such an action would have been contrary to the MPR's existing rules, called the Standing Orders. Wahid managed to avoid such a fate at that time by promising to delegate substantial authority to Vice President Megawati. This promise was set forth in a Presidential Decision (Keputusan Presiden or Keppres).² One of the tasks Wahid delegated to Megawati was to run the weekly cabinet meetings. Surprisingly, however, given the fragility of his support from the large parties, the president announced a new cabinet just five days after the end of the Annual Session that actually contained fewer ministers from the parties and more of his own loyalists. This seems to have been a clear political miscalculation.

After the August MPR session and government reshuffle, DPR members became increasingly critical, as the perception of general government incompetence grew, the value of the currency continued to fall and the domestic security situation failed to improve. When the president was accused of involvement in the mishandling of public money, legislators began to consider initiating the impeachment process set forth in the 1978 MPR Decree. In one case, which came to be known as "Buloggate," it was alleged that money had been embezzled from the State Logistics Agency (Bulog). In the other, called "Bruneigate," the processing of a substantial donation from the Sultan of Brunei for humanitarian relief in Aceh was called into question. The DPR established a Special Committee to investigate these cases.

Both allegations provided a weak legal basis for impeachment. As discussed below, the MPR is permitted to remove the president only if he or she violates the Constitution or "state policy," as that term is used in the Constitution. The allegations against President Wahid, however, were vague and largely unsubstantiated and even if proved might not meet the constitutional standard. In the Bruneigate case, while the president's acceptance of off-budget contributions from abroad, albeit for humanitarian purposes, hardly comported with democratic norms of transparency, even Wahid's accusers never alleged that he personally benefitted. With respect to so-called Buloggate, the president denied any knowledge of the scam, and the legislature offered no specific evidence that he was involved.

Rather than attempt to mollify the DPR, President Wahid continued to antagonize its members. In late 2000 and early 2001, the president and the legislature engaged in extended standoffs regarding his attempts to dismiss the governor of the central bank, the choice of a chief justice of the Supreme Court and the composition of a new commission to monitor the wealth of state officials. Amid these conflicts, the Special Committee reported to the DPR its conclusion that there was reason to suspect presidential involvement in the two corruption cases, although it offered no details or evidence. (Much later, on May 28, the attorney general formally cleared the president of any involvement in the two cases.) But the Special Committee report began the long process that eventually led to the president's impeachment.

² Keppres 121/2000.

The Indonesian Constitutional System: The President and the Legislature

The Indonesian constitution was hurriedly prepared as a temporary, emergency document in 1945. It is short and often vague. The Constitution includes a Preamble, Main Body and explanatory Annotations. The exact legal status of the Annotations section was a matter of debate during the recent impeachment proceedings. The Constitution has served at various times in the history of independent Indonesia as the basis for authoritarian government, in part because, at least as interpreted during Soeharto's regime, it granted wide powers and broad flexibility to the executive branch.

Constitutional reform was a key demand of the *reformasi* movement that toppled Soeharto. The recent political crisis, which eventually led to the removal of President Wahid, further demonstrates the critical need for serious reconsideration of Indonesia's fundamental governmental institutions and for broader understanding of and agreement about the political rules of the game. All major political actors in Indonesia seem to agree that constitutional reform remains a critically important step in the ongoing democratic transition in Indonesia.

Despite its weaknesses, the 1945 Constitution has remained the basic framework for the ongoing democratic transition. The Constitution vests popular sovereignty in the People's Consultative Assembly (MPR). As reconstituted by a 1999 law enacted as part of the transition to democracy, the current MPR is made up of 695 members. This includes all 500 members of the national legislature, the People's Representative Assembly (DPR),³ 462 of whom are elected in proportional elections by province and 38 of whom are appointed from the military (known as Tentara Nasional Indonesia, Indonesian National Soldiers, or TNI) and the police (Polisi Republik Indonesia, Police of the Republic of Indonesia or Polri). It also includes 130 regional representatives chosen by elected provincial assemblies, five from each of 26 provinces in existence in 1999.⁴ Finally, the MPR includes 65 representatives of designated social groups (Functional Groups).

Under the 1945 Constitution, the MPR has sole responsibility to elect the president and vice president and to amend the constitution. At the beginning of each presidential term, the MPR also enacts policy guidelines, the Broad Outlines of State Policy (Garis-Garis Besar Haluan Negara or GBHN), which constitute the broad policy agenda for the newly elected president. Enacted as an MPR decree, the GBHN, in addition to being a political statement, are legally binding and a basis by which the MPR can evaluate the performance of a president.

³ The DPR is sometimes referred to in this report as the "legislature" and the DPR and MPR together as the "legislative branch", although the MPR has certain executive and judicial characteristics.

⁴ East Timor, then Indonesia's 27th province, voted for independence in a referendum in August 1999, shortly before the establishment of the current MPR. Since 1999, the government of Indonesia has established or is in the process of establishing several new provinces. These new provinces are not immediately entitled to regional representatives in the MPR.

The Constitution provides that the MPR must meet at least once every five years;⁵ such meetings are referred to as General Sessions (Sidang Umum). The Annotations to the Constitution also provide that, upon request from the DPR, the MPR can convene a Special Session (Sidang Istimewa) to which the president must account.⁶ In 1999, the MPR decided to begin holding Annual Sessions (Sidang Tahunan) in order to hear annual progress reports from the President, the DPR and other constitutional bodies and to amend the Constitution or enact decrees, as it deemed appropriate.⁷

Since the country's first democratic elections in four decades in 1999, Indonesia has twice amended the Constitution and continues to grapple with possible fundamental constitutional reform. At its General Session in October 1999, the MPR amended nine of the Constitution's 37 articles; these amendments are referred to collectively as the First Amendment. Most significantly, the First Amendment strengthens the position of the legislative branch vis-a-vis the executive branch by increasing the DPR's control over the legislative process and giving the DPR a greater role in the formation of the cabinet and the appointment of ambassadors.⁸ At the Annual Session in August 2000, the MPR adopted the Second Amendment to the Constitution, which provides that beginning in 2004 the DPR and provincial and regional legislatures shall be fully elected (that is, shall no longer include appointed representatives from the military) and reduces certain presidential powers to enact or veto legislation. The Amendment also enshrines certain individual rights in the Constitution.⁹ At its 1999 meeting, the MPR formed a committee to consider further constitutional reform, and in 2000 the MPR agreed that further constitutional amendments could be debated at Annual Sessions in 2001 and 2002.

Separation of Powers and Checks and Balances . One of the primary weaknesses of the 1945 Constitution is its ambiguity regarding the fundamental relationship between the president and the legislature – in other words, whether the system is presidential or parliamentary. On the one hand, the president acts as both head of state and head of government, with a fixed term, as in a pure presidential system. There is no position similar to that of prime minister in a pure parliamentary system. According to the Annotations to the Constitution, the president is not formally accountable to, and cannot dissolve, the national legislature (DPR). Indeed, most Indonesian political elites describe the system as presidential.

⁵ Constitution of the Republic of Indonesia, Article 2(2).

⁶ Constitution of the Republic of Indonesia, Annotations Section VII.

⁷ MPR Standing Orders, MPR Decree II/1999 as amended by MPR Decree I/2000 and Decree II/2000 (hereinafter "MPR Standing Orders"), Articles 49 and 50.

⁸ Constitution, Articles 5 and 20. For more on the First Amendment, see National Democratic Institute for International Affairs, *The 1999 Presidential Election, MPR General Session and Post-Election Developments in Indonesia*, November 28, 1999.

⁹ Constitution, Articles 28A-28J. For more on the Second Amendment, see National Democratic Institute for International Affairs, *Indonesia's Road to Constitutional Reform: The 2000 MPR Annual Session*, October 2000.

On the other hand, a legislative body, the MPR, is the sole repository of popular sovereignty and the highest state institution. The MPR elects the president and vice president and is the body to whom the president and the government must "account." Regardless of terminology, the ouster of President Abdurrahman Wahid has made clear that the current political system provides for very strong legislative powers over the president.

In electing the president and vice president, the MPR has broad discretion. By electing Abdurrahman Wahid in 1999, even though Megawati's party had won a plurality in national elections and Wahid's party had received only about 12 percent of the national vote and 51 of the 462 elected seats, the MPR made clear its power to choose a president was independent of the electorate's preferences. Negotiations among political parties have played an important role in all contested elections for president and vice president since 1999.

The Constitution does not mention MPR decrees, but, consistent with the status of the MPR as the supreme body in the Indonesian system of government, New Order practice established MPR decrees in the legal hierarchy as second only to the Constitution itself, above laws passed by the DPR.¹⁰ This practice was itself acknowledged in MPR Decree III/2000. Thus, while not part of the formal Constitution, MPR decrees can regulate and elaborate upon constitutional matters, including presidential impeachment.

Absence of Judicial Review . The protracted crisis over presidential impeachment during the first half of 2001 exposed another deficiency in the current constitutional system: the lack of a judicial authority that can definitively resolve constitutional issues. Throughout the crisis, constitutional issues were frequently at the fore of the conflict between the legislature and the president. But varying and opposing constitutional interpretations were simply left unresolved, items for public debate and speculation, but not subject to resolution.

The Supreme Court has no general power of judicial review; the MPR is the sole judge of the constitutionality of its own acts. The chief justice does have the authority to issue advisory opinions, which the current chief justice did on the eve of impeachment. The MPR's power to pass on the legality of its own actions means, of course, that the Indonesian Constitution lacks meaningful "separation of powers."

Procedure for Removal of President . The 1945 Constitution establishes a fixed five-year term of office for the president.¹¹ The Annotations to the Constitution provide that if the DPR believes the president has violated "state policy as laid down in the Constitution or as determined by the MPR," the MPR may convene a Special Session in order to call the President to account.¹² The Constitution itself, however, does not set forth

¹⁰ The Soeharto regime was called the New Order.

¹¹ Constitution of the Republic of Indonesia, Article 7.

¹² Constitution of the Republic of Indonesia, Annotations Section VII.

procedures for the removal of a president from office, in either the main text or the Annotations.

Rather, an MPR decree enacted under Soeharto establishes the required process. According to MPR Decree III/1978, the People's Consultative Assembly has the power to remove the president, other than at his own request or because of incapacitation, only for a "clear violation of state policy."¹³ That standard does not appear to authorize removal of the president merely because he has lost the confidence of the legislature (DPR) or the People's Consultative Assembly (MPR). But "state policy" is understood to include the Constitution and MPR decrees, and the MPR has essentially plenary powers to interpret what constitutes a violation of state policy.

The actual process for presidential impeachment is complex. It involves both the DPR and the MPR. If the DPR concludes that the president has violated state policy, it has the power to initiate proceedings.¹⁴ To aid its determination of whether the president has committed an offense that justifies impeachment, the DPR may exercise its "right of interpellation" (*hak interpelasi*) to summon the president for questioning. The MPR inserted the DPR's right of interpellation, analogous to "question time" in a parliamentary system, into the Constitution as part of the Second Amendment adopted in August 2000.

If the DPR determines that charges are warranted, then it must send a first memorandum of censure to the president. The president has three months to comply with the demands of such a memorandum. If the DPR believes the president has not complied, it can vote to send a second memorandum. The president has one additional month to comply with, or satisfactorily respond to, the demands of the second memorandum. Only then can the DPR vote to request the MPR to convene in Special Session to seek the president's statement of accountability.¹⁵ Under the MPR rules of procedure, it takes at least two months to prepare a session of the MPR.¹⁶

If the MPR decides to accept the DPR's invitation to convene in Special Session, it calls the president to make an "accountability speech" to defend the performance of his or her government and respond to the specific charges.¹⁷ If the MPR votes to reject this speech, then the president has the right of reply. A vote to reject the reply as well functions as removal from office. In such an instance, the MPR swears in the vice president to serve out the president's term and elects a new vice president.

¹³ MPR Decree III/1978, Article 4.

¹⁴ MPR Decree III/1978, Article 7.

¹⁵ MPR Decree III/1978, Article 7.

¹⁶ MPR Standing Orders, Article 33.

¹⁷ MPR Decree III/1978, Article 5(2).

Unlike in many parliamentary systems, the executive lacks reciprocal rights to the legislature's power to remove the government. While the MPR can remove the president in effect for political reasons, as recent events have re-emphasized, the president cannot dissolve the legislature and call for early elections. The power of a prime minister to dissolve parliament provides an important check on the willingness of that body to bring down the government. No such check exists in the Indonesian system.

Although significantly more complicated and time consuming than a parliamentary vote of no confidence – it requires a number of specific steps and should take at least six months – this process of presidential impeachment now appears more political than legal, as it evidently permits the early removal of a president who has lost the political support of the legislative branch.

Calling the MPR Special Session

On February 1, 2001, the DPR voted by 393 to 4 to accept the Special Committee report, which formally opened the possibility of impeachment. President Wahid's party group, the National Awakening Party (Partai Kebangkitan Bangsa or PKB), walked out before the vote. The four votes against the report came from the Nation, Compassion and Democracy Party (Partai Demokrasi Kasih Bangsa or PDKB), a small Catholic-based party that consistently supported Wahid. Then, with the acquiescence of even the PKB and the PDKB, the DPR unanimously decided to initiate the process to remove President Wahid from office by sending him the first memorandum warning him that he had violated "state policy."

During the first half of 2001, members of the DPR grew increasingly dissatisfied with President Abdurrahman Wahid. On March 28, the president formally responded to the first memorandum in a speech at the DPR. The president continued to question the legality of the work of the Special Committee that had investigated the alleged corruption charges against him. The president also rejected the DPR's argument that his actions in those cases violated "state policy" because they violated the MPR decree against corruption, collusion and nepotism.

On April 30, judging the president's response to the first memorandum to be unsatisfactory, the DPR voted by 363 to 52 with 42 abstentions to send the second memorandum to the president, in accordance with the procedures outlined in MPR Decree III/1978. As previously, PKB and PDKB were the only party factions voting against the memorandum. Most of the abstentions were the 38 representatives of the Indonesian Armed Forces (TNI) and national police (Polri), who in February had joined the consensus on the first memorandum.

On May 2, in a five-minute speech on national television, the president responded only indirectly to the second memorandum by offering some conciliatory, but vague, words for the legislature. He urged the DPR to turn its attention to more pressing business. His remarks evidently failed to dampen criticism or slow the momentum for his removal. In late May the president attempted to open negotiations about sharing power with the vice

president. On May 29, he offered a more formal response in writing in which he argued that the memorandum "failed to specify what pledge of office has been violated" by him.¹⁸

On May 30, the DPR judged the president's response to the second memorandum to be unsatisfactory and, by a vote of 365 to 4 with 39 abstentions, requested the MPR to call a Special Session. The PKB again walked out before the vote. The abstentions came from the TNI-Polri faction and one PDKB member. As noted above, the MPR Standing Orders provide that two months' notice is required to call an MPR session, including a Special Session called to hear a statement of presidential accountability before the end of a president's term. The MPR Working Committee (Badan Pekerja), a steering committee of the MPR with representatives from each faction, therefore fixed the Special Session to open on August 1.

Beginning in early June, the President made several attempts to remove the national police chief, General Surojo Bimantoro. TNI and Polri had consistently resisted the idea of a presidential declaration of a state of civil emergency, which had been floated since around February. The president may have thus seen Bimantoro as an obstacle to the implementation of any such declaration. On June 2, citing the need for an investigation of a May 30 incident in which the police had opened fire on rioters in Pasuran, East Java, the president announced that he had suspended Bimantoro. Under MPR Decree VII/2000, the appointment or dismissal of the commanders of the TNI and Polri is subject to the approval of the DPR, which the president failed to obtain. Bimantoro was unwilling to resign, retire or accept an offer of the ambassadorship to Malaysia on the request of the President alone.

On July 9, the MPR Working Committee met and left open the possibility of convening the Special Session at an earlier date. The Working Committee decided that, if there was, in the words of Speaker Amien Rais, a "worsening of the political situation that could harm the country due to the President's decisions," the leadership could convene a "plenary session" of the Assembly to consider moving up the Special Session.¹⁹ The MPR Standing Orders, which were completely rewritten in 1999 and amended in 2000, do not recognize this concept. As discussed above, the MPR Standing Orders define only three kinds of MPR sessions: General Sessions, Annual Sessions and Special Sessions. Under the existing rules, only a Special Session of the MPR can remove the president before the end of his term.

In response, speaking on CNN on July 12, the President threatened to declare a state of emergency at 6:00 p.m. on July 20.²⁰ That evening, the President announced the

¹⁸ Geoff Spencer, "Megawati's Party, Golkar Demand Wahid's Impeachment," Associated Press, May 30, 2001.

¹⁹ "MPR Team Agrees to Hold Snap Session If Necessary," The Jakarta Post, July 10, 2001 (<http://www.thejakartapost.com>).

²⁰ "Wahid Outlines State of Emergency Plans," July 12, 2001, CNN.com, (<http://www2.cnn.com/2001/WORLD/asiapcf/southeast/07/12/wahid.impeach/index.html>).

appointment of General Chaeruddin Ismail as acting head of the national police.²¹ The MPR leadership responded to this announcement by activating its decision of July 9 and calling the Plenary Session of the MPR for 9:00 a.m. on July 21.

The Plenary Session of the MPR convened on July 21 with members of all Assembly factions except the PKB and the PDKB present. Letters from both parties were read out. The PKB rejected the entire constitutional basis of the accountability process in the DPR and MPR. The PDKB letter argued that there was no legal basis for the holding of a Plenary Session, because it was a type of session not recognized under the Constitution or the MPR rules. It also argued that the rules did not permit the acceleration of the Special Session.

The absence of PKB and PDKB throughout the proceedings of the Special Session over the following days meant that MPR had to make decisions by majority vote. Although the MPR officially prefers making decisions by consensus, this requires the presence of all of the recognized factions within the MPR.²²

Each of the nine factions present on July 21 presented its views. All of them, including the military and police, argued that developments were becoming increasingly dangerous and cited in particular the dangers of contested command of the national police. Many factions specifically charged that the president had violated the constitution. The military-police faction argued that the MPR needed to protect the state.

A proposal to move up the opening of the Special Session to July 21 was agreed to by 592 votes to five, with four abstentions. The nine who did not vote in favor of moving up the session were all members of Functional Groups. Although the vote was overwhelming, there had been considerable debate in some quarters – including, for example, at the Golkar faction meeting – in the preceding hours about whether to move up the Special Session. Eventually, however, the MPR was unable to resist the feeling on the floor that the time for action had arrived.

The Proceedings of the Special Session

Immediately after the vote, the MPR formally opened the Special Session. In accordance with the MPR Standing Orders, its first act was to adopt a timetable, which it did without dissent, by 537 votes to 0. According to that timetable, the MPR Special Session would next sit at 9:00 a.m. on July 23 to hear the accountability speech of the President.

On behalf of the MPR leadership, MPR Speaker Amien Rais sent a letter to President Wahid requesting the president to be present to deliver his accountability report,

²¹ Keppres 56/2001 and 57/2001

²² MPR Standing Orders, Articles 82 and 83.

as required by the MPR Standing Orders.²³ The president promptly sent a reply declaring that the Special Session was illegal and that he would not attend.

In a clear show of support for the MPR, police officials announced that they were prepared to provide full security for the Special Session. On Sunday, July 22, in a show of force, some 2000 soldiers from the Indonesian Army, Navy and Air Force gathered at the National Monument, in front of the presidential palace, in a ceremony to display the unity of the troops. They paraded heavy equipment, including amphibious tanks and armored cars.²⁴ During the evening, the president announced that he had met with military leaders in the legislature, MPR Deputy Speaker Lt-Gen Hari Sabarno and Lt-Gen Budi Harsono, to order them to withdraw TNI-Polri support for the Special Session. If they refused, the president said, they should resign or would be dismissed in the course of the evening. This threat was not carried out.

State of Emergency. At 1:10 a.m. on July 23, the president announced that he was declaring a state of civil emergency. The president's order purported to dismiss the MPR and DPR, called for new elections within a year, and claimed to suspend Golkar until the Supreme Court resolved the pending case on alleged Golkar financial irregularities during the 1999 general elections.

The legal grounds for the declaration of a state of emergency are established by a 1959 presidential decree, issued by President Soekarno following his dissolution of the Constituent Assembly then trying to prepare a constitution and his announcement of "Guided Democracy."²⁵ Although the grounds for a declaration of an emergency are vague, the political crisis in 2001 did not seem to be the kind of situation envisioned by the decree.²⁶

In addition, the president issued his order in the form of a *maklumat*, a form of legal instrument used in the early days of the Republic of Indonesia that does not now exist as a valid legal instrument. The controlling MPR decree on the Hierarchy of Laws, which lists such instruments, makes no mention of a *maklumat*.²⁷

In response to the president's order, the MPR leadership advanced the second sitting of the Special Session to 8:00 a.m. on July 23. Akbar Tandjung, the Speaker of the DPR, immediately requested the Supreme Court provide an advisory opinion on the

²³ MPR Standing Orders, Article 98(7).

²⁴ "TNI in Show of Force and Unity," The Jakarta Post, July 23, 2001 (www.thejakartapost.com).

²⁵ Government Regulation in lieu of Law (Peraturan Pemerintah Pengganti Undang-Undang or Perpu) 23/1959

²⁶ See Andrew Ellis, *States of Emergency: Some Thoughts on the Legal Issues*, June 3, 2001, which provides a more detailed analysis of Indonesia's state of emergency provisions.

²⁷ MPR Decree III/2000.

presidential *maklumat*. (As discussed above, the Supreme Court does not currently have powers of binding constitutional interpretation or judicial review.) The Jakarta chief of police made it clear that he would take orders from the vice president and took action to ensure the security of the Special Session. Retired Lieutenant General Agum Gumelar, coordinating minister for political, social and security affairs, fulfilled an earlier vow by announcing his resignation due to his failure to prevent the declaration of a state of emergency.

At about 7:00 a.m., Supreme Court Chief Justice Bagir Manan announced his advisory opinion. According to the chief justice, the presidential *maklumat* was unconstitutional. The president did not have the power to suspend the MPR. The holding of elections was a question for the legislature, and the possible suspension of Golkar was a matter for the courts.

Second Sitting of Special Session. The second sitting of the Special Session opened just before 8:30 a.m. The advisory opinion of the Chief Justice was read to the full body. The MPR immediately voted to refuse the validity of the *maklumat*, by 599 votes to 0 with 2 abstentions. In the light of the president's refusal to attend, the MPR then agreed to a revised timetable for the Special Session, by a vote of 598 to 0. (The MPR Standing Orders do not provide for this eventuality.)

Each faction then gave its position. There was consensus among all factions present that the president's order violated the constitution. Since the MPR is the highest institution of state, the president could not suspend or dissolve it and was in violation of his oath of office by attempting to do so. The Special Session set up an 82-member ad hoc committee (PAH Majelis) to draft the Special Session decisions. The formation and composition of ad hoc committee was agreed to by 598 votes to 0.

The Special Session reconvened in the mid-afternoon of July 23 to receive the report of the ad hoc committee. The committee offered four draft MPR decrees. The first provided text for the morning's decision to refuse the validity of the *maklumat*, which became MPR Decree I/2001. The second draft decree declared the absence of the president, his refusal to appear before the MPR, and the publication of the *maklumat* as against "state policy" (the Constitution and MPR decrees), as required under the rules for impeachment. The second decree accordingly dismissed the president with immediate effect. The third draft decree immediately appointed the vice president to serve as president for the remainder of the 1999-2004 term of office. The fourth draft decree would confirm the new vice president once that election had taken place.²⁸

All factions present spoke in favor of the draft decrees. The military-police faction presented its approval as a willingness to support the political decisions of the MPR reached by a legal and constitutional process. Nonetheless, the decision of serving military and police officers to vote to remove their commander-in-chief demonstrates clearly the fundamental problem of their presence in representative bodies.

²⁸ MPR Standing Orders, Article 98(5)(b).

The MPR adopted the second and third draft decrees in a single vote, as the presidential succession process is automatic in these circumstances.²⁹ The vote was 591 votes to 0, thus enacting MPR Decrees II/2001 and III/2001. It was taken as an open vote, rather than by secret ballot, which was used when the Assembly rejected President Habibie's accountability speech at the 1999 General Session. The MPR Standing Orders provide for a secret ballot where the matter under consideration relates to a person.³⁰ However, the rules are considerably less clear than those in place in 1999, and MPR members who had considered the matter believed that the absence of two party factions from the Special Session required the use of the standard majority voting procedures throughout. The issue was not raised on the floor and might merit further consideration away from the current context.

Speaker Amien Rais then brought Megawati Soekarnoputri into the hall for the presidential swearing in ceremony, which took place soon after 5:00 p.m. on July 23. This was followed by a short speech from new President Megawati emphasizing unity, teamwork and democracy.

Election of the Vice President. On July 24, there were caucus meetings and intense lobbying efforts regarding the election of the vice president. The MPR established the process for this contest at the 1999 General Session.³¹ Nominations closed at 2:00 p.m. on July 25. Five candidates were nominated: (1) Agum Gumelar, immediate former Coordinating Minister for Political, Social and Security Affairs and former TNI lieutenant-general, nominated by a coalition of small Islamic parties³²; (2) Susilo Bambang Yudhoyono, Gumelar's predecessor as Coordinating Minister and also a former TNI lieutenant-general, nominated by a coalition of small nationalist parties³³ and by 80 individual Functional Group members; Akbar Tanjung, DPR Speaker and Golkar chair, nominated by Golkar; Hamzah Haz, PPP chair, nominated by PPP and by the Reform Faction³⁴; and Siswono Yudohusodo, a Functional Group member, nominated by 78 individual members from the Functional Group faction and from representatives campaigning for recognition of a separate faction of regional representatives.

Two rounds of polling took place on July 25, each taking about three hours to complete. Members were summoned in turn to the front of the MPR hall to vote in secret, and the count was then conducted by announcing the vote on each ballot, subject to open

²⁹ MPR Standing Orders, Article 98(5)(a).

³⁰ MPR Standing Orders, Article 85(5).

³¹ MPR Decree VI/1999.

³² Association of Muslim People's Sovereignty (Perserikatan Daulatul Ummah).

³³ Indonesian National Unity (Kesatuan Bangsa Indonesia).

³⁴ The Reform Faction is a coalition of the National Awakening Party (Partai Amanat Nasional or PAN), led by MPR Speaker Amien Rais, and the Justice Party (Partai Keadilan or PK), parties that emanated from the 1998 reform movement associated with the modernist Islamic tradition.

scrutiny. The results of the first round were as follows: Hamzah Haz – 238 votes; Akbar Tanjung – 177 votes; Susilo Bambang Yudhoyono – 122 votes; Agum Gumelar – 41 votes; Siswono Yudohusodo – 31 votes. There were four abstentions. Under the rules, the top three candidates went through to a second ballot.

The second round results, which were announced just before midnight, kept the same order of candidates: Hamzah Haz – 254 votes; Akbar Tanjung – 203 votes; and Susilo Bambang Yudhoyono – 147 votes; with three abstentions and two invalid votes. The third round was set for the following morning, July 26.

Although this was the third election under these rules (both the presidency and vice presidency having been contested in 1999), questions of procedure arose. In both of the first two rounds, all writing on ballot papers was read out. This publicized messages such as “I love you Hamzah Haz.” It also enabled apparent political messages to be sent to the assembled MPR; “Hamzah Merdeka Yes,” for example, might have been seen as code for PDI-P support of Hamzah. Luthfi Achmad of the Reform Faction challenged the practice from the floor on the morning of July 26, and the Speaker ruled that only names with titles should be read out.

The third ballot considered just the top two candidates from the previous round. On the third ballot, Hamzah Haz was elected as Vice President with 340 votes, which represented the necessary majority of the members present. Akbar Tanjung received 237 votes, and there were 29 abstentions and four invalid votes. Hamzah’s election was formalized into an MPR decree.³⁵

Hamzah Haz was sworn in as Vice President that afternoon, July 26, for the remainder of the 1999-2004 term. His acceptance speech echoed that of Megawati.

Closing of Session . At the formal closing session, Megawati led a minute of silence for Supreme Court Justice Syafiuddin Kartasasmita, who had been assassinated on July 26.³⁶ Speaker Amien Rais closed the session with a strong defense of the constitutionality of the proceedings. He also commended the military and police for, he said, upholding the law and providing security for the Special Session, and thanked the Chief Justice for his opinion in favor of the MPR’s position on the constitutionality of the President’s actions.

Political Analysis of Vice Presidential Election . Much can be discerned from the results of the vice presidential election.

³⁵ MPR Decree IV/2001.

³⁶ Justice Syafiuddin Kartasasmita had presided over the Tommy Soeharto trial. Many have observed that his assassination suggests that the aggressive pursuit or prosecution of members of the Soeharto family may be met by violence.

First, nearly half of the PDI-P members appear to have voted for Hamzah throughout and almost all to have done so in the final ballot. Even though Megawati and Hamzah come from different sides of the nationalist/Islamic divide of Indonesian politics and, indeed, Hamzah was among those who rejected a woman president in principle in 1999, it became increasingly clear that Hamzah was Megawati's choice. (Neither the party nor Megawati publicly backed any candidate). Despite some opposition from within the PDI-P, Megawati was able to carry her party's elected representatives with her in a secret ballot – showing a degree of party discipline that was not universally predicted.

Second, Megawati appeared to be trying to build a coalition even broader than what would be necessary to give her the presidency. As the last two years have shown, the Indonesian constitutional system requires the president, in order to function, to maintain the support of a solid majority of the DPR. Megawati could in fact have secured a majority through the support of PDI-P, Golkar and the military alone, without any help from other parties, especially those that in various ways represent Islamic tendencies. But such an approach might have appeared as the return to power of the New Order, that is, of the secular, nationalist and pro-military forces. In any event, by backing Hamzah Haz for Vice President, Megawati and her supporters unmistakably reached out to the PPP. Her rejection of a government based solely on secular-nationalist forces was confirmed by the composition of her Cabinet, announced some two weeks later.

Third, like Megawati, Akbar Tandjung also showed that he is able to retain the support of his party in a secret ballot. This was also not a foregone conclusion given the debate beforehand and an apparent divide within Golkar.

In addition to these political lessons, the vice presidential election raises a potentially important point of legislative procedure. Although the total membership of the MPR is 695, only 682 seats were in fact filled at the time of the Special Session. The remaining seats were vacant because of deaths or resignations; one vacancy occurred as far back as December 2000. (Currently, the process of filling DPR vacancies is in dispute). In the event, Hamzah Haz's margin was definitive. But if there were a close vote in a future election, questions of legitimacy could arise as a result of the existence of such long-term vacancies. Both the text and the implementation of MPR Standing Orders dealing with such vacancies might usefully be reviewed.

The Validity of the President's Impeachment

President Wahid, with the advice of University of Indonesia constitutional scholar Harun Alrasyid, argued that the MPR's efforts to remove him were unconstitutional. The president specifically attacked the 1978 MPR decree establishing a process for presidential impeachment. The president and his supporters argued that the MPR decree is unconstitutional because presidential impeachment is not authorized in the main body of the Constitution. The body of the Constitution states only that the MPR has the authority to elect the president; it says nothing about removal of the president. The president argued that the Annotations cannot justify a process to remove the president before the completion of his term because the Annotations are not an organic part of the 1945 Constitution.

As we have seen, the Annotation section indeed states that if the DPR determines 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.”³⁷ Most Indonesian legal scholars and MPR members regard the Preamble, Main Body, Annotations and now the first two Amendments of the 1945 Constitution as an organic whole. Thus, President Wahid’s legal arguments did not appear to carry much weight with most scholars or politicians in Indonesia.

In any case, having an early definitive court ruling, rather than a last-minute advisory opinion, on the conflicting constitutional arguments of the president and the legislature might have helped to diffuse the controversy, or at least have clarified it. Perhaps the president would have been more inclined to cut a deal, or to generally be more accommodating, if he had faced the prospect of a judicial panel reviewing his assertions that the impeachment process lacked a basis in law.

Under the Constitution and MPR decrees, at least the president’s attempt to declare a state of emergency and dismiss the MPR and DPR appears to have met the substantive grounds for his removal, which include not only breach of the constitution but also breach of state policy guidelines as determined by the MPR. The MPR did not ultimately rest its case on the president’s alleged involvement in two corruption cases, which might not have met the constitutional standard. But the rules do not prevent the MPR from changing its grounds for action as the process of impeachment progresses over time.

Procedurally, the impeachment process did appear to violate the rules when the Special Session was moved ahead to July 21, which meant the requisite two months’ notice had not been provided. MPR members who are knowledgeable and careful of procedures acknowledged this violation of the established rules, but they argued that this violation was technical and that they feared that President Wahid do something even more damaging. On this procedural point, this justification after the fact is not a legal one. It is a political rationalization made by pointing to the acceptance of the action by a wide range of political forces, the military and police, and the society at large, as demonstrated by the low level of rejection on the streets.

The Military Faction’s Renewed Assertiveness in the Legislature

The military-police faction in the DPR and MPR played an important role throughout the proceedings that resulted in President Wahid’s removal. Because most of the political parties were united on the need to impeach the president, the TNI-Polri faction never had to cast a decisive vote. But the military’s apparent opposition to the president seemingly had a significant psychological influence. This influence continues a trend of the military’s renewed assertiveness in politics, increasingly visible in the 2000 and 2001 MPR sessions.

³⁷ Constitution of the Republic of Indonesia, Annotation VII.

During the 1999 General Session, members of the TNI-Polri faction rarely contributed to the debates in the plenary and commission sessions open to the public. This was most likely a conscious strategy to keep a low profile, given the military's history as the backbone of the New Order, during the crucial transitional MPR session that would effect the first democratic transfer of power in Indonesia's history. By letting the parties take center stage, the military probably hoped to defuse criticism by students, NGOs and others regarding its very presence in these representative bodies.

The TNI-Polri faction began, however, to assert its views in the months leading up to the 2000 Annual Session. This was in part due to the military's unhappiness with the president over perceived interference in military personnel matters. It was also due to Wahid's weakening political position, in which both the faction's 38 seats and the psychological effect of its views became crucial bargaining chips. This increasing influence was apparent when the 2000 Annual Session extended the military's role in the MPR until 2009;³⁸ under a previous agreement, it would have been out in 2004. The faction was also a much more vocal participant in the debates during the 2000 Annual Session than it had been in the previous year's General Session.

Of course, the military never really retreated from its position of largely unchecked power. It has utterly failed to prosecute or otherwise hold accountable its own members for human rights abuses, and such abuses continue in such places as Aceh and Irian Jaya (West Papua). The military, or elements of the military, have evidently supported radical Islamic groups in the sectarian conflict in Moluku province. It resisted efforts by President Wahid to control military promotions and appointments. And after early talk of a "new paradigm," the military has now stalled any effort to dismantle the "territorial system" that gives it significant control over the entire country.

The military's continued re-engagement in politics continued in 2001. In February the TNI-Polri faction voted in the DPR with the majority to accept the Special Committee report on President's Wahid's alleged involvement in financial misconduct and joined the consensus to send the first memorandum to the president. While the military abstained on the votes in April and May to send the second memorandum and to request that the MPR hold a Special Session, its votes were hardly crucial. In July, after the standoff between the legislature and the president over Wahid's attempts to replace the national police chief, the TNI-Polri faction again voted with the overwhelming majority to advance the Special Session and remove the president.

Changes to the Constitutional Landscape

The impeachment of the president and related events in recent months have undoubtedly changed the constitutional landscape of Indonesia and affected the prospects for constitutional reform. Some of these changes will be felt immediately, while others may be apparent only in the longer term.

³⁸ MPR Decree VII/2000.

One immediate question is the constitutional position of the new vice president. Article 4 (2) of the Constitution is unclear, providing only that the president will be assisted in the exercise of her duties by one vice president. Following the Annual Session of 2000, President Wahid issued a decree that delegated technical duties of administration to the vice president, including setting the program and agenda of the cabinet, chairing cabinet meetings and establishing the focus and priorities for administration policies.³⁹ But this relationship between Wahid and Megawati never seemed to operate satisfactorily. In her first official action as president, Megawati withdrew that decree, which leaves open the question of what the role of the vice president will be.

The Process of Constitutional Review. The 2001 Special Session may also have longer-term constitutional implications. In 1999 the MPR initiated a process of review of the 1945 Constitution that still has a year to run. In 2000, as noted above, the MPR agreed that further constitutional amendments could be debated at Annual Sessions in 2001 and 2002. The postponed 2001 Annual Session is now scheduled for late October or early November, and the Annual Session of 2002 will likely take place next August.

In her Independence Eve speech to the DPR on August 16, President Megawati announced her support for a thorough constitutional review. She proposed that the MPR draw up basic principles to be fleshed out by a constitutional commission that would report back to the MPR General Session in 2004. It is unclear how this proposed process would affect the previously existing constitutional reform process, including the plans to consider constitutional amendments at MPR sessions before 2004.

The new president's announcement of support for a constitutional commission has energized the debate about the process of constitutional change between MPR members confident of their own capability and legitimacy in completing the constitutional review and a wide range of academics and civic leaders who have called for broader involvement in the constitutional reform process. Indeed, many civic leaders have rejected the legitimacy of any MPR involvement in the constitutional amendment process. It is possible that the MPR could appoint a commission of some kind at the upcoming Annual Session.

At this point, many other procedural issues remain unclear as well. First, in addition to the establishment of the commission, proposals for a Third Amendment to the Constitution on certain questions may or may not be presented to the Annual Session. Second, if a commission is to be established, there will be a substantial debate on its composition, in particular on whether the commission will include elected members or be restricted to people outside the MPR. Third, the question may be raised again as to whether to continue with the policy of amending the 1945 Constitution or to draft an entirely new constitution. If it is to amend the 1945 Constitution, a new commission may or may not have powers to reopen issues already decided by the MPR in the First and Second Amendments (adopted in 1999 and 2000). It will need also to consider how the final changes should be consolidated and presented, especially in the context of possible

³⁹ Keppres 121/2000.

removal of the Annotations section. Fourth, a constitutional reform commission and the MPR itself will need a process for consultations. Fifth, the procedures for a commission to report back to the MPR will need to be agreed upon: whether its work is to be presented to the MPR Annual Session in 2002 or to the General Session in 2004, whether the MPR will have the right of amendment to the commission's report, and whether the final version of the constitution should be submitted to a referendum. All of these issues are likely to be the subject of fierce debate in the weeks leading up to the Annual Session in early November 2001.

Nor is any agreement currently apparent on a number of substantive issues. It is not clear for example that the MPR will be willing to give up its right to receive annual reports from the five state institutions: the president, the Legislature (DPR), the State Audit Board, the Supreme Advisory Council and the Supreme Court. As explained above, the MPR does not have the right to require a presidential accountability report during an Annual Session, as opposed to a General or Special one.

There are many constitutional issues that the MPR has yet to debate. These can be divided broadly into three categories.

The first category of constitutional issues contains a range of potentially related issues regarding state structure, checks and balances, and the possible separation of powers. These include proposals on the role, sovereignty and composition of the MPR, for direct election of the president and vice president, and for the possible establishment of a bicameral legislature (with a second chamber made up of regional representatives, which may or may not have limited legislative powers).

These issues also include possible revision of constitutional provisions governing the judiciary. Under the existing constitution, the supremacy of the MPR implies that the judiciary is subordinate to the MPR, although not subject to government interference. It is not clear, however, that the MPR has any sanction if it is unhappy with an action of the Supreme Court. The MPR has no practical mechanism for hearing or considering constitutional or legislative interpretation. It is notable that at the critical point of the MPR's conflict with President Wahid, legislators sought an advisory opinion of the Supreme Court through the Chief Justice rather than relying solely on the MPR's own powers, although these are superior on paper. The proposed amendments that introduce a constitutional court and some form of judicial review of legislation and conflicts between higher state bodies could therefore further strengthen the position of the judiciary. Judicial review would necessarily affect the powers of the MPR, it seems.

The second category includes constitutional issues about the society more broadly, including a number of issues that the MPR may still be a long way from resolving. At the top of this list is the role of religion in the constitution and, in particular, whether the wording of the Jakarta Charter obliging Muslims to practice the rites of their religion should be included. This proposition was rejected in the early years of Indonesian independence and attracts vigorous support in some quarters and deep-rooted opposition from others. Other issues in this second category include the form of the economy (that is,

the roles of the state, private and cooperative sectors, and of the “family system”) and the relationships among education, religion and technology.

The third category contains more technical, less contentious issues that need to be address in the Constitution. These include constitutional provisions for independent general elections, amplification of the provisions regarding state finance and audit, and clarification of the role of the Supreme Court and the organization of the judicial system.

Presidential, Parliamentary – Or An “Indonesian Presidential” Third Way?

As discussed above, most Indonesian political elites claim that the Constitution establishes a “presidential system.” There is consensus that the current constitutional review will not change the system from a presidential one. The system created by the 1945 Constitution and reaffirmed by recent events is, however, not the common kind of presidential system, as used in the United States, the Philippines and a number of South American countries. It is not based on separation of legislative and executive powers. It is a different system, unique in the world, and only tested as the basis of a democracy since 1998.

The events of recent months have brought the role of the MPR as the highest institution of state under the 1945 Constitution into clear focus. This role lay at the core of the constitutional positions expressed on the floor of the Special Session. The result of the Special Session and the removal of President Wahid can be seen as a reaffirmation of the MPR’s constitutional superiority, which was the cornerstone of the process that unfolded. Given the MPR’s demonstration in July 2001 of its fundamental supremacy, it may now be less likely that the MPR’s powers over the president will be significantly reduced, at least in the short term. At the same time, new momentum for the direct election of the president may be building. The direct election of the president would be hard to reconcile with MPR supremacy.

This role of the MPR remains a matter of debate, however, although almost entirely among political and elite groups and primarily in Jakarta. While the MPR itself, the media and civil society organizations have all made efforts to take the debate to a wider audience, nobody has as yet succeeded in demonstrating the relevance and importance of constitutional change or in kindling any significant public interest. If and when a constitutional commission is established, it will face a formidable task in encouraging wide public debate and response.

The issue is still open for debate. Faith in the current system will be tested by the success or failure of the Megawati presidency. Supporters of change generally wish to move to a normal presidential system. They may now be able to place their case firmly on the table, but may still face the need to build support. Until Indonesia can establish working institutions and clear, agreed upon rules of the political game, though, it will face the threat of further instability.

NDI Programs in Indonesia

The National Democratic Institute for International Affairs (NDI) has been working in Indonesia since 1996, when it supported the Independent Election Monitoring Committee (*Komite Independen Pemantau Pemilu*) (KIPP), the country's first formal independent election monitoring organization, in its efforts to monitor the May 1997 parliamentary elections. NDI has worked with political parties and domestic election monitoring organizations more intensively since the democratic transition began in 1998.

Current NDI programming aims to strengthen civil society and political parties; to assist the legislature in undertaking democratic reforms; to provide assistance to regional governing bodies as they implement decentralization policies; and to encourage civilian control over the military. NDI provides technical assistance to political parties at the national and provincial levels, at a non-partisan basis, through workshops, seminars and consultations on strategic planning, platform development, leadership training, and communications. NDI also works with political parties in the legislative environment to support a more informed and participatory constitutional reform process in Indonesia. NDI provides members of the People's Consultative Assembly (MPR) Working Body and its subcommittee on constitutional reform with technical assistance, training and international comparisons in order to inform the debate on constitutional reform and encourage positive change. NDI also works with the Ministry for Home Affairs and Regional Autonomy to develop a democratic approach to implementing the nationwide regional autonomy initiative, and to consider ways to meet the political challenges posed by decentralization. In addition, since November 2000, NDI has held sessions of its Political Leadership Academy, an intensive training program on political leadership and party development for young leaders.