Pancasila Nation:
Indonesia's Folk Constitutionalism

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Abstract

When the Preparatory Committee for Indonesian Independence ("BPUPKI") convened to draft the 1945 Constitution, the members acknowledged their lack of expertise in constitutional matters. Consequently, the constitution they produced was characterised as a hastily crafted document, deemed temporary until a more suitable replacement could be devised. Nearly eight decades later, it is evident that the 1945 Constitution has evolved into the cornerstone of Indonesia's persisting constitutional order, showing no signs of imminent replacement. Scholars have offered diverse interpretations of this phenomenon, attributing it to either superstitious beliefs or Indonesia's entrenched culture of constitutional corruption. In essence, the prevailing view is that Indonesia's continued veneration to the 1945 constitutional order is driven primarily by pragmatic considerations rather than a shared set of principles. In this study, I challenge the existing consensus by suggesting a deeper layer to the story surrounding the persistence of the 1945 constitutional order. To support the underlying theme of this argumentative narrative, I propose that folk religious traditions emphasising communal harmony (known as *rukun*) should play a significant role in the explication process, because these traditions represent Indonesia's embodied knowledge, distinct from the Western or modern social imaginaries that have predominantly informed current constitutional scholarship. By utilising Indonesia's folk religious traditions as an interpretive framework, this study reinterprets the persistence of the 1945 constitutional order as a religious competition between the supporters of the 1945 Constitution and its adversaries, rooted in divergent religious heritages. In a sense, they represent two conflicting religious ideologies, hinting at a divergent conception of Indonesia as a religious state. This study further delineates

Résumé

Lorsque le Comité préparatoire pour l'indépendance de l'Indonésie (« BPUPKI ») s'est réuni pour rédiger la Constitution de 1945, ses membres ont reconnu leur manque d'expertise en matière constitutionnelle. Par conséquent, la constitution qu'ils ont produite a été caractérisée comme un document élaboré à la hâte, considéré comme temporaire jusqu'à ce qu'un remplacement plus approprié puisse être conçu. Près de huit décennies plus tard, il est évident que la Constitution de 1945 est devenue la pierre angulaire du cadre constitutionnel durable de l'Indonésie, ne montrant aucun signe de remplacement imminent. Les chercheurs ont proposé diverses interprétations de ce phénomène, l'attribuant soit à des croyances superstitieuses, soit à la culture indonésienne bien ancrée de la corruption constitutionnelle. En substance, l'opinion dominante est que la vénération continue de l'Indonésie pour l'ordre constitutionnel de 1945 est principalement motivée par des considérations pragmatiques plutôt que par un ensemble de principes partagés. Dans cette étude, je remets en question le consensus existant en suggérant une couche plus profonde à l'histoire entourant la persistance de la constitution de 1945. Pour soutenir le thème sous-jacent de cette histoire, je propose que les traditions religieuses populaires mettant l'accent sur l'harmonie communautaire (connues sous le nom de *rukun*) jouent un rôle important dans le processus d'interprétation. En effet, les traditions religieuses populaires incarnent le savoir Indonésien, distinct des imaginaires sociaux occidentaux ou modernes qui ont principalement influencé les études constitutionnelles actuelles. En utilisant les traditions religieuses populaires Indonésiennes comme cadre d'interprétation, cette étude réinterprète la persistance de l'ordre constitutionnel de 1945 comme une compétition religieuse entre les partisans de la

and exemplifies how Indonesia's folk religious traditions facilitate the process termed the vernacularisation of constitutionalism, indicating the infusion of the nation's folk religious referents or sensibilities into three ideals of modern political morality, namely *negara kesatuan* (the theory of the state), *negara hukum* (the rule of law), and *hukum tata negara* (constitutional law).

Constitution de 1945 et ses adversaires enracinés dans des héritages religieux divergents. Dans un sens, ils représentent deux idéologies religieuses conflictuelles, symbolisant une conception divergente de l'Indonésie en tant qu'État religieux. Cette étude décrit et illustre en outre la manière dont les traditions religieuses populaires de l'Indonésie facilitent le processus de vernacularisation du constitutionnalisme, indiquant l'infusion des références ou sensibilités religieuses populaires de la nation dans trois idéaux de la moralité politique moderne, à savoir *negara kesatuan* (théorie de l'état), *negara hukum* (état de droit) et *hukum tata negara* (droit constitutionnel).

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perspective on Indonesia's curious model of constitutionalism when considered against the backdrop of the exceptionalism of North American experiences. Also, I would like to thank Adrian Budiman for his generosity, allowing me to test out the thesis' suppositions as the guiding assumption for the Australian Consortium for "In-Country" Indonesian Studies' Law Practicum Program (2021–22).

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"There is No Constitutionalism in the Abstract"[1]
A Prolegomenon

I. The Rationale of the Study

Indonesia attempted a constitutional reform (1999-2002) described aptly as "the series of patchwork, and sometimes ad hoc, amendments passed every year" since the abrupt end of the three decades of political domination by the "authoritarian and militaristic" New Order regime ("Orde Baru," 1966-98).[2] This constitutional reform was "against expectations," considering that the success of the reform has been due to the unanimous approval of virtually all political factions, encompassing supporters of the status quo, the modernisers, and many others in between.[3] The intriguing aspect of Indonesian constitutional reform lies in the fact that it was achieved "without academic draft and used the old constitution as the working manuscript, gradually, piece by piece, not in one shot, through deliberations and consensus and solely by the constituted Assembly, [which] had invited critics and funny comments."[4] In a comparative context, the Indonesian model of constitutional reform constitutes "a distinctive path," as it deviates from many principles established by both theorists and practitioners involved in the writing of democratic constitutions.[5] In that regard, a noted constitutional design scholar quipped, this makes Indonesian constitutional reform "not a just-so story; it is simply far-better-than-it-might-have-been story."[6]

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[1] This subtitle is an adaption of Kahn's phrase that ". . . there is no law in the abstract." See Paul W Kahn, "Freedom, Autonomy, and the Cultural Study of Law" (2001) 13 Yale J L & Hum 141–171 at 151.
[2] Tim Lindsey, "Constitutional Reform in Indonesia: Muddling towards Democracy" (2002) 6:1 Sing J Int'l & Comp L 244–301 at 244–245.
[3] *Ibid*. (Noting that "[f]ew would believe[sic] that the current MPR [People's Consultative Assembly, Indonesia's highest constitutional body], an institution with a justified reputation for party political in-fighting and horse trading, could produce the majority necessary to resolve debates that have divided Indonesia since independence in 1945.").
[4] The Chairman singled out the U.N. Commission on Human Rights Special Rapporteur, Param Cumaraswamy, who asserted that "Indonesia's piecemeal amendments fail to meet the aspirations of the people for a democratic country under the rule of law." See Jakob Tobing, *Getting to Democracy in the World's Largest Muslim Country: How Indonesia Did It* (University of Virginia, 2016) at 2.
[5] Donald Horowitz, *Constitutional Change and Democracy in Indonesia* (New York: Cambridge University Press, 2013) at 10.
[6] *Ibid* at 5.

At first glance, one could agree with Jimly Asshidiqie, the inaugural Chief Justice of the new Constitutional Court, that the Indonesian constitutional reform has initiated what he referred to as "incremental big bang constitutional modifications," indicated by the fact that the reformed 1945 Constitution is three times as long as the original text. On a substantive level, Jakob Tobing, the Chairman of the Constitutional Reform Commission, boasted that constitutional reform entrenched "all principles of a democratic country such as popular sovereignty, rule of law, checks and balances, independent judiciary, religious freedom, free press and other basic rights, and periodical-democratic circulation of powers are incorporated into and guaranteed by the [the 1945 C]onstitution."[7] This suggests that the 1945 Constitution has undergone a profound transformation, evolving from a document initially described as "an idiosyncratic instrument" that functioned as "a source of instability,"[8] to a manifestation of "all the features of Western-style liberal constitutional democracy."[9] Hence, it is not uncommon to find commentators who simply assume that reform is driven by the desire to achieve a liberal democratic Indonesia, in the image of Western understanding of the concept.[10] In short, constitutional reform is what was considered as the passport for Indonesia's status as a poster boy of non-Western "young liberal democracy."[11] But only a few years later, Indonesian democracy was being dismissed as "low quality."[12] More recently, Indonesia's political condition took a turn for the worse which is widely understood as a signal that Indonesia is experiencing democratic regression.[13]

The assumption behind this understanding is the conventional wisdom that "[d]uring the constitution-making process from 1999 to 2002, constitution-makers introduced profound changes to the legal and political system, . . . [signalling that a] culture of [liberal] constitutional democracy has developed, driven by a robust civil society, media, and lawyers who mobilise advocacy

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[7] See Tobing, *supra* note 4 at 1.
[8] Horowitz, *supra* note 5 at 39–40.
[9] Albert HY Chen, "Pathways of Western Liberal Constitutional Development in Asia: A Comparative Study of Five Major Nations" (2010) 8:4 Int'l J Con L 849–884 at 865.
[10] While there is no direct mention of liberal democracy, it can be deduced that commentators in discussion of democracy and reform, are implicitly referencing liberal democracy. See e.g., Harold Crouch, *Political Reform in Indonesia After Suharto* (Singapore: ISEAS, 2010) at 333; Simon Butt & Tim Lindsey, *The Constitution of Indonesia: A Contextual Analysis* (Oxford: Hart Publishing, 2012) at 24.
[11] Chen, *supra* note 9 at 865, 866.
[12] Horowitz, *supra* note 5 at 207. (He argues that components contributing to its low quality can be attributed to some "fundamental aspects of the new political system.").
[13] See Thomas Power & Eve Warburton, "The Decline of Indonesian Democracy" in Thomas Power & Eve Warburton, eds, *Democracy in Indonesia: From Stagnation to Regression?* (Singapore: ISEAS-Yusof Ishak Institute, 2020) 1 at 1.

campaigns for the rule of law and social justice."[14] With this conventional wisdom as its premise, it is logical to arrive at the conclusion that Indonesia's current condition in which virtually every element of liberal democracy is held in contempt can be labelled a form of constitutional regression, backsliding, or even decay. Interestingly, the conclusion is not widely shared among most Indonesians, save for a small minority who are either Westernised lawyers/activists or Islamic Puritans.[15] Popularly accepted as a personification of "the average of Indonesian,"[16] President Joko Widodo ("Jokowi"), who was "praised as . . . [showing] a new way of doing things,"[17] presents a starkly different claim that "Indonesian democracy is alive and well."[18] To be sure, Jokowi's claim aligns with the understandings of numerous Indonesians who perceive democracy mainly as a means to attain concrete economic outcomes, rather than as a system that safeguards personal rights and liberties.[19] This means Indonesia's commitment to democracy is intricately linked to the ability of the government to deliver public goods.[20]

On closer investigation, the 2002 Indonesian constitutional reform does not present a turning point, but rather a reinvigoration of the nation's commitment to the 1945 constitutional order. The Indonesian perception of the 1945 Constitution transcends its role as a mere regulatory framework for addressing technical and routine constitutional matters. It stands as the foremost symbol of national identity and embodies Indonesia's distinctive understanding of religious constitutionalism. Given its symbolic significance, the fact that the PDI-P ("Partai Demokrasi

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[14] See Melissa Crouch, "The Limits of Transformational Authoritarian Constitutions: The Indonesian Experience" in Melissa Crouch, ed, *Constitutional Democracy in Indonesia* (Oxford: Oxford University Press, 2023) 1 at 1. It is worth noting the same conventional wisdom that informs works in the field of political science. See Eve Warburton & Edward Aspinall, "Explaining Indonesia's Democratic Regression: Structure, Agency and Popular Opinion" (2018) 41:2 Contemp Southeast Asia 255–285 at 267.

[15] See Daniel S Lev, "Judicial Authority and the Struggle for an Indonesian Rechtsstaat" (1978) 13:1 L & Soc'y Rev 37–71 at 43–46.

[16] See e.g., "Makna Jokowi sebagai Presiden Indonesia [The Meaning of Jokowi as a President of Indonesia]", *BBC News Indonesia* (23 July 2024), online: <https://www.bbc.com/indonesia/berita_indonesia/2014/07/140722_indonesia_kepresidenan_jokowi>; Niniek Karmini, "Indonesia's President, Who Mingles with People and Listens to Metallica, Still Popular in Last Term", *Associated Press* (14 February 2024), online: <https://apnews.com/article/indonesia-election-joko-widodo-7a47cf5e0811bedb95914b4ba20199bf>.

[17] Ben Bland, *Man of Contradictions: Joko Widodo and the Struggle to Remake Indonesia*, A Lowy Institute Paper (Sydney: Penguin Books, 2020) at 2.

[18] Emir Yanwardhana, "Indeks Demokrasi Indonesia Turun, Jokowi bilang Gini [The Index of the Indonesian Democracy is Deteriorating: [The President] Jokowi Says [Indonesian Democracy is in Good Shape]]", *CNBC Indonesia* (19 July 2024), online: <https://www.cnbcindonesia.com/news/20240719202021-4-556215/indeks-demokrasi-indonesia-turun-jokowi-bilang-gini>.

[19] Warburton & Aspinall, "Explaining Indonesia's Democratic Regression", *supra* note 14 at 275.

[20] *Ibid*; Saiful Mujani, R William Liddle & Kuskridho Ambardi, *Voting Behavior in Indonesia since Democratization: Critical Democrats* (Cambridge: Cambridge University Press, 2018) at 18.

Indonesia – Perjuangan" or "Indonesian Democratic Party of Struggle," Indonesia's largest political party) was the most persecuted party under the 1945 Constitution during the New Order ("Orde Baru," 1966–98) does not preclude it from being closely aligned with the constitution and exhibiting traditionalist tendencies on nearly all constitutional issues.[21] Hence, Indonesia's "distinctive path" to constitutional reform hinges on the fact that "there was no [liberal] democratic epiphany, no single moment of revolutionary transformation."[22] Hence, the best understanding of Indonesian constitutional reform is that it is a national purification rite to reinvigorate the nation's commitment to the 1945 constitutional order.[23]

With this assumption, it is justifiable to detach any study of a particular form of constitutional reform or constitutionalism from the assumption that achieving liberal ideals is inherent in every project of constitutional reform.[24] By taking social imaginary into account, this study represents a marked departure from comparative constitutional studies that ignore social imaginary as the background knowledge which is a key component in explaining the entrenchment of constitutionalism and other important social concepts.[25] Constitutionalism should be treated as "a concept that is not the invention of theorists but is one that normal adults are not only familiar with but employ on a frequent if not everyday basis."[26] Despite growing recognition that ideology, lifeword, social imaginary, cosmovision, or even the plurality of moral theories are critical in the operation of a written constitution, the prevailing approach has not fully articulated the resulting

[21] Horowitz, *supra* note 5 at 51.
[22] *Ibid* at 3.
[23] This is implicit in Tobing's description of the meaning of the success of the Indonesian constitutional reform as "an ability to comprehend Indonesia's socio-political and socio-cultural development along the history and to seize the opportunities opened by the political crisis at the end of the 1990s and to implement deliberative and consensual approach in achieving the expected reforms." See Tobing, *supra* note 4 at 3.
[24] See Martin Loughlin, *Against Constitutionalism* (Cambridge, Mass.: Harvard University Press, 2022) at 39. (He argues that "like liberalism and nationalism, constitutionalism is an ideology.).
[25] A similar argument has been made in a comparative study of the supposedly straightforward concept of the separation of powers which reveals that "there is very likely to be some variation in theories associated with it . . . , prompted by different histories, differences in constitutional context, or differences in trajectories of the interpretation of written constitutions over time." See Cheryl Saunders, "Theoretical Underpinnings of Separation of Powers" in Gary J Jacobsohn & Miguel Schor, eds, *Comparative Constitutional Theory* (Cheltenham, U.K.: Edward Elgar Publishing Ltd., 2018) 66 at 68.
[26] See also William A Edmundson, "Why Legal Theory is Political Philosophy" (2013) 19:4 Leg Theory 331–346 at 336. (He argues that "[l]aw is a concept that is not the invention of theorists but is one that normal adults are not only familiar with but employ on a frequent if not everyday basis."). On the application of philosophical analysis of the concept of law in the context of Malaysia, see R H Hickling, *Malaysian Law: An Introduction to the Concept of Law in Malaysia*, 2d ed (Selangor Darul Ehsan, Malaysia: Pelanduk Publications, 2001) at 15. (Hickling maintains "that the law produced by [Malaysian] custom is in general closer to the people than any rule of law posited, laid down, by a legislature.).

vernacularisation of the meaning behind the field's keywords, as they travelled from one context to another.[27] This suggests that the analytical construction of most studies is contingent on a thin understanding of its key concepts.[28] The dominant approach does not seek philosophical analysis to articulate the nature or meaning of the key concepts they invoke, let alone viewing them in context of the studied social imaginary. Thus, it is hardly surprising that the current approach tacitly assumes that their key concepts are perfectly clear and they know what they mean. In contrast, by removing ambiguity in the Indonesian meaning of various key concepts in constitutional studies, this study challenges that foundational assumption.

My justification for undertaking this conceptual analysis is premised on the assumption that it can explain why constitutionalism or constitutional law takes a particular form.[29] While this idea will be further developed in the last section of this Chapter, at this point it is sufficient to elaborate that conceptual analysis can be a key element in making sense of constitutional theory and practice beyond the Western context. Indeed, conceptual analysis can clarify what we are talking about and serve as the building block for more technical aspects of comparative constitutional studies in Indonesian tradition of meaning. As Chapter 6 on the Indonesian theory of the state will show, it is difficult to explain the reason that prompted Indonesia to consider federalism as a model without resorting to folk religiosity that sees the diffusion of power as signifying anarchy, the most despised socio-political condition.[30] Without insights from conceptual analysis, the resulting explanation of comparative constitutional theories will arguably be nothing more than superficial similarities and differences in constitutional orders. On a profound level, the imperative for undertaking conceptual analysis is the presumption that "[the idea of] 'understanding' can have a quite different sense applied to human affairs from that which it has in

[27] See e.g., Nicholas W Barber, "What is Constitutional Ideology?" (2024) Int'l J Con L 1–27; Aaron Mills, "The Lifeworlds of Law: On Revitalising Indigenous Legal Orders Today" (2016) 61:4 McGill L J 847–884; Kahn, *supra* note 1; Tom Kohavi, "Moral Pluralism and Constitutional Horizontality" (2024) Can J L & Jurisprudence 1–31.
[28] Gary J Jacobsohn & Miguel Schor, "Introduction: The Comparative Turn in Constitutional Theory" in Gary J Jacobsohn & Miguel Schor, eds, *Comparative Constitutional Theory* (Cheltenham, U.K.: Edward Elgar Publishing Ltd., 2018) 1 at 2, 4. They claim that "many of the ideas and analytical constructs that have become ubiquitous in the field of comparative constitutional law remain largely under-theorised."
[29] See Saunders, *supra* note 25 at 66, 74.
[30] See Benedict R O'G Anderson, "The Idea of Power in Javanese" in *Language and Power: Exploring Political Cultures in Indonesia* (Ithaca and London: Cornell University Press, 1990) 17 at 24. (He argues that "the idea of impurity is intimately related to diffusion and disintegration [of power]." For this reason, the overarching goal of various religious rituals of Indonesia's folk religious traditions is to concentrate power.)

natural science or technology. Understanding why you made that surprising move involves something rather different from understanding why my car broke down."[31]

II. Interpreting Indonesia's Constitutional Persistence

In this study, I present an argument to shed light on the cultural underpinning that upholds the persistence of Indonesia's 1945 constitutional order and attempts to construct a synthetic narrative interpreting what it signifies. The importance of "the cultural underpinning" has been articulated as the "component in a working legal system . . . which binds the system together, and which determine the place of the legal system in the culture of the society as a whole."[32] In the context of Japan's constitutional experience as a non-Western legal tradition, the cultural underpinning has also been the critical factor in the success of an "imposed constitution" earning its socio-cultural legitimacy; in a word, "the new Constitution was accepted by the people with its nature of continuity from the old Constitution."[33] Thus, this study is not primarily interested in whether Indonesia's 1945 constitutional order is good or bad, but rather in what it means and what it is trying to tell us in the context of constitution-building and beyond. It aims to investigate folk religious traditions as conceptual understanding, commonly referred to as folk or local knowledge,[34] which informs the Indonesian theory and practice of constitutionalism.

Indonesia's 1945 Constitution is widely viewed as possessing magico-religious or "Sakti" significance.[35] Moreover, when examining the traditional notion of political legitimacy in Indonesia, it becomes evident that this magico-religious proposition is crucial for preserving the

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[31] Charles Taylor, "Preface to this Edition" in John B Thompson, ed, *Hermeneutics and the Human Sciences: Essays on Language, Action and Interpretation* (Cambridge: Cambridge University Press, 2016) vii at vii. Worthy of note, Lasser has also posited that public perceptions and overarching cultural beliefs significantly shape the framework, functioning, and ideology of a legal system. See Mitchel de S-O-l'E Lasser, "The Question of Understanding" in Pierre Legrand & Roderick Munday, eds, *Comparative Legal Studies: Traditions and Transitions* (Cambridge: Cambridge University Press, 2003) 197 at 228.

[32] See Lawrence M Friedman, "Legal Culture and Social Development" (1969) 4:1 L & Soc'y Rev 29–44 at 34. On the significance of cultural aspects when striving to offer an inclusive account that can be understood by individuals outside of their own cultural backgrounds, see Paul W Kahn, "Comparative Constitutionalism in a New Key" (2003) 101:8 Mich L Rev 2677–2705 at 2678.

[33] Masaji Chiba, "Three-Level Structure of Law in Contemporary Japan: The Shinto Society" in Masaji Chiba, ed, *Asian Indigenous Law in Interaction with Received Law* (London: Routledge, 1986) 301 at 318.

[34] See Clifford Geertz, "Local Knowledge: Fact and Law in Comparative Perspective" in *Local Knowledge: Further Essays in Interpretive Knowledge* (New York: Basic Books, 1983) 167.

[35] See e.g. Danial Kelly, "Pancasila Sakti: The Sacred Authority of the Pancasila in Indonesian Law and Society" (2010) 13:2 Jurnal Yustika 201–233; Al Makin, "Pancasila Sakti [The Magical Power of Pancasila]", online: *Badan Pembinaan Ideologi Pancasila (BPIP) Republik Indonesia* [The Pancasila Ideology Development Agency] <https://bpip.go.id/bpip/berita/1035/796/pancasila-sakti.html>.

country's traditional social order.[36] Tobing stated that the sacred character of the 1945 Constitution significantly influenced "the structure and substance of [Indonesia's constitutional] amendment."[37] During the drafting process, Sukarno emphasised that the document was made "at lightning speed" and hence temporary.[38] So what began as a temporary founding document ended up enduring. Indeed, the brevity of its pre-amended version has been interpreted that its drafters were unable to be of one heart and mind.[39] In exploring the cultural factors elucidated in this study, it becomes evident that the 1945 Constitution has succeeded remarkably in evoking an emotional appeal, making it one of the few constitutions to achieve such a remarkable feat and elicit a distinct form of constitutional engagement or discourse.[40]

This study posits that the 1945 constitutional order is founded on the premise that it is a meeting point between Western constitutionalism and Indonesia's folk religious traditions, which gave the former its "inarticulate major premise."[41] Day and Reynolds examine various scholarly works that allude to the interconnectedness of historical and contemporary epistemologies in influencing and moulding the socio-political landscape of modern Indonesia.[42] My argument is inspired by Kasemsup who posits that "the Eastern countries were not only receiving new systems of law but also totally new ways of thinking of law, such as the idea of state sovereignty with its

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[36] See Moertono Soemarsaid, *State and Statecraft in Old Java: A Study of the Later Mataram Period, 16th to 19th Century* (Ithaca: Cornell Modern Indonesia Project, 1968) at 28.
[37] See Jakob Tobing, *The Essence of the 1999-2002 Constitutional Reform in Indonesia: Remaking the Negara Hukum* (Ph.D. Thesis, Leiden University, 2023) [unpublished] at 8.
[38] See Muhammad Yamin, ed, "Bagian Ketiga [Third Part]" in *Naskah Persiapan Undang-Undang 1945, memuat Segala Naskah Rasmi Penggalang Undang-Undang '45 jang Berlaku Kembali dalam Negara Kesatuan Républik Indonésia* [Travaux Préparatoires of the 1945 Constitution, including Every Official Material Supporting the Reintroduction of the 1945 Constitution] (Jakarta: Prapantja, 1960) 397 at 410.
[39] See Petra Stockmann, *Indonesian Reformasi as Reflected in Law* (Münster: LIT Verlag Münster, 2004) at 29.
[40] The importance of emotion in constitutional design is overlooked in constitutional studies. See András Sajó, "Emotions in Constitutional Design" (2010) 8:3 Int'l J Con L 354–384. Sajó also argued that the prevalence of specific emotions within interactive and self-reinforcing emotional procedures, commonly referred to as the "constitutional sentiment" of the era, played a crucial role in the development of contemporary constitutional establishments. Engaging with these emotions not only influences but also potentially weakens the endurance of current constitutional frameworks. Consequently, the cognitive mechanisms that mould constitutional law and its implementation are profoundly intertwined with emotions at their core. See András Sajó, "The Constitutional Domestication of Emotions" in Mortimer N S Sellers, ed, *Law, Reason, and Emotion* (Cambridge: Cambridge University Press, 2017) 55 at 55–56.
[41] O.W. Holmes is credited with coining the term "inarticulate major premise" which directly challenges the widely held belief that a judge simply applies well-defined legal principles, derived from prior cases or statutes to the established facts. See Robert B Seidman, "The Inarticulate Premise" in Alison Dundes Renteln, ed, *Folk Law: Essays in the Theory and Practice of Lex Non Scripta* (London: Routledge, 1994) 805 at 805.
[42] See Tony Day & Craig J Reynolds, "Cosmologies, Truth Regimes, and the State in Southeast Asia" (2000) 34:1 Mod Asian Stud 1–55 at 13–18.

accompanying legislative power."[43] It is worth mentioning that Shinto, the folk religious tradition of Japan, has also been acknowledged as the underlying influence for the functioning of Japanese society. Consequently, academic studies that employ a "conventional framework" fail to acknowledge that Shinto has furnished the Japanese with a body of knowledge akin to or closely resembling science.[44]

To make sense of the significance of folk religious traditions, it is essential to start with vernacularising an understanding of the Indonesian idea of "being religious"[45] which is critical to Indonesian constitutionalism, consistently self-described as "religious state," "religious constitutionalism," or, more recently, "Godly constitutionalism."[46] Indeed, Indonesia topped the 2019 Pew Research Global Survey as the country with the highest percentage of people whose belief in God is indispensable to being moral,[47] which is embraced with a hint of triumphalism by the Indonesian public.[48] However, Indonesian understanding of being religious can be considered a variant of folk religious expressions or traditions, rooted in immanentism where "the conception

[43] See Preedee Kasemsup, "Reception of Law in Thailand–A Buddhist Society" in Masaji Chiba, ed, *Asian Indigenous Law In Interaction with Received Law* (London: Routledge, 1986) 267 at 294.
[44] See Jason Ananda Josephson, *The Invention of Religion in Japan* (Chicago and London: The University of Chicago Press, 2012) at 96.
[45] Meaning the idea of religion and therefore being religious is a Western folk category. See Ann Taves, *Religious Experience Reconsidered: A Building-Block Approach to the Study of Religion and Other Special Things* (Princeton, New Jersey: Princeton University Press, 2009) at 25–26. For more detailed argument on this point, see Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore, Maryland: The John Hopkins University Press, 1993).
[46] See e.g "Menag: Identitas Indonesia adalah Religiusitas [The Minister of Religious Affairs: The Indonesian National Identity is Religiosity]", (25 July 2016), online: *Kementerian Agama Republik Indonesia* [The Indonesian Ministry for Religious Affairs] <https://kemenag.go.id/nasional/menag-identitas-indonesia-adalah-religiusitas-t3dtbf>; Team Viva, "Mahfud MD: Indonesia Bukan Negara Agama, Bukan Sekuler [Mahfud MD, [the Chief Justice of the Constitutional Court]: Indonesia is not a Religion-based State, or a Secular [State]]", *Viva News* (23 August 2018), online: <https://asset.viva.co.id/appasset-2018/desktop-2018/img/icon-profile-team.png?v=5.13>; Arief Hidayat, *Indonesia Negara Berketuhanan [Indonesia [is a] Godly State* (Mahkamah Konstitusi Republik Indonesia [The Constitutional Court of the Republic of Indonesia]); "Ketua MK Tegaskan Indonesia Negara Berketuhanan [The Chief Justice of the Constitutional Court Asserts Indonesia as a Godly State]", (13 February 2018), online: *Mahkamah Konstitusi Republik Indonesia* [The Constitutional Court of the Republic of Indonesia] <https://www.mkri.id/index.php?page=web.Berita&id=14294>.
[47] See *The Global God Divide*, by Christine Tamir, Aidan Connaughton & Ariana Monique Salazar (Washington D.C.: Pew Research Center, 2020).
[48] See e.g. Permata Adinda, "Riset Pew: Indonesia Negara Paling Religius di Dunia, Mengalahkan Negara Timur Tengah [[The Result of] Pew Research: Indonesia is the Most Religious Country in the World, beating the Middle East Countries]", (4 March 2020), online: *Asumsi* <https://www.asumsi.co/post/59299/hasil-riset-pew-indonesia-negara-paling-religius-di-dunia-mengalahkan-negara-timur-tengah/>. See also "Jokowi Sebut Dunia Semakin Tak Religius dan RI Paling Percaya Tuhan [[The President] Jokowi Mentions the World is Increasingly Becoming Irreligious[,] Not Indonesia", *CNN Indonesia* (7 August 2023), online: <https://www.cnnindonesia.com/internasional/20230807170755-106-983054/jokowi-sebut-dunia-semakin-tak-religius-dan-ri-paling-percaya-tuhan>.

of the divine tends to be extremely diffused."[49] It is therefore plausible to conceive Indonesia's veneration of the 1945 Constitution as a form of "religious action."[50] Like other Asian folk religious traditions, Indonesian folk religious traditions are notably "syncretic" and "diffused," as opposed to systematic ("theological") or institutionalised.[51] Numerous expositions of Indonesian Islam, the latest manifestation of Indonesia's folk religious traditions, have not objected to mixing with the best bits of non-Islamic religious traditions.[52] Thus, Indonesian Islamic law is best understood as "law [that] is only shaped by Islam, but not original Islamic law in a strict sense."[53] Hence, Indonesian folk religious traditions have emerged through amalgamation of the Austronesian ancestral cult as their foundational element, absorbing aspects from Hindu-Buddhist or Indic religion and, more recently, incorporating elements from various World religions, most notably Sufism and the now-preferred nomenclature "Indonesian Islam" or "Nusantara Islam" (see Chapter 5). Based on the experience of Christianisation in Spanish America, this phenomenon can be seen as a "reconstitution" of indigenous public identities within a new or foreign religious form.[54]

Thus, a definition of Javanese folk religious traditions is:

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[49] Robert N Bellah, *Tokugawa Religion: The Values of Pre-Industrial Japan* (Boston: Beacon Press, 1970) at 7. See also Chapter 3.

[50] *Ibid*. (He defines religious action as "any action directed toward the sacred or divine.").

[51] The portrayal presented here stems from Zürcher's metaphor of the "three religions", depicting the religious landscape in China. His categorisation of Buddhism, Daoism, and Confucianism as the three base religions suggests that not only are folk religious traditions extensively embraced by the Chinese, but also exist in a state of simultaneous overlap and interconnection rather than being intricately woven together. See Erik Zürcher, "Buddhist Influence on Early Taoism: A Survey of Scriptural Evidence" (1980) 66:1 T'oung Pao 84–147. The term syncretic or syncretism is not neutral, as it implies the existence of a pure version. Therefore, Dolce prefers the term "combinatory [belief] system." See Lucia Dolce, "The Practice of Religion in Japan: An Exploration of the State of the Field" in James D Babb, ed, *The SAGE Handbook of Modern Japanese Studies* (London: SAGE Publications Ltd, 2015) 33.

[52] See e.g. Mark R Woodward, "Islamicate Civilization and National Islams: Islam Nusantara, West Java, and Sundanese Culture" (2019) 9:2 Heritage of Nusantara: Int'l J of Rel Lit & Heritage 149–187; Hisanori Kato, "The Islam Nusantara Movement in Indonesia" in Muhammad Afzal Upal & Carole M Cusack, eds, *Handbook of Islamic Sects and Movements* (Leiden: Brill, 2021) 110; Azyumardi Azra, "Distinguishing Indonesian Islam: Some Lessons to Learn" in Jajat Burhanudin & Kees van Dijk, eds, *Islam in Indonesia* (Amsterdam: Amsterdam University Press, 2013) 63; Al Makin, "Unearthing Nusantara's Concept of Religious Pluralism: Harmonisation and Syncretism in Hindu-Buddhist and Islamic Classical Text" (2016) 54:1 Al-Jami'ah 1–32.

[53] See Uwe Kischel, *Comparative Law*, translated by Andrew Hammel (Oxford: Oxford University Press, 2019) at 780.

[54] In the context of Spanish America, it has been noted that "[c]hurch architecture, ecclesiastical ritual, and the dances and music that were performed in honor God and his saints continued to express, however distantly, theological ideas and religious expectations that had formerly tied to very different God." In short, it is a reconstitution of the indigenous "public identities within the new Christian framework that the invaders had brought with them." See Sabine MacCormack, "A House of Many Mansions: Aspects of Christian Experience in Spanish America" in James Boyd White, ed, *How Should We Talk About Religion? Perspectives, Contexts, Particularities* (Notre Dame, Indiana: University of Notre Dame Press, 2006) 55 at 66, 67.

> part of a syncretic subculture that is shot through with Javanese aesthetic forms, etiquette, customs, rituals, and folk beliefs, unified into an overarching cosmological-philosophical framework. At the next level, the cultic practice itself is Javanist in style: the way of serving tea during meditation, the issues of status and motherhood, of balance in the world, that are often discussed and form part of meditational therapy, and the relation between student and teacher. Finally, the third level, where the adept experiences ultimacy out of these broad and specifically Javanistic contexts, is also Javanist in coloration-uniting self, society, and cosmos into a harmonic tranquility that is at once refined and earthly, eternal, and dynamic, or so it is said to be.[55]

The nature of Indonesian folk religious traditions as syncretic and diffuse has paradoxically resulted simultaneously in their disappearance from public view and their enduring significance as the "soul" of contemporary Indonesia,[56] and can be attributed to their character as a form of "applied psychology,"[57] intended to unleash a "disciplinary" force.[58] It is important to note that this definition diverges from conventional understanding of organised, institutionalised, or scriptural religions which define religion based on identifiable beliefs that constitute the foundation of their theological frameworks. Hence, identifying Indonesian folk religious traditions cannot be carried out directly; neglecting this conceptual disparity could lead to the mistaken belief that they may not exist.[59] Nevertheless, considering the syncretic and diffused characteristics of

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[55] See James L Peacock, "The Creativity of Tradition in Indonesian Religion" (1986) 25:4 Hist Rel 341–351 at 347.
[56] The soul metaphor has also been applied to Chinese folk religious traditions and is regarded as the factor that prompts "one of the world's great spiritual revivals." See Ian Johnson, *The Souls of China: The Return of Religion after Mao* (New York: Pantheon, 2017).
[57] The University of Gadjah Mada ("UGM") recognises the imperative of establishing a postgraduate program in psychology to investigate folk religious traditions as a foundation for comprehending the Indonesian mentality. See "UGM Kembangkan Teori Psikologi Ki Ageng Suryomentaram [UGM Develops Ki Ageng Suryomentaram's Theory of Psychology]", (14 November 2014), online: *Universitas Gadjah Mada* <https://www.ugm.ac.id/id/berita/9470-ugm-kembangkan-teori-psikologi-ki-ageng-suryomentaram>; Abdul Kholik & Fathul Himam, "Konsep Psikoterapi Kawruh Jiwa Ki Ageng Suryomentaram [The Psychotherapy of the Science of the Soul of Ki Ageng Suryomentaram]" (2015) 1:2 Gadjah Mada J of Psychology 120–134.
[58] The argument that religion is a disciplinary force can be traced back to Max Weber. See Max Weber, *The Protestant Ethic and the Spirit of Capitalism with Other Writings on the Rise of the West*, 4th ed, translated by Stephen Kalberg (New York and Oxford: Oxford University Press, 2009) at 283.
[59] Indonesia's official statistical data does not include folk religious traditions when categorising religious affiliations. See "Jumlah Penduduk dan Agama Yang Dianut 2019-2021 [The Information Regarding the Religious Affiliations in Indonesia, 2019-2021]", (2023), online: *Badan Pusat Statistics* [The Indonesian Agency of Statistical Data] <https://jabar.bps.go.id/indicator/108/335/1/jumlah-penduduk-dan-agama-yang-dianut.html>.

folk religious traditions, it is highly probable that a more intricate depiction of the Indonesian religious landscape will emerge.[60]

This study argues that Indonesian constitutionalism can be understood within the idiom of its folk religious traditions and requires an appreciation of the vernacular understanding and practice underpinning it.[61] In a similar vein, An-Na'im reasons that "my assertion of epistemological and methodological self-determination leads me to speak of constitutionalism, instead of constitutional law, because the term 'law' already assumes a European frame of reference. In my view, the objective of comparative study and reflection is not to adapt or adjust constitutional experiences of any country to fit a preconceived model of 'the' constitution that has evolved in another context."[62] By conceptualising it as a vernacularisation of Western constitutionalism in which folk religious traditions serve as its inarticulate major premise, I further argue that it should be *rasa* ("feeling" or "emotional sensibility"), defined shortly, which serves as the nation's constitutional sensibility (see Chapter 2). It sustains the longevity of the 1945 constitutional order and must be distinctly Indonesian or vernacular, without which the 1945 constitutional order could not have endured beyond its intended lifespan. In essence then the 1945 Constitution can be characterised as a vernacularised constitution. In this study, I synthesise folk knowledge or religious beliefs from various disciplines to describe the persistence of the 1945 constitutional order as a socio-cultural phenomenon.[63]

By positing the 1945 constitutional order as a meeting point between Western constitutionalism and Indonesia's folk religious traditions, this study ventures beyond the conventional framework where the relationship between law and religion relies on the notion that

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[60] A comprehensive survey explored the vitality of Chinese folk religious traditions within a social science framework. Employing a "conventional" definition of religion, the World Values Survey suggests that folk religious traditions occupy a peripheral position in the Chinese religious landscape, rather than being a dominant force. However, by introducing an alternative metric that incorporates a comprehensive range of supernatural practices and spiritual beliefs, the number of individuals identified as adherents of folk religion increases significantly from less than a half of a per cent to fifty-five and a half percent. See Chunni Zhang, Yunfeng Lu & He Sheng, "Exploring Chinese Folk Religion: Popularity, Diffuseness, and Diversities" (2021) 7:4 Chinese J of Sociology 575–592 at 577.

[61] This conceptual framework has been introduced within the context of comprehending the notion of law in the discourse of legal pluralism. See Brian Z Tamanaha, *Legal Pluralism Explained* (Oxford: Oxford University Press, 2021) at 12.

[62] See Abdullahi Ahmed An-Na'im, "Islam, Sharia and Comparative Constitutionalism" in Susanna Mancini, ed, *Constitutions and Religion* (Cheltenham, U.K.: Edward Elgar Publishing Ltd., 2020) 172 at 173. *See also* Paul W Kahn, "Constitutional Culture: Opening a Space between Law and Power" (2019) 189 Telos: Critical Theory of the Contemporary 15–33.

[63] The pioneering work that argues for the importance of "local knowledge" in the context of comparative legal understanding is Clifford Geertz, "Local Knowledge: Fact and Law in Comparative Perspective" in *Local Knowledge: Further Essays in Interpretive Knowledge* (New York: Basic Books, 1983) 167.

they are distinct domains which often intersect and sometimes clash. If we disregard the intricate relationship between religion and law, it will be impossible to acknowledge folk religious traditions as a valid manifestation of religious expression. The distinction between the concept of religion as a folk category in the Western context and folk religious practices has been utilised in different Asian settings. In India, for instance, the Hindu right has embraced this reasoning, asserting that "since secularism is [centered around tolerance] and only Hindus are tolerant, then only Hindus can be considered truly secular."[64] Rather than perceiving law and constitution on one side and religion on the other, I consider that law and religion have comparable qualities and mutually beneficial associations which concurs with Waldron's view that the separation of religion from law has not occurred. Hence, individuals involved in the secularisation of law continue to be influenced by the unstated religious assumptions.[65] After all, "constitutionalism, like religion, represents an attempt to render an otherwise chaotic order coherent, to supply a set of beliefs capable of channeling our conduct."[66]

Numerous legal systems display religious attributes that influence their ideas of power, precedent, ceremonial practices, and authoritative texts, while most religions use legal principles or vocabulary. As Kahn argues: "In truth, religion has operated as more than an analogy in my work. Running throughout my work have been two claims not shared by many of those doing cultural studies of law. First, I have been struck by the way in which the American belief in law's rule is continuous with many large religious themes in the West. There has been a substantial migration of religious conceptions into legal thought."[67] This presumption aligns with the Indonesian framework of religious constitutionalism, where the connection between law and religion has been deeply interwoven. This absence of separation between religion and law is not unusual in legal traditions in Southeast Asia. For example, Li-ann, a Singaporean comparative

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[64] See Ratna Kapur, "Secularism's Others: The Legal Regulation of Religion and Hierarchy of Citizenship" in Susanna Mancini, ed, *Constitutions and Religion* (Cheltenham, U.K.: Edward Elgar Publishing Ltd., 2020) 41 at 43. Shinto occupies a position that transcends personal religious beliefs. It is considered a mundane "public expression of Japanese ethnic identity and loyalty to the throne that all imperial subjects would observe, regardless of their *private* religious beliefs." See Helen Hardacre, "Religion and the Japanese Constitution" in Aslı Ü Bâli & Hanna Lerner, eds, *Constitution Writing, Religion and Democracy* (Cambridge: Cambridge University Press, 2017) 49 at 50. See also Bellah, *supra* note 49 at 53–54. (Noting "national Shinto was not incompatible with other religions and this is the basis of the assertion by the Meiji government that state 'Shinto is not a religion.'").

[65] See Jeremy Waldron, "Desanctification of Law and the Problem of Absolutes" in David C Flatto & Benjamin Porat, eds, *Law as Religion, Religion as Law* (Cambridge: Cambridge University Press, 2022) 7 at 9.

[66] See Sanford Levinson, "'The Constitution' in American Civil Religion" (1979) 1979 Supreme Ct Rev 123–151 at 136.

[67] See Kahn, *supra* note 1 at 164.

constitutional law scholar, warned that "when it comes to religion and constitutions, bearing in mind the 'secularisation thesis' holds no water in Asia."[68] A similar understanding has been noted in a study on Thailand's constitutionalism[69] as well as in numerous constitutionalism models that advocate for the separation of religion and law.[70] Hence, the basic presupposition that I adopt for this study is not unique.

III. Another Cultural Turn?

It is now crucial to articulate the rationale for this study embracing a cultural turn in understanding the persistence of Indonesia's 1945 constitutional order. Let us start with the observation that "[i]n Indonesian constitutional matters, what is in the bottle does not always match what is on the label."[71] It is not unexpected within Indonesian constitutional studies to observe this phenomenon. In that vein, a commentator proclaims that "[t]he sum of the characteristics of the [constitutional reform] process is what stamps Indonesia as distinctive, if not unique."[72] One reason is that Indonesia's constitution is based on the "indigenous" model of familial or communal structure;[73]

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[68] See Thio Li-ann, "Varieties of Constitutionalism in Asia" (2021) 16:2 Asian J Comp L 285–310 at 293. A similar argument can also be found in Andrew Harding, "Law, Religion, and Constitutionalism in Asia" (2018) 13:2 Asian J Comp L 227–232.

[69] See e.g. Eugénie Mérieau, *Constitutional Bricolage: Thailand's Sacred Monarchy vs. The Rule of Law* (Oxford: Hart Publishing, 2022).

[70] This is the result of three key factors, according to Flatto and Porat. Firstly, there is a notable increase in interest in political theology, which involves scrutinising secular liberal political theory and suggesting that specific modern governing powers and principles stem from, or supplant, religious institutions or doctrines. Secondly, a connected scholarly discussion on secularism has questioned the Weberian explanation of modernity as a time of increasing disillusionment. Lastly, several ground-breaking works in religious studies have explored the fundamental concept of divine law. See David C Flatto & Benjamin Porat, "Introduction" in David C. Flatto & Benjamin Porat, eds, *Law as Religion, Religion as Law* (Cambridge: Cambridge University Press, 2022) 1 at 1–3.

[71] This statement originates from a Senior Adviser affiliated with the National Democratic Institute (NDI) in Indonesia from 1999 to 2003 who had extensive experience in collaborating with the Indonesian legislature on constitutional amendment, electoral and political law reform, and the intricacies of decentralisation. See Andrew Ellis, "The Indonesian Constitutional Transition: Conservatism or Fundamental Change?" (2002) 6 Sing J Int'l & Comp L 1–38 at 3.

[72] See Horowitz, *supra* note 5 at 2.

[73] See Satjipto Rahardjo, "Between Two Worlds: Modern State and Traditional Society in Indonesia" (1994) 28:3 L & Soc'y Rev 493–502 at 502; *cf.*, David Bourchier, *Illiberal Democracy in Indonesia: The Ideology of the Family State* (Abingdon, Oxon: Routledge, 2014). It is widely believed that the Indonesian leadership aimed to progress towards industrial capitalism while simultaneously reverting to non-Western methods of community governance and peaceful conflict resolution. Consequently, Indonesian society was once again confronted with seemingly contradictory models, complicated by the impact of global standards absorbed through interaction with private enterprises, international organisations, tourists, and the media. In this context, it is impractical to oversimplify entire societies based on indigenous legal cultures that deemphasise rights talk. David Engel, "Concepts of Rights: Introduction" (1994) 28:3 L & Soc'y Rev 489–492 at 490.

thus Indonesian constitutionalism relies on understanding various constitutional categories that differ from those of Western or international counterparts.[74]

There is a different system of thought underpinning the operation of Indonesian constitutionalism. Considering that culture is "an historically transmitted pattern of meanings embodied in symbols, a system of inherited conceptions expressed in symbolic forms by means of which [human] communicate, perpetuate, and develop their knowledge about and attitudes toward life,"[75] this means that "local [or folk] knowledge" is required to illuminate various Indonesian constitutional understandings.[76] The persistence of the 1945 constitutional framework can be elucidated, in part, through the lens of folk knowledge, as it embodies *Bhinneka Tunggal Ika*, Indonesia's syncretic religious sensibility. This sensibility is widely regarded as fundamental to Indonesia's identity as a multicultural society (see Part II). It not only emphasises that constitutionalism depends on the distinctive attributes of Indonesia, but also highlights the imperative of incorporating its culture as the folk belief system implicitly supporting the functioning of the country's constitutional framework.[77]

It therefore becomes necessary to understand the religious underpinning of Indonesia's constitutional order, because religion is "a system of symbols which acts to establish powerful, pervasive, and long-lasting moods and motivations in men by formulating conceptions of a general order of existence and clothing these conceptions with such an aura of factuality that the moods and motivations seem uniquely realistic."[78] That definition provides further understanding of Indonesia's peculiar characterisation of religion as being primarily about doing rather than believing in things.

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[74] This cognitive dissonance is primarily premised on, and hence affected by, the conviction that the 1945 Constitution embodied magico-religious characteristics. Thus, Bell highlights that politicians have taken advantage of the conviction, referred to as "misguided belief in the instant efficiency of constitutions," to maintain the existing constitutional state. See Gary F Bell, *Obstacles to Reform The 1945 Constitution: Constitutions do not Perform Miracles*, Van Zorge Report on Indonesia: Commentary and Analysis on Indonesian Politics and Economics 3 (Jakarta: Van Zorge, Heffernan & Associates, 2001).

[75] Clifford Geertz, *The Interpretation of Cultures* (New York: Basic Books, 1973) at 89.

[76] See Geertz, *supra* note 34. Gunter recognises the importance of local knowledge in the context of constitutional studies. Günter Frankenberg, "Comparing Constitutions: Ideas, Ideals, and Ideology: Toward a Layered Narrative" (2006) 4:3 Int'l J of Constitutional L 439–459 at 442.

[77] Most literature on comparative constitutionalism typically overlooks the vital role of folk religious traditions, despite acknowledging a tendency towards embracing the values and principles inherent in them. See e.g., Cheryl Saunders, "Constitutional Cultures" in Tom Gerald Daly & Dinesha Samararatne, eds, *Democratic Consolidation and Constitutional Endurance in Asia and Africa: Comparing Uneven Pathways* (Oxford: Oxford University Press, 2024) 157 at 164; Alexander Latham-Gambi, "The Constitutional Imaginary: Shared Meanings in Constitutional Practice and Implications for Constitutional Theory" (2021) 15:1 Vienna J Int'l Cons L 21–51 at 29–32.

[78] See Geertz, *supra* note 3. at 90.

Religion being primarily about believing things, is a vernacular expression that begins its life as a European folk category.[79] Taves acknowledges the instability and contested nature of the terms "religion," "religious," and "religions" as Western folk categories, making them inadequate for identifying the distinctiveness of non-Western religious expressions or traditions. She supports a more inclusive approach to identify a wider range of concepts to capture the subject matter under investigation. In Indonesian understanding, religion is commonly defined as a holistic approach to effectively govern the natural elements and bestow favorable outcomes on the human populace.[80] In effect, it is difficult, if not impossible, to separate social duty from religious obligation, and we have to look at the worldview and ethics for further elaboration.[81] However, religion often serves as the legitimising authority for legal norms.[82] As I will further demonstrate in Chapter 4, this inclusive understanding of religion enables us to recognise that Indonesia is deeply infused with its diverse religious traditions, modes of religious expression or, more precisely, folk religious traditions. In essence, it cannot be regarded as a blank canvas on which the concepts of constitution, constitutional law, or constitutionalism can be comprehended without considering its folk religious traditions as the nation's social imaginary, if not *zeitgeist*.

[79] See Taves, *supra* note 8 at 25–26.
[80] Mulder, for example, employs the term Weltanschauung, or worldview which surpasses mere religion to denote the Javanese religious belief system. It perceives human existence within a cosmological framework, thereby transforming life into a profoundly religious encounter. It therefore becomes impossible to disentangle the religious from the non-religious aspects. Human existence is intertwined with the supernatural realm, rendering any clear demarcation between the present moment and the eternal and timeless utterly meaningless. See JA Niels Mulder, "Aliran Kebatinan as an Expression of the Javanese Worldview" (1970) 1:2 J of Southeast Asian Stud 105–114 at 105.
[81] See Niels Mulder, "Abangan Javanese Religious Thought and Practice" (1983) 139:2 Bijdragen tot de taal-, land- en volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia 260–267 at 262. *See also* James L Peacock, "The Creativity of Tradition in Indonesian Religion" (1986) 25:4 Hist Rel 341–351 at 344–345.
[82] See Engel, *supra* note 73 at 490.

Like the United States with its Puritan religiosity,[83] where constitutional law and constitutionalism as a modern category was conceived,[84] this study argues that Indonesian constitutionalism earned its legitimacy and meaning within the idiom of folk religious traditions. In a similar vein, "Quebec's brand of pluralism for law" posits the existence of spontaneous social realities within the legal system which is characterised by contrasting dynamics of economic and administrative systems and lifeworld. This proposition is influenced by the rise of a pessimistic legal culture in the 2000s, which challenges the notion of the state as the central and ultimate authority in the social system. But the state has continued to evolve and exert its influence within society.[85] To borrow from religious studies, "emplacement," that is the proposition that folk beliefs are embedded in time and space, must be an essential category in unveiling the deep meaning of any constitutional order. Whitman also argues that an essential aspect in categorising legal traditions is contemplating the connections between archaic or folk religion and axial age or world religion.[86] Furthermore, emplacement emphasises the significance of time and place in constitutionalism's historical and geographical contextualisation and as dynamic factors that actively influence and mould constitutionalism.

[83] With Puritanism serving as the foundation of its collective consciousness, it is contended that the Puritan myth laid the groundwork for the transformation of the "New England of the type" into the United States of America, commonly referred to as God's Country. See e.g. Sacvan Bercovitch, *The Puritan Origins of the American Self*, translated by George C. Schoolfield (New Haven and London: Yale University Press, 2011) at 136; George McKenna, *The Puritan Origins of American Patriotism* (New Haven and London: Yale University Press, 2007). By acknowledging the Puritan influence in the intellectualism of the United States, it is hardly surprising that its constitutionalism and federalism are also firmly embedded in the Judeo-Christian covenantal tradition. See e.g. Daniel J Elazar, *Covenant and Constitutionalism: The Covenant Tradition in Politics* (New York: Routledge, 1998). Hence, it is concluded that [t]he independence granted to the Council for New England, and to later colonial enterprises in New England ". . . set into motion forces and events that profoundly shaped the American constitutional tradition that emerged from the Seventeenth-century colonial experience." See H Lowell Brown, *The American Constitutional Tradition: Colonial Charters, Covenants, and Revolutionary State Constitutions, 1578–1780*, hardback ed (Lanham, Maryland: Fairleigh Dickinson University Press, 2017) at 26.

[84] See e.g. Dieter Grimm, *Constitutionalism: Past, Present, and Future* (Oxford: Oxford University Press, 2016) at 357–358; Paul Craig, "Written and Unwritten Constitutions: The Modality of Change" in Sam Bookman et al, eds, *Pragmatism, Principle, and Power in Common Law Constitutional Systems: Essays in Honour of Bruce Harris* (Antwerp: Intersentia, 2022) 263 at 266.

[85] See Jean-Guy Belley, "What Legal Culture for the Twenty-First Century?" (2011) 26:2 Can J L & Soc'y 237–251 at 243–246; Nicholas Kasirer, "How Jean-Guy Belley Thinks: Translator's Note" (2011) 26:2 Can J L & Soc'y 253–255 at 253; Michel Coutu & Pierre Guibentif, "Introduction: The Disenchantment of Critical Legal Thought" (2011) 26:2 Can J L & Soc'y 227–236 at 228.

[86] See James Q Whitman, "Comparative Law and Religion" in Mathias Reimann & Reinhard Zimmermann, eds, *The Oxford Handbook of Comparative Law*, 2d ed (Oxford: Oxford University Press, 2019) 734 at 741.

Thus, religion must be understood as the "psychologic" factor that disciplines how a written constitution is given meaning.[87] By asserting the existence of a religious basis within every constitutional interaction, this study enhances the argument for prioritising the notion of (religious) diversity as a fundamental principle in formulating a more comprehensive understanding of a nation's constitutionalism or constitutional legal tradition. This point is captured in Glenn's decision to change the title of Chapter 9 in his publication "Legal Traditions of the World." The original title, "An Asian Legal Tradition," was altered to "A Confucian Legal Tradition," prompted by his dissatisfaction with using a geographical reference to classify a legal tradition, due to the resurgence of Confucianism. Significantly, the endorsement of Confucianism by the Chinese Communist Party also played a role in encouraging this alteration.[88] Glenn's changed perspective may reflect the emerging trend in comparative legal studies, which only recently started recognising the interconnectedness of religion and law. In his contribution to the 2006 edition of the *Oxford Handbook of Comparative Law*, Berman acknowledged the scarcity of literature about law and religion, describing it as inadequate. However, in the second edition, the same chapter asserts that comparative law and religion are now regarded as a topic of significant relevance.[89] Importantly, the chapter views constitutionalism as a dynamic interplay between two opposing social realities: the overt economic and administrative systems and the underlying lifeworld that shapes the prevailing interpretation of the former.[90]

By arguing that constitutional order is a dynamic interplay of two opposing social realities, this study suggests that constitutionalism can be understood as multivalent or syncretic; that is, a constitutionalism model established by two or more primary legal traditions with the ability "to

[87] The argument for the significance of religion as a disciplinary force in establishing and preserving social structure can be attributed to Max Weber. Nevertheless, the most recent and comprehensive exposition can be found in Gorski. See Philip S Gorski, *The Disciplinary Revolution: Calvinism and the Rise of the State in Early Modern Europe* (Chicago: The University of Chicago Press, 2003) at 20.

[88] See Marie Seong-Hak Kim, "Commensurability, Comparative Law, and Confucian Legal Tradition" in Helge Dedek, ed, *A Cosmopolitan Jurisprudence: Essays in Memory of H Patrick Glenn* (Cambridge: Cambridge University Press, 2021) 202 at 203.

[89] See James Q Whitman, "Comparative Law and Religion" in Mathias Reimann & Reinhard Zimmermann, eds, *The Oxford Handbook of Comparative Law*, 2d ed (Oxford: Oxford University Press, 2019) 734 at 736.

[90] Belley also asserts that due to the dynamic interaction of opposing social realities, the emergence of "a differentiated legal order" becomes unavoidable. This legal order reflects a fragmented society divided into two factions, where one groups, known as legal persons, have significantly expanded ambitions, while the other group, comprising natural persons, experiences anxiety, distress, or passivity. This stark contrast arises from the widespread shift from a closed society to an open one. See Jean-Guy Belley, "What Legal Culture for the Twenty-First Century?" (2011) 26:2 Can J L & Soc'y 237–251 at 246.

overcome arguments of incommensurability and to hold the larger tradition together."[91] In the African context in which "the constitutional experience of postcolonial Africa begs more questions and casts more doubts as to what constitutions and constitutionalism actually mean than what it actually tells," Gebeye highlights the contrast between the formal declaration of exclusive constitutional authority and its actual implementation on one hand, and the enduring significance of customary or indigenous systems as origins of political influence and safeguarding of rights, on the other hand. Consequently, a more precise examination of constitutions and constitutionalism in postcolonial Africa is needed.[92] Nonetheless, most, if not all, dominant cultural approaches in constitutional studies require the presence of democratic liberal culture for a written constitution to function effectively. Put differently, most constitutional theories are premised on the assumption that there can only be one way to conceive modern constitutionalism which is a brainchild of the American and French Revolutions and hence a unique product of the Western experience.[93] As one of its leading proponents puts it, "[e]stablishing a constitution is not merely a matter of writing a text but of creating a [liberal-democratic] culture that mediates between legal text and political power."[94] By defining constitutionalism as a form of syncretism of various active legal traditions, rather than insisting on the importance of creating democratic liberalism as the appropriate culture to accompany the entrenchment of a written constitution, this study recognises that folk religious traditions may be the culture that mediates between constitutional and political power.

Furthermore, this study presents a proposal that marks another shift in constitutional studies in emphasising the need to incorporate folk religious traditions as a significant aspect of local knowledge, when describing and explaining the practice or theory of a specific form of constitutionalism. Adopting a comprehensive historical perspective when elucidating how a constitution acquires significance or meaning within a specific constitutional framework is

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[91] See H Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law*, 5th ed (Oxford: Oxford University Press, 2014) at 373. Glenn employs the phrase "incommensurability" to denote the absence of a singular measuring gauge to assess or transform subjects. See H Patrick Glenn, "Are Legal Traditions Incommensurable?" (2001) 49:1 Am J Comp L 133–145 at 144.

[92] Berihun A Gebeye, *A Theory of African Constitutionalism* (Oxford: Oxford University Press, 2021) at 12.

[93] See e.g. Grimm, *supra* note 34 at 357–358; Martin Loughlin, *Against Constitutionalism* (Cambridge, Mass.: Harvard University Press, 2022) at 2; Kahn, *supra* note 31. On the lineage of modern constitutionalism see also Michael W Dowdle & Michael A Wilkinson, "On the Limits of Constitutional Liberalism: In Search of Constitutional Reflexivity" in Michael W Dowdle & Michael A Wilkinson, eds, *Constitutionalism beyond Liberalism* (Cambridge: Cambridge University Press, 2017) 17.

[94] See Kahn, *supra* note 31 at 17.

imperative.[95] Without this long historical view, constitutional studies in a non-Western context will only reflect constitutionalism within the categories one finds in Western experience. This will not yield a satisfactory answer as many critical concepts in Indonesian constitutional law do not fit the Western-derived categories they supposedly represent.[96]

Turning to the Japanese context, where the appeal of folk religious traditions is most apparent in its widespread acceptance in the written constitution, the Indonesian habit of using meanings that are entirely different from the original or supposed ones is not exceptional. For instance, Chiba suggests that, from a strictly legal perspective, Japanese constitutional reform represented a transition from an absolutist Tenno state in which the union of the state and the people is indivisible to a democratic state, which could be interpreted as a form of revolution. Nevertheless, the public's acceptance of the new Constitution stemmed from the widespread belief that it signified a continuation of the former Constitution. This suggests that while various new constitutional features introduced by the imposed Constitution may have been imported practices, their foundational matrices stem from the indigenous national understanding of the Tenno and the nation.[97] Furthermore, Seong-Hak Kim's study of historical legal development in Korea argues that the reception of European civil law was facilitated by colonial forces who constructed a traditional Korean legal system. Korean historians have endeavored to revive them by embracing the concept of organic legal harmony and emphasising the importance of tradition during the Chosŏn dynasty, purportedly serving as proof of its organic legal nature. Consequently, it can be argued that Korea is another example of folk religious traditions playing a crucial role in adopting Western law.[98] Similarly, in Thailand, where "constitutional law . . . is heavily influenced not only by the Western idea of liberal democratic constitutionalism but also traditional ideas of power derived from Thai Buddhism," the fact that folk religious traditions had been out of sight did not

[95] The assertion that "the serious student of comparative law and religion must be ready to plunge deep into 'the well of the past'" is articulated by among others Whitman who discusses some ancient links between law and religion. See Whitman, *supra* note 36 at 736.
[96] This led a commentator to a simplistic and narrow assertion that comprehending a constitution should primarily center on the influence of specific immediate, sectoral, or even self-serving interests shaping its trajectory, which is essentially a manifestation of its contemporary context and circumstances. See Andrew Ellis, "Indonesia's Constitutional Change Reviewed" in Ross H McLeod & Andrew MacIntyre, eds, *Indonesia: Democracy and the Promise of Good Governance* (Singapore: ISEAS–Yusof Ishak Institute, 2015) 21 at 21.
[97] See Chiba, *supra* note 1 at 318–319, 323.
[98] See Marie Seong-Hak Kim, *Law and Custom in Korea: Comparative Legal History* (Cambridge: Cambridge University Press, 2012) at 1–3.

mean they were out of the nation's constitutional mind.[99] Engel and Engel's study of Thailand's legal awareness indicates that the global influence of law does not alter how Thai people engage with the legal system. The integration of law within Thai society has not eradicated the influence of traditional religious practices even though they are no longer in existence.[100]

As a pioneering attempt to articulate the importance of factoring in folk religious traditions to make sense of Indonesian constitutionalism, this study can also be read as another invitation to consider these traditions as an active element in illuminating all kinds of non-Western constitutionalism. It is not the first study to do so; several others have argued for the central role of folk religious traditions as the nation's prejudiced and underpinned constitutionalism. Inspired by Friedman's definition of the legal system, which comprises three interacting components,[101] Chiba's is arguably the seminal work that addresses the role of Japanese folk religious traditions in founding and sustaining modern Japanese "constitutional law." More pointedly, Chiba argues that "indigenous legal postulates since Shotoku Taishi were actually fundamental in formulating the Constitution under the authority of *Tenno*, with the ideal of *wa* (harmony) based on the principles of the family system and status hierarchy."[102] Unfortunately, he does not provide a sustained discussion of the role of folk religious traditions in Japanese constitutionalism. There is also a burgeoning body of constitutional studies on non-Western constitutionalism characterised by a coherent integration of doctrines, texts, and practices—thereby warranting scrutiny. The most relevant are two recent works on Thailand by Mérieau and Tonsakulrungruang and a comparative study in African constitutional tradition by Gebeye.

Both Mériau and Tonsakulrungruan extensively examine the process of indigenisation, reinterpretation, and sedimentation of Western-derived constitutional categories such as constitutional monarchy, constitutionalism, and the rule of law across various times and locations in Thailand's constitutional history. Like Mérieau,[103] Tonsakulrungruan proposes that the absence

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[99] Moreover, it is contended that even the pinnacle of "democratic constitutionalism," the implementation of the 1997 Constitution of the People, furnished assets for conceptions of public authority resembling "barami" or charisma. See Khemthong Tonsakulrungruang, "Thai Constitutions as a Battle Ground for Political Authority: Barami versus Vox Populi" in Tom Ginsburg & Benjamin Schonthal, eds, *Buddhism and Comparative Constitutional Law* (Cambridge: Cambridge University Press, 2022) 161 at 161–162.
[100] See David M Engel & Jaruwan S Engel, *Tort, Custom, and Karma: Globalisation and Legal Consciousness in Thailand* (Palo Alto, CA: Stanford University Press, 2010) at 123–124.
[101] See Masaji Chiba, "The Unofficial Jural Postulates Underlying Attitudes toward Law" (1982) 3:1 Zeitschrift für Rechtssoziologie 59–73 at 60. There, Chiba is referring to Friedman, *supra* note 1.
[102] See Chiba, *supra* note 1 at 310.
[103] See Mérieau, *supra* note 26 at 9.

of secularisation in Thailand defines constitutional categories within the Thai constitutional order.[104] Despite their recognition of the centrality of Buddhism as Thailand's predominant religion in Thai constitutionalism, they do not consider folk religious traditions with which Thai Buddhism is associated as beneficial in understanding Thai constitutionalism. This may be linked to their interpretation of faith or religion as more closely aligned with Western folk understanding of religion as a closed belief system. Tonsakulrungruang acknowledges that his study is not a discussion of the authentic manifestation of Thai Buddhism, but a sociological interpretation, which typically includes the Theravada tradition and the official order as key components. Regrettably, this approach unintentionally diminishes the richness of Thailand's understanding or interpretation of Buddhism.[105] Mérieau fails to explore her comprehension of Buddhism in Thailand, although she acknowledges a process whereby Buddhist literature has become more localised within the Thai context.[106] Failing to acknowledge the significance of folk religious ideas within Thai Buddhism may result in an exaggerated assessment of the influence of "Protestant Buddhism," a contemporary movement aimed at reinterpreting Buddhism through a Western lens.[107] Furthermore, scholarly surveys have consistently verified that religious traditions in Southeast Asia, including Thailand, are better perceived as an extensive progression where world religions, including "Buddhism," represent only a fraction.[108]

Consequently, Mériau and Tonsakulrungruan's analysis has inadequately acknowledged the widespread aspects of Thai religiosity. In a different context, Gebeye similarly argues that traditional religious practices, Islam, and the influences of European colonisation are recognised as an essential component of the "African triple heritage" and contribute to understanding

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[104] Khemthong Tonsakulrungruang, *Toward a New Buddhist Constitutionalism: Law and Religion in the Kingdom of Thailand* (Ph.D. Dissertation, University of Bristol Law School, 2020) [unpublished] at 1.
[105] See *Ibid* at 4.
[106] See Mérieau, *supra* note 69 at 63.
[107] David N Gellner, "For Syncretism: The Position of Buddhism in Nepal and Japan Compared" (1997) 5:3 Soc Anthro 277–291 at 280.
[108] See e.g., Paul Stange, "Religious Change in Contemporary Southeast Asia" in Nicholas Tarling, ed, *The Cambridge History of Southeast Asia* (Cambridge: Cambridge University Press, 1993) 529 at 531. (Strange comments that "whenever contemporary elites invoke indigenous spiritual cultures it is within new frameworks which make the process one of reinvention rather than strictly of preservation."); Barbara Watson Andaya & Yoneo Ishii, "Religious Developments in Southeast Asia c. 1500–1800" in Nicholas Tarling, ed, *The Cambridge History of Southeast Asia* (Cambridge: Cambridge University Press, 1993) 508 at 511. (They argue that "any study of Southeast Asian cultures will stress the tenacity of indigenous beliefs and will point out that for a number of societies they have remained a completely satisfactory means of explaining the world. Such studies will also emphasise that all the world religions which became established in Southeast Asia succeeded because they not only made some accommodation with existing attitudes but elaborated and enhanced them.").

constitutions and constitutionalism in Africa.[109] However, his analysis does not explore the African folk religious tradition within the diverse expression of African constitutionalism.

In a marked departure, the current study highlights the significant influence of folk religious traditions on the development of constitutionalism and constitutional law in Indonesia. It presents Indonesian constitutionalism, also known as *hukum tata negara*, as a manifestation of a "complex legal tradition" within a non-Western framework and a product of the amalgamation of various religious traditions, with more recent incorporation of "secular" Western legal traditions (see Chapter 8).

IV. Method and Structure

As previously noted, a primary reason for the persistence of the 1945 constitutional order, beyond its anticipated lifespan, is the prevailing belief that Indonesia's survival is contingent upon this Constitution.[110] This belief is also prevalent among academic constitutional lawyers whose voices are mostly ignored or marginalised in international or English language scholarship on Indonesian constitutionalism. As Part III of this thesis will make clear, one reason why they are invisible is that they do not publish in English and hence are unknown to international audiences.[111] But more importantly, their voices are ignored in international scholarship on Indonesian constitutionalism because their constitutional understanding does not fit with the master narrative of the Western model of constitutionalism.[112] Nevertheless, this study argues that they are critical in explaining the rationality behind the 1945 Constitution's prolonged lifespan. By articulating their conceptual

[109] See Gebeye, *supra* note 39 at 9.
[110] Given its prevalence, this cult of the 1945 Constitution has provoked a "sober" approach aimed at demystifying the 1945 Constitution as nothing more than a human made constitution. See Muhammad Ridwan Indra, *The 1945 Constitution: A Human Creation* (Jakarta: CV Haji Masagung, 1990).
[111] Arguably, an important reason why this group has never been given much narrative space is their limited ability to express themselves in "proper" English. Clearly, this has something to do with them being primarily a product of the Indonesian education system. Thus, whenever they publish in English, they can only do so with a local publisher who has limited resources which explains the poor quality of their published work. All this contributes to the marginalisation of their understanding on constitutionalism. Afandi's work is invaluable in grasping the sense of sacredness of the 1945 Constitution. See Idrus Affandi, *Back to the Original 1945 Constitution of the Republic of Indonesia* (Bandung: Penerbit Rosda, 2020).
[112] The only work that takes this off-script approach to the 1945 Constitution is provided by a political scientist. However, this analysis overlooks the scholarly and theoretical rationale behind the proponents of the 1945 constitutional framework. Rather than delving into the theoretical discourse, this study centers on elucidating the reasons for the prevailing sentiment towards the 1945 Constitution. See Marcus Mietzner, "Defending the Constitution, But Which One? The Indonesian Military, Constitutional Change, and Political Contestation, 1945–2020" in Melissa Crouch, ed, *Constitutional Democracy in Indonesia* (Oxford: Oxford University Press, 2023) 49.

understanding of it, this study will unveil the implicit meaning behind the sacred use of the 1945 Constitution.

This belief gives rise to the premise that the 1945 Constitution contains, for want of a better term, "self" or even "spirit" ("semangat" or "jiwa"). It is assumed that the Constitution has an intangible essence or self that cannot be changed, including by a series of constitutional amendments. Thus, the popular perception is that a great continuity exists between the original or pre- and post-amendment 1945 Constitution even though it contains 80 percent more words than the pre-amended version. To accommodate the contradictory nature of the 1945 Constitution as simultaneously an embodiment of change and continuity, the inaugural Chief Justice of the Constitutional Court urged that it "should be understood as incremental big-bang constitutional change."[113] Much like the idea of the human self, the self of the 1945 Constitution is perceived as immutable despite any changes that have been made.[114] This premise diverges from the assumption of most constitutional studies that textual changes would alter the self-definition of a constitution.[115] Accepting the premise that the 1945 Constitution is immutable, this study argues there is a higher identity attached to it that remains intact despite any textual transformations.

It can therefore be argued that the very idea that animates the persistence of the 1945 constitutional order does not derive from foreign or Western theories. Rather, it is cultivated from folk religious traditions, also known as folk psychology, theory of mind, and mentalising, that continue to function as the lifeblood of Indonesian socio-cultural practices and are entrenched in the Indonesian way of being. Hence, folk religious traditions denote our everyday way of understanding, or rationalising, intentional actions; they are a familiar way of making sense of our actions and those of others but also underwrite a range of moral, legal, educational, clinical, and

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[113] See Jimly Asshidiqie, *Indonesian Post-Crisis Constitutional Reform: An Incremental Big-Bang Constitutional Change between 1999-2002* (Manila: International IDEA and the Constitution Transformation Network, 20017-10-3).

[114] See also Michel Rosenfeld, "Constitutional Identity" in Michel Rosenfeld & András Sajó, eds, *The Oxford Handbook of Comparative Constitutional Law*, 1st ed (Oxford: Oxford University Press, 2012) 756 at 759.

[115] The concept of *Pancasila* self ("Manusia Pancasila"), stemming from the essence of the 1945 Constitution, remains relatively constant, even amid changes in political regimes. See e.g., H Caroko, "Konsep Manusia Menurut Pancasila [The Conception of Self according to Pancasila]" (1984) 1 Analisa 68–78; Sartika Intaning Pradhani, "Konsepsi Manusia Indonesia dalam Perspektif Ideologi Hukum Indonesia [The Idea of the Indonesian Person in the Indonesian Legal Ideology]" (2018) 30:1 Mimbar Hukum 49–62; Toto Tis Suparto, "Gambaran Manusia Pancasila [The Idea of Pancasila Self]", *Kompas* (24 October 2021), online: <https://www.kompas.id/baca/opini/2021/10/24/gambaran-manusia-pancasila>; Nicolaus Driyarkara, *Karya Lengkap Driyarkara: Esai-esai Filsafat Pemikir yang Terlibat Penuh dalam Perjuangan Bangsanya [The Complete Works of Driyarkara: Essays of a Philosophical Thinker who Deeply Involved in the Struggle of His Nation]*, Sudiarja, S.J., ed (Jakarta: Gramedia Pustaka Utama, 2006) at 938–959.

therapeutic practices. Without these understandings, a person would no longer be a subject capable of knowing where they stood and what things mean to them; they would suffer a terrifying breakdown of precisely those capacities which define a human agent. More crucially, they provide the receiving societies with both a model of and for refashioning constitutionalism as they deem desirable. It is these understandings that provide the epistemological base for the translated constitutionalism to register its local ownership and earn its qualitative distinctions of worth. In short, folk religious traditions serve as the conceptual framework guiding our comprehension of the world.[116] In a word, the 1945 constitutionalism rests on folk or indigenous values that express the subjective experience and hence character of a people. Thus, the 1945 Constitution is shorthand for saying "this is how Indonesia has always been."

The unwavering conviction of the unchanging self of the 1945 Constitution is closely associated with the enduring strength of what might be described as the *Pancasila sakti* cult which takes a tough stand on the indispensability of *Pancasila*, the affective name for the Preamble of the 1945 Constitution. The Pancasilaists believe that if the Preamble is left untouched, the 1945 Constitution will project the same self. Their membership includes various high-ranking state officials and eminent public figures commonly described as the Pancasilaist or nationalist faction, as opposed to the Islamist faction who take a strong stand against the 1945 constitutional order. As Part II will make clear, this tension between the Pancasilaists and the Islamists is best described in religious terms where the survival of "this is how Indonesia has always been" is at stake. Furthermore, the conviction of the unchanging self of the 1945 Constitution hints at the importance of its assumed symbolic function in Indonesian constitutionalism, a topic that has attracted little attention. By bringing to light its symbolic function, it is now possible to conceive the embeddedness of folk religious traditions within the symbolism emanating from the 1945 Constitution. While it is true that Indonesia is experiencing a process of constitutionalisation of its public life like that seen in the West, its folk religious traditions continue to be important.

It is misleading to think of the 1945 Constitution as a re-enactment of Indonesia's traditional or folk constitutional order. Nevertheless, we cannot ignore the vision of folk

[116] See Bertram F Malle, "Folk Theory of Mind: Conceptual Foundations of Human Social Cognition" in Ran R Hassin, James S Uleman & John A Bargh, eds, *The New Unconscious* (New York: Oxford University Press, 2006) 224 at 226–227. (He notes that: "[p]eople's theory of mind thus frames and interprets perceptions of human behavior in a particular way—as perceptions of agents who can act intentionally and who have feelings, desires, and beliefs that guide their actions. When this framing and interpretation are lacking, as in the case of autism, the resulting social perception is strangely mechanical and raw.").

constitutionalism, given the prominent position of its adherents in Indonesian constitutional politics. As I will elaborate in Part III, conceptual analysis of Indonesia's three constitutional postulates suggests that their meaning is closely aligned with folk religious sensibility, rather than with the modern or liberal meaning. Not only has the domination of the folk-inflected constitutional vision in Indonesian constitutional discourse been relatively unchallenged from the time the 1945 Constitution was framed, including in the so-called era of political reform ("jaman reformasi") (1998–present), but it also explains why constitutionalism has become an emotive subject in Indonesia. The drafting committee of the 1945 Constitution was known as "the Radjiman committee," hinting at the influence of its chairman Radjiman who was a devout practitioner of Javanese folk religious traditions.[117] It is therefore plausible to imagine that the 1945 Constitution symbolises an aspiration to maintain the supremacy of their folk or traditional way of life. As Chapter 3 will show, the symbolic importance of the 1945 Constitution may also signify an awareness that Indonesia could not cling to the past, and yet it also conveyed *Bhinneka Tunggal Ika*, the desired Indonesian identity.

More importantly, by suggesting that there is a symbolic association between the 1945 Constitution and Indonesia's folk religious traditions, this study is aiming to elicit the cultural logic behind its persistence. It is therefore imperative to clarify what makes "folk religious traditions" central in the context of Indonesian constitutional discourse. After all, in ordinary parlance folk religious traditions are juxtaposed to what is commonly understood as "the modern," believed to be a product of reflective-, conscious-, or reason-based deliberation, in which the concept of a constitution, as "a consciously constructed artifact" and by extension constitutionalism are arguably emblematic of being modern. Loughlin, a noted constitutional theorist, goes further in suggesting that constitutionalism is essentially an ideology, like liberalism, socialism or nationalism.[118] Therefore, it can be asserted that constitutionalism embodies a particular or parochial meaning that is very likely not shared by a nation with a differing experience, such as Indonesia. By implication, constitutional studies with their universal assumptions have unwittingly imposed an understanding that is parochial in nature. It is hardly surprising then that most constitutional studies find it difficult to accept assumptions that derive from folk religious

[117] Martin Ramstedt, "Introduction" in Martin Ramstedt, ed, *Hinduism in Modern Indonesia: A Minority Religion Between Local, National, and Global Interests* (London and New York: Routledge Curzon, 2004) 1 at 4–5.
[118] Furthermore, by regarding it as a form of ideology, Loughlin suggests that "the concept of constitutionalism is not reducible to a specific institutional configuration." See Loughlin, *supra* note 24 at ix, 1, 3, 34–35.

traditions as helpful in explaining constitutional matters. In short, it is assumed that constitutionalism occupies a sphere of experience that is detached from the influence of folk religious traditions which exist in the realm of the everyday, nonrational or subconscious realm.[119]

Now, let us turn to the nature of the Indonesian folk knowledge where it is impossible to distinguish between the secular and profane. For instance, in the case of Indonesian folk religious traditions, the epics *Mahabharata* and *Ramayana,* which function in a similar way to the Bible in Christianity, provide not only the main source for the shadow puppet theatre, the nation's popular entertainment, but also for popular moral lessons.[120] (Importantly, both *Mahabharata* and *Ramayana* serve as the repository of Indonesian folk religions that have been adapted to local conditions.) One commentator aptly described the entrenched status of folk knowledge: "[i]n political discourse, any important political official is liable to be labeled a puppet manipulated by an unseen *dhalang* ['puppet master; or 'God']. Much discussion about the current regime has centered on who at any given movement the real *dhalang* is."[121] It is the protean character of folk knowledge that helps to entrench folk religious traditions into Indonesia's conception of constitutionalism. Thus, this protean character has allowed them to operate as the ghost in Indonesia's constitutional machine. Considering its significance, *Pancasila* is unsurprisingly dubbed Indonesia's "semi-official civil religion."[122] It is the intrinsic part of the Indonesian consciousness.

By factoring in the symbolic significance of the 1945 Constitution, this study not only challenges the assumption that has animated most if not all constitutional studies in Indonesia, but also reimagines what an interpretive approach to constitutionalism in a non-Western context may

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[119] Ran Hirschl, *Constitutional Theocracy* (Cambridge, Mass.: Harvard University Press, 2010) at 243. (Hirschl states that "works in comparative constitutional law continue to draw heavily on the constitutional experience of half a dozen, mostly liberal democratic countries but seldom refer to the constitutional experience, law, and institutions elsewhere." Curiously, this admission does not prevent him from applying the Protestant conception of religion as its analytical underpinning to elucidate what he termed "constitutional theocracy" in several non-Western nations. His privileging of the Protestant conception of religion has led him to assert that constitutional theocracy represents "the clash between secularists and religionists." In Hirschl's analytical framework, folk religious traditions that eschew the distinction between the sacred and the profane are nonexistent). It is not surprising that his highly regarded work on comparative constitutional studies neglects to consider the significance of the epistemology, lifeworld, or social imaginary of the constitutional framework under analysis. See Ran Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Oxford: Oxford University Press, 2016).

[120] Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1973) at 132.

[121] Ward Keeler, *Javanese Shadow Plays, Javanese Selves* (Princeton: Princeton University Press, 1987) at 15.

[122] Clifford Geertz, *After the Fact: Two Countries, Four Decades, One Anthropologist* (Cambridge, Mass. and London: Harvard University Press, 1995) at 5.

entail. One strategy to get the meaning of the 1945 Constitution across is to employ a "conceptual analysis." This can be defined as:

> a diverse set of methods and sensibilities derived from cognitive science, ordinary language philosophy, political theory, and Bible translation that includes looking at (1) the structure of concepts, (2) how concepts get used in ordinary contexts, (3) how specific concepts fit into a semantic field of related concepts, (4) how the meaning of concepts evolve over time, and (5) issues that arise in translating.[123]

This definition uses conceptual analysis to identify the spectrum of standards based on the functioning of meaning in language, with the underlying assumption that the meaning of words is derived from their actual use across different contexts. Therefore, comprehending how individuals interpret terms like "constitutionalism" or "constitutional law" necessitates an examination of their use in typical contexts encompassing legal and non-legal domains. This broad approach is important, considering that the use of legal concepts in the non-legal or ordinary domain may not be arbitrary.[124] As one commentator puts it, "concepts are never held or used in isolation, but in constellations which make up entire schemes or belief systems."[125] Hence, it is arguable that "a refusal to apply the term in a certain situation may constitute an act of social insensitivity or a failure of social awareness."[126] In that sense, conceptual analysis "requires little else but imagination, some intelligence and a fine armchair—although to be persuasive, one also needs linguistic intuitions properly attuned to those of the wider language community."[127]

By suggesting that Indonesian constitutional concepts are rooted in ordinary language, this study distinguishes between "local" and "foreign" sources, prioritising local or indigenously produced sources over foreign and comparative ones. Nonetheless, this differentiation does not imply that foreign and comparative sources are unimportant. The rationale behind this strategy is to clarify the uniqueness of each while also establishing a connection between Indonesian and

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[123] See Frederic Charles Schaffer, *Democracy in Translation: Understanding Politics in an Unfamiliar Culture* (Ithaca and London: Cornell University Press, 1998) at 9.
[124] *Ibid* at 12. (arguing that the ordinary use of concepts such as democracy "appear to be extensions of familiar understandings" of them).
[125] See James Farr, "Understanding Conceptual Change Politically" in Terence Ball, James Farrar & Russell L Hanson, eds, *Innovation and Conceptual Change* (Cambridge: Cambridge University Press, 1989) 24 at 33.
[126] Quentin Skinner, "Language and Political Change" in Terence Ball, James Farrar & Russell L Hanson, eds, *Innovation and Conceptual Change* (Cambridge: Cambridge University Press, 1989) 6 at 13. See also Farr, *supra* note 125 at 41. (Positing that "[t]he meaning of political concepts is to be understood in terms of the contexts within which actors put them to use.").
[127] Johan Olsthoorn, "Conceptual Analysis" in Adrian Blau, ed, *Methods in Analytical Political Theory* (Cambridge: Cambridge University Press, 2017) 153 at 164.

Western constitutionalism as a fusion between two constitutional traditions which are not necessarily incommensurable. This is consistent with the main goal of the study, which is to leverage local knowledge in shedding light on shared meanings and their significance in shaping Indonesia's constitutional landscape.

This study therefore embraces an interpretive turn and suggests that to understand the persistence of Indonesia's 1945 constitutional order as a social phenomenon, the approach must be grounded in ordinary language. Bluntly put, the ultimate objective of this model is to build a "better understanding" than the authors of the text of the 1945 Constitution have presented. Hence, the resulting explication will consider the subject's larger context.[128] Implicit in embracing this turn is the assumption that the persistence of the 1945 constitutional order has to do with something that is larger than itself. In short, it aims to uncover the underlying meaning of Indonesia's social practices and institutions.[129] This model is best exemplified in Clifford Geertz's analysis of Balinese cockfighting in which the Balinese cultural and social world is a critical element in the process of articulating the meaning behind the phenomenon discussed.[130] Moreover, unveiling meaning "is not merely [adding more] interpretation; it points beyond itself to the fundamental problems—theoretical, practical, and aesthetic—of human existence."[131] Therefore, this study incorporates Indonesia's folk religious traditions in what might be described as the Indonesian equivalent of "the intersubjective and common meanings" embedded in its social reality.[132]

To demonstrate that the persistence of the 1945 constitutional order cannot be separated from the entrenched status of folk religious traditions in the nation's public imagination, Part I articulates the two background understandings that inform both the operation of the 1945 constitutional order and sustain its persistence. The first is what one might describe as the translation of Charles Taylor's modern social imaginary in the Indonesian context. Chapter 1 argues that it can be understood through analysis of the "folk" narratives that the nation constructs about its identity and experience. Chapter 2 suggests that *rasa* ("emotion," "feeling," or

[128] Paul Rabinow & William M Sullivan, "The Interpretive Turn: Emergence of An Approach" in Paul Rabinow & William M Sullivan, eds, *Interpretive Social Science: A Reader* (Berkeley and Los Angeles: University of California Press, 1979) 1 at 12–13.
[129] Charles Taylor, "Interpretation and the Science of Man" in Rabinow, Paul & William M Sullivan, eds, *Interpretive Social Science: A Reader* (Berkeley and Los Angeles: University of California Press, 1979) 25 at 48.
[130] Clifford Geertz, "Deep Play: Notes on the Balinese Cockfight" (1972) 101:1 Daedalus 56–86.
[131] Rabinow & Sullivan, *supra* note 128 at 18.
[132] Taylor, *supra* note 129 at 65.

"meaning"), the second constitutive factor and arguably Indonesia's foremost religious sensibility, defines the Indonesian mode of constitutional engagement.

Part II of this thesis will argue that the persistence of the 1945 constitutional order has been perpetuated by Indonesia's long-running religious rivalry between the Pancasilaists and Islamist Puritans and examines various interdisciplinary insights. Thus, Chapter 3 articulates two ideal types of religious tradition which inform the symbolism behind the 1945 Constitution, drawing heavily on the literature of comparative religious studies. Chapters 4 and 5 translate two ideal types as the Pancasilaists and the Islamist Puritans, two predominant socio-political forces, drawing on the interdisciplinary domain known as "Indonesian studies." Chapter 4 argues that these two socio-political forces represent different views about managing Indonesia's religious pluralism, while Chapter 5 examines the persistence of the 1945 constitutional order which has primarily been a story about the continued supremacy of Indonesia's folk religious traditions, or Indonesian ways of doing things.

In Part III, the discussion, turns to explaining that the meaning of Indonesia's three constitutional postulates is contingent on the background understanding examined in Part 1, and the long-running religious rivalry explored in Part 2. Therefore, these three constitutional postulates are the fundamental components of the Indonesian idea of constitutionalism and the discussion in Part 111 compares them with their equivalents in the Western discourse of constitutionalism. Chapter 6 explains *negara kesatuan* ("unitary state") as Indonesia's very own theory of the state that emphasises nonseparation between state and religion. While a recent concept, it conveys the aspiration to be embedded in Indonesia's historical experience as an agglomeration of religious people. A similar argument is advanced in Chapters 7 and 8. Chapter 7 demonstrates that *negara hukum* is best understood as a "vernacularisation" of the rule of law rather than a mere translation of the rule of law or *Rechtsstaat*, as commonly understood. Chapter 8 makes the case for the vernacularity of communal-oriented *hukum tata negara*, the Indonesian equivalent of constitutional law, because it is a derivative of Indonesia's folk religious traditions that are rooted in immanent religious traditions, signifying the monistic belief that "metapersons [or God(s)] as inhabiting the world in exactly the manner that normal persons do." In contrast, constitutional law is rooted in transcendental religious traditions, reflecting a dualistic belief in the coexistence of divinity and humanity, underscoring the significance of individualism. Together,

these three constitutional postulates substantiate what I term the "vernacularisation of constitutionalism."

PART I

Constituting Indonesia's Constitutional Sensibility

In response to the challenge that it may be difficult if not impossible to translate one constitutional experience into another, this Part presents the building blocks that are necessary for the success of "translating" the Indonesian constitutionalism in the framework of modern constitutionalism. By translating, I am referring to an act of "putting two things together in such a way as to make a third, a new thing with a meaning of its own . . . [in the hope that it will] sharpen the sense we have of each, and of the differences that play between them."[1] As such, translation is being defined as "a way of knowing; a way of seeing one thing in terms of another."[2] The premise posits that each constitution is a reflection of its distinct environment, constructed from elements that are inherently cultural. This includes one's knowledge concerning all fields of knowledge that have formed the social reality itself, and which one must therefore take as one's starting point. Therefore, each constitution is intrinsically linked to its cultural and contextual milieu, necessitating interpretation and evaluation within that framework. After all, "as human beings we live on artistic and rhetorical, not scientific, terms."[3]

One strategy to start the process of explaining the persistence of the 1945 constitutional order is by unveiling Indonesia's own "modern social imaginary." Adapted from Charles Taylor's concept of modern social imaginary, Indonesia's modern social imaginary refers to "the ways in which [the Indonesian people] imagine their social existence, how they fit together with others, how things go on between them and their fellows, the expectations which are normally met, and the deeper normative notions and images which underlie these expectations."[4] The core idea behind this concept refers to how ordinary people make sense of their social existence, which is, oftentimes, expressed in and facilitated by their local knowledge or folk religious traditions, such as proverbs, mythical stories, and other forms of vernacular expression. In other words, Indonesia's

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[1] James Boyd White, *Justice as Translation: An Essay in Cultural and Legal Criticism* (Chicago and London: The University of Chicago Press, 1990) at 263.
[2] *Ibid* at 264.
[3] *Ibid* at 265–266.
[4] Charles Taylor, *A Secular Age* (Cambridge, Mass.: Harvard University Press, 2007) at 171.

modern social imaginary functions as the background understanding that gives meaning to virtually every common practice in Indonesia.

Accordingly, I devote Chapter 1 to articulating the Indonesian modern social imaginary. More specifically, Chapter 1 argues that Indonesia's folk religious traditions are the core component of Indonesian modern social imaginary. By identifying Indonesia's folk religious traditions as such, Chapter 1 implicates that the Indonesian modern social imaginary signifies a continuation of its traditional life—an "enchanted" way of life. This perspective arises from the Indonesian folk religious conception, which posits that human existence is intrinsically situated within a broader cosmic framework, thereby rendering life an inherently religious experience. Within this paradigm, the dichotomy between the sacred and the profane is untenable, as human life is inextricably linked to the supernatural, rendering any rigid demarcation between the temporal and the transcendent as fundamentally flawed.[5] In contrast, the Western modern social imaginary conceives the sacred and the profane as two different spheres, originating from the seventeenth-century European experience.[6]

This distinction between the Indonesian and Western modern social imaginaries will be critical in understanding the nature of the 1945 Indonesian constitutional order itself. To begin with, the Indonesian modern social imaginary reflects the main trait of the political rivalry between the Pancasilaists and the Islamist Puritans—primarily, a contest for religious supremacy between two competing religious traditions. In this framework, the Pancasilaists, supporters of the 1945 constitutional order, represent advocates for maintaining the constitutional supremacy of Indonesia's folk religious syncretic sensibility. In contrast, the Islamist Puritans represent Indonesia's growing attachment for a more scripturalist tendency in understanding Islam and its relation to the constitution (see Part II). For that matter, Indonesia's folk religious syncretic sensibility must be embodied in *Pancasila* and, by extension, the 1945 Constitution. Thus, the very force that underpins the persistence of the 1945 constitutional order does not reflect an aspiration for maintaining a secular order, as most commentators have believed.

In Chapter 2, the focus of the discussion turns to *rasa,* defined as "emotion," "feeling," "intuition," "inner meaning," or "common understanding." In that sense, *rasa* is not only critical

[5] *See* JA Niels Mulder, "Aliran Kebatinan as an Expression of the Javanese Worldview" (1970) 1:2 J of Southeast Asian Stud 105–114 at 105.
[6] Charles Taylor, *Modern Social Imaginaries* (Durham, NC: Duke University Press, 2004) at 85–86.

to the Indonesian modern social imaginary but also an important part of its background informing both the operation of the 1945 constitutional order and its ongoing persistence. In fact, it is through *rasa* that average Indonesians conceives their propositional attitudes, namely mental phenomena of whatever kind, and that these centrally figure in the Indonesian everyday practice of explaining, predicting, and rationalising one another and the Indonesian self-conception. In short, *rasa* is essentially the theoretical view of the Indonesian practical self-understanding.[7] In effect, *rasa* constitutes the principal component of the Indonesian constitutional sensibility. Accordingly, understanding *rasa* is a critical concept to unveil the intentionality behind the persistence of the 1945 constitutional order.

One of the most plausible reasons that makes *rasa* as a lynchpin of the 1945 constitutional order is none other than the moral value systems of most Indonesian societies, which is shame-driven.[8] By being shame-driven, Indonesian societies rely on the ability of its individual member to self-enforce *perasaan malu* ("the sense of shame") in maintaining their social cohesion. In Javanese folk conception of maturity, for instance, being aware of *isin* ("shame") is the primary indicator of a person no longer being a child.[9] Conventionally, shame culture is contrasted with guilt culture in the sense that the latter's main mechanism of social control is based on the creation of an inner feeling of guilt (and the consequent expectation of punishment, either in the present or in the afterlife) associated with certain condemned behaviors, practices, or thoughts.

In that sense, Indonesia's moral value systems put a premium on self-esteem, honor or respect, which is sustained by the internal or psychological mechanism of its individual members. Thus, it is unsurprising that Indonesia's folk religious traditions have their own inbuilt mechanism or ritual, which primarily aims for the cultivation and enhancement of *rasa* or emotion (see Chapter 2). By making the ability to cultivate *rasa* as Indonesia's most prized personal character, the communal orientation of the Indonesian social life is emphasised as the constitutive component in Indonesia's modern social imaginary (see Chapter 1).

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[7] Clifford Geertz, *The Religion of Java* (Chicago and London: The University of Chicago, 1976) at 238–239.
[8] See e.g. Karl G Heider, *The Cultural Context of Emotion: Folk Psychology in West Sumatra* (New York: Palgrave Macmillan, 2011) at 129.
[9] Hildred Geertz, *The Javanese Family: A Study of Kinship and Socialisation* (Illinois: Weeland Press, Inc., 1961) at 109–110. (noting that "Javanese conceptions of maturity are closely associated with their view of . . . feelings conceived to be proper to such relationships. The important lesson the child must learn as part of his growing up is how and, when to act respectfully; for there are those toward, whom he must show respect, and there are those with whom he may act spontaneously or familiarly. He soon learns that older people must be respected, especially his father and other men relatives who, formerly indulgent and affectionate, now seem to, withdraw and to expect a polite relationship which verges on avoidance.").

Furthermore, as we will see in Part III, both the Indonesian modern social imaginary and *rasa* becomes integral in elucidating the meaning of Indonesia's three constitutional postulates. By acknowledging the Indonesian modern social imaginary, one can explain why *Kawulo Manunggaling Gusti* (mystical union between the lord and the servant), the core doctrine of Indonesia's folk religious traditions, becomes critical in explaining *negara kesatuan* (see Chapter 8). Similarly, it is difficult to unveil the vernacularity of *negara hukum* as Indonesia's correlative formulation of the rule of law without considering the communal orientation of the Indonesian modern social imaginary (see Chapter 8). Indeed, it is through the Indonesian modern social imaginary that one can identify *hukum tata negara*, Indonesian equivalent of constitutional law, as an embedded folk religious value or ideal (Chapter 9).

In that regard, Part I expresses this first critical principle of this study's central supposition: Indonesia's shared emotional sensibility that creates and nurtures the 1945 constitutional order and its imagination. That means, this shared emotional sensibility allows the 1945 constitutional imagination to *work upon* Indonesia. It works upon many Indonesia because the majority of its people accept the 1945 constitutional imagination as it is assumed to correspond to the Indonesian habits of mind. It is this state of being assumed to be in correspondence with the Indonesian habits of mind that gives the meaning of the 1945 Constitution as the nation's existential proposition—not skills of the framers or constitutional actors—which prompts the perpetuation of the 1945 constitutional order.

CHAPTER 1

Indonesia's Modern Social Imaginary: A Folk Constitutional Frame

Introduction

This Chapter aims to explain the concept of Indonesia's modern social imaginary, drawing on Charles Taylor's framework, which will provide the basis for analysis in the ensuing Chapters.[1] This concept encapsulates Indonesian conception of human flourishing, or even cosmos vision. It serves as an "informal" social theory that pervades the consciousness of the average Indonesian and influences daily social engagement and forms the foundational context within which Indonesian constitutional discourse is situated. As the conceptual scaffold of Indonesia's vernacular constitutionalism, its modern social imaginary furnishes the framework from which the nation's constitutional principles are conceived, interpreted, and enacted, thereby shaping the 1945 constitutional order whose persistence might be termed as "constitution in society," implying the interconnection of Indonesia's modern social imaginary and the ways its constitution is interpreted. In short, by focusing on Indonesia's modern social imaginary, this chapter explains the foundation that underpins the persistence of the 1945 constitutional order.

Indonesia's modern social imaginary is different from the ethereal *rasa,* the subject of Chapter 3. *Rasa* can be taken to mean the "spirit" of the 1945 constitutional order; it is the nation's collective embodied mode of being, with an intangible yet perceptible quality that facilitates its persistence. In juxtaposition, Indonesia's modern social imaginary can be understood through analysis of the "folk" narratives that the nation constructs about its identity, experience, theme, and sentiment or sensibility.[2] Furthermore, it implies a shared understanding that can be discerned from various sources with folkish qualities; that is, it refers to the everyday, taken-for-granted understanding and beliefs that shape peoples' perceptions, actions, and reactions to events and

[1] Charles Taylor, *A Secular Age* (Cambridge, Mass.: Harvard University Press, 2007) at 171.
[2] See Clifford Geertz, "Deep Play: Notes on the Balinese Cockfight" (1972) 101:1 Daedalus 56–86 at 82–86.

situations. Thus, this Chapter suggests that Indonesia's modern social imaginary has the potential not only to explain the longevity of the 1945 constitutional order (see, Part II) but also to reveal the cultural assumptions behind Indonesia's three constitutional postulates that underpin the 1945 constitutional order (see, Part III).

Hence, Indonesia's modern social imaginary functions as the nation's constitutional consciousness that gives meaning to every constitutional action and implies that it is largely part of the intuition. Thus, drawing inferences from Indonesia's social imaginary can be second nature to most Indonesians, providing a cognitive basis for judging virtually every Indonesian constitutional question. Importantly, it diverges from social theories typically advanced by scholars or specialised expert groups which frequently stem from systematic and deliberate intellectual endeavour.[3] Indonesia's modern social imaginary relates to understanding collective circumstances, a backdrop against which specific aspects of Indonesian reality acquire significance. Its inherently diffuse and indeterminate character precludes being fully encapsulated in explicit doctrinal formulations. Consequently, it is termed a social "imaginary" rather than a social "theory."[4]

This Chapter argues that Indonesia's modern social imaginary enables a better understanding of the persistence of the 1945 constitutional order. There is no literature on Indonesian constitutionalism in English or Indonesia's national language ("Bahasa Indonesia," or the Indonesian language) that explicitly draws from Indonesia's modern social imaginary to unlock its conceptual universe in relation to constitutional matters because the conventional wisdom is that such matters are immune from the nation's social imaginary. Therefore, it seems logical to assume that Indonesian constitutional theory and practice must be understood within the analytical framework of "the universal model" that originates from Western experience.[5] This fails to

[3] This divergence is exemplified in the contrast between the understanding of the concept of law that derives from social imaginary and the scholarly interpretations of the same concept. One reason is that the belief that the understanding that derives from social imaginary are liable to get in the way of achieving conceptual clarity, which is the primary objective of any academic endeavor. See e.g., Brian Flanagan & Guilherme De Almeida, "Lawful, But Not Really: The Dual Character of the Concept of Law" (2024) 43 L & Philosophy 507–548 at 510. See also Brian Flanagan & Ivar R Hannikainen, "The Folk Concept of Law: Law Is Intrinsically Moral" (2022) 100:1 Australasian J of Phil 165–179 at 168–170.

[4] Taylor, *supra* note 1 at 173.

[5] A pertinent example is Fenwick's descriptive study that employs John Rawls' notion of public reason as a theoretical lens to interpret Indonesia's Constitution and its constitutional discourse on human rights within the paradigm of liberal political philosophy. See Stewart Fenwick, *Blasphemy, Islam and the State: Pluralism and Liberalism in Indonesia* (Abingdon, Oxon: Routledge, 2017) at 13–14.

recognise Indonesia's modern social imaginary as second nature, which means it is not only embedded but also implicit in all things Indonesian, including constitutional action.[6] Despite its prominence in cognitive processes, Indonesia's modern social imaginary remains an implicit element within the praxis and theoretical frameworks of the 1945 constitutional order and offers an alternative approach to elucidating the conceptual universe embedded within it. By articulating Indonesia's modern social imaginary, this Chapter provides the necessary conceptual tool to enable ensuing Chapters to transcend mere literal translation and elucidate the cultural logic that has allowed the 1945 constitutional order to persist beyond its intended lifespan.

The Chapter further argues that the persistence of the 1945 constitutional order implies the existence of "constitutional pluralism"—where two different or competing visions of social reality exist in the Indonesian conception of constitutionalism.[7] Overtly, it appears to exhibit conceptual congruence with a range of presuppositions in Western constitutional paradigms but does not reflect consistent implementation of Western constitutional principles in the Indonesian context. This discrepancy between professed adherence and practical application requires Indonesia's modern social imaginary to be examined to elucidate underlying incoherences.[8] Consequently, incorporating the social imaginary, with folk knowledge as an integral component, is defensible as it broadens "the range of imaginative constructions to be interpreted."[9]

This Chapter has three sections. Section I further elaborates on what social imaginary looks like in the context of modern Indonesia. Defined as intuitive "theories" that people use to organise their experience, social imaginary generates inferences, guide learning, and influence behavior and social interactions. As such, Section I asserts that a vernacular corpus known as folk theories or concepts is the key element of Indonesia's modern social imaginary. Section II argues that Indonesia's modern social imaginary serves as the tacit presupposition underlying the nation's

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[6] Similar reasoning has been used to elucidate the nexus between individuals' perceptions ("folk knowledge") of law and their corresponding behaviour within the legal sphere ("legal action"). See Benjamin D Steiner, William J Bowers & Austin Sarat, "Folk Knowledge as Legal Action: Death Penalty Judgments and the Tenet of Early Release in a Culture of Mistrust and Punitiveness" (1999) 33:2 L & Soc'y Rev 461–505 at 463.

[7] Legal pluralism, as conceptualised entails a dichotomy between the formal interpretation of law and its vernacular comprehension, representing an adaptation of Belley's framework. See Jean-Guy Belley, "What Legal Culture for the Twenty-First Century?" (2011) 26:2 Can J L & Soc'y 237–251 at 243–246.

[8] The significance of the social imaginary is also arguably pivotal in comprehending the enduring nature of Japan's "imposed constitution," wherein popular endorsement is more consequential than backing from the elite. See David S Law, "The Myth of the Imposed Constitution" in Denis J Galligan & Mila Versteeg, eds, *Social and Political Foundations of Constitutions* (Cambridge: Cambridge University Press, 2013) 239 at 242.

[9] Stephen Greenblatt, "The Touch of the Real" (1997) 59 Representations 14–29 at 21.

collective consciousness, thereby informing the identity of Indonesia's constitutional order. This allows analysis of how Indonesia's folk religious traditions give way to a distinct concept of constitutionalism because of folk conceptions of "God" and the "public," two constituting yet interconnected elements that outline the conceptual building blocks of constitutionalism. Finally, Section III explains how Indonesia's modern social imaginary through *Pancasila* has become a coherent or unifying spirit that continuously informs the nation's constitutional theory and practice.

I. On Indonesia's Modern Social Imaginary

In explaining "the differences among today's multiple modernities," Taylor puts forward the concept of social imaginary, an interpretive construct that enables the practice of a society.[10] He suggests that there are various social imaginaries that begin their life as an idea in the minds of some influential thinkers and subsequently permeate and sculpt the collective consciousness of significant segments of society, ultimately crystallising into a constitutional order. Taylor contends that such imaginaries have become so ingrained in our perception that their status as one among multiple potential conceptions becomes obscured. The transmutation of these moral order perspectives into our social imaginary heralds the emergence of distinct social structures that epitomise Western modernity, including the market economy, the public sphere, and the sovereign citizenry.[11] While Taylor's exploration is confined to Western contexts, the social imaginary as an interpretive construct may be adapted to analyse the understanding behind and operation of constitutional order in non-Western societies, such as Indonesia.

In the context of Indonesia, the notion modern social imaginary finds its origin in intuitive folk concepts or theories which average Indonesians use in organising their experience, generating inferences, guiding learning, and influencing behavior and social interaction. They derive from Indonesia's folk religious traditions which in turn form the country's conception or vision of the moral order. In the Indonesian modern social imaginary the sacred and the secular are interconnected and hence inseparable. Therefore, it implies a continuation of the enchanted way of life. In contrast, the Western modern social imaginary's conceptual origin is in theories of Natural Law which emerged in seventeenth century Europe, beginning as a response to the

[10] See Charles Taylor, *Modern Social Imaginaries* (Durham, NC: Duke University Press, 2004) at 1–2.
[11] See also Martin Loughlin, "The Constitutional Imagination" (2015) 78:1 Mod L Rev 1–25 at 3.

devastating religious wars that prompted a vision of moral order premised on "the rights and obligations we have as individuals in regard to each other."[12] Taylor further adds that the new theories of Natural Law have "moved from being a theory, animating the discourse of a few experts, to becoming integral to our social imaginary; that is, the way our contemporaries imagine the societies they inhabit and sustain."[13] This presumption of individual equality pushed the older theories that place the sacred and the secular in one hand to inventing a secular sphere in human activities. The Western modern social imaginary therefore represents "the shift to secularity . . . , a move from a society where belief in God is unchallenged and indeed, unproblematic, to one in which it is understood to be one option among others, and frequently not the easiest to embrace."[14]

To better understand the distinctiveness of Indonesia's modern social imaginary compared to its Western equivalent, it is necessary to understand its origins which resulted in a different conception of constitutionalism. The Indonesian idea of modernity is a fusion of ideologies and values, closely associated with the Pancasilaists' syncretic vision of independent Indonesia (*see* Chapter 4). The Indonesian term for modernity, "modern," is directly borrowed from the Dutch word but has not retained a similar connotation.[15] Instead, Indonesia's *modern* signifies "a redoubled representation, a *sign of a sign* for continuity" with the supposedly glorious past.[16] The agenda for returning to the past is the unifying theme for anti-colonial movements in Indonesia; hence the emphasis on Indonesia's past and future unity becomes the predominant route to its national identity.[17] Indonesia's vision of modernity does not carry the notion of "progress." In the Western conception of modernity, progress is a central element.[18] The concept of modernity is closely associated with the debate surrounding the extent to which contemporary writers should adhere to the traditional standards of aesthetics and literary structure that have prevailed since the era of Aristotle.[19] Accordingly, the Western conception of modernity signifies a linear path, implying the conviction that civilisation moves forward gradually and is "destined to continue

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[12] Taylor, *supra* note 10 at 4.
[13] *Ibid* at 6.
[14] Taylor, *supra* note 1 at 3.
[15] John Pemberton, *On the Subject of "Java"* (Ithaca: Cornell University Press, 2018) at 102.
[16] *Ibid* at 156–157.
[17] Deliar Noer, "Yamin and Hamka: Two Routes to an Indonesian Identity" in Anthony Reid & David Marr, eds, *Perceptions of the Past in Southeast Asia* (Singapore: Asian Studies Association of Australia and Heinemann Educational Books (Asia) Ltd., 1979) 249 at 252–253.
[18] Partha Mitter, *Indian Art* (Oxford: Oxford University Press, 2001) at 41.
[19] Steven B Smith, *Modernity and Its Discontents: Making and Unmaking the Bourgeois from Machiavelli to Bellow* (New Haven and London: Yale University Press, 2016) at 6.

indefinitely."[20] Ultimately, the idea of progress necessitated reassessment of ancient authorities to emancipate intellectual pursuits and unequivocal recognition of the significance of secular existence.[21]

A similar approach applies in understanding the word "revolution," or "revolusi" in Indonesian language, which is not only central to the idea of Indonesia's modern social imaginary, but, legitimates and constructs the 1945 constitutional order. Western understanding of revolution implies a linear movement towards the end of democratic equality.[22] Like the concept of modernity, Western revolution implies an absolute new beginning and is believed to be "the veritable engines of human progress from which there could be no return [and] . . . viewed as the harbinger of a better future."[23] Before 1789, no term in any known language encapsulated the essence of the contemporary term "revolutionary."[24] However, the Indonesian interpretation of revolution embodies a conservative notion, implying a resurgence of foundational tenets, as indicated by the prefix "re" in the term "revolutio."[25] As Anderson perceptively commented, "[h]ere is 'revolution is continuity' with a vengeance! . . . It is above all a *restoration*: the old order re-emerging in technical, modern dress; the Golden Age at a much higher level of average per capita income, but with the older verities and structures scarcely altered."[26]

This meant that Indonesian revolution and hence the act of constituting the 1945 constitutional order signified a return to its folk religious traditions. To understand its religious significance, it needs to be acknowledged that Indonesia's folk religious conception of history is cyclical, not linear, with "the myth of eternal return" as central to their belief and ritual system. Eliade explains: "it is a revolt against concrete, historical time, [a] nostalgia for a periodical return

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[20] W Warren Wagar, "Modern Views of the Origins of the Idea of Progress" (1967) 28:1 J Hist of Ideas 55–70 at 60.
[21] *Ibid*.
[22] See Paul W Kahn, *Origins of Order: Project and System in the American Legal Imagination* (New Haven and London: Yale University Press, 2019) at 72. See also Steven Pincus, *1688: The First Modern Revolution* (New Haven: Yale University Press, 2011) at 31. (In his widely acclaimed study, Pincus suggests that revolution as "constitut[ing] a structural and ideological break from the previous regime. They entail changes to both the political and socioeconomic structures of a polity. They involve an often violent popular movement to overturn the previous regime. Revolutions change the political leadership and the policy orientations of the state. And revolutionary regimes bring with them a new conception of time, a notion that they are beginning a new epoch in the history of the state and its society.").
[23] Smith, *supra* note 19 at 11.
[24] See John Dunn, "Revolution" in Terence Ball, James Farr & Russell L Hanson, eds, *Innovation and Conceptual Change* (Cambridge: Cambridge University Press, 1989) 333 at 334.
[25] Smith, *supra* note 19 at 11.
[26] Benedict R O'G Anderson, *Language and Power: Exploring Political Cultures in Indonesia* (Ithaca: Cornell University Press, 1990) at 149.

to the mythical time of the beginning of things, to the 'Great Time.'"[27] The implicit assumption behind *slametan*, the main ritual of folk religious traditions in Indonesia is to restore order ("rukun"); that is, to return to the Great Time.[28] *Slametan,* a folk religious concept, has been imported into Indonesian constitutional understanding and is associated with 17 August 1945, the day Sukarno and Mohammad Hatta read the Indonesian declaration of independence, being sanctified.[29] The flag ceremony ("upacara bendera"), required to take place every Monday in all public institutions to honor the day of Indonesia's independence declaration, can be seen as a ritual symbolising a return to a significant period. The term "upacara" itself holds cultural and religious importance, stemming from Indonesia's folk religious practices.[30]

II. Indonesia's Folk Constitutional Order

In this section, I examine how Indonesia's modern social imaginary, with folk religious traditions as its implicit assumption, sets Indonesia's conception of constitutional order apart from its Western counterparts. Contrasting between two different concepts of constitutional order can help us understand the sense of continuity with the past and hence the meaning embedded in each concept. Thus, this section will demonstrate that the persistence of the 1945 constitutional order is linked to Indonesia's folk religious traditions as its defining element.

Two interrelated components that are foundational to the 1945 constitutional order are examined. The first is the notion of God as the sacred which Indonesians interpret as dependent on its underlying folk religious traditions. The second is the Indonesian vernacularisation of public law, a field of knowledge concerning "the state . . . and its relationships with other entities and

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[27] Mercia Eliade, *Cosmos and History: The Myth of the Eternal Return*, translated by Willard R. Trask (New York: Harper Torchbooks, 1959) at xi.
[28] "The purpose of the [communal] meal [*slametan*] is to maintain pleasant equilibrium, of *slamet* (well-being), where one is 'unbothered by either natural difficulties or supernatural annoyances.'" See Justus M van der Kroef, "Javanese Messianic Expectations: Their Origin and Cultural Context" (1959) 1:4 Comp Stud Soc'y & Hist 299–323 at 300. See also Clifford Geertz, "Ritual and Social Change: A Javanese Example" (1957) 59:1 Am Anthropologist 32–54 at 36.
[29] Sukarno, "Tahun 'Vivere Pericoloso' [The Year of Living Dangerously]" in Iwan Siswo, ed, *Panca Azimat Revolusi: Tulisan, Risalah, Pembelaan dan Pidato, Sukarno 1926-1966 [The Five Amulets for the Revolution: Writings, Manuscripts, Rationalisation and Speeches, Sukarno, 1926-1966]* (Jakarta: Kepustakaan Populer Gramedia, 2014) 340 at 340–341; Pemberton, *supra* note 15 at 157.
[30] Pemberton, *supra* note 15 at 192–194.

individuals inside and outside the state."[31] Indonesia's thin understanding of public law, referred to as "hukum publik," provides a vital insight into the constitutionalisation of the folk concept of the public sphere that has historically shaped village life and is crucial for discerning Indonesia's modern social imaginary with folk instincts that sustain the persistence of the 1945 constitutional order.

A. Two Concepts of God

In striving to establish and validate a novel idea or scholarly endeavor, it is inevitable that one must craft an original narrative to bestow credibility upon it. For Western modern constitutionalism, it is "reason" which is integral for the Enlightenment project. Grimm, a German constitutional scholar, believes a distinguishing component of modern constitutionalism is detaching the constitution from the divine order and expressing the "turn to reason."[32] However, adopting reason does not necessarily push the divine into insignificance. As Paul Kahn has pointed out, reason can be considered the Enlightenment's equivalent to the concept of God, evident in Blackstone's understanding of the concept of reason which Kahn believes is key in the convergence of "common law, constitutional law, and the science of the social."[33] Most importantly, Blackstone sees reason as a manifestation of God, thus reinvigorating the folk idea of the sacred. For that reason, Kahn argues that Blackstone's understanding of reason as God embodied late Enlightenment thought, suggesting that morality could not survive without faith in God and the eternal consequences of his judgments.[34] It can therefore be concluded that "[o]n this reasoning, faith is not challenged by science [of law]; rather, science [of law], is an expression of faith."[35]

In exploring the Indonesian model of constitutionalism, the enduring idea of God that underscores the Western constitutional framework was also premised on "immanent principles" and highlighted the "transcendental religiosity" inherent in Judeo-Christian traditions, a stark

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[31] Mark Elliott & David Feldman, "Introduction" in Mark Elliot & David Feldman, eds, *The Cambridge Companion to Public Law* (Cambridge: Cambridge University Press, 2015) 1 at 1.
[32] Dieter Grimm, *Constitutionalism: Past, Present, and Future* (Oxford: Oxford University Press, 2016) at 360–361. Arguably, Grimm's claim that the distinguishing character of Western constitutionalism is reason-based is primarily grounded in the German Constitution. See Alon Harel & Adam Shinar, "Two Concepts of Constitutional Legitimacy" (2023) 12:1 Glob Con 80–105 at 82.
[33] Kahn, *supra* note 22 at 22.
[34] *Ibid* at 107.
[35] *Ibid* at 163.

contrast to Indonesia's "immanentist religiosity." Let us start with recognising the impact of transcendental religiosity in the modern conception of constitutional order in which, in defiance of immanentist religiosity, partitions the sacred and the profane through the doctrine of the Two Kingdoms or Two Swords of pope and emperors.[36] Furthermore, its anti-communal orientation allows a form of individualism and universalism to emerge. This means, "morality moved from a matter of communal flourishing to one of codified and explicit ethics found on the Golden rule and aiming for universal applicability."[37] In the immanentist religiosity that preceded it, morality was meant to be experienced through ritual to be communally felt. Thus, in early religious traditions God was essentially a manifestation of the society as a whole.[38] In contrast, transcendentalist religiosity subjected the sovereign or king to the scripture rather than rituals found in immanentist religiosity.[39] In this vein, one can see the logic behind "[the preference of the Puritan] Americans [to] identify writing a text with creating a polity; they identify defending that text with maintaining the state . . . [and their] reverence for text well before We the People became the author of our founding text."[40]

Thanks to their immanentist roots, Indonesians' conviction of the efficacy of rituals as the main means of constraining the sovereign endures. Indonesian folk theory of the state is primarily dependent on ritual. As Geertz aptly put it: "court ceremonialism was the driving force of courts politics; and mass rituals was not a device to shore up the state, but rather the state, even in its final gasp, was a device for the enactment of mass ritual. Power served pomp, not pomp power."[41] Thus attaining harmonious governance depends on reflecting the cosmic order. This notion encapsulates the central tenet of Indonesia's folk religiosity where the sacred and secular are inextricably intertwined; human life is bound to the supernatural, rendering any strict demarcation between the temporal and the transcendent nonsensical.[42] It is not surprising, therefore, that *Pancasila*, the most

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[36] Robert A Yelle, "Hobbes the Egyptian: The Return to Pharaoh, or the Ancient Roots of Secular Politics" in A Azfar Moin & Alan Strathern, eds, *Sacred Kingship in World History: Between Immanence and Transcendence* (New York: Columbia University Press, 2022) 223 at 225.
[37] A Azfar Moin & Alan Strathern, "Sacred Kingship in World History: Between Immanence and Transcendence" in A Azfar Moin & Alan Strathern, eds, *Sacred Kingship in World History: Between Immanence and Transcendence* (New York: Columbia University Press, 2022) 1 at 11.
[38] Taylor, *supra* note 10 at 10.
[39] Moin & Strathern, *supra* note 37 at 17.
[40] Kahn, *supra* note 22 at 110.
[41] Clifford Geertz, *Negara: The Theatre State in Nineteenth-Century Bali* (Princeton: Princeton University Press, 1980) at 13.
[42] JA Niels Mulder, "Aliran Kebatinan as an Expression of the Javanese Worldview" (1970) 1:2 J of Southeast Asian Stud 105–114 at 105.

sacred part of the 1945 Constitution, is essentially the symbolism of *slametan*, the main ritual of virtually every folk religious tradition in Indonesia. Accordingly, *Pancasila* projects "the ethic of unity, balance and harmony," the same message that *slametan* represents, in which the constitutional question must not be framed as "a matter of choice of *either* this *or* that, nor is it a matter of inclusion of *both* this *and* that, but it is a mystery in which we can choose *neither* this *nor* that."[43] Compared to the transcendental American constitutional order, the 1945 constitutional order is less dependent on universalism, grounded in the textual meaning of its constitution.[44] No wonder Supomo, one of the key drafters of the 1945 Constitution, emphasised the primacy of the constitution's *semangat* (spirit) over its textual interpretation.[45]

B. Indonesia's Thin Conception of Public Law

To reiterate, public law refers to a field of knowledge about "the state . . . and its relationships with other entities and individuals inside and outside the state."[46] By implication, it conveys an understanding of the role the state should play.[47] For that reason, public law is believed to be simultaneously a "special and autonomous branch of jurisprudence which . . . [plays an] essential task in the workings of the modern world"[48] with law and constitutional order embedded in its social and political origins.[49] Hence, this subsection suggests that public law can be helpful in understanding the role of Indonesia's modern social imaginary in informing the vision of the 1945 constitutional order. But it should be noted that public law is a European concept and is thus parochial rather than universal. In discussing *hukum publik*, Indonesian conception of public law, one can reveal how Indonesia's modern social imaginary with its folk instinct shaped the vision of the 1945 constitutional order.

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[43] Eka Darmaputera, *Pancasila and the Search for Identity and Modernity in Indonesian Society: A Cultural and Ethical Analysis* (Leiden: Brill, 1988) at 122.
[44] Simon Butt, "The Indonesian Constitutional Court: Implying Rights from the 'Rule of Law'" in Rosalind Dixon & Adrienne Stone, eds, *The Invisible Constitution in Comparative Perspective* (Cambridge: Cambridge University Press, 2018) 298 at 300, 301.
[45] See Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia [the Investigating Committee for Preparatory Work for Independence], *Lahirnya Undang-Undang Dasar 1945: Memuat Salinan Dokumen Otentik Badan Oentoek Menyelidiki Oesaha2 Persiapan Kemerdekaan [The Birth of the 1945 Constitution: With Copies of the Documents of the Investigating Committee for Preparatory Work for Independence]*, R.M. A. B. Kusuma, ed (Depok: Universitas Indonesia Press, 2009) at 361.
[46] Elliott & Feldman, *supra* note 31 at 1.
[47] *Ibid* at 5.
[48] Martin Loughlin, *Foundations of Public Law* (Oxford: Oxford University Press, 2010) at 1.
[49] Martin Loughlin, *The Idea of Public Law* (Oxford: Oxford University Press, 2004) at 1.

Loughlin locates the genesis of the concept within the tumultuous epoch of profound religious strife in Europe, from the mid-sixteenth to the late-seventeenth centuries, distinguished by escalating historicisation, rationalisation, and secularisation of political thought which were instrumental in shaping the Western contemporary notion of public law. It gave rise to a political order that extricated itself from its ecclesiastical roots, transitioning towards a temporal realm where it sought an autonomous purpose and identity, articulated in secular understanding.[50] The latter marked a pivotal transition in the perception of political power, from the notion of a sovereign preserving his dominion—interpreted as merely sustaining his own status—to recognition of an independent legal and constitutional framework which the sovereign was obligated to uphold. This shift gave rise to the collective notion of the state, which ultimately laid the groundwork for an independent notion of public law. Furthermore, Loughlin emphasises that "this achievement cannot be fully grasped without returning to the themes of both continuity and rupture with the medieval world view."[51]

The rise of the state and hence the development of public law hinted at the state as *universitas* or a common undertaking.[52] Consequently, the constitutional framework was conceived as a set of formal practices rooted within, and acquiring identity from, a wider body of political practices.[53] It points to the centrality of representation as the fundamental aspect of public law which in turn coheres with "the public sphere." Taylor defines the public sphere as a common space that enables people to "come together in a common act of focus for whatever purpose, be it ritual, the enjoyment of a play, conversation, or the celebration of a major event."[54] This is a key feature of the Western modern social imaginary which merges various public spheres previously isolated from one another into one larger public sphere. Taylor notes that "this mutation in the [Western] social imaginary was inspired by the modern idea of order," based on the propositions that: (1) there has to be "a place to stand, mentally, outside of the polity, . . . from which to judge its performance;" and (2) "freedom is central to the rights society exists to defend."[55] Importantly, the public sphere signifies that the state is constituted by "secularity;" that is, the need to invoke

[50] Loughlin, *supra* note 48 at 37.
[51] *Ibid* at 50.
[52] Loughlin, *supra* note 49 at 154.
[53] *Ibid* at 156–157.
[54] Taylor, *supra* note 10 at 85.
[55] *Ibid* at 86–87.

"some action-transcendent dimension, either by an act of God or in a Great Chain or by a law that comes down to us since time out of mind" is no longer necessary.[56]

The 1945 constitutional order is premised on an entirely different vision of the public sphere, which in Indonesia derives its legitimacy from the supposed connection with the sacred, symbolised by *Pancasila*. Indonesia with its *Pancasila* sees its founding act as not just existing earlier, but in another exemplary time. Through its association with the Great Time, the 1945 constitutional order rejects the separation of state and religion and embraces the inclusion of religion into virtually every aspect of public law.

It should therefore come as no surprise that the idea of public law has failed to gain ground in Indonesian discourse. *Hukum publik,* the Indonesian equivalent of public law does not carry the same meaning as in the Western context. It only aims to classify whether a certain rule has a public interest dimension.[57] The thinness of the semantic meaning of *hukum publik* points to Indonesia's disinterest in embracing public law as it signifies secularisation of the public sphere.[58] Hence, the Constitutional Court Justice believed that the *Pancasila*-based *hukum publik* would induce both worldly and spiritual welfare which is different from Western public law.[59] This belief is aligned with the intention of the Investigating Committee for Preparatory Work for Independence ("Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia," better known as "BPUPKI") to establish the 1945 constitutional order to embody Indonesia as a "religious constitutionalism," based on a distinct social imaginary that emphasises the unity of the sacred and the profane.[60]

III. How *Pancasila* as Indonesia's Modern Social Imaginary Informs the 1945 Constitutional Order

This Section will discuss how Indonesia's modern social imaginary has informed both constitutional theory and practice by establishing *Pancasila* as its embodiment. *Pancasila*

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[56] *Ibid* at 96.
[57] CST Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia [Introduction to the Science of Law and the Indonesian Legal Order]* (Jakarta: Balai Pustaka, 1989) at 38.
[58] Arief Hidayat, *Negara Hukum Berwatak Pancasila [Law-based State (Negara Hukum) with Pancasila Characteristic]* (Universitas Atmajaya, Yogyakarta: The Constitutional Court of Indonesia, 2017) at 3–4.
[59] Andi Saputra, "Hakim MK: Indonesia Bukan Rechtsstaat, tapi Negara Hukum Pancasila [A Constitutional Court Justice: Indonesia is Not A Rechtsstaat, But Negara Hukum Pancasila]", *detikNews* (12 September 2021), online: <https://news.detik.com/berita/d-5720104/hakim-mk-indonesia-bukan-rechtsstaat-tapi-negara-hukum-pancasila.>.
[60] Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia [the Investigating Committee for Preparatory Work for Independence], *supra* note 45 at 128–130.

symbolises "the immutable normative values . . . [that] have the qualities of natural law, taking their origin not from Sukarno but from the soil of *Ibu Pertiwi* (Motherland) . . . as *Pancasila* express universally valid principles."[61] Hence, it is a symbol of the Indonesian idea of "the sacred" and is inviolable.[62] It is through *Pancasila* that Indonesia's folk religious traditions impregnate the 1945 constitutional theory and practice. The argument unfolds in two phases: firstly, the preeminence of *Pancasila* within the 1945 constitutional hierarchy is explored, and secondly, the discussion suggests that *Pancasila*'s significance is attributable to its role as a symbol of Indonesia's modern social imaginary.

Pancasila is believed to be no less than the "spirit" or "soul" of the 1945 Constitution and, by extension, of Indonesia:[63] "Without it, Indonesia will not exist or will soon be breaking up."[64] McVey likened it to the United States' Declaration of Independence in its function as Indonesia's "statement of civilisational intent."[65] Indonesians believe *Pancasila* is entrenched in the last paragraph of the Preamble of the 1945 Constitution, even though there is no explicit textual statement in it or the Preamble regarding *Pancasila.* This belief is based on the premise that the final paragraph of the Preamble outlines the five points or principles that make up *Pancasila* (see Appendix 1). This supposition is predicated on tacit agreement among BPUPKI members and perpetuated by indoctrination of later generations of the Pancasilaists. The BPUPKI were more interested in the symbolism of the 1945 Constitution than making it a workable document.[66] As

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[61] Donald E Weatherbee, *Ideology in Indonesia: Soekarno's Indonesian Revolution*, Monograph Series 8 (New Haven: Yale University Southeast Asia Studies, 1966) at 25.

[62] The "sacred" is different from "religion." Hammond's compares it with love and marriage. "Love—whether a personality trait or socially induced (or, indeed, heaven sent)—is routinely understood as a quality that *may* be reflected in the institution of marriage and child-production, but it may also be independent therefrom. Moreover, while marriage is ideally seen, under some cultural conditions, to combine love between two persons with sex, parenthood, economic cooperation, and social identity, the *institution* of marriage is regularly distinguished from love in the sense that persons are known to marry without love, just as love may exist in many forms outside of marriage." See Philip E Hammond, "Introduction" in Philip E Hammond, ed, *The Sacred in A Sacred Age: Toward Revision in the Scientific Study of Religion* (Berkeley and Los Angeles: University of California Press, 1985) 1 at 4–5.

[63] Ayu Utami, *The Spirit of Indonesia: Rasa, Reason, Religion* (Vienna, 2015).

[64] "Prabowo: Begitu Kita Tinggalkan Pancasila, Negara Ini Bubar [The Coordinating Minister Prabowo: As Soon As We Abandon Pancasila, This Country Will Fall Apart]", *kumparanNews* (7 July 2022), online: <https://kumparan.com/kumparannews/prabowo-begitu-kita-tinggalkan-pancasila-negara-ini-bubar-1yE4JZJ0Qlb/full>.

[65] Ruth T McVey, "Building Behemoth: Indonesian Constructions of the Nation-State" in Daniel S Lev & Ruth T McVey, eds, *Making Indonesia: Essays on Modern Indonesia in Honor of George Mc T Kahin* (Ithaca: Cornell Southeast Asia Program, 1996) 11 at 24.

[66] Eddy Damian & Robert N Hornick, "Indonesia's Formal Legal System: An Introduction" (1972) 20:3 Am J Comp L 492–530 at 501.

we will see in Part II, the contentious debate revolves around its interpretation or meaning, not about its constitutional preeminence.

It is hardly surprising that *Pancasila* occupies an eminent position in the 1945 constitutional order. Surveying literature on Indonesian constitutional law, there is consensus on its constitutional preeminence. Take, for instance, a widely used and state-supported publication that argues *Pancasila* is not subject to amendment, including by the People's Consultative Assembly ("Majelis Permusyawarakatan Rakyat"), Indonesia's highest governing body,[67] despite its repeated efforts ensure that any interpretation of the 1945 Constitution and its derivative legal products are consistent with *Pancasila*.[68] In addition, the Indonesian Constitutional Court has recently confirmed that *Pancasila* is "the state's foundation and the legitimating source for the 1945 Constitution and it is the very source of all sources in which Indonesian laws are originating."[69]

The claim that *Pancasila* is the very source of Indonesian laws signifies that it "is at the same time also the soul, the identity and the outlook on life of the Indonesian people."[70] Similarly, Notonagoro the revered theorist of *Pancasila* claims that Indonesian spirituality guides the development of its positive laws.[71] Moreover, *Pancasila* serves as a referential framework for understanding Indonesian religiosity, "necessitating an examination of the spiritual origins and self-identity of the Indonesian people."[72] Thus, hinting at the construction of the 1945 constitutional order as an expression of the sacred in the framework of folk religious traditions. Now, we will turn to the second claim, that *Pancasila* is Indonesia's social imaginary and by extension the embodiment of folk religious values.

Suharto, Indonesia's second president, publicly associated *Pancasila* with Javanese folk religious traditions. In associating it with the Javanese alphabet ("aksara Jawa"), he interpreted it

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[67] Kuntjoro Purbopranoto, "Pancasila Ditinjau dari Segi Hukum Tata Negara [Viewing Pancasila from the Standpoint of Hukum Tata Negara [Constitutional Law]]" in Darji Darmodiharjo et al, eds, *Santiaji Pancasila [The Fundamentals of Pancasila]*, 10th ed (Surabaya, Indonesia: Usaha Nasional, 1991) 211 at 218.
[68] The latest statement is *Ketetapan MPR No. III/MPR/2000 tentang Sumber Hukum Dan Tata Urutan Peraturan Perundang-Undangan [The Statement of the People's Consultative Assembly No. III of 2000 on the Sources of Law and the Hierarchy of Laws]*, Ketetapan MPR 2000.
[69] *Putusan Nomor 59/PUU-XIII/2015 [The Decision No 59/PUU-XIII/2015]*, 2016 Mahkamah Konstitusi [The Indonesian Constitutional Court] at 59.
[70] Danial Kelly, "Pancasila Sakti: The Sacred Authority of the Pancasila in Indonesian Law and Society" (2010) 13:2 Jurnal Yustika 201–233 at 219.
[71] Notonagoro, *Pancasila: Dasar Falsafah Negara [Pancasila: The Philosophical Foundation of the State]* (Jakarta: Pantjuran Tudjuh, 1974) at 10–11.
[72] Purbopranoto, *supra* note 67 at 219.

as *Eling Sangkan Paraning Dumadi*, a Javanese folk religious prescription that every person must consistently be mindful of their origin and destination.[73] Moreover, he believed that because of this association it deserved to be called as "the [Indonesian folk] science of [the ultimate] reality."[74] Suharto then advanced the claim that Indonesian self-conception valued communal interest over personal interest. Through this interpretive framework, *Pancasila* instructs that "happiness flows from concord, harmony, and balance in human relationships, and thus we need to exercise self-control as members of groups."[75] It gives Indonesia purpose and direction. Embracing Suharto's interpretation, the Constitutional Court organises training for professors of *hukum tata negara* ("constitutional law") (see Chapter 8). that includes reading material emphasising that the Indonesian conception of the self is not only embedded in the idea of religiosity but is also the foundation for constitutional reasoning.[76] It can safely be concluded that Suharto's interpretation is widely accepted as the official exegesis of the *Pancasila*.

Conclusion

This Chapter explored Indonesia's modern social imaginary, positing that it is the bedrock upon which the 1945 constitutional order functions. Its key argument is that it is deeply rooted in the nation's folk religious traditions and furnishes cultural presuppositions that inform the conceptualisation and functioning of the 1945 Constitution which diverges from the paradigms of Western constitutional systems. The 1945 constitutional order sustains a symbiosis of the sacred and the secular, underpinned by folk religious traditions that shape its cultural presuppositions, thus maintaining a communal orientation. Conversely, the Western modern social imaginary is predicated on a secular public domain, detached from the sacred, which fosters opinions by

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[73] *Huruf Jawa dan Jatidiri Manusia Pancasila [Javanese Alphabet and the Self of Pancasila Person]* (Jakarta: Televisi Republik Indonesia [The Broadcasting Corporation of the Indonesian State]). It is also worth noting, Suharto published a book containing proverbs derived from Javanese folk religious traditions, as his legacy to Indonesia. See Suharto, *Butir-Butir Budaya Jawa: Hanggayuh Kasampurnaning Hurip Berbudi Bawaleksana Ngudi Sejatining Becik [The Essentials of the Javanese Culture: In Search of Perfect Life Noble and Generous Mind In Quest of the Essence of Goodness]*, Siti Hardiyanti Rukmana, ed (Jakarta: Yayasan Purna Bhakti Pertiwi, 1987).
[74] Ken Ward, "Soeharto's Javanese Pancasila" in Edward Aspinall & Greg Fealy, eds, *Soeharto's New Order and Its Legacy: Essays in Honour of Harold Crouch* (Canberra: ANU Press, 2010) 27 at 32.
[75] Niels Mulder, *Mysticism in Java: Ideology in Indonesia* (Amsterdam and Singapore: The Pepin Press, 2004) at 104.
[76] Sudjito, *Pancasila Sebagai Paradigma Ilmu [Pancasila as [Indonesia's] Scientific Paradigm]* (Pusat Pendidikan Mahkamah Konstitusi [The Center of Education of the Constitutional Court of the Republic of Indonesia], 2015) at 2–3.

sovereign individuals. Consequently, the value system intrinsic to the 1945 Constitution diverges from the liberal individualistic model.

CHAPTER 2

The Rise of the *Rasa* of the 1945 Constitution: An Indonesian Origin Story

Introduction

Rasa is an Indian concept that involves a deeply felt aesthetic experience resulting, for example, from listening to music, reading literature, contemplating or speculating on a variety of existential questions. In Western aesthetics or humanistic tradition, this first half sense of *rasa* is arguably comparable with a notion called "the Sublime." Like *rasa*, the concept of the Sublime is the strong conviction that emotion ("pathos") is present in art. With this conviction, the sublime, moreover, refers to experiencing the transcendence. In the words of Longinus, the reputed first articulator of the Sublime himself, "Sublimity [*hypsos*] is the echo of a noble mind [*megalophrosyn*]."[1] However, the Indonesian understanding of *rasa* ("feeling," "emotion," "sensation," or "inner meaning") is to be understood as a transmutation of the original Indian concept: a holistic or contextual thinking tool that primarily assesses every aspect of Indonesian life, including constitutional engagement. In other words, *rasa* covers any public action that involves the appropriation of the 1945 Constitution.[2] Indeed, this *rasa-based* integration makes the 1945

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[1] Quoted in Robert Doran, *The Theory of the Sublime from Longinus to Kant* (Cambridge: Cambridge University Press, 2015) at 61.

[2] To better see how holistic or contextual thinking plays second fiddle to *rasa* in sustaining the endurance of the 1945 constitutional order, one may start with noting that holistic or contextual thinking is one of the distinguishing characteristics of the "Asiatic" or "Eastern" mode of thought. This Asiatic mode of thought is in contrast to the Western analytical thinking emphasising the supremacy of formal logic in many cognitive operations to begin with. See e.g., Richard E Nisbett & Takahiko Masuda, "Culture and Point of View" (2003) 100:19 Proc Nat'l Acad Sci 11163–11170. In the context of Indonesia, the assumption that holistic thinking and hierarchical social order support each other seems to be very helpful in making sense why *rasa* becomes central in determining one's conduct. One way to understand it, one can look at the basic assumption that undergirds the complexity and intricacy of the Javanese language as an effort to achieve and maintain the perfect world where everything has been assigned to their own position. Like many other Indonesia's major regional languages, the Javanese is widely recognised not only as a vehicle of conveying referential meaning, but also for its no less important aspect, that is being a vehicle to engage in an intense face to face communication. In effect, as Errington points out, "[m]ost of the literature is framed with Javanese metalinguistic terms that are structurally and analytically precise but have little in common with 'ordinary' Javanese ways of talking about talk." See J Joseph Errington, *Structure and Style in Javanese: A Semiotic View of*

Constitution no longer involve matters of textual and mundane concerns. More profoundly, it stands for conceptual relationships sustained by a plethora of religio-cultural practices and assumptions rooted in Indonesia's ancient past as a subgroup of the Austronesian speaking peoples. And still to many other Indonesians, the importance of *rasa* functions as a kind of vehicle that transports one to a proper understanding of reality and experience. No less critical, *rasa* is, at the same time, the sublime reality or experience itself. In other words, *rasa* solely establishes a genuine connection with the ultimate reality of being ("manunggaling kawulo gusti" or "unio mystica" in the Judeo-Christian tradition).[3]

At its core, this connection requires the existence of the "porosity" between the (internal) mind and the (external) world, implying the state of "being in touch with some [external] source—for example, God, or the idea of God—was considered essential to full being."[4] With the absence of the boundary between the mind and the world, the nonmodern self has the unbounded mind that allow them to be able to easily hear and perceive the divine voice or "voice-hearing experiences." Bluntly put, for the unbounded mind, God's voices can be heard and therefore able to talk back, literally.[5] Through such porosity, Indonesia's *rasa* enables a recognition of the Austronesian derived "*semangat*" (spirit) supposed to be inherent in the 1945 Constitution. Equally critical, the *semangat* of the 1945 Constitution indicates approval from Indonesia's revered and long-dead ancestors. This conviction undergirds Indonesia's dreamlike or magical thinking or attitude toward *Pancasila* and the 1945 Constitution. It presupposes that Indonesia will not survive without them. On a more mundane level, the concept of *rasa* serves as Indonesia's foremost tool in understanding the human condition and navigating the intricacies of social affairs and beyond. Needless to add, one cannot separate *rasa* from the importance of Indonesia's folk-religious worldviews because they place great value on the refined or graceful ("alus") and despise the coarse or raw ("kasar").

Linguistic Etiquette, Conduct and Communication Series (Philadelphia, PA: University of Pennsylvania Press, 1988) at 4.

[3] Moreover, it is illuminating to note Charles Taylor's insightful argument that locates the origin of the modern individualistic or atomised view of the self in which "moral salvation comes from recovering authentic moral contact with ourselves." Thus, for the modern, "the source we have to connect with is deep within us. This fact is part of the massive subjective turn of modern culture, a new form of inwardness, in which we come to think of ourselves as beings with inner depths." See Charles Taylor, "The Politics of Recognition" in Amy Gutmann, ed, *Multiculturalism*, expanded paperback ed (Princeton, New Jersey: Princeton University Press, 1994) 25 at 28–29.

[4] It is worth noting, the concept of "porosity" is coined by Charles Taylor to refer to the nonmodern self that recognises no boundary between the mind and the world. *See* Charles Taylor, *A Secular Age* (Cambridge, Mass.: Harvard University Press, 2007) at 27, 38.

[5] See Tanya M Luhrmann, "Thinking about Thinking: The Mind's Porosity and the Presence of the Gods" (2020) 26:S1 J Royal Anthro Inst 148–162.

For the average Indonesians, the most common way to distinguish the refined from the raw is by applying *rasa*.[6]

One might add, one reason that makes *rasa* to be supremely important for many Javanese is related to the proposition that aesthetic values are very important. For sure, this is another testament to the everlasting influence of Shaivism, a Hindu cult that informs the modern-day Balinese Hinduism, that introduces beauty is one of god's positive qualities. To understand the importance of beauty, one can look at Indonesia's folk art where the mundane and the sacred is inseparable. Hence, the good or evil nature of a character in *Wayang* or shadow puppet play is in congruent with their physical appearance. As a Western trained medical doctor and founder of a number of cultural institutions in Bali puts it, "form seems to evoke spirituality." Furthermore, the belief on the importance of beauty is somehow connected on the notion of *rukun* ("harmony") as Indonesia's most cherished value.[7] Worthy of note, Hindu also sees beauty as a divine feature.[8] Granting that this dualist *rasa* has an outsized influence on Indonesian constitutional engagement, this Chapter argues that *rasa* functions as Indonesia's primary regulating mechanism bringing about individuating characteristics engaging the written Constitution.

To substantiate the claim that *rasa* emblematises religious syncretism, this Chapter will show how the Indonesian notion of *rasa* traces back to Indonesia's Austronesian root through *sumanged,* arguably the primal manifestation of Indonesia's *semangat*. In arguing for such a contribution from the pre-Indian concept of *rasa*, I aim to belabor Indonesia's age-old syncretic religious sensibility. It eventually informed the notion of religious tolerance that undergirds the 1945 constitutional order, elaborated in Part II. I also insinuate that the root of this syncretism has entrenched itself as a religious sensibility. In other words, syncretic religiosity is integral and intrinsic to the idea behind the founding principle of Indonesia as "Bhinneka Tunggal Ika" ("a nation based on diversity"). In the pre-Islamised or Indic Indonesia that serves as its original context, the notion of *Bhinneka Tunggal Ika* itself refers to a conviction that Buddha and Shiva are two sides of the same coin, described as different and yet similar or one functioned as one what

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[6] See Clifford Geertz, *The Religion of Java* (Chicago and London: The University of Chicago, 1976) at 310–312. See also Ayu Utami, *The Spirit of Indonesia: Rasa, Reason, Religion* (Vienna, 2015).
[7] See Adrian Vickers, *Balinese Art: Paintings and Drawings of Bali, 1800-2010* (Singapore: Tuttle Publishing Inc., 2012) at 18.
[8] Partha Mitter, *Indian Art* (Oxford: Oxford University Press, 2001) at 77.

we might call as the then religion-state relations (see Chapter 3, Section 3).[9] As the inviolable spirit of the 1945 Constitution, *Pancasila* symbolises this syncretism-based concept of religious toleration. My argument further serves to anticipate Part II, which presupposes that this syncretic religious sensibility later becomes instrumental in maintaining the 1945 constitutional order as a rejection of foreign Islamic constitutional order. Together with Part II, this Chapter also sets the stage for the main subject of Part III, which explains the hidden deep meaning of Indonesia's three peculiar constitutional postulates. By thus explicating the animating spirit of Indonesia's 1945 constitutional order, this Chapter contributes to the development of an analytical exposition of what prompted Indonesia's 1945 constitutional order to persist much longer than it intended to, the main goal of the entire study.

In addition, this Chapter presents an interpretive exposition of how Indonesia's peculiar "constitutional sensibility" emerged. By "constitutional sensibility," I refer to shared feelings or emotions that gave birth to common affective reactions among Indonesians regarding *Pancasila* as the *semangat* of the 1945 Constitution as their sacred symbol.[10] I aim to convey the historicity of the spirit of *Pancasila* and the 1945 Constitution. Thus, I claim that the embeddedness of *Pancasila* and the 1945 Constitution follows from the Indonesian condition as a product of hundreds, if not thousands, of years of religio-cultural evolution. I further present what constitutes the conditions that pave the way for the 1945 constitutional order to endure beyond anyone's expectation, including the drafters themselves. This conditioning prompted the development of Indonesia's unique constitutional sensibility to *Pancasila* and the 1945 Constitution. Similar to the American phenomenon known as "constitutional veneration,"[11] suspected to be prominently rooted in America's puritan religious sensibility.[12] The ambiguousness of *Pancasila* suggests

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[9] See Ann R Kinney, Marijke J Klokke & Lydia Kieven, *Worshiping Siva and Buddha: The Temple Art of East Java* (Honolulu, Hawai'i: University of Hawai'i Press, 2003) at 32.

[10] See also András Sajó, "Emotions in Constitutional Institutions" (2015) 8:1 Emotion Rev 44–49 at 45.

[11] To mention a few, see e.g., James R Zink, "The Dead Hand of the Past? Toward an Understanding of 'Constitutional Veneration'" (2016) 38:3 Political Behavior 535–560; William D Blake & Sanford Levinson, "The Limits of Veneration: Public Support for a New Constitutional Convention" (2016) 1:2 Con Stud 1–22; Mary Anne Franks, *The Cult of the Constitution* (Stanford, California: Stanford University Press, 2019); Jeremy D Bailey, "Should We Venerate That Which We Cannot Love? James Madison on Constitutional Imperfection" (2012) 65:4 Pol Res Q 732–744; Alan Gibson, "Veneration and Vigilance: James Madison and Public Opinion, 1785-1800" (2005) 67:1 Rev Pol 5–35.

[12] One scholarly interpretation suggests that "[t]he [American] Constitution included specific provisions that were almost certainly derived from the Bible and Christian doctrine. The Constitution's oath requirements found in Article 1, § 3, cl. 6; Article II, § 1, cl. 8; Article VI, cl. 3; and Amendment IV entailed a profoundly religious act. Moral philosophers and constitutional architects in the founding era—and well into the nineteenth century—typically defined an oath as a solemn appeal to the Supreme Being for the truth of what is said, by a person who

Indonesia's constitutional sensibility is rooted in its folk syncretic sense of religiosity. However, the similarity ends there. Considering its puritan influence, the American constitutional veneration emphasises giving supremacy to the Constitution's textual or plain meaning.[13] By contrast, "constitutional veneration" or "idolatry" in the Indonesian context is not about maintaining the supremacy of textual understanding.[14] The only inviolable or sacred part of the 1945 Constitution revolves around three abstract concepts: *Pancasila*, Indonesia's understanding of Unitary State ("negara kesatuan") as anything but "federalism" (see Chapter 7), and Indonesia's peculiar understanding of the rule of law ("negara hukum") (see Chapter 8). They are all difficult, if not impossible, to understand.[15] Indonesia's constitutional interpretive practice allows for the proliferation of various interpretations that contradict one another. It is reasonable to suggest that Indonesia's veneration of the 1945 Constitution relates to the conviction that it has the right spirit (*semangat*) for Indonesia to thrive. As Supomo has emphasised during its drafting process, the *semangat* or spirit, not the text, of the 1945 Constitution is what matters the most.[16] It is a religious

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believes in the existence of a Supreme Being, and in a future state of rewards and punishments, according to that form which will bind his conscience most." See Daniel L Dreisbach, "The Bible in American Law" in Paul C Gutjahr, ed, *The Oxford Handbook of the Bible in America* (Oxford: Oxford University Press, 2017) at 281. Moreover, Compton argues that religious sensibility has been the main force that shapes the American constitutional development. See John W Compton, *The Evangelical Origins of the Living Constitution* (Cambridge, Mass.: Harvard University Press, 2014). Hence, it seems legitimate to take thing further by asserting that "law [in the U.S. context must be treated] *as* religion, as opposed to [merely] showing the parallels between law *and* religion." See Daniel F Piar, "Keepers of the New Covenant: The Puritan Legacy in American Constitutional Law" (2010) 49:1 J of Catholic Leg Stud 143–193 at 146. (emphasis is in original).

[13] This argument is articulated further in Vincent Crapanzano, *Serving the Word: Literalism in America from the Pulpit to the Bench*, hardback ed (New York: The New Press, 2001). See also Brian C Jones, *Constitutional Idolatry and Democracy: Challenging the Infatuation with Writtenness* (Cheltenham, U.K.: Edward Elgar Publishing Inc., 2020).

[14] Specific to the U.S. context, it is argued that the veneration or to be more precise the devotion to the textual meanings of the constitution has something to do with its religious fundamentalism roots. Interestingly, the infusion of religious flavor in the U.S. constitutional discourse is a relatively recent development. See Compton, *supra* note 12. In this respect, it is similar to Indonesia. As Parts II and III below will further elucidate, Indonesia's hardened devotion to the 1945 Constitution is in commensurate with the Islamisation process.

[15] As Ellis puts it, Indonesia's notion of presidentialism is to be defined as "The President was to be 'the Chief Executive of the State' and 'the true leader of the state,' and would 'hold the power of government in accordance with the Constitution': but 'the powers of the Head of State are not unlimited.' The President was both 'not in an equal position to' and also 'subordinate and accountable to' the MPR, and indeed was 'the mandatory of the MPR' and 'the highest administrator of state below the MPR'." See *Constitutional Reform in Indonesia: A Retrospective*, by Andrew Ellis (Stockholm: International Institute for Democracy and Electoral Assistance (IDEA), 2005) at para 6.

[16] Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia [the Investigating Committee for Preparatory Work for Independence], *Lahirnya Undang-Undang Dasar 1945: Memuat Salinan Dokumen Otentik Badan Oentoek Menyelidiki Oesaha2 Persiapan Kemerdekaan [The Birth of the 1945 Constitution: With Copies of the Documents of the Investigating Committee for Preparatory Work for Independence]*, revised ed, A.B. Kusuma, ed (Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2009) at 182.

conviction or sensibility that created and has sustained Indonesia's 1945 constitutional order. Arguably, Indonesian constitutional sensibility must be seen as an example of "sustainable diversity in law" despite the increasing pressure of the globalisation of constitutional law.[17]

In this Chapter, I also present the first mover of this study's central supposition: Indonesia's shared emotional sensibility that creates and maintains the persistence of the 1945 constitutional order. In so doing, this Chapter aims to shed light on how this shared emotional sensibility is traceable to a primal past. Considering this interpretive account of the story of origin, the primary materials here follow from Indonesia's early formative period: its roots lay within the Austronesian world as a periphery of the so-called "Sanskrit cosmopolis."[18] With the second and third parts devoted to the Islamisation of Indonesia and the Independence era onward, this Chapter present a tentative timeline delineating the evolutionary path for Indonesia's constitutional sensibility to mature. In that sense, this constitutional sensibility results from a long gestation period. The resulting constitutional sensibility then should be understood as indicating something more significant than simply an unthinking devotion to a piece of technical documentation. As such, it would be wrong to presuppose that the value of the 1945 Constitution can be elucidated simply by revealing its instrumentality through uncovering its textual meaning. Indonesia's 1945 Constitution is a symbol, or a stand-in, or perhaps a gateway to something more significant than any regular constitution can convey.

In Section I, I begin by identifying the Austronesian religious concept of *sumanged* as the primal form of *rasa* to substantiate the above argument further. Adapted as *semangat* in Indonesia's national language ("Bahasa Indonesia"), *sumanged* allegedly animates and sustains the 1945 constitutional order's popular appeal. Implicit in the argument of Section I, *sumanged* provides the 1945 Constitution its magico-religious appeal which previously inhered in *Adat* laws and Sanskrit. Accordingly, the magico-religious appeal from the 1945 Constitution turns it into a scripture-like artifact from a mere parchment or mundane legal document. In Section II, I analyse Indonesia's Indic background aiming to impart the continuity and change of how *sumanged,* the earliest iteration of Indonesia's *rasa,* has informed the debate surrounding the importance of the

[17] On "sustainable diversity in law," see H Patrick Glenn, "Sustainable Diversity in Law" in Brian Z Tamanaha, Caroline Sage & Michael Woolcock, eds, *Legal Pluralism and Development: Scholars and Practitioners in Dialogue* (Cambridge: Cambridge University Press, 2012) 95.
[18] On the concept of "Sanskrit cosmopolis," see Sheldon Pollock, "The Sanskrit Cosmopolis, 300–1300: Transculturation, Vernacularization, and the Question of Ideology" in Jan E M Houben, ed, *Ideology and Status of Sanskrit: Contributions to the History of the Sanskrit Language* (Leiden: Brill, 1996) 197.

1945 Constitution. I further make explicit that Indonesia's syncretic religious orientation served as the organising principle for "Indianisation" to occur and conveyed the centrality of *rasa* in becoming increasingly important in later periods. In particular, *sumanged* cannot be separated from the dualism of the Indonesian conception of *rasa*—that is, being simultaneous "the spirit of thing" and a "way to get to an understanding of thing." While as a "spirit of thing," *rasa* transubstantiates the prior concept of the Austronesian *sumanged* as the spirit of the rice, as a "way to get to an understanding," *rasa* is a method to arrive at *sumanged*. By accepting this dual association between *sumanged* and *rasa,* I contend in Section II that the "Indianisation" or "Sanskritisation" of Indonesia must be understood as another phase in which an additional layer is added to the story of Indonesia, taken as an accumulation of "layer upon layer upon layer."

Section III deepens the notion of magico-religious appeal. To establish the claim that magico-religious beliefs and practices are innermost presuppositions that sanctify and, in effect, enable Indonesia's 1945 constitutional order to endure, I aim to explain and contextualise the mystical or magical power of Sanskrit as a sacred language or of words, such as *Pancasila*. Any sacred language is the locus where mystic power is chiefly being consigned. It is entirely conceivable that Indonesia's various Sanskrit-derived constitutional lexicons, such as *Pancasila*, are similar to *palambang* or *kakawin* in the ancient world: a multitude of mantras that function as blessing providers. By implication, it is misguided to pursue the analytical paths in explicating *Pancasila*. The argument for embracing non-rational or non-analytical approaches is foundational as it aligns with Indonesia's symbolic thinking and, therefore, justifies an interpretive route in understanding Indonesia's constitutional symbols. One can further infer that using an alternative path to understanding Indonesia's case is a necessity—not a convenience. Considering the intricate complexity of its subject, I divide Section III into two Subsections. First, I discuss how Sanskrit as a sacred language can be the locus where mystic or magical power inheres. Second, I substantiate the claim that the Preamble to the 1945 Constitution—the purported seat of *Pancasila*—is Indonesia's contemporary take on Indonesia's ancient practice dubbed as "verbal magic." In a nutshell, Sanskritisation made the magico-religious relationship between Indonesian minds and the 1945 Constitution possible.

I. In the Beginning, There Was *Sumanged*

It is difficult to make a definitive claim regarding Indonesia's autochthonous, indigenous, or chthonic elements. There is a linguistic supposition that the Western half of Indonesia roughly belongs to the Malayo-Polynesian languages, a branch of the Austronesian speaking world.[19] Austronesia is a language family in which its speakers populate half of the globe.[20] Geographically speaking, it is settled that the Austronesian world stretches from what we now know as Taiwan down to the Pacific Island countries. More importantly, from this geographical understanding, the Austronesian world shares the same ancestor: Taiwan.[21] One can confidently claim that Indonesia shares not only linguistic features determining language mapping but also that, excluding the Eastern part that belongs to the Melanesia category, Indonesia retains a shared set of religio-cultural orientations with the rest of the Austronesian world. As a noted commentator has made it clear, "[t]hroughout the [Southeast Asian] region, folk beliefs were remarkably consistent. The world was regarded as being peopled with good and evil spirits that had the power to aid or harm humans and thus had to be appeased by ceremonies or offerings of food."[22]

In a multitude of ancient Austronesian religions, *sumanged* refers specifically to the spirit of the rice.[23] The Indonesian equivalent to *sumanged* is "Dewi Sri" or "Sridevi" among the Javanese or "Nyai Pohaci Sanghyang Asri" among the Sundanese people inhabiting the Western part of Java Island.[24] It may be worth highlighting, "the idea [of *sumanged* as] an impersonal and creative energy supports and animates the universe, and can be tapped by individuals in order to increase their own potency and effectiveness, is widespread in Southeast Asia, and by no means restricted to people in the upper echelons of past or present polities."[25] The centrality of rice in

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[19] The use of the word Austronesian or Malayo-Polynesian to refer to a people or their culture is not without a problem. See Wilhelm G Solheim II, "The Nusantao and North-South Dispersals" (1996) 15:2 Indo-Pac Prehistory Assoc Bull 101–109.

[20] It may be worth noting, the core claim that Indonesia is considered to be part of Austronesian world is simply because it shares similar vocabularies with the other members. More detail treatment on this, see Marian Klamer, "The Dispersal of Austronesian Languages in Island South East Asia: Current Findings and Debates" (2019) 13:4 Lang & Linguistics Compass 1–26.

[21] This is known as the "Out of Taiwan" or the "Early farming dispersal hypothesis" thesis. See Peter Bellwood, *First Islanders: Prehistory and Human Migration in Island Southeast Asia* (Hoboken, NJ: Wiley-Blackwell, 2017).

[22] David K Wyatt, *Thailand: A Short History*, 2d ed (Chiang Mai, Thailand: Silkworm Books, 2003) at 3.

[23] Julian Baldick, *Ancient Religions of the Austronesian World: From Australasia to Taiwan* (London and New York: I. B. Tauris, 2013) at 13.

[24] It is noteworthy that the word "Sri" represents the aesthetic attributes of "brilliance, splendour, and adornment." See Mulk Raj Anand, *The Hindu View of Art*, routledge library editions ed (London: Routledge, 2019) at 60.

[25] Shelly Errington, "Embodied *Sumange'* in Luwu" (1983) 42:3 J of Asian Stud 545–570 at 546.

traditional Javanese societies can also be inferred from the ancient name of Java itself, that is, "Djawa Dipa" or "rice island."[26] Indonesians still commonly refer to Indonesia as "Ibu Pertiwi" (Mother Earth), another name for a rice goddess. It is worth noting, *Ibu Pertiwi* is a syncretic symbolism, signifying the influence of Buddhism in Indonesia. What is interesting about the symbolism of *Ibu Pertiwi* is that it allows one to interpret Indonesia as being "founded on truth," "sustained by great truth," and "upheld by eternal law."[27] It is worth mentioning that the depiction of *Ibu Pertiwi* can also be found in the Prambanan temple complex, located on the outskirts of Yogyakarta, glorified as Indonesia's "cultural capital city," lying alongside the Hindu's Trimukti of Brahma, Vishnu, and Shiva.[28] For the Javanese folk religionists "who make something of a cult of the Javanese cultural heritage,"[29] Dewi Sri is the wife of Vishnu, one of Hindu's significant deities (See Appendix III).[30] In Luwu, southwestern Sulawesi Indonesia, a traditional community retains the word *sumange* or *sumangat* in Malay and defines it as "soul stuff,"[31] whatever that may be. It is reasonable for the most widely consulted Indonesian-English dictionary then to assert that *sumange[d],* in Bahasa Indonesia, is being reborn as *semangat*.[32]

Besides, an ethnographic study on Javanese shaman ("wong pinter," "person of wisdom," or "medicine man") implies similarity between *semangat* and the Polynesian notion of power, better known as "mana."[33] Polynesian refers to a subgroup of Austronesian-speaking people who inhabited Pacific islands. As *sumanged* or *semangat,* the referent for *mana* is the spirit that animates any object that one can find in the world. Both terms refer to the latent inner force ("batin"), not brute or physical force, that animates humans and very likely the entire universe

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[26] Justus M van der Kroef, "Rice Legends of Indonesia" (1952) 65:255 J Am Folklore 49–55.
[27] Miranda Shaw, *Buddhist Goddesses of India* (Princeton: Princeton University Press, 2006) at 18.
[28] Ni Kadek Surpi, "Śivagrha (Prambanan Temple) as an Archetype of Hindu Theology in Nusantara: An Endeavor to Discover Hindu Theological Knowledge through Ancient Temple Heritage" (2020) 5:1 Analisa: J Soc Sci & Rel 107–122 at 119.
[29] Niels Mulder, "The Crux is the Skin: Reflections on Southeast Asian Personhood" (2011) 30:1 J Current Southeast Asian Aff 95–116 at 100.
[30] See e.g., Suwardi Endraswara, *Rasa Sejati [The True Rasa]* (Yogyakarta: Penerbit Narasi, 2006) at 71.
[31] Introduced by A.C. Kruyt, a Dutch Protestant missionary-scholar in the colonial era, the concept of "soul stuff" is meant to be "a catchall category in which to place diverse types of unfamiliar Indonesian soul elements that did not match his Christian view of the human soul." See Lorraine V Aragon, *Fields of the Lord: Animism, Christian Minorities, and State Development in Indonesia* (Honolulu, Hawai'i: University of Hawai'i Press, 2000) at 167. See also Errington, *supra* note 25 at 545–546.
[32] John M Echols & Hassan Shadily, *Kamus Indonesia Inggris: An Indonesian-English Dictionary*, 3d ed (Jakarta: Gramedia Pustaka Utama, 1989).
[33] Agustinus Sutiono, *The Roles and Significance of Wong Pinter, the Javanese Shaman* (PhD Dissertation, The University of Leeds, 2014) [unpublished] at 58.

itself.[34] Often, both *sumanged* and *mana* refer to the essence or the spirit of the ancestors, any living thing, or even the universe. The Polynesian religious understanding is predicated on the belief that "human *mana* derives from the influences of gods or spirits."[35] Consequently, there is no separation between the unseen realm of the dead and other spirits and the seen realm of the living. Defined as the cult of the "potent dead," this conviction has prompted, for instance, Abdurrahman Wahid, Indonesia's first democratically elected president, to sack two well-thought-of ministers based on instructions he received straight from the grave.[36] Hence, any effort that includes or signifies the existence of the *semangat '45* (the spirit of '45) implies intimate collaboration between the dead and the living. With that conviction in mind, it becomes sensible to further assume that the *semangat '45* inheres within the 1945 Constitution.

The official dictionary of Bahasa Indonesia, *Kamus Besar Bahasa Indonesia* or "KBBI" ("the Big Dictionary of Indonesian Language"), states that the meaning of *semangat* (or *sumanged*) is "the spirit ('roh') of life that [infuses and] animates all things, either dead or alive" and puts it at the top of the list of its meanings.[37] More tellingly, the KBBI further intimates the meaning of "roh" with this sentence: "a shaman [or diviner or medicine man] ('dukun') in the village can summon *semangat*."[38] This is an unequivocal admission that there is a mystical conviction at play. It makes enough sense that the referents in statements such as *semangat '45* (the spirit of 45) or *semangat Pancasila* ("the spirit of Pancasila") underlie the mystification of the 1945 constitutional order. This mythical conviction may underlie various practices that are publicly summoning the *semangat '45* to solve the variety of challenging social evils and crises, as illustrated by two examples. The first example is where a health government official calls for the importance of the *semangat '45* in the national effort to eradicate the corona virus.[39] The second example comes

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[34] Supposedly, it is the same reason that emphasises the centrality of regulating the inner self that make both Javanese and Sundanese religious traditions to self-reference as "kebatinan." See e.g., Imam S Suwarno, *Konsep Tuhan, Manusia, Mistik dalam berbagai Kebatinan Jawa [The Conception of God, Person, Mysticism in Various Strands of Javanism]* (Jakarta: Rajawali Press, 2005); Abdul Rozak, *Teologi Kebatinan Sunda [Sundanese Theology of Esotericism]* (Bandung: P.T. Kiblat Buku Utama, 2005).

[35] Bradd Shore, "Mana and Tapu" in Alan Howard & Robert Borofsky, eds, *Developments in Polynesian Ethnology* (Honolulu, Hawai'i: University of Hawai'i Press, 1989) 151 at 154.

[36] Henri Chambert-Loir & Anthony Reid, "Introduction" in Anthony Reid & Henri Chambert-Loir, eds, *The Potent Dead: Ancestors, Saints, and Heroes in Contemporary Indonesia* (Crows Nest, NSW: Asian Studies Association of Australia in association with Allen & Unwin, 2002) xv at xv.

[37] *Semangat*, online ed (Jakarta: The Indonesian Ministry of Education and Culture, 2016).

[38] *Ibid*. Interestingly, an ethnographic work in South Sulawesi confirms the central role of shaman in maintaining *sumange*[*d*]. See Errington, *supra* note 25.

[39] See e.g., Luqman Nurhadi Arunanta, "Pemerintah: Songsong Agustus dengan Semangat '45 Merdeka dari Corona! [Government: Welcoming August with the Semangat '45 [to Liberate Ourselves] from Corona!", *Detik* (3

from the academic community. In a struggle to gain a global recognition of their academic excellence, the president of a state university emphasises the necessity of embracing the *semangat '45*.[40] Furthermore, the modern Javanese purification or exorcism ritual ("ruwatan") known as the Birth of Kala unsurprisingly transmutes from an Austronesian myth under the theme of "broken seed" into one a myth of the rice goddess.[41]

The Polynesians' worldview also sees that the link between food (meaning, agriculture) and sex is closely linked.[42] In other words, it is believed that food and sex are linked directly or indirectly "to generative potency, to the sources of organic creation."[43] The Hindu Shiva cult quickly gained popularity among the subsistence agricultural Indonesians. In his monumental volume that later was described as an "authoritative overview of Javanese manuscript,"[44] Theodore Pigeaud has observed that "poems and tales describing erotic situations are . . . to be found in almost every important, mythic, historical and romantic Javanese text."[45] Seen thus, Indonesia's post-independence signature architecture known as "Monas," a portmanteau of *Monumen* and *Nasional* ("National Monument"), takes the form of a phallus, one of Shiva's many symbols makes sense (*see* Appendix, image 3 below). Then again, it is recognised that the obligation to procreate is central in Hinduism as it "follows the archetypal activity of creation and is likened to a sacrifice … the sexual act is called fire sacrifice."[46]

Against this background, what prompts Indonesia's dreamlike or magical attitude to *Pancasila* and, by extension, the 1945 Constitution is not as merely being written by mortals. The 1945 Constitution is a magical document, signifying the location where *semangat* is inhered. It is

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May 2020), online: <https://news.detik.com/berita/d-5000678/pemerintah-songsong-agustus-dengan-semangat-45-merdeka-dari-corona>.

[40] See Zalfaa A Pursita, "Mengusung Semangat 45, Begini Makna Tema Dies Natalis ke-45 UNS [Promoting the Spirit of [19]45, It is the Theme of the 45th Anniversary of the State University of Surakarta]", (18 February 2021), online: *Universitas Sebelas Maret* <https://uns.ac.id/id/uns-update/mengusung-semangat-45-begini-makna-tema-dies-natalis-ke-45-uns.html>.

[41] Stephen C Headley, *From Cosmogony to Exorcism in a Javanese Genesis: The Spilt Seed* (Oxford: Oxford University Press, 2001).

[42] It is noted that "Polynesians paid special attention to the reproductive capacities and histories of their chiefs, whose potency encompassed that of their people. . . . For Maori, it was said that the chief's penis could inspire courage and renewed vigour in his people, accounting for the practice of warriors crawling through their chief's legs." See Shore, *supra* note 35 at 157.

[43] *Ibid* at 154.

[44] Edwin P Wieringa, "A Javanese Handbook for Would-Be Husbands: The 'Sĕrat Candraning Wanita'" (2002) 33:3 J Southeast Asian Stud 431–449 at 431.

[45] Theodore G Th Pigeaud, *Literature of Java: Synopsis of Javanese Literature 900-1900 A.D.* (Leiden: Springer Netherlands, 1967) at 247.

[46] Patrick Olivelle, "Introduction" in *The Samnyasa Upanisads: Hindu Scriptures on Asceticism and Renunciation* (Oxford: Oxford University Press, 1992) 1 at 28.

unmistakably a scripture of sorts. Indeed, one must conceive the meaning or original intent of the 1945 Constitution. As Supomo, a protégé of Cornellis Van Vollenhoven, the "father" of *Adat* law and one of its leading architects, declared:

> I am completely aware [that] the [constitutional] drafting committee is far from perfect[.] Indeed, we are mere laypersons and no expert whatsoever. Therefore we are truly conscious that our work is imperfect. . . . [But] chairmen, the most important thing in governance and public life is *semangat*, the *semangat* of the public officials, the *semangat* of the statemen . . . It does not matter if the Constitution is well-written. As such, what matters most is *semangat.* In a word, it is *semangat* that matters.[47]

The drafting of the 1945 Constitution was primarily aimed at creating a sacrosanct symbol rather than a pragmatic instrument of governance.[48] Its value does not lie in its textual composition or content but in the conviction that the implicit *semangat* that stands outside the confines of the text inheres in the 1945 Constitution. This is not without precedent. As Shelly Errington, an ethnographer, has noted, the belief in the importance of *semangat,* defined as "a cosmic energy [that] suffuses and animates the world . . . that makes items effective and potent,"[49] has influenced the practice of politics in the traditional States of Southeast Asia, ranging from Burma, Thailand, and Cambodia.[50] Then, it makes sense that taking utmost care of the *semangat* worries mostly the people of Luwu, Sulawesi, beginning on the day they are born.[51] The concept of *semangat* is a pervasive element within Austronesian cultures.[52] In addition, I also want to anticipate the influence of Hinduism in the 1945 Constitution as a modern manifestation of *kakawin*—a Javanese folk literary work aiming to consecrate and legitimise the prevailing political order.

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[47] Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia [the Investigating Committee for Preparatory Work for Independence], *supra* note 16 at 13.
[48] Eddy Damian & Robert N Hornick, "Indonesia's Formal Legal System: An Introduction" (1972) 20:3 Am J Comp L 492–530 at 501.
[49] Errington, *supra* note 25 at 545, 554.
[50] *Ibid* at 546.
[51] *Ibid* at 549–554.
[52] Roxana Waterson, "Houses and the Built Environment in Island South-East Asia: Tracing Some Shared Themes in the Uses of Space" in James J Fox, ed, *Inside Austronesian Houses: Perspectives on Domestic Designs for Living* (Canberra, ACT: Australian National University Press, 2006) 227 at 229–230.

II. *Rasa* as an Indic Manifestation of *Sumanged*

Here I primarily present the Indianisation period as an epoch where *rasa* became the spirit for the modern-day Indonesian constitutional theory and practice. This period has resulted in the "Indic world," connoting a hybrid civilisation.[53] The use of the unwonted term Indic may confuse the extent of Indian influence in Indonesia. However, it will be retained here because the term denotes and conveys a sense of selective reception of concepts and categories of Indian origin. In the light of this syncretic disposition, Indonesia's *rasa* is Indic—a mutation of its Indian counterpart. By "mutation," India's *rasa* has undergone a significant foundational alteration. Indonesia's *rasa* is an indigenised *rasa* that must be understood on its own terms.

A more detailed exploration of the syncretism within Indonesia's native religio-cultural viewpoint is crucial, as illustrated in Part II, which will elucidate the very impulse behind the ideological duality of Indonesian constitutionalism. Arguably, Indonesia's religio-cultural orientation followed from its encounter with Hinduism and Buddhism, India's two great religious traditions. There seems to be no historical record showing religious violence due to competition between Hinduism and Buddhism in Indonesia. In addition to the strength of Indonesia's syncretic tendency, the fact that the Indianisation process failed to create competition between Hinduism and Buddhism can also be attributed to another peculiar characteristic, that is it is "an effort to expand the holy land [of India], not replicate it."[54] Archaeological evidence confirms that "the general population does not seem to have been concerned with doctrinal differences between

[53] Accordingly, the use of the term "Indic" here contains a similar understanding that is given to the term "Islamicate," coined by Hodgson. To borrow from Hodgson's own illustration, Indic "has a double adjectival ending on the analogy of 'Italianate,' 'in the Italian style,' which refers not to Italy itself directly, not to just whatever is to be called properly Italian, but to something associated typically with Italian style and with the Italian manner. One speaks of 'Italianate' architecture even in England or Turkey. Rather similarly (though I shift the relation a bit), 'Islamicate' would refer not directly to the religion, Islam, itself, but to the social and cultural complex historically associated with Islam and the Muslims, both among Muslims themselves and even when found among non-Muslims." See Marshall G S Hodgson, *The Venture of Islam: The Classical Age of Islam* (Chicago and London: The University of Chicago Press, 1977) at 57–60.

[54] See John Guy, "Introducing Early Southeast Asia" in John Guy, ed, *Lost Kingdoms: Hindu-Buddhist Sculpture of Early Southeast Asia* (New York: The Metropolitan Museum of Art, New York, 2014) 3 at 9.

them."[55] Indeed, "this peaceful competition" is unique to Indonesia and Southeast Asia.[56] It is difficult to classify a particular temple in Indonesia as Hindu or Buddhist.[57]

As vividly recorded by Faxian (399–414), a Chinese Buddhist pilgrim who made a stop in Indonesia, there is "a country called Java-dvipa, where various forms of error and Brahmanism are flourishing, while Buddhism in it is not worth speaking of."[58] In a sense, the arrival of Hinduism and later Buddhism is best understood as an enrichment—or, better yet, a reinvigoration—of the already dynamic local religious traditions that freely drew their inspiration from various indigenous animist traditions. For instance, the symbolism of Bhima, a major character in *Mahabharata*, at the Temple of Sukuh, has been presented differently to a point where one can no longer recognise it in its Indian guise. In his visit to Indonesia in 1927, Rabindranath Tagore remarked, "I see India everywhere, but I do not recognise it."[59] This led to forming a "Hindu-Buddhism" cult that substantially informed and shaped many of Indonesia's contemporary (folk) religious traditions, Javanism included. Though this synthesis may seem logically fallacious to modern minds, one should not, for example, classify Indonesia's most remarkable religious monument, Borobudur, as a Buddhist expression, as conveyed in the state-approved account. There, Shiva is on a throne in the Buddha's pose.[60] Today's Balinese Hinduism self-proclaims its variant as the religion of Shiva-Buddhism.[61]

This brings us to Indonesia's *rasa*—the syncretised *sumanged* interpreted from the Indic world. Previously, I noted that *sumanged* essentially functions as a spirit in living things. With the infusion of Indian elements, *sumanged* (now *rasa*) expanded its definition to make it possible for various artificial inanimate things to have *sumanged*. In its Austronesian sense, *sumanged* is

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[55] John N Miksic & Goh Geok Yian, *Ancient Southeast Asia* (New York: Routledge, 2017) at 151.
[56] *The Buddhist-Hindu Divide in Premodern Southeast Asia*, Manuscript, by John N Miksic, Nolanda-Sriwijaya Centre Working Paper Series Manuscript 1 (Singapore: Institute of Southeast Asian Studies, 2010) at 6.
[57] Roy E Jordaan & Robert Wessing, "Human Sacrifice at Prambanan" (1996) 152:1 Bijdragen tot de taal-, land- en volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia 45–73.
[58] Fa-Hsien, *A Record of Buddhistic Kingdoms*, translated by James Legge (Oxford: Clarendon Press, 1886) at 113.
[59] See Claire Holt, *Art in Indonesia: Continuities and Change* (Ithaca: Cornell University Press, 1967) at 33, 63.
[60] Jacques Dumarçay, *Borobudur*, paperback ed, translated by Michael Smithies, Michael Smithies, ed (Singapore: Oxford University Press, 1986).
[61] The Government of Indonesia, "Siwa-Budha[:] Sebuah Praktik Filsafat Perenialisme [Siva-Buddhism: An Implementation of the Philosophy of Perennialism]", (7 March 2019), online: *Indonesia.go.id: Portal Informasi Indonesia [The Gate to Information on Indonesia]]* <https://indonesia.go.id/kategori/komoditas/454/siwa-budha-sebuah-praktik-filsafat-perenialisme>.

supposed to exist or be found only in living things.[62] With the expansion of the semantic field of the term, anyone would need to cultivate ("olah") their capacity to recognise and understand *sumanged* (or "rasa"). In fact, one exercise that aims to do precisely that is known as "olah rasa," and is usually contrasted with "olah raga" ("physical exercise" or "sport"). In a word, "olah rasa" is meditation, which is central to many folk religions in Indonesia.[63] Indeed, Parni Hadi, an eminent Indonesian journalist, presupposed the need to act according to the *semangat* ("spirit") to perform *olah rasa*—none other than *tapas* ("meditation").[64] (I will soon discuss it as a primary method to access its power and knowledge.) Accordingly, Indonesia's minister of education issued a 2018 law that explicitly acknowledges *olah rasa* as a method constituent of the current administration's signature initiatives, the *Gerakan Nasional Revolusi Mental* (the "National Movement of the Psychological Revolution").[65] Considering that it is a call for a joint effort that aims for a national rejuvenation beginning with cultivating self-awareness, there is a strong likelihood that the *Gerakan Nasional Revolusi Mental* replicates the ritual of purification or exorcism ("ruwatan") that one can virtually find in almost every Austronesian communities across the Indonesian archipelago.[66]

Central to the religious sensibility of the Indic and, therefore, of many today's folk religious traditions is the conviction that not only living but also inanimate things can embody their *sumanged*. Supposedly, this expansion cannot be separated from the transmutation of *sumanged* into *rasa*. Considering this syncretism, one must also note that the transmutation does not

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[62] Since *sumanged* can only be found in living things, it is reasonable to guard it with caution. If *sumanged* leaves one's body, one might as well be dead. It appears that this belief is still adopted in South Sulawesi. See Errington, *supra* note 25.

[63] J Indrakusuma, "Pangestu: Suatu Pandangan Hidup Djawa [Pangestu: A Javanese Worldview]" (1972) 4 Archipel 32–45.

[64] See Parni Hadi, "Olah Rasa: Menelisik Rasa Sendiri untuk Meraih Rasa Bahagia [Managing Rasa: Inquiring One's own Rasa to Achieve the Rasa of Happiness]", *Antara News* (6 March 2021), online: <https://www.antaranews.com/berita/616355/olah-rasa-menelisik-rasa-sendiri-untuk-meraih-rasa-bahagia>; Parni Hadi, *Olah Rasa dan Laku Pancasila dalam Amal Nyata [Olah Rasa and the Spirit of Pancasila in the Real Life]* (Jakarta: Dompet Duafa, 2018).

[65] *Peraturan Menteri Pendidikan dan Kebudayaan Republik Indonesia Nomor 20 tahun 2018 tentang Penguatan Pendidikan Formal pada Satuan Pendidikan Formal [The Regulation of the Indonesian Minister of Education and Culture No. 20 of 2018 on the Strengthening of Character[-building] Education in the Formal Educational System]*, 2018 art 1 (1).

[66] This claim is inspired by Endraswara's assertion that self-awareness ("sadar diri" or "éling") is particularly important in the Javanese worldview. It is through self-awareness that one can recognise the supreme value of purification ritual as an expression of gratitude to the nature. Hence, the absence of self-awareness marks, quite possibility, self-indulgence that leads to inharmony. For that reason, it is important to perform the *Gerakan Nasional Revolusi Mental* or purification ritual. See Suwardi Endraswara, *Revolusi Mental dalam Budaya Jawa [The Psychological Revolution in Javanese Culture]* (Yogyakarta: Penerbit Narasi, 2015) at 25–36.

necessarily put an end to the relevance of *sumanged*. As the previous Section has indicated, *sumanged* in the form of *semangat* is still invoked and thus relevant in today's socio-political context in Indonesia. Furthermore, this broadening of the semantic field of *semangat* indicates that India has become progressively appealing to local Indonesian rulers, who seek to model themselves after its image. One commonly believes that the incentive for the local powers to "self-Hinduise" is predicated on the primal concern to enhance their political legitimacy. In particular, as one of the world's most advanced civilisations, the Indian civilisation has developed an elaborate and sophisticated system of an all-embracing "ideology."[67] Specifically, the Gupta period (4th century CE) prompted such a process of Indianisation.[68] Popularly known as the "golden age" in Indian history, it helped India become the provider of "a powerful, coherent and attractive ensemble of religious motifs and bureaucratic mechanisms."[69] For example, in Indian civilisation, the local rulers found a state-of-the-art repertoire of doing politics that could elevate their prestige to the next level. While Indonesia also had the Chinese model available to be emulated, Chinese "colonising" politics in conducting their foreign affairs had discouraged the local powers from turning China into their Mecca in their effort toward religio-cultural development.[70]

With such an expansion of the definition of *sumanged* (or *rasa*), a different kind of engagement with the high culture of India through, most notably, its literary and architectural traditions emerge.[71] As one can still witness today, this new form of high culture manifested itself in the construction of various temples on the island of Java. Moreover, it is the conviction that *sumanged* (or *rasa*) inheres within every object that guides the temple's design. Thus, the meaning of the temple's relief can only be deciphered by the initiated ("yang terpanggil") through the utilisation of *rasa*.[72] Likewise, in the case of ancient literature, one has detected in the study of the

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[67] This understanding of ideology is following Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1973) at 204. *Cf. e.g.,* Terry Eagleton, *Ideology: An Introduction* (London: Verso, 1991).
[68] It was during this period, the project of law books compilation took place. And no less remarkable was that the introduction of a neat separation between civil and criminal law matters. In terms of urban administration, organised professional bodies were given explicit role. See Ram S Sharma, *India's Ancient Past*, 33rd impression ed (New Delhi: Oxford University Press, 2019) at 238.
[69] Monica L Smith, "'Indianization' from the Indian Point of View: Trade and Cultural Contacts with Southeast Asia in the Early First Millennium C.E." (1999) 42:1 J Econ & Soc Hist of the Orient 1–26 at 15.
[70] *See Ibid* at 17.
[71] In the premodern South Asia, the element that substantively makes a particular work to be considered as "literary" is that it must contain a "self" or "soul." See Sheldon Pollock, *The Language of the Gods in the World of Men: Sanskrit, Culture, and Power in Premodern India* (Berkeley and Los Angeles: University of California Press, 2006) at 3.
[72] On the interpretation of Indonesian temples' relief, *see e.g.,* Lydia Kieven, *Following the Cap-Figure in Majapahit Temple Reliefs: A New Look at the Religious Function of East Javanese Temples, Fourteenth and*

chronicles of Old Java the importance of Sanskrit as "verbal magic" in this process of ritual mobilisation.

Furthermore, *begja* ("initiation") requires having total capacity to recognise the true *rasa* of the *barang* ("thing") that exists beyond the phenomenal world and is a prerequisite to uncovering its *kawruh nyata* ("true meaning").[73] To this effect, Javanese has produced the cult of *adiluhung* (sublime)—a distinctive style of expressing the thought that persists even today.[74] At this point, it is fair to suggest that "being initiated" refers to those who have mastered *rasa*. As the "founder" of modern studies of Old Javanese literature points out, one can "see … [with *rasa*] what is hidden behind these [literary] stories of human events."[75] Thus, the capacity to read between the lines during Indonesia's constitutional amendment supposedly enabled Indonesia to transition smoothly from 32 years under the authoritarian New Order to the chaotic *Reformasi* era (1998–present), where power was widely dispersed in the hands of various actors.

The reception of Indian civilisation also introduced *tapas* ("meditation")—Hinduism's ascetic and ritual practice that purifies one's soul—into Indonesia's folk religious repertoire.[76] In addition to being known as *tapa*, contemporary Indonesians also recognise it by various

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Fifteenth Centuries (Leiden and Boston: Brill, 2013). For a comprehensive interpretation of *rasa* philosophy as something that can be achieved. See Sri Teddy Rusdy, *Epistemologi Ki Ageng Suryomentaram: Tandhesan Kawruh Bab Kawruh [The Theory of Knowledge of Ki Agen Suryomentaram: Basics of the Wisdom of Happiness]* (Jakarta: Yayasan Kertagama, 2014).

[73] See Ki Ageng Suryomentaram, *Filsafat Rasa Hidup [The Philosophy of the Rasa of Life]*, 2d ed, translated by Ki Oto Suastika (Jakarta: Yayasan Idayu, 1976). It might be added, it is for this very reason that one can only be able to write a "cultural history"—not a proper historical genre—of pre-colonial Indonesia. In his response to this disparity of the between Indonesia and Western sense of history, it is illuminating to quote a remark at Gadjah Mada University by an eminent Indonesian intellectual at length: ". . . How far can categories which originate in the development of European society be used to understand the development of Indonesian society? How far can we use terms like 'feudal,' 'bourgeoisie' and so on? How far can terms like these be lifted out of the environment in which they have developed and brought to Indonesian society? Indonesian history, like Indonesian sociology, will have to create its own terminology and categorisations in order that the history and society of Indonesia may be analysed and understood on its own merits. In the same way the periodisation of Indonesian history will have to be rooted in the autonomous development of this history itself." See Soedjatmoko, *An Approach to Indonesian History: Towards an Open Future* (Universitas Gadjah Mada, Yogyakarta, 1957) at 15–16.

[74] Further discussion on this point, see Nancy K Florida, "Reading the Unread in Traditional Javanese Literature" (1987) 44 Indonesia 1.

[75] See Peter J Zoetmulder, "Indonesia Wayang as Philosophical Theme" (1971) 12 Indonesia 85–96 at 88. See also Benedict R O'G Anderson, *Mythology and the Tolerance of the Javanese* (Ithaca: Cornell Modern Indonesia Project, 1996).

[76] The main character in the Tantric influenced *Pararaton*, an ancient Javanese chronicle written in Old Javanese or Kawi, named Ken Angrok. It is asserted that the name Angrok related to the Javanese word *warok*, that is someone who "has gained wild and magic powers through ritual and asceticism." More importantly, it somehow can be read as an indication that meditation is primary path to the acquisition of power. See Mary S Zurbuchen, *Introduction to Old Javanese Language and Literature: A Kawi Prose Anthology* (Ann Arbor, Michigan: The University of Michigan Center for Southeast Asian Studies, 1976) at 76–87.

designations, such as *tirakat* (with Islamic connotations), *semedi* (with a strong association with various folk religions), and the previous *olah rasa*. Similar to the practice of identifying and acquiring the mastery of *rasa* and similar to *rasa's* connection with *sumanged, tapas* retains, if not reinforces, the existing elements: animism, dynamism, and the belief in the ancestors' spirit is also a syncretised concept.[77] *Tapas* is then the Indonesian way to reach the *rasa jati* (the "true *rasa*") by merging oneself with the spirits or gods ("manunggaling kawulo gusti," "panunggal," or "unio mystica" in the Judeo-Christian tradition).[78] As such, one can benefit from the help of supernatural forces in making sense of things beyond human comprehension. Despite its apparent mystical nature, it is today ultimately oriented toward any worldly matter: for example, when one's capacity to subdue one's emotion becomes unruly.[79] Being able to control one's emotion fully, one is not only considered as having achieved the much-coveted human condition named *alus* ("refined" or "grace") but also, and most importantly, the capacity to understand the delicate interpersonal connection conducted within the realm of *meneng* ("ambiguity" or "silence"). Since constitutional politics requires one to have an exceptional sensibility to *rasa*, the current administration made *tenggang rasa* ("capacity to understand other's *rasa*") one of its priorities in Indonesia's legislative program of "the Nationwide Effort of [Achieving] Psychological Revolution" in the area of constitutional and legal reforms.[80]

III. Sanskritisation and the Mythification of the 1945 Constitution

In this Section, I set forth an argument used to explain why Indonesia's key constitutional concepts are in Sanskrit. I will expound on the magical power of Sanskrit words such as *Pancasila* and the 1945 Constitution as a modern "palambang," "kakawin," or "verbal magic." This is Indonesia's

[77] Diah Pitaloka, *Semedi dalam Kebudayaan Jawa: Studi Kasus di Tempuran Gadog, Sebuah Tinjauan Semiotik [Semedi in Javanese Culture: A Case Study at Tempuran Gadog, A Semiotic Analysis]* (B.A. Thesis in Javanese Studies, Universitas Indonesia, 2008) [unpublished].
[78] Suwarno, *supra* note 34 at 86–97.
[79] As the mythology of "Bima Suci" shows, it is believed that emotion is the very first thing that one must master before they do anything else. See Sarwedi Sosrosudigdo, *Fungsi dan Arti Kebatinan: Untuk Pribadi dan Revolusi [Function and Meaning of Javanism: For Individual and [National] Revolution]* (Jakarta: P. N. Balai Pustaka, 1965). On the mythology of Bima Suci, please see Jeanette DeBouzek, "Mysticism as Defense in Javanese Shadow-Play Theater: The Story of 'Dewa Ruci'" (1986) 43:4 Am Imago 273–288.
[80] See *Himpunan Peraturan Gerakan Nasional Revolusi Mental [The Compilation of Regulations on the National Movement of Psychological Revolution]* (Kementerian Koordinator bidang Pembangunan Manusia dan Kebudayaan Republik Indonesia [The Coordinating Ministry in the Development of Person and Culture], 2017).

ancient literary genre that has provided magico-religious legitimation to various political orders.[81] The decision to choose Sanskrit was deliberate. During the revival of Javanese folk religious traditions, Sukarno made a crucial move by assembling a team of ideologues to assist him in broadening his revolutionary vocabulary. Priyono (1907–69), educated in Paris and with a Ph.D. from Leiden, is considered the most significant figure. He played a crucial role in developing a fresh lexicon derived from the Sanskrit-influenced Old Javanese language.[82] In a similar vein, Mohammad Yamin sensed the cosmic significance of Sanskrit for post-colonial Indonesia. The military New Order regime (1966–98) provides further evidence of consistent use of Sanskrit and therefore securing its status as Indonesia's "cult language."[83] The New Order regime approved a publication entitled *Bekal Andjangsono* ("Food for Thought for Get[ting] Together"), containing several foundational doctrines aimed at anyone wanting to serve as an army official. There, one finds a vital doctrine called "Catur Dharma Eka Karma" ("The Only Way [to uphold] the Four Obligations") as the raison d'être for Indonesia's national armed forces.[84] The preference to use the Sanskrit word "catur" (or four) implies the importance of its symbolism as one can find this number throughout the Indic cultural system: there are, among other things, four social groups ("varna"), four primary paths to reach spiritual liberation ("moksa," "catur marga"), four cardinal points of direction, four Vedas, four stages of life, and so on. Concerning "dharma," it refers here to humans' fundamental obligation to uphold the cosmic order. Meanwhile, "eka" is "one" or "singular," and "karma" is "way of action." That makes *eka karma* an Indonesian acknowledgment that there can only be a singular way of action or serving for public service.

Considering that the national armed forces are a modern manifestation of the *Kshatriya varna* ("warrior" or "knight class") analogised to the function of human arms, one can further surmise that "catur dharma eka karma" emphasises that there can only be one singular way to serve

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[81] The concept of verbal magic is first introduced by Berg. See Cornelis C Berg, "The Javanese Picture of the Past" in Soedjatmoko et al, eds, *An Introduction to Indonesian Historiography* (Ithaca: Cornell University Press, 1965) 87. On the function of "palambang" or "kakawin," see S O Robson, "Kakawin Reconsidered: Toward A Theory of Old Javanese Poetics" (1983) 139:2–3 Bijdragen tot de taal-, land- en volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia 291–319.

[82] Adrian Vickers, *A History of Modern Indonesia* (Cambridge: Cambridge University Press, 2013) at 151.

[83] The notion of Sanskrit as Indonesia's cult language is introduced by Supomo. See Suryo Hudoyo Supomo, "Indic Transformation: The Sanskritization of Jawa and the Javanization of the Bharata" in Peter Bellwood, James J Fox & Darrell Tyron, eds, *The Austronesians: Historical and Comparative Perspectives* (Canberra, ACT: ANU Press, 2006) 309.

[84] *Bekal Andjangsono Pradjurit TNI-AD [[Teaching] Pointers for the Indonesian Army's Recollection]* (Jakarta: Pusat Penerangan Angkatan Darat, 1967).

to uphold cosmic law. In 2007, however, *Catur Dharma Eka Karma* was replaced by another Sanskrit expression: "Tri Dharma Eka Karma." While the replacement of "catur" (four) with "tri" (three) purportedly claimed to signal the abandonment of the armed forces' involvement in practical politics, the relevant point to note here is that Sanskrit occupies a unique place in the minds of many Indonesians.[85]

This leads to the next proposition that the so-called Sanskritisation has propelled ancient Indonesia into a periphery of the Sanskrit cosmopolis operating without a center.[86] One particular advantage of this development which deserves our attention is the ability to appropriate Sanskrit, which, at the time, had already reached the status as one of the world's most sophisticated languages, first and foremost designed for the gods, to enhance the political legitimation of local powers. As we will see later, a similar pattern can be observed for Sufism, whose strong association with magical power made very attractive to Indonesian audiences. Hence, through Sanskritisation, *Pancasila*, and, by implication, the 1945 Constitution earned its magico-religious character. This not only points to the continuous aspect of the magico-religious character as a legitimating factor for public issues in Indonesia. More importantly, Sanskrit also became Indonesia's constitutional language of choice, revealing the religiosity underpinning the 1945 constitutional order, its cosmology, and ramifications which I will further expound in Parts II and III of this study.

I begin by proposing a postulate that will help us establish a connection between sacred language or words and its magical power (Subsection A). One can then further accept that *Palambang* or *Kakawin,* an ancient Javanese literary genre laden with Sanskrit words, is appropriately denominated as "verbal magic."[87] Next, I will explain the nature of Sanskrit as a sacred language. Sanskrit was thought to hold a special kind of power that one cannot find in profane or ordinary language. Taking advantage of the burgeoning interdisciplinary scholarship on the theme of magic, religion, and science, Subsection 1 will argue that the ancients' understanding of a word's magical power tightly connects with the words' performative function. In this function, magical words were not meant to accord with objective reality.

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[85] "TNI Ganti Doktrin, Tahun Ini Mulai Diberlakukan [Indonesia's National Armed Forces changes Their Doctrine, Starting This Year]", *Detik.com* (24 January 2007), online: <https://news.detik.com/berita/d-734243/tni-ganti-doktrin-tahun-ini-mulai-diberlakukan>.
[86] Pollock, *supra* note 71 at 11–19.
[87] Berg, *supra* note 81.

Furthermore, Sanskrit words do not necessarily need to be intelligible or subjected to the analytical meaning-making process. It makes no sense to perform a semantic analysis on *abracadabra* or Hinduism's *Om*. In a sense, they are merely "constative"—establishing a new intersubjective reality. It concerns changing the states of the human mind, not the objective reality. A similar claim should also be ascribed to *Pancasila*: its constitutive nature should be enough for explaining why Indonesia cannot exist without it. As the newly introduced mantra of Indonesia's current President, aimed at reinvigorating Indonesia's spirit of anti-religious sectarianism, "I am Indonesia, I am *Pancasila*," implies that Indonesia and *Pancasila* are the same.[88]

In Subsection B, I introduce a concept to explain the connection between the magical power and the enduring relevance of the 1945 Constitution. That is, the imperative of the magico-religious mantle follows from Indonesia's unshakable conviction that the dead and undead realms perpetually interact, and the latter influences how the human world unfolds. Thus, the presence of the supernatural blessing is essential for the success of a worldly and communal enterprise named Indonesia. More importantly, from asserting the necessary influence between human and non-human worlds, one can glean that it becomes sensible to argue that the 1945 Constitution should be classified as another instance of *palambang* or *kakawin,* as verbal magic. Thus, similar to *palambang* or *kakawin,* it is not from the textual meaning of the Constitution that one can extract a form of analytical reading.

It is, indeed, symbolic or esoteric meaning that matters most to the minds of Indonesians. The 1945 Constitution carries a cosmic significance for the project of Indonesia. Similar to the Delphian *palambang* or *kakawin,* it is thus of utmost importance to employ *rasa* in an attempt to unveil its esoteric meaning. One can thus grasp the importance of *rasa* as an Indic aesthetic concept for Indonesia's theory and practice of legitimating constitutional order. Some now argue that mastering esoteric or emotional-based knowledge is paramount in a *rasa*-based constitutional order.[89] To the Puritan Islamists' dismay, this implicit prerequisite inevitably made *rasa* a central theme.

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[88] "Saya Indonesia[,] Saya Pancasila [I am Indonesia, I am Pancasila]", (29 May 2017), online: *Kementerian Komunikasi dan Informatika [The Ministry of Communication and Informatics]* <https://www.kominfo.go.id/content/detail/9739/saya-indonesia-saya-pancasila/0/berita>; "Saya Indonesia, Saya Pancasila [I am Indonesia, I am Pancasila]" in *Wikipedia*, bahasa indonesia ed.

[89] Agus Yulianto, "Gus Mus: Kita Sekarang Kurang Olah Rasa [Gus Mus: We Need to Cultivate Our Rasa]", *Republika* (20 June 2018), online: <https://www.republika.co.id/berita/pk0w8f396/gus-mus-kita-sekarang-kurang-olah-rasa>; Ayu Utami, *Critical Spiritualism: Rasa, Reason, Religion* (Tillburg, 2016).

A. The Magical Power of Indonesia's Sanskrit Words

This Subsection seeks to answer the question: how may Sanskrit words, such as *Pancasila*, are perceived as having magical power ("sakti" or "shakti") that bless and possibly safeguard Indonesia's constitutional persistence? At the outset, it is important to note that *sakti* is the very word that refers to the magical power that inheres in, among others, *Pancasila*.[90] In addition to being an everlasting legacy of Indic civilisation,[91] *sakti* unveils an underlying epistemological construct that helps one make sense of the meaning of magical power: "[t]he basis of knowing, whether in super-sense or sense-knowledge, is experience."[92] I then posit that the magical power of Indonesia's Sanskrit words is intended to alter experiential reality—not objective reality.[93] First and foremost, it is a conceptual understanding that may help one locate and grasp the "rationality" of seeing Sanskrit words as the locus for such magical power. In other words, I propose a presupposition that delineates a way of seeing that expounds the claim that Sanskrit words, as Indonesia's sacred words, become intelligible. In constructing this presupposition, I claim that the sense of sacred nature of Sanskrit has played a crucial role in Indonesia's contemporary and unceasing conviction of the indispensability of its Constitution. It has helped achieve a more prosperous Indonesia.

The sacred word or language must be distinguished from the profane one. The sacred language necessitates a commitment from both the speakers or officiants and the addressees that is fundamentally different from that associated with profane language, thereby establishing "a new reality."[94] The word "new" refers to a phase or period when the ritual or utterance of the sacred

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[90] See e.g., Al Makin, "Pancasila Sakti [The Magical Power of Pancasila]", online: *Badan Pembinaan Ideologi Pancasila (BPIP) Republik Indonesia [The Pancasila Ideology Development Agency]* <https://bpip.go.id/bpip/berita/1035/796/pancasila-sakti.html>; Danial Kelly, "Pancasila Sakti: The Sacred Authority of the Pancasila in Indonesian Law and Society" (2010) 13:2 Jurnal Yustika 201–233.

[91] Further discussion on this point, see Peter Levenda, *Tantric Temples: Eros and Magic in Java* (Lake Worth: Ibis Press, 2011).

[92] Sir John Woodroffe, *S'akti and S'ākta*, 8th ed (Madras: Ganesh & Company, 1975) at 19.

[93] It is worth quoting: "Like magic, Tantra is a technology. It is a means to an end. It involves the manipulation of consciousness through ritual, the end result of which has been pre-determined by the practitioner. And, as a technology, it makes use of all available materials. The tools of Tantra are the tools of consciousness—the five senses. Virtually anything can be employed in a Tantric ritual, from food and wine, to drugs, icons, incense, music, and sex, but always with a concentration on the physical body itself." With that in mind, it becomes sensible to suggest that Pancasila and Indonesia's other Sanskrit words are Indonesia's tools of Tantra. Levenda, *supra* note 91 at 19.

[94] Amina Kropp, "How Does Magical Language Work? The Spells and Formulae of the Latin Defixionum Tabellae" in Francisco Marco Simón & Richard Gordon, eds, *Magical Practice in the Latin West* (Leiden: Brill, 2010) 357 at 358.

words has been performed. "Reality" refers to an understanding that it "only exists for us in the facts of consciousness given by inner experience."[95] It is clear that "magic" in this respect is not about interfering with objective or empirical reality whatsoever. Instead, the notion of magic is understood as simply constituting a new state of intersubjective consciousness concerning the socially constructed reality. It primarily, and very likely exclusively, addresses the inner experience of the self. It is not empirical understanding that it pursues to alter, to be precise.

Given that changing an empirical understanding is not its primary concern and constituting a new state of intersubjective consciousness or reality is its ultimate goal, the sacred words' magical power is exclusively directed at the subjective emotional experience as it is absorbed or engrossed in a thing or activity.[96] Further, it also explains why the existence of semantic meaning becomes beside the point or, at the very least, redundant.[97] It is clear that the sacred words necessitate a different form of intellectual commitment so that their magical power can fully take effect in the mental state of the addressees. It is within this frame of shared intellectual commitment and, as an aspiration, that Indonesia's unwavering commitment to the 1945 Constitution should be understood. In this regard, as we will see in Part II, not every Indonesian commits to the 1945 Constitution, in particular the Islamist Puritans.

Why does it take a different kind of shared intellectual commitment from its addressees for the language's magical power to take effect? One must begin by acknowledging that some utterances can also function as part of a process of doing something.[98] "Performative utterance"

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[95] Wilhelm Dilthey, *Dilthey: Selected Writings*, H. P. Rickman, ed (Cambridge: Cambridge University Press, 1976) at 161.

[96] In an interdisciplinary field called "the cognitive science of religion," the bedrock of understanding of religion and thus religious experience itself is all about mental action, not bodily action. Implicit in this understanding, there is a different notion of realness that the believers apply to perceive the realness of various religious experiences, such as sensing the presence of the divine power. See Tanya M Luhrmann, *How God Becomes Real: Kindling the Presence of Invisible Others* (Princeton, New Jersey: Princeton University Press, 2020).

[97] As a noted commentator in Indonesian studies has pointed out, it is the incomprehensibility of magical language that makes it appropriate to create the magical effect. This line of reasoning underlies the practice of making "Arabic . . . as the language of 'initiation' precisely because Arabic was not understood (*vide* the present disastrous attempts to make the Latin mass 'comprehensible!')) the whole point of a spiritual ritual in a not comprehended language is that it manifests power, limitless power, and implies a deliberately non-rational mode of cognition. . . . (The fact that until quite recently it was forbidden to 'translate' the Koran under Islamic law itself simply served to justify a 'principle' which derived from the local culture.)." See Benedict R O'G Anderson, "The Languages of Indonesian Politics" (1966) 1 Indonesia 89–116 at 92. For general discussion on the nature of magical languages, also see Brian P Bennett, *Sacred Languages of the World: An Introduction* (Oxford: Wiley, 2018).

[98] Stanley J Tambiah, *Magic, Science, Religion and the Scope of Rationality* (Cambridge: Cambridge University Press, 1990); David Frankfurter, "Spell and Speech Act: The Magic of the Spoken Word" in David Frankfurter, ed, *Guide to the Study of Ancient Magic* Religions in the Graeco-Roman World 189 (Leiden and Boston: Brill, 2019) 608; Kropp, *supra* note 94.

does not describe, report, or constate anything.[99] Not only is it never meant to be subjected to empirical verification, but its only objective is to change or transfer oneself from one inner state of mind to another. Again, the performative utterance is not "'describ[ing]' some state of affairs, or to 'stat[ing] some fact,' which it must do either truly or falsely."[100] It is "constative" in nature.[101] Two examples within this category are naming a ship (declaratory) or proclaiming a newly married couple's legal status as entering the relationship of a husband and a wife (contractual). These two forms of sayings are *performing* or *doing* things; they are not just saying something. It is a "speech act."

Specifically, naming a ship, proclaiming someone as a husband of a wife, or any other form of speech act can only be realised in reality when everyone accepts or submits to that speech act constituting this newly created reality. In the case of proclaiming someone's status as a husband or a wife, as soon as the utterance has been performed, the speech act is expected to change everyone's state of mind concerning the status of the affected parties. It thus addresses the state of mind. It would be foolhardy to construe them as having to do only with objective reality. Considering its objective of altering a state of mind, it should be clear why the officiants and the partakers must commit themselves to mutual intellectual commitments unsuitable for profane language. Sacred language can be a jumble of meaningless words without a mutual intellectual commitment to its changing effect.[102] Such a line of reasoning can explain why the nationalists insist that Indonesia will disintegrate without the 1945 Constitution and its *Pancasila*. For the nationalists, the right state of mind is a necessary, but by no means sufficient, condition.

There is a secondary function of a speech act which establishes identity differentiating us from them. This function is infrastructural. Without it, the magical power cannot take effect. It is tightly weaved into the existence of a shared intellectual commitment as a prerequisite for the words' magical power to take place. Without it, the magical power of sacred words will never take effect. One can see why being able to recall *Pancasila* in exact order, never mind its substantive

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[99] John L Austin, *How To Do Things With Words* (Oxford: Clarendon Press, 1962).
[100] *Ibid*, s B.
[101] *Ibid* at 3.
[102] This point is raised by Stanley J Tambiah, *Culture, Thought, and Social Action: An Anthropological Perspective* (Cambridge, Mass.: Harvard University Press, 1985) at 22. It may also be interesting to note, there is an ethnography-based argument that claim that "the religious healing work and psychotherapy both worked for the same reason: they persuaded the suffering subject that the priest/healer/therapist had the authority in heal him, and that subject and healer shared a symbolic system within which healing could occur." See Luhrmann, *supra* note 96 at 204.

meaning, is an essential point of reference in determining whether an individual is Indonesian enough to hold public office.[103] This kind of commitment is no different from the one asked by folk religions that emphasise adherence to the correct conduct, form, or ritual ("orthopraxy"). In contrast, the "modern" or "universal" religions such as Christianity or Islam value the importance of following the correct conceptual understanding or dogma ("orthodoxy"). It is thus also sensible to suggest that *Pancasila* and hence the 1945 Constitution is the scripture of Indonesia's current folk religious tradition or cult of sorts—albeit in the mold of a folk religion that emphasises correct conduct or form, not the dogma.[104] Despite Indonesia's antagonism toward the military regime of the New Order, which introduced the mythification and sacredness of *Pancasila* and the 1945 constitutional order, Indonesia's current sitting nationalist administration has nonetheless chosen to revive the New Order's method that aims to instill a correct implementation or practical implementation for *Pancasila* and the 1945 Constitution. Interestingly, it is argued that the New Order became bankrupt because it betrayed *Pancasila*. *Pancasila* cannot go wrong by itself, and this is a veiled message that the maintenance of the 1945 constitutional order is an existential matter that requires everyone to be on the same page so that the magic works. In a word, *Pancasila* and the 1945 Constitution are Indonesia's very own performative utterance.

There is thus an intrinsic connection between language and magic that serves as a constitutive attribute of any sacred language. This intrinsic connection predicates the ancient mode of thought where magic, religion, and science are inseparable. It is believed that the separation between magic, religion and science is related to what Max Weber called a "disenchantment of the world." Moreover, as Charles Taylor added, it has produced a different kind of self that no longer sees the boundaries between the self and the natural world as essentially permeable. Indeed, it is noted that "the basic issue which was of crucial importance in philosophical and linguistic discussions in the Sanskrit tradition is whether thought, thinking, understanding is inseparable

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[103] Such a method to gauge one's intimate knowledge on *Pancasila* and the 1945 Constitution is known as the Test of the Understanding of (Indonesian) Nationalism (*Tes Wawasan Kebangsaan*). The test covers issue, ranging from morality, pluralism, and, of course, Islamism. See CNN Indonesia, "Daftar Isi Materi Tes Wawasan Kebangsaan Pegawai KPK [The Content of the Substances of the Understanding of Nationalism for the Employees of the Indonesian Commission for the Eradication of Corruption]", *CNN Indonesia* (5 May 2021), online: <https://www.cnnindonesia.com/nasional/20210505122310-12-638810/daftar-isi-materi-tes-wawasan-kebangsaan-pegawai-kpk>.

[104] It is no surprise, many folk religious currents identify themselves as "the religion of *Pancasila*." See e.g., Rozak, *supra* note 34 at 119. A conceptual basis for the argument that Indonesian folk religious traditions to be in agreement with the founding ideas of the state of Indonesia is articulated in Sosrosudigdo, *supra* note 79.

from language."[105] This subtle point directs one to another critical point: ancient religiosity recognises no clear line of demarcation between magic, religion, and science.[106] This is borne out by, among others, the Malay literary tradition that sees magic and divination as a legitimate part of the religious corpus.[107] In that sense, magical words, including scriptural text, functions as a manual of operation to attain altered states of consciousness. Furthermore, the usefulness of magical words is judged by their effectiveness or capability to deliver a particular emotive state.[108] Indonesia's religious textual analyses are beside the point; the efficacy of the words lies in its essence. In other words, one should not be overconcerned with the analytical meaning of the words; one must see the importance of *Pancasila* as a form ("wadah"), not substance. In this respect, it makes sense that:

> In the *slametan* [Indonesia's folk religions' most important ritual], people do not have to have a common belief. What one believes is his/her private business. As long as it remains private, it will not disturb the peace of the community. *On the contrary, once one tries to establish a common belief, the peace and harmony of the community is endangered, because people will try to impose upon others their own beliefs*.[109]

Indonesia's folk literary tradition embodies this interlace between textual and non-textual representations to convey a complex message. Accompanying symbolic images and other art forms are no less important than the words of the text themselves in unveiling the embedded understanding. Thus, in "a semi- or non-literate society, written words are usually not sacred semantically but rather visually—as concrete symbols."[110] They serve a similar function to the background music, enhancing the audience's experience toward a respective emotive understanding. It is worth mentioning that Pancasila itself has its symbol: the mythical sunbird

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[105] Jan E M Houben, "Language and Thought in the Sanskrit Tradition" in Sylvain Auroux et al, eds, *An International Handbook on the Evolution of the Study of Language from the Beginnings to the Present* History of the Language Sciences (Berlin and New York: Walter de Gruyter, 2000) 146 at 146.
[106] On this point, see Tambiah, *supra* note 98. See also Randall G Styers, *Making Magic: Religion, Magic, and Science in the Modern World*, American Academy of Religion Reflection and Theory in the Study of Religion Series (New York: Oxford University Press, 2004).
[107] See Farouk Yahya, *Magic and Divination in Malay Illustrated Manuscripts* (Boston: Brill, 2016) at 9–11.
[108] On this point see e.g., Styers, *supra* note 106; Jan Assmann, "Magic and Theology in Ancient Egypt" in *Envisioning Magic: A Princeton Seminar and Symposium* Numen Book Series 75 (Leiden and Boston: Brill, 1997).
[109] Eka Darmaputera, *Pancasila and the Search for Identity and Modernity in Indonesian Society: A Cultural and Ethical Analysis* (Leiden: Brill, 1988) at 176 (emphasis added). Darmaputera adds a further comment: "[a]lthough this perhaps sounds strange to the non-Indonesians, it is very much a common thing to Indonesians. For the majority of people, common belief is not seen as a necessity."
[110] David Frankfurter, "Narrating Power: The Theory and Practice of the Magical Historiola in Ritual Spells" in Marvin Meyer & Paul Mirecki, eds, *Ancient Magic and Ritual Power* (Leiden: Brill, 1995) 457 at 463.

giant Garuda that serves as the mount ("wahana" or "vahana") of God Vishnu. Perhaps, one lesson that the mythology of Garuda imparts is that to earn ultimate release ("moksa"), one must overcome bodily impulses.[111] As if that was not enough, each principle ("sila") of *Pancasila* is likewise designated with its individuating symbol. The use of images is a salient feature in Indian religious tradition, where images form part of what is defined as "visual theologies" and "visual scriptures."[112] Interestingly, the first principle ("sila") of *Pancasila*, which is worded as the Great One Godhead ("Ketuhanan Yang Maha Esa"), for instance, is symbolised as a lone five-pointed star that supposedly represents Islam. It is sensible for the Indonesians to conceive *Pancasila* and the 1945 Constitution as Indonesia's superstructure, in which Islam and many other religious or ideological systems serve as substructures that must align with the superstructure.

In order to access and acquire the power of magic, one must be liberated from the state of ignorance (*awidya*).[113] To achieve such a liberation indicated by spiritual purity (*widya*), a meditative practice called "tapas" is needed.[114] The necessity of *tapas* follows from considering that knowledge of magic is essentially gnosis, a form of esoteric understanding, in the experiential realm. The emphasis on the correct conduct or practice is in line with Indonesia's myriad folk religious currents encapsulated in the tradition of "tirakat" or "slametan." As a noun, *tirakat* refers to various practices to arrive at the state of inner calmness so that one may communicate and unite with the God, cosmos, or ultimate reality. As such, *tirakat* is an integral part of the annual commemoration of Indonesia's Independence Day, celebrated every 17 August eve.

Given that Indonesia earned its independence in 1945, *tirakat*, by implication, is also a form of religious expression that continually serves as the backbone of the 1945 constitutional order. Precisely, *tirakat* is a recurring mechanism for renewing the people's commitment to the

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[111] Holt, *supra* note 59 at 19.

[112] As Eck points out, the central role of images in Hindu religious tradition is necessitated by the condition of preliteracy that prompted "the traditions of sculptural representations of the gods . . . [to] serve[] both theological and narrative functions." In addition, images serve as *yantra*, a "'device' for harnessing the eye and the mind so that the one-pointedness of thought (*ekāgrata*) which is fundamental to meditation can be attained." More on this see Diana L Eck, *Darsan: Seeing the Divine Image in India*, 3d ed (New York: Columbia University Press, 1998) at 41, 43, 45.

[113] The connection between knowledge and (magical) power is pointed out by Paul Stange, who claims that the concept of person must also be added. In particular, the concept of person embodies "[a] qualitatively different orders of consciousness." See Paul Stange, "The Logic of Rasa in Java" (1984) 38 Indon 113–134.

[114] It seems plausible that *tapas* are an Indian origin meditative technique. In Indian tradition of religious hermeneutics, "there is a source which usually plays no role in modern or classical Western traditions of linguistics and philosophy of language: the meditative experiences of ascetics, monks, holy persons etc." See Houben, *supra* note 105 at 147.

1945 constitutional order. This understanding makes *tirakat,* now another word for *tapas,* a tool to activate and enhance one's *rasa,* meant to understand *rasa* as "the intuitive aspects of reality."[115] It is through *rasa* that one may sense a powerful person's charisma ("wahyu," literally the "divine" or "radiating light").[116] One defining characteristic of being a powerful person is the conviction that they are "'*luhur'* ['high' or 'noble']. They must also be *alus* [refined or graceful] in their behavior toward others."[117]

To further understand the implication of the quality of being *luhur*, it is necessary to quote Soemartono Soemarsaid at length:

> The man who is completely *alus* can, by emptying himself, absorb this whole universe into himself. And once he has attained what . . . [one may call as] "all-encompassing cosmic being," neither good or bad exist for him; at the highest point he attains indifference. A king, who by the very nature of his position represents this state of being, must do absolutely nothing, and the example was given of royal audiences in Yogyakarta at which the king sits speechless and immobile until his subjects are dismissed by an official.
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> The king, on the other hand, is still expected to influence the whole society around him; "by doing nothing, he will have all things done." In the practical sense it is the king's right-hand man, the *Patih* [Prime Minister], who in fact ensures that things are done according to the ruler's unformulated will. The *Patih*, however, can only differentiate good from bad by attuning himself to the spiritually superior king.[118]

While at first blush, the above reasoning seems to be nothing more than a fantastical line of reasoning, there are a few real-world circumstances that can corroborate the cultural significance of *rasa* and the quality being *luhur* and persuade one to take them seriously. To date, the most notable example of the importance of *rasa* and being *luhur* is how Susilo Bambang Yudhoyono, Indonesia's fourth President and "a son of the soil of eastern Java," personally resolved a very divisive and challenging issue of corruption in which two critical institutions—the

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[115] See Stange, *supra* note 113 at 114.
[116] *Ibid* at 149; Benedict R O'G Anderson, "The Idea of Power in Javanese Culture" in Claire Holt, ed, *Culture and Politics in Indonesia* (Ithaca: Cornell University Press, 1972) 1.
[117] See Moertono Soemarsaid, "The Concept of Power in Javanese Tradition" (1974) 2:5 Indonesia Circle School of Oriental & African Studies Newsletter 16–17 at 16.
[118] *Ibid*.

police and prosecutors—turned against each other. This puts Yudhoyono in a bind. Instead of providing a clear resolution, as the public expected him to, Yudhoyono chose to refrain from action. As a symbolism, the then-attorney general, Hendarman Supandji, explained Yudhoyono's doing nothing as: "following legal procedures, [thus] the case must be sent to the South Jakarta district prosecutor, who may then abandon it. The national police followed suit by reassigning its chief of detectives, who stood accused of leading the plot to frame Mr. Bibit and Mr. Chandra. Both institutions were given scope to be seen to be maintaining their authority, thus saving face."[119] As Soemarsaid has stated above, "by doing nothing, [Yudhoyono] . . . ha[s] all things are done."[120]

B. On Sanskrit as the 1945 Constitutional Order's Magico-Religious Legitimation

In this Subsection, I present an explication how the magico-religious power of *Pancasila* and the 1945 Constitution has sustained the persistence of the 1945 constitutional order. In addition to the argument that Sanskrit is the primary locus where *Pancasila* and many other significant ideological terminologies are inculcated, thus making Sanskrit Indonesia's political language of choice or "cult language,"[121] I further claim that *Pancasila* is Indonesia's own constitutional and most fundamental mantra. The function of *Pancasila* and the Preamble of the 1945 Constitution have not been to convey informational, factual, or explicit knowledge aimed at analytical processing. *Pancasila* aims to deliver a magico-religious legitimation. As I have mentioned before, this genre of literature performs a performative utterance: it is Indonesia's long-standing practice in providing a magico-religious mantle to the prevailing political order, that of the 1945 Constitution-based political order. Ultimately, the magico-religious power of *Pancasila* can also be understood as the persistence of Indonesia's syncretic religiosity which ignites religious rivalry between the Pancasilaists and the Islamists Puritans. Paradoxically, as I will argue in Part II, this religious rivalry has somehow contributed to the persistence of the 1945 constitutional order.

It is common belief that it is the magico-religious power of *Pancasila*, and by extension the 1945 Constitution, that holds Indonesia together. As Zulkifli Hasan, the chairman of the People's Consultative Assembly, Indonesia's highest political institution in the hierarchy of the

[119] See "The Bland Leading the Blind", *The Economist* (26 November 2009), online: <https://www.economist.com/asia/2009/11/26/the-bland-leading-the-blind>.
[120] Soemarsaid, *supra* note 117 at 17.
[121] Supomo, *supra* note 83.

1945 constitutional order, claimed, "any attempt to change the Preamble is equal to an effort that aims to dissolve Indonesia."[122] Furthermore, it is argued that the conviction that Indonesia requires magico-religious legitimation can be traced to, at the very least, the Indic period, a time when a literary tradition dubbed "verbal magic" was flourishing.[123] Consequently, it is sensible to classify the 1945 Constitution as a written expression that is no less than Indonesia's modern expression of its religious syncretic orientation. I will start by discussing the symbolism of 1945 when Indonesia proclaimed its national independence. It is a convenient entry point in expounding the claim that Indonesia is trying to replicate the Indic Majapahit empire.

The magical power of the 1945 Constitution is, so the argument goes, supposed to be inhered in the symbolism of the 17 August of 1945.[124] The importance of this numerical symbolism can also be inferred from the symbolism of *Pancasila* itself as "a support for the contemplation of supra empirical principles."[125] This cannot be separated from Indonesia's strong folk tradition in numerology, which can be traced back to the civilisation of Babylonia in the 3rd millennium B.C.[126] For example, in Javanese folk tradition, numerology was known as *petungan* or *primbon.* Simply put, it is "a study of calculation." The underlying presupposition of this numerology is that the microcosmos ("jagad alit") and macro-cosmos ("jagad ageng") are interrelated and constantly influence each other. To achieve this harmonious relationship, the former must be acted following the latter's course of action. Consequently, one must adjust their cognitive operation so that the

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[122] See Muhammad Fida Ul Haq, "Membubarkan Negara [Disbanding the State]", *Detik.com* (16 August 2017), online: <https://news.detik.com/berita/d-3601924/ketua-mpr-mengubah-pancasila-berarti-membubarkan-negara>.
[123] Berg, *supra* note 81.
[124] It is worth noting, Sukarno himself has been oft-quoted as a proud mystic. Interestingly enough, Indonesia's foremost modernist Islamist newspaper, *Republika,* seems to fully endorse the "extraordinary" nature of the symbolism of the 17 August 1945. With that endorsement, it seems *Republika* has implicitly supported the necessity of the 1945 constitutional order. See Karta Raharja Ucu, "Soekarno: Saya Percaya Mistik, 17 Angka Keramat, Angka Suci [Soekarno: I believe in Mysticism, 17 the Mystical Number, the Sacred Number]", *Republika* (17 August 2020), online: <https://www.republika.co.id/berita/qf71u4282/soekarno-saya-percaya-mistik-17-angka-keramat-angka-suci-part1>. On Sukarno's disposition to mysticism, see Bernhard Dahm, *Sukarno and the Struggle for Indonesian Independence*, translated by Mary F. Somers Heidhues (Ithaca: Cornell University Press, 1969).
[125] In addition to the fact that each principle ("*sila*") of Pancasila is represented by a different symbol, the mythical sunbird Garuda, originally a vehicle of the god Vishnu and now remodelled as the vehicle for Indonesia, has: two wings, each with 17 feathers, representing Indonesia's independence date; a tail that has 8 feathers, representing Indonesia's month of independence; 19 feathers that are located below the shield, representing the first two digits of Indonesia's year of independence; and 45 feathers on Garuda's neck, representing the last two digits of Indonesia's year of independence. Moreover, the Symbolism of *Pancasila* forms the core of the indoctrination program. In this regard, *Pancasila* is no different from Stupa or ("candi") that acts as "a support for the contemplation of supra empirical principles." See Appendix 3, Image 1, below. In the context of stupa, *see* Adrian Snodgrass, *The Symbolism of the Stupa* (Ithaca: Cornell Southeast Asia Program, 1985).
[126] See *Conceptions of State and Kingship in Southeast Asia*, Data Paper, by Robert Heine-Geldern, Southeast Asia Program Publications Data Paper 18 (Ithaca: Cornell University, 1956).

microcosmos can be in harmony with the macro-cosmos. Any failure to accommodate this requirement will wreak havoc. With this conviction in mind, it is an open secret that every Indonesian President has utilised this art of divination in the formulation of policy, including the right day to start the COVID vaccination program as the most recent example.[127]

It becomes unsurprising that to many Indonesians, the year 1945 as a whole symbolises the end of the mad age ("jaman edan") and the beginning of the golden age ("jaman emas"). In 1945, Indonesia miraculously rose from the ashes. The folk mythology of sharp bamboo ("bambu runcing") was invented and propagated as Indonesia's primary tool in their all-out fight to drive out the technologically advanced Dutch.[128] An oral reminder of this fantastical account of Indonesia's independence is also part of the state-sanctioned program of national mythologies that must be recited annually during the commemoration of Indonesia's independence, every 17 August. The myth is sustained through the erection of various monuments nationwide that aim to remind the Indonesian mind of the magical power of the 1945 constitutional order.

It is with this in mind that one must interpret the statement of A.H. Nasution, one of Indonesia's only three "great generals" or "five stars," who emphasises that "in the real battle, sharp bamboo serves more often than not as the *semangat* weapon."[129] In other words, it is justifiable to interpret the sharp bamboo as a medium ("wadah") to summon "semangat" and, in turn, spirit into its holders as they are embodied by *kesakten* (the divine power of the goddess Sakti)—the kind of power that is sought after by every ascetic. For unclear reasons, *kesakten* is also believed to be embodied in *Pancasila*, as attested by the erection of the monument of "Pancasila Sakti."[130] Thus, by studying *Pancasila*, one can also earn *kesakten* (mystical power or

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[127] See e.g., Marchio Irfan Gorbiano, "'Good Days' Find Outsize Role in Jokowi's Javanese Leadership Style", *The Jakarta Post* (19 January 2021), online: <https://www.thejakartapost.com/news/2021/01/19/good-days-find-outsize-role-in-jokowis-javanese-leadership-style.html>.

[128] It is noted that that: "Without bambu there wouldn't be an Indonesian revolution. The Japanese had taught hundreds of thousands of young mean how to quickly turn a charming plant into a fearsome weapon. Hack off a stem of that is not too thick, sharpen it—and if you like, harden it in the fire. . . The cruel bambu runcing would become the mythic weapon of the Revolusi, the emblem of collective struggle, the ultimate proof that the new state was not an elitist project, but the expression of a broad national craving for independence." See David Van Reybrouck, *Revolusi: Indonesia and the Birth of the Modern World*, translated by David Colmer & David McKay (New York: W.W. Norton & Company, 2024) at 314.

[129] Cited in "Cerita Bambu Runcing dan Simbol Digdaya Senjata Perjuangan [The Story of Sharp Bamboo and the Powerful Symbol of the Weapon for National Independence]", *CNN Indonesia* (17 August 2019), online: <https://www.cnnindonesia.com/nasional/20190814185439-20-421391/cerita-bambu-runcing-dan-simbol-digdaya-senjata-perjuangan/2>.

[130] On the symbolism of the Monument, see a webpage developed by Indonesia's ministry of education and culture, "Monumen Pancasila Sakti [the Monument of Pancasila Sakti]", (2021), online: *Sistem Registrasi Nasional Cagar*

Sakti). Furthermore, it is this proposition that propels *ruwatan* or purification ceremony, which is none other than the act of summoning the spirit ("semangat" or "sumanged") of 1945 whenever issues go astray.

The year 1945, then, is believed to be the rebirth of Indonesia's glorious past, exemplified by the existence of the Indic Majapahit empire—rising from the ashes like the mythical bird phoenix. When a moderate Islamic political party agreed to Sukarno's plan to return to the 1945 Constitution, it was "a welcoming recourse to deal with innumerable economic-physical or spiritual complications."[131] According to many conservative or Pancasilaist accounts, during the Majapahit and, by extension, the Indic period, Indonesia was at its height (or "jaman emas"). The very idea of being Javanese conceptually enables the formation of this coalition of *Pancasila* supporters. In short, the notion of being Javanese is about being in a particular or perhaps correct or calm state of mind, and the notion of "not yet Javanese" refers to behavioral characteristics that are not refined or graceful ("alus") or coarse ("kasar").[132] Furthermore, the prevailing notion that regards Javanese culture as the most sophisticated within Indonesia has led non-Javanese figures, such as Mohammad Yamin—who is often viewed unfavorably yet played a pivotal role in drafting the 1945 Constitution—to emerge as prominent advocates for interpreting Indonesia's constitutional framework through the lens of "Javanese political theories." As Yamin put it, the new Indonesia must cover an area previously considered the colony of the Majapahit empire, encompassing most, if not all, that is now known as the region of Southeast Asia.[133] This narrative claims that historical continuity plays an indispensable role in creating the popular appeal of *Pancasila* and, by extension, the 1945 Constitution. Unwittingly or not, the widespread conviction that it must have a strong link with Indonesia's glorious past must be considered another supporting factor for the sustenance of the 1945 constitutional order.

In this light, it becomes reasonable to perceive modern-day Indonesia as the purported reincarnation of the Indic Majapahit empire. On that account, one may hypothesize the factors contributing to the contemporary prominence of Indonesia's "indigenous" literature, which is

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Budaya <http://cagarbudaya.kemdikbud.go.id/cagarbudaya/detail/PO2015090300077/monumen-pancasila-sakti>. See also Appendix 3, Image 6 below.

[131] Muhammad Yamin, ed, *Naskah Persiapan Undang-Undang Dasar 1945 [Travaux Préparatoires of the 1945 Constitution]* (Jakarta: Jajasan Prapantja, 1959) at 531–532.

[132] Ayu Sutarto, "Becoming a true Javanese: A Javanese view of attempts at Javanisation" (2006) 34:98 Indonesia and the Malay World 39–53.

[133] Marieke Bloembergen & Martijn Eickhoff, *The Politics of Heritage in Indonesia: A Cultural History* (Cambridge: Cambridge University Press, 2019) at 129–163.

perceived as a resurgence of the Indic literary tradition. It encapsulated a genre called "palambang" or "kakawin"—best defined as belles-lettres. In line with the syncretic tradition, *palambang* or *kakawin* is considered a Javanese concept despite its technique borrowed from Sanskrit literature.[134] It is a vehicle to experience beauty or aesthetics ("kalangwan"). Through this vehicle, one can find transportation to the sublime or ecstatic.[135] Considering that the ecstatic, or emotional, state of mind is its ultimate goal, it makes sense that clarity and logical consistency, or any other values highly prised by modern scientific literary traditions, is the last thing on the author's mind.

As a commentator put it, "[f]or the most part traditional Javanese literature remains something imagined rather than something read."[136] This tradition cannot be separated from the refined or gracefulness ("alus")—worshipping cults found across Indonesia. The connecting factor between the subjective experience and the ecstatic state is *rasa* which, like a mantra, is defined as something devoid of (textual) meaning.[137] By conceding a similarity between Indonesia's "classic" literature and mantra or ritual, one can see the proposition that this literary genre is a "verbal magic" of sorts.[138] The more critical implication that the magical power brings to the mundane human life is providing order originating from acquiescing minds. After all, it is an aggregation of "minds [that] make [any] societies."[139]

Therefore, *rasa* is an aesthetic concept that informs and, more importantly, guides Indonesia's constitutional engagement. Indonesia's constitutional engagement highly prizes realising and emphasising *tenggang rasa* and *tepa salira*—defined as one's sensibility to sense others' situations, conditions, and expectations. The sensible route to Indonesia's constitutional understanding is through the employment of one's *rasa* embodied in the second principle of

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[134] Robson, *supra* note 81.
[135] Peter J Zoetmulder, *Kalangwan: Sastra Jawa Kuno Selayang Pandang [High Literature: An Overview of the Old Javanese Literature Tradition]*, translated by Dick Hartoko, W. A. L. Stokhof, ed (Jakarta: Djambatan, 1983) at XI.
[136] Florida, *supra* note 74.
[137] The articulation of this point is presented by Frits Staal, a Dutch Indologist. In a nutshell, Staal's argument is that "[r]itual is pure activity, without meaning or goal. . . . To say that ritual is for its own sake is to say that it is meaningless, without function, aim or goal, or also that it constitutes its own aim or goal. It does not follow that i[t] has no value: but whatever value it has is intrinsic value." See e.g. Frits Staal, *Rules without Meaning: Ritual, Mantras and the Human Sciences* (New York: Peter Lang, 1993); Frits Staal, "The Meaninglessness of Ritual" (1979) 26:1 Numen 2–22 at 9. In a rather less extreme position on the muted role of textual meaning in mantra, a group of anthropologists claims, "the goal of mantra practice is often to lead the practitioner to a point at which the words lose their meaning, but the practice begins with representation." See Michael Lifshitz, Joshua Brahinsky & Tanya M Luhrmann, "The Understudied Side of Contemplation: Words, Images, and Intentions in a Syncretic Spiritual Practice" (2020) 68:2 Int'l J Clinical & Experimental Hypnosis 183–199 at 184.
[138] Berg, *supra* note 81.
[139] Pascal Boyer, *Minds Make Societies: How Cognition Explains the World Humans Create* (New Haven, Conn.: Yale University Press, 2018).

Pancasila as "the just and fair humanism." It makes no sense to perform an analytical reading on the text of the Preamble of the 1945 Constitution—as one would have done with a scholarly article or modern literary work. There is no textual understanding of semantic meaning in the Preamble. Like any other mantra or ritual, the meaning of *Pancasila*, like a mantra or ritual, is outside the realm of text. *Pancasila* is but one manifestation of many "representation-rich practices" that may help one to "immerse themselves in imaginative representations of different scriptural scenes."[140] That is why many of Indonesia's folk religious currents identify themselves as the religion of *Pancasila*.[141]

Thus, *Pancasila* is no different from a bird song which emphasises the importance of the correctness of the sound. A number of both government- and non-government-sponsored initiatives which promote and advocate for a non-substantive understanding of *Pancasila* are a fixture of public life in Indonesia. It ranges from introducing the correct way to memorise to the right way to utter *Pancasila* as a part of the national curriculum. For example, a Presidential Regulation explicitly lays out the approved manner of uttering *Pancasila* in the formal setting.[142] It follows then that the "rational" or "substantive" meaning of *Pancasila* is very likely to be beside the point. What matters most is the emotional experience, or *rasa,* that one acquires from their effort to utter *Pancasila* correctly. Like Indonesia's ancient literary expression, *Pancasila* or the Preamble has been serving a similar function as other artifacts such as temples ("candi")—it is supposed to provide the magico-religious blessing for the benefit of Indonesia.

The utilisation of *rasa* then becomes eminently indispensable. It points to the importance of metaphors since they can convey bodily experiences in disregarding an analytic reading.[143] Thus, it is claimed that "the essence of metaphor is understanding and experiencing one kind of thing in terms of another."[144] In a sense, one must build a connection with the claim that *Pancasila* or the Preamble is saying one thing while it means another as something that cannot be classified

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[140] Lifshitz, Brahinsky & Luhrmann, *supra* note 137 at 183–184.
[141] A Sundanese folk religion is a case in point. Being known as, among others, "the religion of *Pancasila*." Its ritual procession is no different from a state occasion. For instance, it includes the public reading of *Pancasila* and the entire content of the 1945 Constitution and singing *Indonesia Raya*, Indonesia's national anthem. See Rozak, *supra* note 34 at 143–144.
[142] See *Instruksi Presiden Republik Indonesia tentang Tata Urutan dan Rumusan Pancasila [The Instruction of the President of Indonesia on the Hierarchy and Understanding of Pancasila]*, Instruksi Presiden 1968.
[143] George Lakoff, "Mapping the Brain's Metaphor Circuitry: Metaphorical Thought in Everyday Reason" (2014) 8 Front Hum Neurosci 1–14 at 4.
[144] George Lakoff & Mark Johnson, *Metaphors We Live By*, paperback ed (Chicago: The University of Chicago Press, 2003) at 6.

as an outlandish assertion. Similar to a metaphorical or symbolic system, *Pancasila* values are dependent and coherent with the cultural values Indonesia lives by.[145]

Conclusion

Based on the preceding discussion, it is arguable that the 1945 constitutional order has not been built overnight. One reason is that it is somehow aligned with, if not embedded in, Indonesia's folk religious sensibility. I have presented this case to argue for a subsuming of Indonesia's magical attitude to the 1945 Constitution toward the more general intellectual and social matrix from which the meaning or significance of the 1945 Constitution arose. It is my view that the rationality of Indonesia's magical attitude to the 1945 Constitution can be better explained thus. To support my case, I have laid out several presuppositions which attest to Indonesia's magical attitude to the 1945 Constitution. Also, I have provided the socio-historical footing that justifies a different set of assumptions in understanding the forces that eventually led to the endurance of the 1945 constitutional order. Having read it this way, this reading anticipates an upcoming central argument that the value of the 1945 Constitution does not involve all its textual meaning. The significance of this symbol is rooted in its representation of Indonesia's syncretic religious and cultural orientation, which elicits opposition from Islamic purists. In short, the 1945 Constitution, as a symbol, is a stand-in for something else that has cosmic significance to many Indonesian minds.

[145] *Ibid* at 22–23.

PART II

What Hath God Wrought?
From *Rasa* to Theologico-constitutional Commitment

In Part I, I argued that the 1945 constitutional order has persisted thanks to the symbolic value of *rasa*, which the preamble embodies through its treatment of *Pancasila*. In other words, *Pancasila* has facilitated a kind of religious attachment among influential segments of Indonesian society to the 1945 Constitution. Its Preamble continues to evoke strong emotions, even among Indonesia's elites. Jakob Oetama, a prominent Indonesian journalist, suggested that one should read the entire preamble carefully because it is not only miraculous but also has immense historical significance; its meaning is profound and hold a sacred essence.[1] However, this Part posits that merely relying on the religio-symbolic significance of *Pancasila* to explain the persistence of the 1945 constitutional order would be insufficient. While all previous constitutions entrenched Pancasila in their preambles,[2] what has given the 1945 Constitution its privileged status?

The 1945 Constitution has a privileged position mainly due to the enduring ideological rivalry between the syncretic "Pancasilaists" and the Puritan, Modernist, or Fundamentalist Islamists.[3] The Pancasilaists fervently champion the *Pancasila* ideology, drawing inspiration from Indonesia's folk religious traditions. Their most extreme faction strives to reinstate the original

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[1] See Jakob Oetama, "Refleksi Hari Proklamasi [A Reflection on the Proclamation Day]"in Mulayawan Karim, ed, *Rindu Pancasila: Merajut Nusantara* [Missing *Pancasila*: Weaving *Nusantara*] (Jakarta: Kompas, 2010) xiii at xiii. Another example is the belief that the 1945 Constitution is "the soul ["*jiwa*"] and spirit ["*semangat*"] of the Indonesian revolution." See e.g., Sunario, "Konstitusi tanpa Pondasi Kesejahteraan Rakyat [The Constitution without People's Welfare as Its Basis]" in B Wiwoho, ed, *Mengapa Kita Harus Kembali Ke UUD* 1945 [Why It Is Imperative to Return to the [Original] 1945 Constitution] (Jakarta: Buku Republika, 2019) 23 at 25.

[2] Suharto, the second president of Indonesia, asserted that the inclusion of *Pancasila* in the preambles of all constitutions serves as evidence of its enduring status as the desired religious foundation and fundamental philosophy of the state. Curiously, he was not interested in explaining why the 1945 Constitution was the best home for *Pancasila.* See Suharto, *Pandangan Presiden Suharto tentang Pancasila* [The President Suharto's Point of View on *Pancasila*], 2d ed, Krissantono, ed (Jakarta: Centre for Strategic and International Studies, 1976) at 12.

[3] This differs from the conventional argument about the sanctity of the original 1945 Constitution and the advocacy of *Pancasila* democracy to counter demands for constitutional amendments and to address individuals advocating for reform. See e.g. Melissa Crouch, "The Limits of Transformational Authoritarian Constitutions: The Indonesian Experience" in Melissa Crouch, ed, *Constitutional Democracy in Indonesia* (Oxford: Oxford University Press, 2023) 1 at 22.

1945 Constitution as the sole means to "save Indonesia."[4] They argue that it represents "rukun hidup" (a way of life based on unity or harmony), which serves as the fundamental essence of Indonesia's national identity ("kepribadian bangsa").[5] Thus, the Pancasilaists' unwavering support for the 1945 constitutional order is best seen as a calculated strategy to maintain the supremacy of the folk religious sensibility. In order to grasp this understanding, one needs to know that every *sila* (principle) within *Pancasila* refers to a prevailing political ideology[6] and mirrors the social reality of Indonesia, which is characterised by its pluralism and ideological divisions.[7] Referred to as "Bhinneka Tunggal Ika," an essential Indic principle with religious significance, *Pancasila* in its approach to pluralism highlights the significance of *rasa* as the constitutional sensibility of the country. In this context, Supomo, a key figure in crafting the 1945 Constitution and an expert on Indonesian *adat* law, underscored that *rasa*, or *semangat*, was the pivotal element in governance and public existence;[8] a constitution that is not meticulously constructed can hold immense value only if it incorporates the concept of *rasa*.[9]

In contrast, the Puritan Islamists are characterised by an unwavering commitment to establishing an Islamic constitutional order, the "antithesis" of *Pancasila*-based constitutional

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[4] See e.g. Wisnu Prasetiyo, "Gerakan Selamatkan NKRI: Kembalikan Pancasila dan UUD 1945 [The Movement to Save the Unitary Republic of Indonesia: Restore Pancasila and the 1945 Constitution]", *detikNews* (12 November 2015), online: <https://news.detik.com/berita/d-3069224/gerakan-selamatkan-nkri-kembalikan-pancasila-dan-uud-1945.>.

[5] See Eka Darmaputera, *Pancasila: Identitas dan Modernitas* [*Pancasila*: Identity and Modernity], revised ed (Jakarta: BPK Gunung Mulia, 2017) at 152–154. See also Ismaun, *Problematik Pancasila sebagai Kepribadian Bangsa Indonesia* [The Problematics of *Pancasila* as the Personality of the Indonesian Nation], 5th ed (Bandung: Carya Remadja, 1976); JA Niels Mulder, *Kepribadian Jawa dan Pembangunan Nasional* [The Javanese Personality and the National Development], 6th ed (Yogyakarta: Kanisius, 1986).

[6] *Pancasila* should not be understood as another "great contribution to political thought." See Clifford Geertz, "Are the Javanese Mad?" (1966) 38:424 Encounter 86–90 at 87. Nevertheless, some see *Pancasila* as an ideology that lends itself to analytical exposition. See e.g. Justus M van der Kroef, "*Pantjasila*: The National Ideology of the New Indonesia" (1954) 4:3 Philosophy East & West 225–251.

[7] This discussion on the schism that established the framework for Indonesian constitutional politics is based on Robert R Jay, *Religion and Politics in Rural Central Java*, Cultural Report Series 12 (New Haven, Conn.: Yale Southeast Asia Studies, 1963). One could argue that Ricklefs' trilogy provides an extensive analysis of Indonesia's identity as a nation torn apart. See Merle C Ricklefs, *Mystic Synthesis in Java: A History of Islamisation from the Fourteenth to the Early Nineteenth Century* (Norwalk: EastBridge Books, 2006); Merle C Ricklefs, *Polarising Javanese Society: Islamic and Other Visions, C. 1830-1930* (Singapore: National University of Singapore Press, 2007); Merle C Ricklefs, *Islamisation and Its Opponents in Java: A Political, Social, Cultural and Religious History, c. 1930 to Present* (Singapore: National University of Singapore Press, 2012).

[8] See Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia [the Investigating Committee for Preparatory Work for Independence], *Lahirnya Undang-Undang Dasar 1945: Memuat Salinan Dokumen Otentik Badan Oentoek Menyelidiki Oesaha2 Persiapan Kemerdekaan* [The Birth of the 1945 Constitution: With Copies of the Documents of the Investigating Committee for Preparatory Work for Independence], revised ed, A.B. Kusuma, ed (Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2009) at 361.

[9] *Ibid*.

order. Indonesia's emerging and expanding religious movement, labelled here as "Islamic Puritanism," "Puritan Muslim," or "Islamic Modernism." The rationale is that the terms Puritanism and Modernism are often used interchangeably, reflecting the belief of their followers that a literal or fundamentalist interpretation of the Qur'an aligns with the achievement of modernity.[10] Taking the idea of Mosaic distinction as its premise,[11] it is an attempt to reform the existing or living Islam in Indonesia which it considers is plagued with impurity and hence represents the corrupt—or more precisely syncretic Indic—understanding of Islam. At its core, the rationale for Puritanism, as a religious schism within Indonesian Islam, is to purify Islam as a religion of monotheism (*tawhid*). Hence, unlike the relativistic, syncretic, or traditionalist Islam of the Pancasilaists who defines monotheism as oneness of the Self with the God which is aligned with folk religious vision *Mannunggaling Kawulo Gusti*,[12] the Puritan Muslims, or "the Puritans" for short, espouse a pure, literal, and uncompromising interpretation of the Islamic doctrine of monotheism.[13] Islamic Puritanism is largely "a set of normative propositions" or "ethos" that can be considered the Islamic equivalent of Christian Protestantism.[14] While the Sufistic-derived Pancasilaists' understanding of Islamic monotheism tends to be an expression of continuity with syncretic Indic mystical religious traditions to the extent that it justifies a relativistic stance,[15] the Puritan's purist

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[10] See e.g., Clifford Geertz, *The Religion of Java* (Chicago and London: The University of Chicago, 1976) at 153–155; Deliar Noer, *The Modernist Muslim Movement in Indonesia, 1900–1942* (Singapore: Oxford University Press, 1973) at 303–308.

[11] "Mosaic distinction" asserts the ability to differentiate between authentic and counterfeit faiths as their main intellectual drive. This concept, introduced by Assmann, a noted German Egyptologist, is attributed to Moses as he played a significant role in the tradition of discerning between true and false aspects of religion. Moses is regarded as a pivotal "figure of memory" who holds immense importance in the realm of cultural differentiation and creation. Through the application of Mosaic distinction, monotheistic religious traditions not only constructed their own beliefs but also rejected and denounced all preceding and external elements as pagan practices. *See* Jan Assmann, "The Mosaic Distinction: Israel, Egypt, and the Invention of Paganism" (1986) 56 Representations 48–67 at 48–49.

[12] This vision is different from the "fundamentalists" or "puritans" who see monotheism as "a relationship understood in terms of divine sovereignty and human submission." See Salwa Ismail, "Islamic Political Thought" in Terence Ball & Richard Bellamy, eds, *Cambridge History of Twentieth-century Political Thought* (Cambridge: Cambridge University Press, 2003) 579 at 586–588.

[13] See e.g. Prawoto Mangkusasmito, *Pertumbuhan Historis Rumus Dasar Negara dan Sebuah Proyeksi* [The Historical Growth of the Philosophical Foundation of the State and Its [Possible] Future Trajectory] (Jakarta: Penerbit Bulan Bintang, 1977) at 35.

[14] This proposition underpinned the studies of James L Peacock, *Muslim Puritans: Reformist Psychology in Southeast Asian Islam* (Berkeley: University of California Press, 1978) at 12; James L Peacock, *Purifying the Faith: The Muhammadijah Movement in Indonesian Islam* (Durham, NC: The University of North Carolina Press, 2017).

[15] See e.g. Julia Day Howell, "Modernity and Islamic Spirituality in Indonesia's New Sufi Networks" in Julia Day Howell & Martin van Bruinessen, eds, *Sufism and the "Modern" in Islam* (London: I. B. Tauris & Co Ltd, 2007) 217; Julia Day Howell, "Sufism and the Indonesian Islamic Revival" (2010) 60:3 J Asian Stud 701–729; Verena Meyer, "From Taṣawwuf Modern to Neo-Sufism: Nurcholish Madjid, Fazlur Rahman, and the Development of an Idea" in *Modern Sufis and the State: The Politics of Islam in South Asia and Beyond* (New York: Columbia University Press, 2020) 40.

and uncompromising understanding of monotheism leaves no room for religious relativism. From that perspective, the Puritan perceives Islam as a belief system that demands unwavering allegiance, and considers Pancasila a rival ideology that is inherently flawed in a society that should solely embrace Islam.[16] The Puritan signifies a break or discontinuity with Indonesia's past as part of the syncretic Indic or Hindu-Buddhist realm.[17]

These two groups not only uphold contrasting ideologies that result in divergent policies but are also rooted in distinct religious traditions— the Pancasilaists draw from Indic-derived folk religious traditions, while the Puritans adhere to a literal interpretation of the Qur'an. These two distinct religious traditions of interpreting Islam compete for dominance in Indonesian constitutional politics. In Part III, it will become apparent that they have brought about distinct approaches to understanding the Indonesian constitution, leading to the "mixed" character of Indonesia's three constitutional postulates, most notably Indonesia's own constitutional law vernacularly known as *hukum tata negara* (see Chapter 8).[18] It therefore points to the importance of *rukun* ("harmony"), embodied in the symbolism of *Pancasila* in the 1945 constitutional order, which signifies an association between the persistence of this constitutional order and the imagination of Indonesia's peasant or communal past.[19] In Chapter 4, I will establish the correlation between the Pancasilaists' symbolic link to the 1945 Constitution and Indonesia's Indic past, which they perceive as the source of its religious importance.[20] The Pancasilaists champion

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[16] See "Persatuan Islam: Islamic Reform in Twentieth Century Indonesia" Howard M Federspiel, Ithaca (1970) at 173.

[17] It is evident from a comparative analysis of Yamin, a prominent figure of the Pancasilaists, and Hamka, a leading figure of the Puritans, that Hamka consistently refutes Yamin's assertion that Indonesia is a continuation of its Indic past. In other words, Hamka does not agree with Yamin's perspective on the significance of Hindu Kingdoms and believes that the idea of Indonesia is a relatively recent development. *See* Deliar Noer, "Yamin and Hamka: Two Routes to an Indonesian Identity" in Anthony Reid & David Marr, eds, *Perceptions of the Past in Southeast Asia* (Singapore: Asian Studies Association of Australia and Heinemann Educational Books (Asia) Ltd., 1979) 249 at 255.

[18] A recent survey of diverse models of mixed constitutions either failed to acknowledge or disregarded the impact of non-Judeo-Christian religious traditions as a significant element in their advancement. See Yaniv Roznai, "What are We Talking About When We Talk About 'Mixed Constitutions'? Towards a Typology of Constitutional Mixture" (2022) 16:2 L & Ethics of Hum Rts 193–215.

[19] The inclination towards harmony is prevalent in Asian legal culture. See Mark Van Hoecke & Mark Warrington, "Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law" (1998) 47:3 Int'l & Comp L Q 495–536 at 506.

[20] For example, throughout the drafting process there were frequent references to the importance of the Indic period as a "standard" for developing Indonesia's constitutionalism. See Muhammad Yamin, ed, *Naskah Persiapan Undang-Undang Dasar 1945* [Travaux Préparatoires of the 1945 Constitution], vol. 1 (Jakarta (?): Jajasan Prapantja (?), 1960) at 77–81; Muhammad Yamin, ed, *Naskah Persiapan Undang-Undang Dasar 1945* [Travaux Préparatoires of the 1945 Constitution], vol. 2 (Jakarta: Jajasan Prapantja, 1959) at 89–91, 126–141.

this idea by "invoking the principle of [being a] continuity" with its syncretic Indic past ("Bhinneka Tunggal Ika").[21]

By putting the religious rivalry between Indonesian Islam and Puritan Muslims at the center of the persistence of the 1945 constitutional order, this Part argues that it is not simply a mundane document dealing with various technical, policy, or matter-of-fact questions. Rather, the 1945 Constitution attained a "special" status as a symbolic system that structures the political imagination,[22] and has become a "cultural phenomenon" that "does not come from nowhere."[23] Unlike more recent written constitutions that tend to be void of any emotional attachment, the 1945 Constitution can generate strong emotional attachment and signals its embeddedness within broader Indic-derived religious folk traditions.[24] It is Indonesia's mythical-cum-sacred narrative presenting the "story of us"[25]—or even the "story or myth of origin," and serves to establish and rationalise the very essence of the nation's existence.[26] Thus, the 1945 Constitution is a living subject that started its life as a mundane written statement that grow to inspire various cult-like movements that believes that only by reinstating its original version can Indonesia achieve the mythic-religious-psychological condition known as "rukun" and "slamet" ("tranquility" or "peaceful") or "tata tentram" ("order" or "harmony").[27]

The argument is structured as follows: Chapter 4 lays the groundwork for the debate, positing that Indonesia is a nation marked by religious schism within a shared endeavor. It

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[21] Invoking continuity with the past is a prevalent practice in the Indonesian tradition of legitimising power. See S Supomo, "The Image of Majapahit in Later Javanese and Indonesian Writing" in Anthony Reid & David Marr, eds, *Perceptions of the Past in Southeast Asia* (Singapore: Asian Studies Association of Australia and Heinemann Educational Books (Asia) Ltd., 1979) 171 at 175.

[22] Paul W Kahn, "Comparative Constitutionalism in a New Key" (2003) 101:8 Mich L Rev 2677–2705 at 2677.

[23] *Ibid* at 2678.

[24] In this context, the constitutionalisation process becomes ancillary, rather than the main project serving a broader goal. Constitutions rarely start out as a people's self-conscious effort to demand their own rights or to constrain state power. Rather, they tend to be elite creations designed to modernise ancient states. Consequently, they may have little "bite" in terms of enforcement. Jiunn-Rong Yeh & Wen-Chen Chang, "The Emergence of East Asian Constitutionalism: Features in Comparison" (2011) 59:3 Am J Comp L 805–839 at 817.

[25] By being a "story of us," a constitution can "bound [its subjects] not by blood but by a story, and by faith in a constitutional project." See Jack Balkin, *Constitutional Redemption: Political Faith in an Unjust World* (Cambridge, Mass.: Harvard University Press, 2011) at 2.

[26] See Mercia Eliade, "Myth and 'Sacred History'" (1967) 2:2 Rel Stud 171–183 at 174.

[27] Including rukun and slamet as the main theme of Sukarno's speech was designed to convince Indonesians to accept his proposal to return to the 1945 Constitution. See Sukarno, "Res Publica, Sekali Lagi Res Publica [Res Publica, Once More Res Publica]" in Muhammad Yamin, ed, *Naskah Persiapan Undang-Undang 1945, memuat Segala Naskah Resmi Penggalang Undang-Undang '45 jang Berlaku Kembali dalam Negara Kesatuan Républik Indonésia* [Travaux Préparatoires of the 1945 Constitution, including Every Official Material Supporting the Reintroduction of the 1945 Constitution], vol. 3 (Jakarta: Jajasan Prapantja, 1959) 653. On the importance of tata tentram see van der Kroef, *supra* note 6 at 229.

postulates that Indonesia is characterised by the presence of two diametrically opposed religious traditions. The first ideology is the syncretic folk religion of the Pancasilaists, which aligns with the immanentist religious tradition. The second is the Puritanical approach, marked by a scripturalist inclination, which falls within the transcendentalist religious tradition. Bearing this proposition in mind, Chapter 5 explores how religious contention between the Pancasilaists and the Puritans has led to the revival and subsequent persistence of the 1945 constitutional order. It delineates a narrative framework centered on the theological contention between Pancasilaists and Puritans, positioning this discord as the predominant motif. Concurrently, it elucidates the folk religious nuances that sustained the continuity of the 1945 constitutional regime. Chapter 6 then extends these observations, speculating on the trajectory of the 1945 constitutional order in light of Indonesia's religious dynamics after the New Order era (1998—present). It explains the rationale behind the alignment of Islamist Puritans with their counterparts, the syncretic Islamist Traditionalists, in the defense of the 1945 constitutional order. This strategic transactional alliance is precipitated by the emergence of a novel faction advocating for a pan-national or transnational Islamic ideology, which not only conflicts with the Puritans' nationalist stance but also poses a formidable challenge to their established support base. The advent of transnational Islamism, perceived by the Puritans as an existential threat, has inadvertently driven them to seek solidarity with the Pancasilaists.

CHAPTER 3

Indonesia's Dual Constitutional Identity

Introduction

It is frequently asserted that a key characteristic of Indonesian constitutionalism is that "Indonesia is not an Islamic state, nor a secular state, but rather a religious state."[1] This assertion is commonly attributed to *Pancasila*, which is enshrined in the last paragraph of the Preamble of the 1945 Constitution.[2] This statement is considered pivotal, if not the predominant proposition, in understanding the identity of the 1945 Constitution, and it encapsulates the Constitution's fundamental characteristic which is essential to Indonesia's identity as a *Pancasila* nation.[3] Despite the statement's significance, there has been a lack of scholarly investigation to elucidate this assertion. The scholarly literature implies that this represents a type of rhetorical exaggeration. As a result, most if not all studies on Indonesian constitutionalism overlook or disregard the intricate conceptual meanings intended by this statement.[4] The failure to acknowledge its importance has led Indonesian constitutional studies to overlook the vernacular content that Indonesian constitutionalism seeks to convey. The current scholarly framework on Indonesian constitutionalism is based on the "universal" model of constitutional contestation, depicting a binary conflict between Pancasilaists as the proponents of a secular constitutional order and Islamist Puritans seeking institutionalisation of a theocratic constitutional order through their

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[1] Team Viva, "Mahfud MD: Indonesia Bukan Negara Agama, Bukan Sekuler [Mahfud MD, [the Chief Justice of the Constitutional Court]: Indonesia is not a Religion-based State, or a Secular [State]]", Jakarta *Viva News* (23 August 2018), online: <https://asset.viva.co.id/appasset-2018/desktop-2018/img/icon-profile-team.png?v=5.13>.

[2] The Ministry of Religious Affairs in the Province of East Nusa Tenggara, "Indonesia Bukan Negara Agama Dan Juga Bukan Negara Sekuler [Indonesia is a state that is not based on any particular religion, nor is it a secular state.]" (8 March 2016), online (Government Agency): *The Ministry of Religious Affairs in the Province of East Nusa Tenggara* <https://ntt.kemenag.go.id/berita/388736/indonesia-bukan-negara-agama-dan-juga-bukan-negara-sekuler>.

[3] Gary J Jacobsohn, *Constitutional Identity* (Cambridge, Mass.: Harvard University Press, 2010) at 12–13.

[4] See e.g., Nadirsyah Hosen, "Religion and the Indonesian Constitution: A Recent Debate" (2005) 36:3 J Southeast Asian Stud 419–440; Melissa Crouch, "The Limits of Transformational Authoritarian Constitutions: The Indonesian Experience" in Melissa Crouch, ed, *Constitutional Democracy in Indonesia* (Oxford: Oxford University Press, 2023) 1; Simon Butt, "Constitutions and Constitionalism" in Robert W Hefner, ed, *Routledge Handbook of Contemporary Indonesia* (Abingdon, Oxon: Routledge, 2018) 54.

Islamisation agenda.[5] Arguably, this model assumes that every society is progressing toward a modern social imaginary in which the shift to secularity is both desirable and inevitable.

In this Chapter, I argue that the above key characteristic alludes to an "alternative" constitutional paradigm that does not align neatly with either secular or theocratic constitutional order, but rests on the paramount importance of religion, or more precisely "the sacred," for realising the good society.[6] In Indonesia, engagement in public activities invariably involves encounter with religious elements, as the notion of religiosity is synonymous with moral righteousness.[7] This is different from the secular conception of constitutional order that necessitates a wall of separation between church and state. It presents a constitutional framework grounded in a common set of values or principles drawn from various religious traditions, in contrast to the singular religious supremacy characteristic of a theocratic constitutional order. Thus, Indonesia's constitutional paradigm serves as the foundation for its cautious or constrained approach to embedding the sacred within its constitution. This is the basis for incorporating *Ketuhanan Yang Maha Esa* (the Oneness of God), the first principle (*sila*) of *Pancasila*, while rejecting the Puritans' proposal to include the extra "seven words;" that is, "with the obligations for the Muslims to carry out Islamic law."[8] Consequently, this rationale elucidates Indonesia's stance of identifying as neither Islamic nor secular, but still retaining a religious character.

Indonesia's alternative constitutional paradigm stems from religious syncretism deeply ingrained in its historical consciousness, if not in the broader Southeast Asian region.[9] This framework represents a contemporary manifestation of *Bhinneka Tunggal Ika,* which translates as "unity in diversity," an Indic principle of religious tolerance underscoring the unified essence of diverse religious beliefs. This principle originated in *Sutamosa*, an Old Javanese literary work, or

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[5] Nadirsyah Hosen, *Shari'a and Constitutional Reform in Indonesia* (Singapore: ISEAS, 2007) at 61 ff.
[6] As an official of public health puts it, the importance of religion is greater than physical health. See Arifasno Nafu, "Lebih Penting Agama Atau Sehat? [Is the Significance of Religion Greater than That of Health?]" (22 April 2022), online (Government Agency): *Dinas Kesehatan Provinsi Gorontalo [The Provincial Government of Gorontalo's Division of Public Health]* <https://dinkes.gorontaloprov.go.id/lebih-penting-agama-atau-sehat/>.
[7] See "Menag: Identitas Indonesia adalah Religiusitas [The Minister of Religious Affairs: The Indonesian National Identity is Religiosity]" (25 July 2016), online (Government Ministry): *Kementerian Agama Republik Indonesia [The Indonesian Ministry for Religious Affairs]* <https://kemenag.go.id/nasional/menag-identitas-indonesia-adalah-religiusitas-t3dtbf>. See also Retno H Ninin, "Religious Self: The Multi-Construal Model of Indonesian Self" in Ralph H Hood & Sariya Cheruvallil-Contractor, eds, *Research in the Social Scientific Study of Religion* (Leiden: Brill, 2020) 103 at 110.
[8] Robert E Elson, "Another look at the Jakarta Charter Controversy of 1945" (2009) 88 Indonesia 105–130 at 121ff.
[9] John N Miksic & Goh Geok Yian, *Ancient Southeast Asia* (New York: Routledge, 2017) at 151. See also *The Buddhist-Hindu Divide in Premodern Southeast Asia*, Manuscript, by John N Miksic, in *Nolanda-Sriwijaya Centre Working Paper Series*, Manuscript 1 (Singapore: Institute of Southeast Asian Studies, March 2010) at 2–5.

kakawin, as a declaration that Buddhism and Hinduism, the predominant religions of Indonesia at the time—were essentially "identical, as there are no two Truths."[10] Balinese religion is illustrative in this regard:

> . . . the relationship [between Shivaism and Buddhism] is so intimate, that, seen from the outside, they do not differ in any appreciable way for a complete fusion; however the attentive study will reveal that both Shivaism and Buddhism have preserved a certain degree of autonomy. . . . [T]he priests (*panditas*) on Bali regard Shiva and Buddha as brothers, with Buddha as the younger of the two; they and their followers live peacefully beside one another, but in general the cults are separated: the Buddhists do not reverence Shiva, nor the Shivaists, Buddha. Only at the great irregularly-celebrated "feasts of atonement" does this thing change, and then cooperation becomes as close as possible.[11]

By de-emphasising "diversity" and highlighting "unity" between Buddhism and Hinduism, *Bhinneka Tunggal Ika* embodies a form of religious pluralism management rooted in religious syncretism. As various studies on Indonesia's folk religious traditions that do not recognise the compartmentalisation between the sacred and the profane have highlighted, religious syncretism is a fundamental aspect of Indonesia's cultural ethos in its pursuit of communal harmony, known as *rukun*.[12] For example, *slametan*, the primary ritual in most of Indonesia's folk religious practices, serves not only as a manifestation of religious syncretism but also symbolises religious diversity as a human condition. Thus, it is not surprising that the constitutional establishment of *Bhinneka Tunggal Ika* has been commended as a notable accomplishment of the constitutional amendment from 1999 to 2002.[13] Furthermore, its legal integration as a fundamental principle of

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[10] See Martin Ramstedt, "Introduction" in Martin Ramstedt, ed, *Hinduism in Modern Indonesia: A Minority Religion Between Local, National, and Global Interests* (London and New York: Routledge Curzon, 2004) 1 at 1.
[11] W H Rasser, *Pañji, the Cultural Hero: A Structural Study of Religion in Java*, 2nd ed (Dordrecht: Springer Science+Business Media B.V., 1982) at 71.
[12] See e.g., Clifford Geertz, *The Religion of Java* (Chicago and London: The University of Chicago, 1976) at 379; Andrew Beatty, *Varieties of Javanese Religion: An Anthropological Account* (Cambridge: Cambridge University Press, 1999) at 47.
[13] Slamet Riyanto, Febrian & Zen Zanibar, "Bhinneka Tunggal Ika: Nilai Dan Formulasinya Dalam Peraturan Perundang-Undangan [Bhinneka Tunggal Ika: Values and Its Articulations in Statutory Norms]" (2023) 20:2 Jurnal Legislasi Indonesia 1–13 at 9.

Indonesia's legislative processes could be considered as further proof of the importance of religious syncretism for attaining communal harmony.[14]

This alternative constitutional paradigm that sees communal harmony as the overarching objective of the constitution may not be unique to Indonesia where religion, much like in other Asian countries, is viewed as a fundamental element in shaping individual and collective identities and has led to fostering "religious harmony" as a key objective in expressions of constitutionalism.[15] For that reason, one of the key themes in Asia's Buddhist constitutionalism is question about how to balance political and religious authority in order to achieve communal harmony.[16] This paternalistic approach typical of Asia's Buddhist constitutionalism can also be applied to those countries in which Islam is the dominant religion. Muslim-majority Malaysia is a case in point, where the concept of communal harmony also holds significant constitutional importance evident in the formulation of the five "Rukun Negara," akin to Indonesia's *Pancasila*. Hence, it is not surprising that the state's paternalistic intervention in religious matters becomes widespread, if not legitimated, in Asia's various expressions of constitutionalism.

However, it is difficult to describe Asia's various expressions of constitutionalism as theocratic constitutionalism, given that virtually all Asian constitutionalism does not explicitly describe itself as such.[17] For example, Singapore is described as "a secular democracy whose model of accommodative secularism is premised on freedom of religious conscience."[18] Nevertheless, it is important not to interpret its secularism as mirroring the traditional Western concept of a secular state, considering that "harmony is so frequently invoked and given so much importance that it has attained implicit, if not explicit, constitutional status."[19] The same principles can be observed in Thailand, despite its prominent endorsement of Buddhism. While there is no official state religion, the modernisation of the Thai political system has been spearheaded by

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[14] *Undang-Undang no. 12 tahun 2011 tentang Pembentukan Perundang-Undangan [Law no. 11 of 2011 on Law-Making]*, 12 (11 August 2011) art 6.
[15] Jaclyn L Neo, "Dimensions of Religious Harmony as Constitutional Practice: Beyond State Control" (2019) 20:7 German L J 966–985 at 967–968.
[16] Benjamin Schonthal, "Formations of Buddhist Constitutionalism in South and Southeast Asia" (2017) 15:3 Int'l J Con L 705–733 at 708; Khemthong Tonsakulrungruang, "Thailand's Constitution Capitulates to Buddhist Domineering" (24 January 2018), online (Academic Blog): *East Asia Forum* <https://eastasiaforum.org/2018/01/24/thailands-constitution-capitulates-to-buddhist-domineering/>.
[17] Ran Hirschl, *Constitutional Theocracy* (Cambridge, Mass.: Harvard University Press, 2010) at 3.
[18] Thio Li-ann, "Singapore Relational Constitutionalism: The "Living Institution" and the Project of Religious Harmony" (2019) 2019 Sing J Leg Stud 204–234 at 210.
[19] Neo, *supra* note 15 at 972.

political leaders who have consistently maintained a legal and political framework deeply influenced by Thai Buddhism. This influence is reflected in the frequent use of "tham" or "thamma" as the root for new concepts in contemporary Thailand governance, such as constitution (*ratthathammanun*), rule of law (*nittitham*), and good governance (*thammaphiban*). Hence, Larsson concludes that "it is therefore virtually impossible to discuss the governance of the modern Thai state without invoking pre-modern conceptions of Buddhist moral order."[20] Thus, while rejecting a religion-based state, Asian expressions of constitutionalism are conditioned by folk spiritualism or religious traditions rather than material or economic or liberal values.

Therefore, this Chapter will explore the symbolic association between *Pancasila* and by implication the 1945 Constitution with *Bhinneka Tunggal Ika* as Indonesia's "classical religious style"—or, for want of a better word, "religious syncretism" rooted in its folk religious traditions.[21] The symbolism of *Pancasila* and the 1945 Constitution projects a religious impartiality rather than the religious orientation of the entire population of Indonesia. The Pancasilaists have been consistently engrossed in this matter, as President Suharto explains: "I have said time and again to (Muslim) religious scholars who are afraid that *Pancasila* will evolve into a religion, that that is not possible. *Pancasila* as an outlook on life, the basis of the state and as an ideology guarantees tolerance and the vitality of all religions."[22] In particular, *Pancasila* projects the supremacy of the religious orientation of the Pancasilaists, Indonesia's predominant cultural and political force, at the expense of the Puritans' Islamic constitutional vision. I will therefore argue that the significance of *Pancasila*, and consequently the 1945 Constitution, not only isolates the Puritans as Indonesia's second most influential political and cultural force but also signifies the enduring importance of the syncretic religious way of life as the timeless essence of Indonesian identity.

By positing *Pancasila* and the 1945 Constitution as a symbolic religious partiality, this Chapter offers a conceptual argument that underlines the complexity of Indonesia's ongoing religious rivalry which has resulted in its inability to move on from the 1945 constitutional order.

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[20] Tomas Larsson, "Secularisation, Secularism, and the Thai State" in Pavin Chachavalpongpun, ed, *Routledge Handbook of Contemporary Thailand* (Oxon: Routledge, 2020) 278 at 282.

[21] A similar assertion can be found in C F G Sunaryati Hartono, *Bhinneka Tunggal Ika sebagai Asas Hukum bagi Pembangunan Hukum Nasional [Bhinneka Tunggal Ika as the Legal Source for the Development of National Law]* (Bandung: Citra Aditya Bakti, 2006) at 37–39. The term "classical religious style" originates from Clifford Geertz, *Islam Observed: Religious Development in Morocco and Indonesia* (New Haven: Yale University Press, 1968) at 23–25.

[22] See Ken Ward, "Soeharto's Javanese Pancasila" in Edward Aspinall & Greg Fealy, eds, *Soeharto's New Order and Its Legacy: Essays in Honour of Harold Crouch* (Canberra: ANU Press, 2010) 27 at 32.

To outline the complexity of Indonesia's ongoing religious rivalry, Section 1 establishes the claim that Indonesia's folk religious traditions are a form of immanentism, where religion is not viewed as a distinct sphere within the nation's culture. Consequently, Indonesia's folk religious traditions often perceive religion, such as Islam in this context, as a component that should conform to cultural norms. Against that background, Section 2 examines how Indonesia's folk syncretic sensibility shapes the nation's management of religious pluralism. It surveys Indonesia's folk religious practices, highlighting their lack of strict theological doctrines and holistic influence on individuals' behavior and preferences. For that reason, Indonesia's folk religious traditions are the nation's powerful "psychologic." Section 3 then expounds on *Bhinneka Tunggal Ika*, Indonesia's official approach to religious diversity. Rooted in Indonesia's folk religious traditions, it embraces religious relativism, emphasising coexistence over attaining doctrinal truth. This approach allows Indonesia to navigate religious diversity while maintaining a religiously neutral stance and uphold its identity as a constitutional order with strong religious identity.

I. The Immanentist Roots of the Religious Symbolism of the 1945 Constitution

To unpack the religious symbolism of the 1945 Constitution, this Section focuses on unveiling past practices of human governance. As Section 2 will further elucidate, the nationalism and hence constitutional vision of the Pancasilaists is largely drawn from Indonesia's Indic past, with some novelties. For instance, the Pancasilaists have made it clear that Indonesia is a form of "republican government."[23] On its face, their open declaration may amount to a copy and paste of the American idea of the republican form of government, given that the American revolution fascinated Sukarno and Mohammad Yamin, two key members of Investigating Committee for Preparatory Work for Independence (BPUPKI), the organ that drafted the 1945 Constitution. However, the Pancasilaists' conception of republican government derives from *desa*, the alleged Indonesian folk model of governance, which emphasises the importance of establishing continuity with the past.[24] The reason is that, as Indonesia's fourth president and a daughter of Sukarno Megawati put it, the 1945

[23] *The 1945 Constitution*, (August 1945) art 1. See also Appendix 2.
[24] Moertono Soemarsaid, *State and Statecraft in Old Java: A Study of the Later Mataram Period, 16th to 19th Century* (Ithaca: Cornell Modern Indonesia Project, 1968) at 52–56.

Constitution is "an articulation of the constitutional order a la Indonesia."[25] Thus, many if not all Western concepts that the Indonesian constitutional discourse employs do not indicate a genuine embrace of foreign ideas.[26]

One strategy to establish a connection between the religious symbolism of the 1945 Constitution and its Indic past is to invoke Weber's notion of "charismatic rule" as a key component of Indonesia's folk political thought.[27] As a ground for "the legitimacy of domination," it operates "on the basis of affectual surrender (*Hingabe*) to the person of the lord and his gift of grace, in particular magical capabilities, prophecies or heroism, spiritual power and oratorical powers."[28] In Indonesia's folk religious traditions, this can be found in the exclusive relationship between *guru* (literally, "teacher," symbolically "father") and *murid* (literally, "disciple," symbolically "son" or "daughter") in which "true [mystical] knowledge" resides and hence serves as "the structural bone" of every folk tradition.[29] The same understanding has also been projected in the Javanese folk conception of political authority, which is predicated on the personal and closed relationship between the king and their people, "modelled after the care and love of family ties," and referred to as the "family principle."[30] In fact, the phrases "pure" and "consistent" implementation of the 1945 Constitution refer to the effort of translating the Javanese folk conception of political authority.[31]

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[25] Megawati, "Prolog [Prologue]" in Iwan Siswo, ed, *Panca Azimat Revolusi: Tulisan, Risalah, Pembelaan dan Pidato, Sukarno 1926-1966 [The Five Amulets for the Revolution: Writings, Manuscripts, Rationalisation and Speeches, Sukarno, 1926-1966]* (Jakarta: Kepustakaan Populer Gramedia, 2014) xii at xiv.

[26] P E De Josselin Jong, "A Study of Javanese History as a Reaction to Foreign Cultures" (1997) 153:1 Bijdragen tot de Taal-, Land- en Volkenkunde 112–129 at 116. (He quotes a noted French historian of Indonesia: "In Indonesia—as elsewhere, no doubt—westernisation of the vocabulary is a mirage, by which the historian should not allow himself to be deceived.").

[27] The significance of charismatic leadership in Indonesian religious and constitutional ideologies can arguably be traced back to the Southeast Asian Buddhist perspective on governance. The moral philosophy within Cambodian Buddhist tradition exemplifies this notion, emphasising the essential role of a virtuous ruler (*cakkavattin*) due to human beings' inherent inability to restrain their desires. It is implied in this ideology that the moral integrity of rulers directly influences the well-being of their populace, agricultural output, and the overall balance of natural elements and seasons. See Anne Ruth Hansen, *How to Behave: Buddhism and Modernity in Colonial Cambodia, 1860-1930* (Honolulu, Hawai'i: University of Hawai'i Press, 2007) at 21.

[28] Max Weber, "The Three Pure Types of Legitimate Rule" in Sam Whimster, ed, *The Essential Weber: A Reader* (London and New York: Routledge, 2004) 133 at 138–139.

[29] See Geertz, *supra* note 12 at 328–333; Abdellah Hammoudi, *Master and Disciple: The Cultural Foundations of Moroccan Authoritarianism* (Chicago and London: The University of Chicago Press, 1997). The idea of *guru* is central for the Pancasilaist ideology. See also Sukarno, "Menjadi Guru di Masa Kebangunan [Becoming Guru in the Time of Awakening]" in *Dibawah Bendera Revolusi [Under the Flag of Revolution]* (Jakarta: Di Bawah Bendera Revolusi, 1959) 611.

[30] Soemarsaid, *supra* note 24 at 14.

[31] David Reeve, *Golkar of Indonesia: An Alternative to the Party System* (Singapore: Oxford University Press, 1985) at 282.

This suggests the family principle as "the inspiring principle" of the 1945 Constitution. As General A.H. Nasution put it, the family principle embodies the ideas of a characteristically Indonesian democracy that promotes national unity which is:

> In essence, one harmony, as meant by the family principle, . . . Inspired by zeal for the family principle which arises from the characteristics and patterns of Indonesian society, . . . the *Pancasila* way of thinking holds to harmony and balance between the individual and the totality.[32]

Similarly, Soetardjo Kartohadikusumo who worked closely with Supomo throughout the writing of the 1945 Constitution was convinced, according to Reeve, that the family principle was "an expression of 'the soul of [Indonesian] nation,' 'indigenous democracy,' the God-given 'national personality,' and finally 'the principle of Indonesian political democracy, which is based on the belief in Almighty God in accordance with the [folk] Indonesian philosophy *Manunggaling Kawulo Gusti,* the union of man and God.'"[33]

Moreover, the idea of the closed and exclusive relationship between *guru* and *murid* hints at the immanentist conception of human governance. In Indonesia's folk religious traditions, the ideal of human governance must be based on *wahyu* or *teja* (charisma or "divine radiance"), and certain qualities of a *Bapak* (literally, "father"). The importance of *wahyu* was raised by Sukarno in his 1963 speech at the University of Indonesia.[34] Importantly, *wahyu* indicates the ability to function as "an intermediary between his [disciples] and the mysterious forces of spirits, ancestors, and 'God.'"[35] Furthermore, the legitimacy of power is conferred by *wahyu*. To maintain legitimacy, governance sanctioned by *wahyu* must validate itself through miracles, achievements, and the prosperity of followers or subjects, all attributed to divine grace. The validity of *wahyu* remains contingent upon its holder's ability to substantiate these claims. Failure to achieve success

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[32] *Ibid* at 310.
[33] *Ibid* at 311.
[34] Benedict R O'G Anderson, *Language and Power: Exploring Political Cultures in Indonesia* (Ithaca: Cornell University Press, 1990) at 31.
[35] Niels Mulder, *Mysticism and Everyday Life in Contemporary Java: Cultural Persistence and Change* (Singapore: Singapore University Press, 1978) at 27.

undermines the authority of the governing entity.[36] Therefore, "the movement of *wahyu* typically marked the fall of one dynasty and the transfer of the light source to another."[37]

Indonesia's *wahyu*-based governance fits squarely within the immanentist conception of a human governance model. Arguably, immanentism is humanity's oldest mode of religious expression. It existed long before religion was invented.[38] In the immanentist tradition, the ruler and by implication their government are "sacralised through divinisation; that is, they are treated as if they were a meta-person, that they are close to the ancestors, spirits, and gods, or descended from them, or share in their power or incarnate them at times."[39] This means the ruler becomes the focus of communal hopes for the coming of the rains, the banishment of disease, or simply the continuing order of the universe. Hence, his body becomes loosely linked to a general notion of nurturing, sharing, and justice; that is, morality. In Indonesia's folk political thought, as discussed above, the divinisation can be implied from acknowledging *wahyu* as the necessary condition for the legitimate exercise of power. In the case of Bali, for instance, this has been translated as "the king, the court around him, and around the court the country as a whole, [who] were supposed to make themselves into facsimiles of the order their imagery defined."[40]

By implication, the *wahyu*-based human governance points to the subtype within immanentism of the hero figures as central in constructing political order.[41] The importance of the hero figure is widely believed to be a critical factor in various anti-colonial socio-political movements that originated from the folk religious conviction that the mystical figure known as *Ratu Adil* or *Erucakra* (Righteous Prince) would provide deliverance from alien rule and lead Indonesia toward the golden age (*jaman emas*).[42] Hence, the Indonesian idea of national

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[36] Weber, *supra* note 28 at 141.
[37] Anderson, *supra* note 34 at 31.
[38] A Azfar Moin & Alan Strathern, "Sacred Kingship in World History: Between Immanence and Transcendence" in A Azfar Moin & Alan Strathern, eds, *Sacred Kingship in World History: Between Immanence and Transcendence* (New York: Columbia University Press, 2022) 1 at 14.
[39] *Ibid*.
[40] Clifford Geertz, *Negara: The Theatre State in Nineteenth-Century Bali* (Princeton: Princeton University Press, 1980) at 105.
[41] Justus M van der Kroef, "Javanese Messianic Expectations: Their Origin and Cultural Context" DOI.org (Crossref) (1959) 1:4 Comp Stud Soc'y & Hist 299–323 at 304–305. (noting that "In the developing court literature we note that the Javanese rulers are always context of the all-pervading supernatural forces.").
[42] See e.g., Harry J Benda, "Indonesian Islam under the Japanese Occupation, 1942-45" (1955) 28:4 Pacific Affairs 350–362 at 351; Peter Carey, "The Origins of the Java War (1825–30)" DOI.org (Crossref) (1976) 91:358 Eng Hist Rev 52–78 at 55–56.

independence itself is understood as "the fulfilment of the idea of *Ratu Adil* [Just King]."[43] It has also been argued that this millenarian hope which sustained the popularity of Sukarno as the "great syncretiser" of Indonesia is closely associated with the folk belief that he is the *Ratu Adil* who will lead the nation to the promised land.[44] In addition, *wahyu*-based human governance hints at creating or preserving *tata tentram* (peace and order in harmony), the primary goal of *hukum tata negara* or Indonesia's constitutional law (Chapter 9).[45] This contrasts with the transcendentalist Puritans' religious sensibility that tends to conceive the ideal ruler as "the rigid doctrinal king—hemmed in by scriptural truths . . . [to] eliminate the ruler's agency and charisma."[46]

Crucially, the importance of *wahyu* is related to the nature of folk religious traditions as monistic or "'cosmological,' in that supernature, nature, and society were all fused in a single cosmos."[47] In Ancient Greece, for instance, the dwellings of the gods were believed to be "on the most remote, elevated mountain in Greece. . . they may have been capable of flight, but they nevertheless inhabited the same ecosystem as we do."[48] Indonesia's folk notion of the "good life," as imparted by Javanese gurus and mystics to both royalty and commoners across generations, centers on removing obstacles that hinder the harmonious unity between humans and the cosmos.[49] One implication is that there can be no purely secular authorities.[50] Hence, one can interpret Sukarno's conception of God as "the all-powerful being who animated the world, the essence of all being and of every religion, and the 'great unity' and all that came from him as part of this great unity;"[51] and the very idea behind *Pancasila* is making it "a program rather than a philosophy, the program for a movement that had its first task to form an 'Indonesia' out of the archipelago."[52]

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[43] Bernhard Dahm, *Sukarno and the Struggle for Indonesian Independence*, translated by Mary F. Somers Heidhues (Ithaca: Cornell University Press, 1969) at 19, 122.
[44] *Ibid* at 167, 346.
[45] van der Kroef, "Javanese Messianic Expectations", *supra* note 41 at 300.
[46] Moin & Strathern, *supra* note 38 at 17.
[47] Robert N Bellah, *Religion in Human Evolution: From Paleolithic to the Axial Age* (Cambridge, Mass.: Harvard University Press, 2011) at 266. See also Charles Taylor, "What Was the Axial Revolution?" in Robert N Bellah & Hans Joas, eds, *The Axial Age and Its Consequences* (Cambridge, Mass.: The Belknap Press of Harvard University Press, 2012) 30 at 34.
[48] Alan Strathern, *Unearthly Powers: Religious and Political Change in World History* (Cambridge: Cambridge University Press, 2019) at 33.
[49] van der Kroef, "Javanese Messianic Expectations", *supra* note 41 at 303.
[50] David Graeber & Marshall Sahlins, *On Kings* (Chicago: Hau Books, 2017) at 59.
[51] Dahm, *supra* note 43 at 342.
[52] *Ibid* at 343.

This signifies that *Pancasila*'s symbolism of national unity is to be interpreted as more than just a tactic; it is a religious allegiance to the folk principle of order (*tata*) (see Chapter 7).[53]

Ultimately, Indonesia's *wahyu*-based governance points to religious syncretism as the immanentist approach to management of religious pluralism. In other words, it is the Pancasilaists' immanentist impulse that emphasises the ritual purity, not the doctrinal correctness which translates into the Indonesian conception of "religious or Godly constitutionalism," that informs the *Pancasila*-based or *Bhinneka Tunggal Ika* management of religious pluralism, to be discussed later in this Chapter. This is evident from the ideological stance of Pancasilaists, which is fundamentally rooted in Indonesia's folk religious traditions, where their unio mystica acts as an expression of immanentism (see Chapter 6). This is best exemplified by Sukarno's "Javanese religious feeling" which "was not tied to any dogma, although allowed him access to all cults, including Marxism, in accordance with ancient Javanese belief that 'all things are one.'"[54] Given that the phrase *Pancasila* appeared in *Sutasoma* and *Negara Kertagama*, Indic's two most important *kakawin* or verbal magic, it is plausible that Sukarno's *Pancasila* is an allusion to *Bhinneka Tunggal Ika*,[55] signifying the similarity and hence unity among all religions in Indonesia and "to see them, one should use [their] conscience (*rasa*)."[56]

II. Indonesia's Folk Constitutional Impulse

To explain how Indonesia's folk syncretic sensibility could act as the nation's constitutional impulse, its folk religious traditions as polytheistic, cosmotheistic, oral, natural, primary, practice-oriented (orthopraxy), pagan, or tribal religious tradition need to be recognised. They originate in an ancient tradition predating monotheistic, global, scriptural, Semitic, Abrahamic, faith-based (orthodox), revealed or scripture-based, or secondary religions such as Islam and Christianity. This classification highlights the unique nature of Indonesia's folk religions compared to Islam and other global religions, characterised by an all-encompassing belief system, prioritising practice and ritual over creed. Hence, the sole indicator of religiosity in Indonesia's folk religions is a

[53] *Ibid* at 347.
[54] *Ibid* at 177. Interestingly, Sukarno's understanding of Marxism resulted in "Marxism plus God." See Reeve, *supra* note 31 at 236–237.
[55] Al Makin, "Unearthing Nusantara's Concept of Religious Pluralism: Harmonisation and Syncretism in Hindu-Buddhist and Islamic Classical Text" (2016) 54:1 Al-Jami'ah 1–32 at 22.
[56] *Ibid* at 23.

modest, unpretentious, inconspicuous, and almost secretive ceremony known as the *slametan* (alternatively referred to as a *kendurén*).[57] Therefore folk religious traditions become "highly malleable" because they are more significant than a religion in the conventional sense.[58] They can easily "merge" with newer religious forms or expressions and have been subsumed under the category of Islam. Thus, folk religions set the terms of admission of newer beliefs because they are not merely a set of theological doctrines but also an all-encompassing way of life that aims to influence one's action or preference.[59] Importantly, this malleability has prompted widespread misperception of the decline of folk religious sensibility in the operation of the 1945 constitutional order.

But, what is meant by being "highly malleable"? To repeat, folk religions are Indonesia's powerful "psychologic,"[60] celebrated as Indonesia's indigenous take on psychology.[61] The conversion of Sunan Kali Jaga, regarded as Indonesia's most revered mythical figure who played a significant role in the Islamisation of the country, provides an illustrative example. This resulted not from studying the Qur'an or strictly performing Islamic rituals but from decades-long

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[57] Geertz, *supra* note 12 at 11. Beatty emphasises the importance of *slametan*: "[m]ost anthropologists of Java agree that the *slametan* lies at the heart of Javanese religion." See Beatty, *supra* note 12 at 27.

[58] The Indian Supreme Court acknowledges the expansive essence of Hinduism. It states: "When we think of the Hindu religion, we find it difficult, if not impossible, to define Hindu religion or even adequately describe it. Unlike other religion in the world, the Hindu religion does not claim any one God; it does not subscribe to any one dogma; it does not believe in one philosophical concept; it does not follow any one set of religious rites." The Court concludes: "[Hinduism] does not appear to satisfy the narrow traditional features of any religion or creed. It may be broadly described as a way of life and nothing." Quoted from Ronojoy Sen, "Reforming Religion: The Indian Constitution, the Courts and Hinduism" in Susanna Mancini, ed, *Constitutions and Religion* (Cheltenham, U.K.: Edward Elgar Publishing Ltd., 2020) 222 at 232.

[59] This is connected to the emphasis of folk religious traditions on the practice or ritual aspect of faith (orthopraxy). In contrast, global religion places greater importance on theology or creed (orthodoxy). Consistent with this reasoning, Butinda et al. provide empirical evidence supporting the idea that folk religious traditions play a significant role in shaping the preferences of their followers. See *On the Importance of African Traditional Religion for Economic Behavior*, Working Paper, by Butinda et al, Working Paper 31430 (Cambridge, Mass.: Harvard University, July 2023) online: <https://scholar.harvard.edu/nunn/publications/importance-african-traditional-religion-economic-behavior>.

[60] Geertz's conceptualisation of religion as the interplay between world view and ethos aligns with my argument that it can function as a catalyst for behavioral motivation on a psychological level. See Clifford Geertz, "Religion as a Cultural System" in *The Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1973) 87; Clifford Geertz, "Ethos, World-View and the Analysis of Sacred Symbols" (1957) 17:4 Antioch Rev 421–437.

[61] UGM, Indonesia's most esteemed university, established a postgraduate program solely dedicated to psychology, in recognition of Suryomentaram's psychological theory. This aligns with the university's nationalist aspirations. See "UGM Kembangkan Teori Psikologi Ki Ageng Suryomentaram [UGM Develops Ki Ageng Suryomentaram's Theory of Psychology]" (14 November 2014), online (University): *Universitas Gadjah Mada* <https://www.ugm.ac.id/id/berita/9470-ugm-kembangkan-teori-psikologi-ki-ageng-suryomentaram>. The selection of the name Universitas Gadjah Mada ("UGM") was influenced by the popular belief that Gadjah Mada possesses mystical properties. Furthermore, UGM holds significant value in the resurgence of Indonesian ideology. See Marcel Bonneff, "Gama: Portrait d'une Université" (1971) 1:2 Archipel 29–53 at 33.

meditation known as "tapa."[62] By indicating *tapa* as the key to being a Muslim, the mythology surrounding the inception of Indonesian Islam highlights the significance of cultivating *rasa*. Thus, its significance suggests that the implicit and symbolic interpretation of religious phenomena holds greater importance than their textual meaning and implies that Indonesia's folk religious traditions are the nation's means of social disciplining. Hence, the nation's folk religious sensibility defines the process of creating meaning within the 1945 constitutional order. Undoubtedly, this further fuels the Islamists' unflagging push for a constitutional overhaul.

The potent psychological nature of *rasa* as a folk religious sensibility has enabled it to operate as Indonesia's overarching principle that dictates the vernacularisation of various foreign religious concepts and determines how they can be assimilated. The Javanese reception of Catholicism, primarily driven by pragmatism, is a case in point. The fact that most of Catholic clergy are Javanese, demonstrates a remarkable willingness to adapt to traditional Javanese beliefs. Thus, the validity of Christianity is contingent upon its alignment with Javanese religion. Important to note, the similar statement applies in the context of China where "Christianity . . . was combined with folk religion, and even became a part of it."[63] This phenomenon is similarly evident in South Korean Protestantism, which has become intertwined with the myth of *Tan'gun*, the progenitor of the Korean nation, serving as "the raw material for the construction of an indigenous Korean theology."[64] This signifies the hallmark of folk religion that "comes from the life of masses, and the scientific study of religion often fails to grasp the life of experience of folk religion."[65]

Similarly, for Islam, "a typical Javanese formulation might be: 'Of course, I am a Moslem, but not a fanatical Moslem like the Atjehnese[, popularly portrayed as Indonesia's most "Islamised" ethnic group]. We Javanese can get along with Christians and Buddhists. We see truth in all religions and are not exclusive in our beliefs.'"[66] As I have repeatedly explained, this self-portrayal of the Javanese concept of religious pluralism reflects the popular understanding of religious tolerance that stems from the principles of syncretism, which highlights the relativistic nature of all religious orthodoxies. It is crucial to recognise that the difference between the folk

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[62] Geertz, *supra* note 21 at 25–29.
[63] See Shuai Chi & Chao Liu, "Folk Religion as the "Life-World": Revival of Folk Beliefs and Renewal of Religious Categorisation in Contemporary China" (2024) 11:470 Hum & Soc Sci Comm 1–12 at 5.
[64] Brian Stanley, *Christianity in the Twentieth Century* (Princeton and Oxford: Princeton University Press, 2019) at 46.
[65] Chi & Liu, *supra* note 63 at 5.
[66] Benedict R O'G Anderson, *Mythology and the Tolerance of the Javanese* (Ithaca: Cornell Modern Indonesia Project, 1996) at 14–15.

conception of religious tolerance and its liberal counterpart is that the former necessitates individuals to stay within the boundaries of religion.[67] This is evident in a ruling issued by a District Court concerning a state official who publicly declares his adherence to atheism, suggesting that atheism is fundamentally at odds with the Indonesian framework of religious tolerance, which is predicated on folk sensitivities.[68] In this vein, Indonesia's folk religious traditions can create a kind of religious equilibrium in which no religious tradition can predominate; rather, they act as the ultimate arbitrator of how religious pluralism should be understood. Consequently, there should be no difficulty for the Indonesian or Pancasila religious mind to conclude that "the essence of the Buddha and the reality of Shiva are identical, diverse, yet identical, as there are no two Truths."[69] The domain of the divine and matters about religion are situated within the realm of the refined "alus" which remains inaccessible to humans who are bound in the "kasar" ("coarse" or "raw") realm.[70]

Within Indonesia's folk religious traditions, intercultural translatability gives religion the same function as commerce as the leading promoter of cross-cultural communication and translation. The Mosaic distinction in Islamist thinking is best articulated by Muhammad ibn Abd al-Wahhab, the founder of Wahhabism,[71] the precursor of Islamic modernism in general and Islamic puritanism in particular.[72] His writings focus on the fundamental belief in the existence of

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[67] On liberal conception of religious toleration, see Rex Ahdar & Ian Leigh, *Religious Freedom in the Liberal State*, 2nd ed (Oxford: Oxford University Press, 2013) at 51–84.

[68] See *Case No 45/PIDB/2012/PNMR*, 2012 Pengadilan Negeri Muaro [The Muaro District Court, West Sumatra]] at 45. See also Joe Cochrane, "Embrace of Atheism Put an Indonesian in Prison", Jakarta *New York Times* (3 March 2014), online: <https://www.nytimes.com/2014/05/04/world/asia/indonesian-who-embraced-atheism-landed-in-prison.html>.

[69] Kakawin Sutasoma, Canto CXXXIX, 5, cited in Ramstedt, *supra* note 10 at 1.

[70] Geertz observed that the religious complex is primarily constructed around the concepts of *kasar—alus* or refined versus coarse and *lair—batin* or inner versus outer. See Geertz, *supra* note 12 at 272. This distinction has been described as relevant at the national level. See Peter Just, "Going Through the Emotions: Passion, Violence, and "Other-Control" among the Dou Donggo" (1991) 19:3 Ethos 288–312 at 295.

[71] See e.g., Fazlur Rahman, "The Impact of Modernity of Islam" (1966) 5:2 Islamic Stud 113–128 at 114. Dallal warned that Wahhabism was not the typical representation of Islamic thought in the 18th century, both in its social and intellectual aspects. But he acknowledged Wahhab as a prominent figure among puritan Islamic thinkers of that era. See Ahmad S Dallal, "The Origins and Early Development of Islamic Reform" in Robert W Hefner, ed, *The New Cambridge History of Islam*, 1st ed (Cambridge: Cambridge University Press, 2010) 107 at 111.

[72] As an Indonesian iteration of Wahhabism, the Padri movement "became the inspiration for a dynamic force, impatient in transforming what it considered a *djahiliah*—syncretic and unenlightened—society and at the creation of an Islamic one, by coercive measures if necessary." See Taufik Abdullah, "Adat and Islam: An Examination of Conflict in Minangkabau" (1966) 2 Indon 1–24 at 13–14; Azyumardi Azra, "Contemporary Islamic Militant Movements: Challenges to Democracy in Indonesia" (2005) 2:2 ICIP Journal 1–13.

one God, known as "tawhid" in Islamic teachings;[73] humanity can only be categorised into two distinct groups—those who have faith and those who do not. This concept parallels the Mosaic distinction. The impact of Wahhabism on Indonesia was demonstrated through the almost 40-year-long Padri War (1821–37), which has had a long-lasting effect on the nation's polarisation.[74] It was prompted by the impulse of three "hajis," people who had completed the religious pilgrimage and returned from Mecca to purify the cultural-religious practices ("adat") of Minangkabau, Central Sumatra, from its pre- and hence un-Islamic elements in which *semangat* serves as its "theological" linchpin.[75]

Unlike monotheistic world religions that necessitate one absolute truth to ground moral universalism and hence "defy translatability," Indonesia's folk religions are predicated on intercultural translatability and the assumption that religious truth is translatable and hence can be found in virtually every other religion.[76] This can be inferred from their practice of establishing or designating the sacred center ("axis mundi"), represented by the mountain and believed to be *Parahyangan* ("the abode of the Gods ('hyangs')," the deified ancestors.[77] Considering that volcanoes bring human flourishing to Java and Bali, their centrality in Javanese and Balinese life is hardly surprising. An example of intercultural translatability is their ability to assign their respective regional mountains with a cosmological significance equivalent to Mount Meru in India,[78] which affirms a continuity between the older religious belief system, ancestor worship, and the imported Hindu god Siva. In Bali, Gunung Agung ("the Great Mountain"), believed as a manifestation of the Mount Meru, is considered to be "the Navel of the World."[79] For the Balinese,

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[73] See Dallal, *supra* note 71 at 112. *Cf.,* Michael Laffan, "The Tangled Roots of Islamist Activism in Southeast Asia" (2010) 16:3 Camb Rev of Int'l Aff 397–414 at 399–400. (Laffan argues that "the Dutch assumption that the Padris were doctrinally the local manifestation of the Wahhabiyya was an overstatement, for they did not necessarily share the same distaste for the mystical cults of saints").

[74] See e.g., Jeffrey Hadler, "A Historiography of Violence and the Secular State in Indonesia: Tuanku Imam Bondjol and the Uses of History" (2008) 67:3 J Asian Stud 971–1010 at 972–973.

[75] Christine Dobbin, *Islamic Revivalism in a Changing Peasant Economy: Central Sumatra, 1784-1847* (London and Malmö: Curzon Press, 1983) at 117.

[76] Jan Assmann, "Translating Gods: Religion as a Factor of Cultural (Un)Translatability" in Sanford Budick & Wolfgang Iser, eds, *Translatability of Cultures: Figurations of the Space Between* (Palo Alto, CA: Stanford University Press, 1996) 25 at 29.

[77] It is no surprise that the commentators of *Carita Parahyangan*, the poem of the religion of Sunda, suggest that mountains are the place where religious training and instruction are delivered. See J Noorduyn & A Teeuw, eds, *Three Old Sundanese Poems*, translated by J. Noorduyn & A. Teeuw (Leiden: KITLV Press, 2006) at 321.

[78] Ni Komang Erviani, ""They Should Be Kept Sacred," Bali to Limit Tourists' Access to the Mountains", Jakarta *The Jakarta Post* (6 February 2023), online: <https://www.thejakartapost.com/indonesia/2023/02/05/they-should-be-kept-sacred-bali-to-limit-tourists-access-to-the-mountains.html>.

[79] Edwin Bernbaum, *Sacred Mountains of the World*, 2nd ed (Cambridge: Cambridge University Press, 2022) at 114.

Gunung Agung serves as a principal focal point that significantly influences their daily lives. The absence of a connection to the mountain can lead to psychological distress, manifesting as "feelings of dizziness and nausea."[80] The widespread acceptance of Islam does not stop people from making the mountain an important ongoing focus in Indonesia's folk religiosity.[81] Thus adapting to new conditions without losing one's identity is the core idea behind the Pancasilaists' notoriously vague constitutional phraseology: "Indonesia is neither an Islamic state nor a secular state."[82] Also known as the "neither this nor that" approach, *Pancasila* and by extension the 1945 Constitutional model are Indonesia's answer to religious pluralism, by negating the idea that there can only be one absolute and religious truth.[83]

It is therefore pertinent to construct a conceptual connection between the nationalists' religious relativism and *Bhinneka Tunggal Ika*, Indonesia's constitutional motto that encapsulates the aspiration of coexisting peacefully as a diverse religious community.[84] The term originates from an Old Javanese Poem ("Kakawin") known as "Sutasoma," a magico-religious literature or "verbal magic"[85] that aims to evoke "rasa"[86] or "lango," also known as the god of beauty or the nameless god of gods ("hyang ning hyang").[87] This should not be surprising, given that *rasa* or *semangat* is the shared essence of Indonesia's folk religious traditions.[88] In present-day Indonesia, it is commonly expressed as "berbeda-beda tetapi tetap satu jua."[89] In a nutshell, this phrase conveys that, despite differences, there is still a fundamental unity. Law No. 24 of 2009 affirms that the constitutional expression *Bhinneka Ika Tunggal* is the same as that articulated by Mpu

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[80] *Ibid*.
[81] Zamira Loebis, "For the Love of God", *TIME* (2000), online: <http://edition.cnn.com/ASIANOW/time/features/ontheroad/indonesia.orgy.html>; Aubrey Belford, "The Swingers' Guide To Islam", Sydney *The Global Mail* (11 October 2012), online: <https://web.archive.org/web/20140416000001/http://www.theglobalmail.org/feature/the-swingers-guide-to-islam/419/>.
[82] Team Viva, *supra* note 1.
[83] Eka Darmaputera, *Pancasila: Identitas dan Modernitas [Pancasila: Identity and Modernity]*, revised ed (Jakarta: BPK Gunung Mulia, 2017) at 153–157.
[84] *The 1945 Constitution*, *supra* note 23 art 36A.
[85] See Cornelis C Berg, "The Javanese Picture of the Past" in Soedjatmoko et al, eds, *An Introduction to Indonesian Historiography* (Ithaca: Cornell University Press, 1965) 87 at 90.
[86] Jacob Ensink, *On the Old-Javanese Cantakaparwa and Its Tale of Sutasoma* (The Hague: Martinus Nijhoff, 1967) at 2. See also Chapter 2 above.
[87] Supomo Suryohudoyo, "The Sovereignty of Beauty: Classical Javanese Writing" in Ann Kumar & John H McGlynn, eds, *Illuminations: The Writing Traditions of Indonesia* (New York and Tokyo: Weatherhill, Inc., 1996) 13 at 24.
[88] Geertz, *supra* note 12 at 238; Dobbin, *supra* note 75 at 117; Shelly Errington, "Embodied *Sumange'* in Luwu" DOI.org (Crossref) (1983) 42:3 J of Asian Stud 545–570.
[89] Ramstedt, *supra* note 10 at 1.

Tantular, the author of *Sutasoma*,[90] one of the most beloved classical poems of the Balinese[91] and its foremost scriptural or sacred text.[92] Essentially, *Sutasoma* is a textual vernacularisation of *Jataka*, a journey of the Buddha-to-be toward Buddhahood. The term *Suta* in Sanskrit denotes "child," and *Soma* pertains to the Vedic herb that can yield a potent juice.[93] Undoubtedly, Law No. 24 of 2009's clear allusion to *Sutasoma* as the intellectual source of *Bhinneka Tunggal Ika* serves as an opaque declaration of the constitutional supremacy of Indonesia's folk religious traditions and symbolises their acceptance of religious relativism as the country's distinct view of the status of religion in its public sphere.

III. *Bhinneka Tunggal Ika:* Indonesia's Syncretic Approach to Religious Pluralism

Indonesia's official approach to religious diversity, encapsulated in the Sanskrit phrase "Bhinneka Tunggal Ika"—commonly understood as the Indonesian equivalent of the United States' *E Pluribus Unum*—is deeply rooted in its syncretic folk religious traditions.[94] Its essence lies in accepting religious relativism which forms the core of its unique identity and is influenced by an interpretation that Indonesian folk religious traditions encompass a rich tapestry of ancient belief systems, including influences from Babylonian civilisation.[95] This diverges from the customary

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[90] *Undang-Undang Nomor 24 Tahun 2009 tentang Bendera, Bahasa, dan Lambang Negara serta Lagu Kebangsaan [Law no 24 of 2009 on Flag, Language, and State Symbols with National Anthem]*, 24 app Explanatory Note on Article 46.

[91] Hobart notes that "[*Sutasoma*] still enjoys considerable popularity in Bali, as both the nobility and the peasants find the prince [Sutasoma] a positive symbol who represents enlightened knowledge, benevolence, justice, and sweetness." See Angela Hobart, "The Enlightened Prince Sutasoma: Transformations of a Buddhist Story" (1990) 49 Indon 75–102 at 75.

[92] S O Robson, "The Kawi Classics in Bali" (1972) 128 Bijdragen tot de taal-, land- en volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia 308–329 at 316.

[93] Hobart, *supra* note 91 at 76.

[94] *Bhinneka Tunggal Ika* is not exclusive to Indonesia. Mulder subtly suggested that the amalgamation of religious beliefs could potentially form a religion of Southeast Asia. See Niels Mulder, *Inside Southeast Asia: Religion, Everyday Life, Cultural Change* (Amsterdam and Kuala Lumpur: The Pepin Press, 1996) at 17–25.

[95] On the influence of the Babylonian religious worldview, see *Conceptions of State and Kingship in Southeast Asia*, Data Paper, by Robert Heine-Geldern, in *Southeast Asia Program Publications*, Data Paper 18 (Ithaca: Cornell University, April 1956) at 1. Based on the argument of a renowned Egyptologist, it can be confidently stated that the religious relativism observed in Indonesia's folk religious traditions is very likely linked to an ancient phenomenon of each religious belief being interpreted and understood within the context of another religious belief. In a word, the ancient model of religious belief systems did not function as "the most forceful promoter and expression of cultural identity, unity, and specificity." See Assmann, *supra* note 76 at 28.

understanding of religious tolerance in the "modern" or Western sense, typically associated with either the liberal or communitarian schools of political thinking. Indonesia's distinctive approach to managing religious pluralism diverges from the Western concept due to its unique interpretation of "religion" as its foundation. In the realm of *Bhinneka Tunggal Ika*, religion is understood as a "tradition," signifying an uninterrupted continuum of religious beliefs that resists any endeavor to conceptualise or essentialise it.[96]

By contrast, in Western understanding of religion is characterised as a definable belief system.[97] *Bhinneka Tunggal Ika* sees religion as a lived experience and, conceptually speaking, a porous entity. For instance, the notion of Javanese or more recently "Indonesian" or "Nusantara" Islam cannot be simply categorised as "Islam-proper." Geertz's detailed description is instructive:

> The gentry, deprived of Indic ritualism but not of Indic pantheism, became increasingly subjectivist, cultivating an essentially illuminationist approach to the divine, a kind of Far Eastern gnosticism, complete with cabalistic speculations and metapsychic exercises. The peasantry absorbed Islamic concepts and practices, so far as it understood them, into the same general Southeast Asian folk religion into which it had previously absorbed Indian ones, locking ghosts, gods, jinns, and prophets together into a strikingly contemplative, even philosophical, animism. And the trading classes, relying more and more heavily upon the Meccan pilgrimage as their lifeline to the wider Islamic world, developed a compromise between what flowed into them along this line (and from their plainer colleagues in the Outer Islands) and what they confronted in Java to produce a religious system not quite doctrinal enough to be Middle Eastern and not quite ethereal enough to be South Asian.

Rather than being a "pure" or "literal" translation of Islam, Javanese Islam embodies a syncretic form of religious practice that incorporates Islam and retains various belief systems which predate the arrival of Islam in Indonesia. *Bhinneka Tunggal Ika*, by foregrounding the concept of religion as a continuum of belief rather than a defined belief system, espouses a

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[96] In that sense, Shils elaborates tradition as "beliefs with a particular social structure; they are a consensus through time. In their content they might well be atemporal (that is, they might make no reference to past or future) and they might not even have a temporal (traditional) legitimation. But nevertheless, they have a sequential social structure. They are beliefs which are believed by a succession of persons who might have been in interaction with each other in succession or at least in a unilateral (even if not intergenerationally continuous) chain of communication. This structural property of traditional belief is distinct from the substantive properties of the belief, and from the "mode of acceptance." See Edward Shils, "Tradition" (1971) 13:2 Comp Stud Soc & Hist 122–159 at 126.

[97] This is described as "the confessional approach to understanding religious life and have thus looked at religion . . . as if they are equivalent of Christianity and Islam . . . [and hence] this is a well-known Protestant triumphalism prejudice." See Adam Yuet Chau, *Religion in China: Ties that Bind* (Cambridge: Polity Press, 2019) at 3, 5.

relativistic perspective that suggests the fundamental similarity of all religions in seeking redemption ("agama ageming aji"). Therefore, the foundation of Indonesia's 1945 constitutional order was based on religious pluralism reflected in the syncretism of its folk religious traditions.

Bhinneka Tunggal Ika's relativism is an anathema to the Puritans as Indonesia's foremost force toward rationalisation or modernity.[98] To understand why it has led to Puritans continually fighting to abolish the 1945 constitutional order, it is crucial to understand their conception of Islam as a "rational religion that could form the basis of a leading state in the modern world."[99] Consequently, they embrace "[a] totalising 'legal-supremacist' conceptualisation of Islam as *law*, whereby the 'essence' of Islam is a phenomenon of prescription and proscription, induces, indeed *constrains* us to think of Muslims as subjects who are defined and constituted by and in a cult of regulation, restriction, and control."[100] Thus, the Puritans cannot accept the syncretic or "polluted" understanding of Islam. Instead, they advocate for their constitutional order, the "Islamic state," which is rooted in the fundamentalist or Puritan understanding of Islamic monotheism as a counterforce to the prevalent syncretic Islam. Hence, the Puritans' understanding of Islam is irreconcilable with the *Bhinneka Tunggal Ika*'s model projected by *Pancasila* and, by extension, the 1945 Constitution.

To further identify the religious rivalry underpinning Indonesia's continued attachment to the 1945 Constitution, one must match an understanding of "religion" with the Indonesian modality of doing religion.[101] Indeed, the awareness of religion as a parochial category is not new. Clifford Geertz's seminal book discusses Java's bewildering array of living folk religious traditions and he uses the compound word *The Religion of Java* as its title. He brought these traditions together because of their semblance on a cultural level; that is, in etiquette, art, and mystical practices, and because of their shared commitment to *rasa*.

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[98] The proposition that the Islamists are Indonesia's foremost force toward rationalisation or modernity is taken from James L Peacock, *Purifying the Faith: The Muhammadijah Movement in Indonesian Islam* (Durham, NC: The University of North Carolina Press, 2017); James L Peacock, *Muslim Puritans: Reformist Psychology in Southeast Asian Islam* (Berkeley: University of California Press, 1978).

[99] Kevin W Fogg, *Indonesia's Islamic Revolution* (Cambridge: Cambridge University Press, 2019) at 6.

[100] Shahab Ahmed, *What Is Islam? The Importance of Being Islamic* (Princeton, New Jersey: Princeton University Press, 2015) at 120.

[101] This dissonance between the Western-derived conventional understanding of religion and non-Western modalities of doing religion is well-documented. In China, for instance, it has resulted in difficulty in generating reliable survey data on religion which has been a major stumbling block in advancing the sociology of religion in China. See Chau, *supra* note 97 at 17. See also Chi & Liu, *supra* note 63 at 5–7. (Chi and Liu points out that "folk religion covers potentially significant variation beyond 'typical,' 'standard,' or 'traditional' types of common religions as supposed by Western scholars.")

The religious teachings of these traditions largely vary, except when it comes to *rasa* which is the exception to the rule.[102] However, many leading Indonesian commentators expressed their reservations about Geertz's book which describes the different worldview and ethos (self-discipline) of Java's three social estates (*abangan* or peasant, *santri* or Islamists, and *priyayi* or gentry).[103] They argued that there is no such thing as the "religion of Java" and that Geertz treated cultural practices as theological ones, as its title might suggest.[104] At its core, Geertz's reference pertains to religion's practical and applied aspects, as opposed to its theological and doctrinal underpinnings. At a deeper level, the Javanese religions are another name for various folk religious traditions, characterised by orthopraxy which emphasises the correctness of ritual practice. This contrasts to the Puritan interpretation of Islam, considered a scriptural religion characterised by orthodoxy and emphasising the consistency of doctrine.

Historical records as far back as the 1800s substantiate that the Javanese were cognisant of the religious schism between folk religious traditions and the austere interpretation of Islam.[105] They recognised the rise of puritanical Islam as a unique set of beliefs and labeled it with the Sanskrit word "agama," signifying "text,"[106] and in response, maintained the term "ngelmu" to describe the customary or cultural aspects of religion,[107] which is comparable to "mysticism," "gnosis," or "esotericism."[108] The fundamental objective of these religious traditions is to attain knowledge of the ultimate *rasa*.[109] The term "agama" has evolved to exclusively denote the Puritan interpretation of Islam which embodies a set of universalisable propositional truths,[110] and

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[102] Strange, a devotee of one of Javanese folk religious currents, suggests that "within the terms of *Kejawén*, of traditional Javanist culture, the logic which underpins ideas of power is that of *rasa*." See Paul Stange, "The Logic of Rasa in Java" (1984) 38 Indon 113–134 at 115.
[103] See Mohamad Abdun Nasir, "Revisiting the Javanese Muslim Slametan: Islam, Local Tradition, Honor and Symbolic Communication" (2019) 57:2 Al-Jami'ah 329–358 at 355.
[104] It is crucial to highlight that the Pancasilaists argued that *Pancasila* and Islam are not in a state of rivalry; the former represents a cultural expression, whereas the latter embodies a religious belief. See Ward, *supra* note 22 at 30–31. Intriguingly, a similar assertion can be made in Japanese constitutional discourse about the categorization of Shintoism as either a cultural or religious expression. See Helen Hardacre, "Religion and the Japanese Constitution" in Aslı Ü Bâli & Hanna Lerner, eds, *Constitution Writing, Religion and Democracy* (Cambridge: Cambridge University Press, 2017) 49 at 50–51.
[105] M C Ricklefs, "The Birth of the Abangan" (2006) 162:1 Bijdragen tot de taal-, land- en volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia 35–55 at 43–44.
[106] See John R Bowen, *Religions in Practice: An Approach to the Anthropology of Religion*, 5th ed (Boston, MA: Prentice-Hall, 2011) at 41.
[107] Ricklefs, *supra* note 105 at 43–44.
[108] Stange, *supra* note 102 at 114.
[109] Geertz, *supra* note 12 at 317.
[110] For example, the Balinese have been compelled to redefine their identity as Hindus, which differs from both the conversion of adherents of a local religion to a global religion (such as Islam or Christianity) and the reform that

emphasises the significance of the text as its defining characteristic. Prioritising text enables agama to maintain its doctrinal consistency.

Moreover, the focus on textual interpretation offers a unique strategy for managing pluralism by distinguishing between authentic and false religious beliefs, commonly called the "Mosaic distinction."[111] This approach represents a significant departure from *ngelmu* or Indonesia's traditional folk religions which are based on relativism.[112] Termed as "universal tolerance," this notion operates on the belief that every individual shares a common emotional foundation. Geertz's informant provided a noteworthy insight:

> He (a high prijaji not a sect member) said that every nationality has its own feeling (*rasa*). There is, therefore, Javanese feeling. The trouble with Nadhlatul Ulama, for instance, he said, is that since it does not want to translate the Arab-Islam feeling into Javanese feeling it doesn't mean anything to the Javanese. He said all these feelings have the same end-point, the same meaning, and that if one is a really great man, like Jesus or Muhammad or someone, he can rise above them, but most of us have to follow our own feeling and realise that others have to follow theirs. He said in conclusion that all this (that he had been telling me about a special kind of "Javanese science") would be hard for me to understand because it was Javanese feeling, but that the feeling of all people is the same underneath. All come from a sperm; all given birth to by their mothers; taken care of by their parents; live through sorrow and happiness; and in the end die. So they are all the same. Only their surface feelings are different.[113]

It is thus evident that *agama* and *ngelmu* are two distinct and rival methods for managing religious pluralism. While Indonesia's current official recognition of religion is said to be based on the Mosaic distinction, it does not necessarily imply that folk religions have lost their influence in Indonesian public life.[114] On the contrary, it is an invitation to reconceive religion as Indonesia's

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nominal followers of a proselytizing religion (such as Javanese abangan) had to undertake to align their religious practices with a more orthodox interpretation of their belief system. See Michel Picard, "From Agama Hindu Bali to Agama Hindu and Back: Toward a Relocalisation of the Balinese Religion?" in Michel Picard & Rémy Madinier, eds, *The Politics of Religion in Indonesia: Syncretism, Orthodoxy, and Religious Contention in Java and Bali* (London and New York: Routledge, 2011) 117.

[111] See Jan Assmann, "The Mosaic Distinction: Israel, Egypt, and the Invention of Paganism" (1986) 56 Representations 48–67.

[112] Geertz, *supra* note 12 at 336–338.

[113] See *Ibid*.

[114] The constitutional marginalisation of folk religious beliefs is a widely accepted proposition in the English language scholarly discourse on Indonesia's constitutionalism. Consequently, these beliefs are viewed as unimportant in the practical realm of constitutional politics. See e.g., Victor I W Nalle, "The Politics of Intolerant

powerful "psychologic," not simply as a set of doctrinal or theological statements.[115] By recognising the role of religion as "a frame of mind" that exerts behavioral orientation,[116] one can contend that it is influential in facilitating "the disciplinary revolution," exemplified by the European nation-building process.[117] Folk religious sensibility plays a crucial role in assigning significance to *Pancasila* and subsequently to the 1945 Constitution and is the driving force in sustaining the fundamental principles of its framework.

Conclusion

To understand the importance of the "religious relativism" inherent in Indonesia's folk religious traditions within the context of Indonesian constitutionalism, it is essential to begin by elucidating the concept of the Indonesian model of constitutionalism, which dismisses both an Islam-centered and a secular state, or what can be termed a "neither-this-nor-that state."[118] As this Chapter has demonstrated, the ambiguity of the Indonesian model of constitutionalism is unmistakably a veiled reference to Indonesia's syncretic mode of religiosity. Indonesia does not adhere to any specific religious doctrine but instead follows *Pancasila* as its guiding principle which can be construed as an attempt to foster fairness or even-handedness amid a backdrop of religious pluralism.[119] In that light, the congruity between *Pancasila* and *slametan*, "a simple, formal, undramatic, almost furtive, little ritual," is instructive in understanding how Indonesia's ritual-based folk religious traditions can inform the 1945 constitutional identity.[120] It is arguable that *Pancasila* presents a

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Laws against Adherents of Indigenous Beliefs or Aliran Kepercayaan in Indonesia" (2021) 8 Asian J L & Soc'y 558–576; Simon Butt, "Constitutional Recognition of "Beliefs" in Indonesia" (2020) 35:3 J L & Rel 450–473.

[115] Max Weber contended that the Puritan's behavior and mindset cannot be fully explained by their economic and political interests. Rather, an analysis of their beliefs and the psychological benefits associated with their conduct was necessary to understand how work becomes meaningful. Unlike a follower of Freud, Weber did not refer to the unconscious. Instead, he focused on an ideal type of Puritanism, a highly representative figure. See Philip S Gorski, *The Disciplinary Revolution: Calvinism and the Rise of the State in Early Modern Europe* (Chicago: The University of Chicago Press, 2003) at 20.

[116] Stephen Kalberg, "Introduction to the Translation" in Stephen Kalberg, ed, *The Protestant Ethic and the Spirit of Capitalism with Other Writings on the Rise of the West*, 4th ed (New York: Oxford University Press, 2009) 3 at 37.

[117] Gorski, *supra* note 115 at 19, 20.

[118] Abdurrahman Wahid, the fourth president of Indonesia, is credited with coining this terminology. Its most comprehensive elucidation can be found in the op-ed written by his daughter. See Alissa Wahid, "Negara yang Bukan-bukan", Jakarta *Kompas* (22 December 2019), online: <https://www.kompas.id/baca/opini/2019/12/22/negara-yang-bukan-bukan>.

[119] See The Ministry of Religious Affairs in the Province of East Nusa Tenggara, *supra* note 2.

[120] Geertz, *supra* note 12 at 11.

constitutionalisation of Indonesia's folk response to dealing with religious diversity, which is different from both secularism and theocracy or state system. More specifically, the *Pancasila*-based model hinges on the principle of religious relativism or *Bhinneka Tunggal Ika*, emphasising that the "tutur" (which refers to both "scriptures" and "utterances") of the Buddhist and Siwaite priests are fundamentally indistinguishable.[121] Ultimately, this model also signifies the indispensable role of religion in public life and hence mandates the state to intervene in religious matters—mainly when such intervention promotes religious devotion.[122]

[121] See Hobart, *supra* note 91 at 86.
[122] See Ika, "Mahfud MD Tegaskan Indonesia Bukan Negara Agama [Mahfud MD [Former Chief of the Constitutional Court and the Commissioner of the Steering Committee of the Agency to Promote the Education of the Ideology of Pancasila] Confirms that Indonesia is Not a Religion-Based State]" (23 August 2018), online (University): *Universitas Gadjah Mada* <https://ugm.ac.id/id/berita/16888-mahfud-md-tegaskan-indonesia-bukan-negara-agama>.

CHAPTER 4

Inventing the "Only" Home for *Pancasila*

Introduction

In the eyes of the Pancasilaists during the Old Order (1945–66), Indonesia's constitutional framework before 1959, the year the 1945 Constitution was reinstated, has consistently failed to unite all political factions to formulate a "permanent" constitution and, more importantly, created socio-political disharmony. In response, Army General A.H. Nasution advised Sukarno to take the lead and return to the 1945 Constitution to break this constitutional deadlock.[1] The constitutional rationale was purportedly articulated by Djokosutono, the founding dean of the Faculty of Law at the University of Indonesia, and Supomo, a distinguished expert in Indonesian *adat* law.[2] Sukarno led the charge to "return to the 1945 Constitution" as a way "to restore national harmony."[3] (Earlier on, he had labeled the 1945 Constitution as a "*revolutie-grondwet*," "interim constitution," or "a hastily formed constitution," indicating a shift in perspective from being temporary to essential.[4]) By reinstating the 1945 Constitution, Sukarno concocted a fictional narrative that there had been a "meeting of the minds" between the Pancasilaists and the Puritans in 1945 in which they reached a unanimous consensus ("*mufakat*" or "*rukun*") to adopt the 1945 Constitution.[5] Through this

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[1] General Nasution was given the role of Minister of Defense, in addition to his position of Chief of Staff, as recognition for proposing the initiative. See Guy J Pauker, "Indonesia: The Year of Transition" (1967) 7:2 Asian Survey 138–150 at 138.

[2] David Bourchier, "Organicism in Indonesian Political Thought" in Leigh K Jenco, Murad Idris & Megan C Thomas, eds, *The Oxford Handbook of Comparative Political Theory* (Oxford: Oxford University Press, 2019) 598 at 615 note 7.

[3] Sukarno, "Res Publica! Once More Res Publica!" in Muhammad Yamin, ed, *Naskah Persiapan Undang-Undang 1945, memuat Segala Naskah Resmi Penggalang Undang-Undang '45 jang Berlaku Kembali dalam Negara Kesatuan Républik Indonésia [Travaux Préparatoires of the 1945 Constitution, including Every Official Material Supporting the Reintroduction of the 1945 Constitution]* (Jakarta (?): Jajasan Prapantja (?), 1960) 199 at 653.

[4] Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia [the Investigating Committee for Preparatory Work for Independence], *Lahirnya Undang-Undang Dasar 1945: Memuat Salinan Dokumen Otentik Badan Oentoek Menyelidiki Oesaha2 Persiapan Kemerdekaan [The Birth of the 1945 Constitution: With Copies of the Documents of the Investigating Committee for Preparatory Work for Independence]*, revised ed, A.B. Kusuma, ed (Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2009) at 479.

[5] Petra Stockmann, *Indonesian Reformasi as Reflected in Law* (Münster: LIT Verlag Münster, 2004) at 29. (noting the fact that "the document is such a short and imprecise one is not only owed to its 'express nature', but also due to rather unbridgeable discrepancies in opinion on the nature of the state held by the members of the Basic Law drafting committees [BPUPKI].").

narrative, he emphasised the significance of the soul or spirit that is ingrained within the 1945 Constitution, rather than solely focusing on its *lahir* ("manifest") form, meaning that it was poorly designed or written. Furthermore, he argued that its true essence was in its ability to embody the nation's character.[6] Most importantly, Sukarno's agenda to "return to the 1945 Constitution" as a symbolic act was the turning point in the effort to make it the only constitution that entrenches the "true" and "correct" version of *Pancasila*. In a word, Sukarno's narrative was instrumental in founding the 1945 constitutional order and infusing it with profound symbolic meaning, thus providing its lasting legitimacy.

In this Chapter, I argue that Sukarno's initiative was critical in unveiling the pragmatism behind the persistence of the 1945 constitutional order. For a start, the above account indicates that 1959, not 1945 as the year when the constitution was written, was Indonesia's single constitutional point of origin—or "founding moment." Thus, one must focus on the return to the 1945 Constitution in 1959 as a reflective site through which the Pancasilaists defined Indonesian constitutional identity;[7] Sukarno's fictional narrative served as the continuing cornerstone for the sacredness of the 1945 Constitution. In addition, the symbolic quality of the 1945 Constitution in representing *rukun*, Indonesia's folk religious ideal, implies that it is a folk religious traditions-based constitutional order. Therefore, this Chapter argues that the 1945 Constitution is a symbol of the harmonious relationship among Indonesians and is a veiled attempt by the Pancasilaists to make *rukun* the fundamental principle in the 1945 constitutional order.[8] This claim aligns with the broader argument of this study, that the 1945 Constitution is an attempt to reinstate folk religious ideals.

To structure the discussion, this Chapter is divided into three Sections. Section 1 elaborates what I mean by Indonesia's singular constitutional point of origin signifying the constitutional supremacy of folk religious traditions. Section 2 explains how Sukarno's Old Order (1959–66) was pivotal in creating harmony as the symbolic representation of the 1945 Constitution. It also emphasises the crucial contribution of Sukarno's Old Order in fostering the notion that *Pancasila*

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[6] Sukarno, *supra* note 3 at 663.

[7] This understanding is adapted from Bruce Ackerman, *We the People: Foundations* (Cambridge, Mass.: Harvard University Press, 1993) at 165–167. See also Madhav Khosla, *India's Founding Moment: The Constitution of a Most Surprising Democracy* (Cambridge, Mass.: Harvard University Press, 2020) at 21.

[8] See e.g., "BPIP: Pancasila Kunci Hidup Rukun dan Bahagia [BPIP: Pancasila is the Key to Harmonious and Happy Life]", (28 June 2021), online: *Badan Pembinaan Ideologi Pancasila [The Committe for the Education of the Ideology of Pancasila]* <https://bpip.go.id/berita/1035/786/bpip-pancasila-kunci-hidup-rukun-dan-bahagia.html>.

had no legitimate home other than the 1945 Constitution. Considering their shared religious outlook and orientation with the Old Order, it was therefore logical for the militaristic New Order (1966–88), known for its Java-centrism, to establish its legitimacy by positioning itself as true defender of *Pancasila* and the Constitution. Section 3 shifts focus to post-New Order Indonesia (1998–present), emphasising how the revitalisation of the 1945 constitutional system can be interpreted as a Pancasilaist response to the renewed efforts of Puritans to establish Islam as a fundamental tenet of the constitutionalism or the "Islamic [Republic] state" of Indonesia.

I. Indonesia's (Singular) Constitutional Point of Origin

In this Section, I argue that in the Indonesian context there is only one singular constitutional point of origin. Every constitutional theory implicitly takes its constitutional point of origin as its building block. Indonesia's constitutional point of origin is 1959, not 1945 as the year when the constitution was drafted. This suggests that the 1945 Constitution contains intrinsic symbolism. The importance of the 1945 Constitution goes beyond the inherent worth of its written Articles. Numerous attestations reflect the prevalent belief in the vital significance of the 1945 Constitution, with assertions that "in its absence, Indonesia will undoubtedly cease to exist."[9] With the imputation of magical power to the 1945 Constitution, what matters most to Indonesians in general and Pancasilaists in particular about the 1945 Constitution is the symbolism of *Pancasila*, which represents its extratextual dimension. In effect, an expression of one's total commitment to the 1945 constitutional order becomes "the key term of value" in the Indonesian constitutional discourse.[10]

[9] This belief has, to some degree, evolved into a core principle for numerous influential political leaders in Indonesia. See e.g., "Prabowo: Begitu Kita Tinggalkan Pancasila, Negara Ini Bubar [[The Coordinating Minister and President Elect] Prabowo: As Soon As We Abandon Pancasila, This Country Will Fall Apart]", *kumparanNews* (7 July 2022), online: <https://kumparan.com/kumparannews/prabowo-begitu-kita-tinggalkan-pancasila-negara-ini-bubar-1yE4JZJ0Qlb/full>; "Mahyudin: Tanpa Pancasila, Indonesia Bubar [Mahyudin[, the Vice Chairman of Indonesia's Highest Political Body or MPR]: Without Pancasila, Indonesia Disbands]", *tempo.co* (18 May 2017), online: <https://nasional.tempo.co/read/876408/mahyudin-tanpa-pancasila-indonesia-bubar>.

[10] Boyd uses "the key term of value" to denote several critical concepts, including bravery, trust, and loyalty, which have diminished in significance for the Greeks due to the civil conflicts that emerged during the Peloponnesian War. See James Boyd White, *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community* (Chicago and London: The University of Chicago Press, 1985) at 3.

It is important to establish the difference between constitutional point of origin and Bruce Ackerman's "founding moment" which denotes one of a series of historical events that lead to transformative changes in the identity of a written constitution. As Ackerman himself puts it, "[a]fter these two transformations, American government was very different from anything the Founders had experienced or envisioned."[11] There have been many attempts to apply this concept beyond the American context as a means of analysing informal processes of constitutional change in other countries.[12] In contrast, I introduce constitutional point of origin to emphasise its singularity; it sets the tone of the 1945 constitutional discourse.

By accepting 1959, not 1945, as Indonesia's constitutional point of origin, this Chapter articulates the rationality behind Indonesia's peculiar constitutionalism that is centered on symbolism, not text, which in effect stimulated the ongoing religious rivalry between the Pancasilaists and the Puritans. It is necessary to acknowledge that Indonesia is a deeply divided society, torn between the immanentist and transcendentalist religious traditions (see Chapter 3). Within this framework, one elicits the religious significance of Sukarno's return to the 1945 Constitution. He had made it clear that the symbolism behind the 1945 Constitution—*rukun,* a folk religious ideal—convinced him to think that it was the best constitution for Indonesia. As Section 3 will argue, a similar statement can also be implied from the New Order's decision to double down Sukarno's effort in ensuring that the 1945 Constitution was implemented in "a wholeheartedly and thoroughly manner" (*secara murni dan konsekuen*). Thus, the persistence of the 1945 constitutional order can be seen as a lens through which to reveal the continuous religious conflicts between the two religious groups in Indonesia.

Moreover, Indonesia's constitutional point of origin indicates a constitutional order with a master narrative which revolves around one big question—whether Indonesia is a *Pancasila* nation or an Islamic state. Indonesia is experiencing a static constitutional discourse or constitutional deadlock which should explain why it cannot move on to a different or new written constitution. In fact, the 1999–2002 constitutional amendment further entrenched various folk ideas that Sukarno's Old Order had enunciated. For instance, the Pancasilaist's two constitutional

[11] Ackerman, *supra* note 7 at 8.
[12] Rosalind Dixon & Guy Baldwin, "Globalising Constitutional Moments? A Reflection on the Japanese Article 9 Debate" (2019) 67:1 Am J Comp L 145–176 at 146, 158. (They argue that Ackerman's theory of constitutional moment can be applied in any country as long as it has democratic elections or free public debate.). See also Khosla, *supra* note 7 at 8.

postulates— *negara kesatuan* and *negara hukum*—are now enshrined as the first Article of the amended 1945 Constitution, which differs from Ackerman's founding moment that implies an evolution in the idea of constitutionalism. Therefore, it is difficult to identifying if there has been progress in Indonesian constitutional discourse. The enduring theme has been that *Pancasila* is indispensable.

II. The Implicit Behind Indonesia's Return to the 1945 Constitution

The expression "returning to the 1945 Constitution" introduced by the Old Order is best construed as a covert allusion to advocating for the supremacy of *rasa* in the constitutionalisation of Indonesian politics that would lead to communal harmony, defined as "being in quiet equilibrium with the universe, not striving to conquer nature, neither to compete and to be ambitious, nor to achieve by an excessive interest in material things."[13] No wonder *Pancasila* has been invoked every time a religious radical group uses force to impose their morality on society.[14] Indeed, *tenggang rasa* has been formally recognised as the articulation of the second *sila* ("principle") of *Pancasila*; that is, "the justly and civilised humanitarianism" ("Kemanusiaan yang Adil dan Beradab"). In his 1956 address before the Constitutional Assembly tasked with drafting a new constitution, Mohammad Natsir, arguably the leading figure in Indonesia's Puritan Islam movement, asserted that *Pancasila* "consisted of five relative terms because no one of the five could be considered to be absolute in nature, and because of the *silas* were all relative, in themselves and one to another."[15] From Natsir's perspective, there is only one true religion or religious truth, analogous to the mathematical certainty that the sum of one plus one unequivocally equals two. Put simply, *Pancasila*'s relativistic standpoint on religious truth fundamentally opposes the Puritan conception of religious absolutism.

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[13] JA Niels Mulder, "Aliran Kebatinan as an Expression of the Javanese Worldview" (1970) 1:2 J of Southeast Asian Stud 105–114 at 105.

[14] Haryanti Puspa Sari, "Soal FPI, Menhan Bilang 'Kalau Tak Sejalan dengan Pancasila Tak Usah di Sini' [Regarding FPI [a Radical Islamic Group], the Minister of Defense says 'If they do not follow Pancasila[, they should not be here']", *Kompas* (29 July 2019), online: <https://nasional.kompas.com/read/2019/07/29/19513031/soal-fpi-menhan-bilang-kalau-tak-sejalan-dengan-pancasila-tak-usah-di-sini>. Dwi Andayani, "Mahfud: BPIP Dibentuk karena Ada Ancaman terhadap Ideologi Pancasila", *Detik.com* (31 May 2018), online: <https://news.detik.com/berita/d-4046816/mahfud-bpip-dibentuk-karena-ada-ancaman-terhadap-ideologi-pancasila>.

[15] "Persatuan Islam: Islamic Reform in Twentieth Century Indonesia" Howard M Federspiel, Ithaca (1970) at 173.

The early years of independence leading to Guided Democracy (1955-66) were fraught with foreign threats and more pressing internal divisions due to Indonesia's religious and ethnic pluralism.[16] A member of the Drafting Committee for the 1945 Constitution warned against engaging in "open discussion" or revealing contradictory perspectives to the outside world.[17] It was therefore reasonable for Indonesia to take the matter of *persatuan bangsa* ("national unity") or the *kerukunan nasional* ("harmonious relationship") between various political factions very seriously, and Sukarno's Guided Democracy could be considered the ultimate attempt to restore harmony. One could argue the leading figures of the Pancasilaist movement were frustrated that national unity was in tatters. Even Mohammad Hatta, widely seen as critical of Sukarno's Guided Democracy, explicitly pleaded with the political parties "to correct themselves," hinting at the unruly nature of Indonesian politics.[18] Sukarno's 1959 call for a return to the 1945 Constitution could be interpreted as a desperate plea to utilise *rasa* to get back on track, building Indonesia as a home for people with diverse religious beliefs, but unwittingly locking *Pancasila* in the 1945 Constitution permanently. The militaristic New Order (1966–98) can be seen as another project to constitutionalise the Indic-derived Javanese folk religious traditions[19] and hence was the continuation of the Old Order (1955–66).[20] Like Sukarno's Old Order which introduced and

[16] Indonesia has undergone two constitutional changes since the 1945 Constitution was abandoned. The 1949 Federal Constitution was short-lived due to the national leadership's aversion to federalism. The subsequent 1950 constitution failed to establish a mechanism for achieving equilibrium among political parties. See Adrian Vickers, *A History of Modern Indonesia* (Cambridge: Cambridge University Press, 2013) at 148.

[17] Adnan Buyung Nasution, *The Aspiration for Constitutional Government in Indonesia: A Socio-legal Study of the Indonesian Konstituante 1956-1959* (Jakarta: Pustaka Sinar Harapan, 1992) at 104.

[18] Justus M van der Kroef, "'Guided Democracy' in Indonesia" (1957) 26:8 Far Eastern Survey 113–124 at 114.

[19] The New Order is widely recognised for openly embracing and proudly exhibiting its Indic orientation. To illustrate, Suharto conveyed to the KNPI, a youth organisation following *Pancasila*, that their distant ancestors had passed down the elements that merged into the principles of *Pancasila* in a manner too straightforward for overly intelligent scholars to comprehend. He defended early Indonesians against the onslaught of highly educated scholars who dismissed them as practitioners of black magic ("*ilmu klenik*") and added that the ancient Indonesians, predating the arrival of Hinduism, Buddhism, Islam, and Christianity, were praiseworthy. Not only did they develop practical concepts like mutual help (*gotong-royong*), but also formulated a science of reality ("ilmu kasunyatan") with which contemporary Javanese were already familiar, but non-Javanese should now study. See Ken Ward, "Soeharto's Javanese Pancasila" in Edward Aspinall & Greg Fealy, eds, *Soeharto's New Order and Its Legacy: Essays in Honour of Harold Crouch* (Canberra: ANU Press, 2010) 27 at 31. See also Fachry Ali, *Refleksi Paham "Kekuasaan Jawa" dalam Indonesia Modern [The Manifestation of Javanism in the Modern Indonesia]* (Jakarta: Gramedia Pustaka Utama, 1986).

[20] Geertz maintains that "[t]he ideological wars which have wracked Indonesia for the past twenty-five years must be seen . . . as the substance of a struggle to create an institutional structure for the country that enough of its citizens would find sufficiently congenial to allow it to function." See Clifford Geertz, "Afterword: The Politics of Meaning" in Claire Holt, ed, *Culture and Politics in Indonesia* (Ithaca: Cornell University Press, 1972) 319 at 322.

legitimised the Indic worldview,[21] the militaristic New Order aspired to reimage Indonesia as the modern-day Majapahit, the Java-based last Indic great empire.[22]

Given the New Order's association with Indic cosmology, one can further see why the Puritans eventually withdrew their support, despite initially being ardent supporters.[23] Unsurprisingly, the first thing that the New Order revived was the Old Order's idea of institutionalising the "functional group" as the axis of the 1945 constitutional order; a fusion of various groups who hold different views and focus only on creating and maintaining the unity of and hence *rukun* (harmonious) Indonesia.[24] The functional group's role is to allow "all members of the [Indonesian] family [to] sit at the table—at the eating table and the working table."[25] Therefore, as the primary player in constitutional politics, it is expected to be "in harmony with the soul of the Indonesian people."[26] Conceptualised as an alternative to a party-based system, this constitutional organ is undoubtedly an effort to extrapolate Indonesia's folk religious traditions in Indonesian constitutionalism. Thus, the 1945 constitutional system prioritises non-material objectives—most notably cooperation, consensus, and harmony—as their ultimate goal.

In the era of Guided Democracy, another important milestone was the polarisation between the traditionalist and Puritan Muslims as the nation's principal political force opposed to the *Pancasila*-derived constitutional order. This polarisation pointed to the widening schism between

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[21] The best exposition on the influence of Indic cosmology on the Old Order's constitutional thought can be found in Benedict R O'G Anderson, "The Idea of Power in Javanese Culture" in Claire Holt, ed, *Culture and Politics in Indonesia* (Ithaca: Cornell University Press, 1972) 1; Clifford Geertz, *Negara: The Theatre State in Nineteenth-Century Bali* (Princeton: Princeton University Press, 1980).

[22] A study of Indonesia's official historiography in the New Order period concluded that: "[a]t the core of the past promulgated by the New Order was the empire of Majapahit. The Majapahit, described (and celebrated) by the Suharto regime, was Javanese, Hindu, well-ordered and militarily strong." See Michael Wood, *Official History in Modern Indonesia: New Order Perceptions and Counterviews* (Leiden and Boston: Brill, 2005) at 196. See also S Supomo, "The Image of Majapahit in Later Javanese and Indonesian Writing" in Anthony Reid & David Marr, eds, *Perceptions of the Past in Southeast Asia* (Singapore: Asian Studies Association of Australia and Heinemann Educational Books (Asia) Ltd., 1979) 171.

[23] The enthusiasm of the Nadhlatul Ulama, Indonesia's largest organisation of traditionalist Islamists and supporters of the Islamic state, is a case in point. Hefner notes that "during 1965-66 Nadhlatul Ulama had been a willing and, especially in East java, powerful partner in the military civilian alliance that carried out mass killings." See Robert W Hefner, *Civil Islam: Muslims and Democratisation in Indonesia* (Princeton and Oxford: Princeton University Press, 2000) at xiii.

[24] Reeve argues that the intellectual lineage of this idea is prevalent among early or pre-independence Pancasilaist activists. See David Reeve, *Golkar of Indonesia: An Alternative to the Party System* (Singapore: Oxford University Press, 1985).

[25] van der Kroef, *supra* note 18 at 113.

[26] *Ibid*.

two competing traditions of understanding Islam.[27] Traditionalist Islam represents religious continuity in the Indonesian idea of being a "religious self" that recognises God as a reality and sees them as part of it.[28] The Indonesian idea of being religious is a critical component in the state-approved definition of "*Pancasila* self"[29] and has something to do with the fact that "much of what everyday Muslims take from religion is not about grand questions of theology or jurisprudence, but about much more proximate matters, such as healing a child through reciting scripture, marrying or divorcing in an Islamic manner, or sacrificing correctly and efficaciously to God."[30]

Hence, the traditionalist understanding of Islam does not repudiate Indonesia's various folk religious beliefs and could be regarded as the next stage in the evolution of Indonesia's syncretic Indic religious traditions. Thus, it is hardly surprising that traditionalist Muslims can easily forge religio-political affinity with the Pancasilaists. In contrast, the theological conviction of the Puritan or Modernist Muslims starts from the premise that *adat* (traditions) are a form of polytheism ("shirk") and must be abandoned in favor of *kemajuan* ("progress") or *kemodernan* ("modernity"). By implication, the political coalition between the Puritans and Traditionalists, known as Masjumi, was not only built on shaky ground, but also reached a breaking point. To make matters worse, it was dominated by the Puritans who were more adapted to modern conditions. With the traditionalists joining the Pancasilaist or nationalist camp to return to the 1945 Constitution, the constitutional order received a significant boost that prepared it for the New Order period (1966–98).

The emergence of the New Order was a response to the erratic nature of the Old Order's model of governance, which tended to be less collegial and more dependent on the whim of Sukarno as its self-appointed Great Leader of the Revolution. For that reason, the reign of the New Order was presented by its proponents as "the age of reason," as opposed to the irrational Old Order.[31] Arguably, the objective of the New Order's rise to power was purification of *Pancasila* and the 1945 Constitution from unwanted elements that the Old Order regime had inserted.

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[27] The pre-independence account of religious schism can be found in Merle C Ricklefs, *Islamisation and Its Opponents in Java: A Political, Social, Cultural and Religious History, c. 1930 to Present* (Singapore: National University of Singapore Press, 2012); Christine Dobbin, *Islamic Revivalism in a Changing Peasant Economy: Central Sumatra, 1784-1847* (London and Malmö: Curzon Press, 1983).
[28] See Retno H Ninin, "Religious Self: The Multi-Construal Model of Indonesian Self" in Ralph H Hood & Sariya Cheruvallil-Contractor, eds, *Research in the Social Scientific Study of Religion* (Leiden: Brill, 2020) 103 at 118.
[29] See Suharto, *Pandangan Presiden Suharto tentang Pancasila [The President Suharto's Point of View on Pancasila]*, 2d ed, Krissantono, ed (Jakarta: Centre for Strategic and International Studies, 1976) at 42–44.
[30] John R Bowen, *A New Anthropology of Islam* (New York: Cambridge University Press, 2012) at 5.
[31] Justus M van der Kroef, "Sukarno, The Ideologue" (1968) 41:2 Pac Aff 245–261 at 245–246.

Specifically, it was the Old Order's collusive behavior with the Indonesian Communist Party ("Partai Komunis Indonesia" or "PKI") and Sukarno cultism that signified the partiality of the Old Order which did not align with *Pancasila*'s syncretism that requires ideological impartiality. This explains why the New Order designated the day when they "annihilated" ("tumpas") the PKI and later installed Major General Suharto, replacing the erratic Sukarno, as "Pancasila Sakti." Best translated as the Spiritually Potent *Pancasila*, it cannot be defeated due to its magical power.[32] Suharto, the President throughout the New Order period, depicted his reign as an attempt to "steer[] a middle course between the extremes of communism and radical Islam."[33] Considering that *Pancasila* was a kind of "ideological syncretism," this middle course undoubtedly reflected the New Order's interpretation of what *Pancasila*'s syncretism was supposed to mean in the 1945 Constitution.[34]

During the New Order period, a significant effort was made to incorporate the idea of a "seamless Javanisation" of *Pancasila*,[35] as "an articulation of the historical experience of the Indonesian people."[36] This initiated what may be termed the 1945 Constitution-industrial complex, comprising a diverse array of public figures and organisations that have profoundly shaped Indonesia's unique theory of the state (Chapter 6), the rule of law (Chapter 7), and constitutional law or "hukum tata negara" (Chapter 8). At the core of these three constitutional postulates, *Pancasila* and the 1945 Constitution are understood within the framework of the Javanese folk religious idioms. They are, in Mulder's formulation, the "full-blown and unchangeable sacred heirloom, . . . holy formula to protecting the nation, . . . like a *wahyu*, a divine mandate."[37] After all, "it is because of the *Pancasila* that the nation exists; it is because of the quality of holy heirloom that the nation did not disintegrate."[38]

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[32] The president of the State Islamic University at Yogyakarta asserts that Pancasila serves as Indonesia's protective charm, provided that we wholeheartedly immerse ourselves in its principles. See Al Makin, "Pancasila Sakti [The Magical Power of Pancasila]", online: *Badan Pembinaan Ideologi Pancasila (BPIP) Republik Indonesia [The Pancasila Ideology Development Agency]* <https://bpip.go.id/bpip/berita/1035/796/pancasila-sakti.html>. See also Danial Kelly, "Pancasila Sakti: The Sacred Authority of the Pancasila in Indonesian Law and Society" (2010) 13:2 Jurnal Yustika 201–233.
[33] Ward, *supra* note 19 at 29.
[34] van der Kroef, *supra* note 31 at 249.
[35] Niels Mulder, *Mysticism in Java: Ideology in Indonesia* (Amsterdam and Singapore: The Pepin Press, 2004) at 94–96.
[36] Michael Morfit, "Pancasila: The Indonesian State Ideology According to the New Order Government" (1981) 21:8 Asian Survey 838–851 at 841.
[37] Mulder, *supra* note 35 at 94.
[38] *Ibid*.

To further understand the idea of a "seamless Javanisation" of *Pancasila*, it is reasonable to start by acknowledging Suharto's intellectual orientation as deeply rooted in Javanese folk religious traditions.[39] In this address on 19 July 1982, he unambiguously stated that the exclusive approach to achieving a harmonious Indonesia was for *Pancasila* to serve as the singular foundation for all political and social groups, effectively supplanting all other ideologies.[40] He perceived *Pancasila* as representing Indonesia's time-honored communal lifestyle, deeply rooted in Javanese folk religious traditions that aimed to comprehend the "highest reality." This perspective was mirrored by a loose-knit network that may be defined as the 1945 Constitution-industrial complex, comprising individuals and organisations that directly or indirectly collaborated to establish the theoretical foundation for the 1945 constitutional system. It produced a series of scholarly and non-scholarly documents to expound on *Pancasila* as the constitutional foundation of Indonesia.[41] One could argue that Indonesia's three constitutional postulates, for instance, are the product of the 1945 Constitution-industrial complex. During the New Order era, the push to establish *Pancasila* as the country's foremost constitutional principle intensified.

Thus, it is crucial to examine the marginalisation of the Puritan movement during the New Order era, despite their initial support for the regime, due to their insistence on creating Indonesia as an Islamic state. This is essential in understanding the New Order's decision to maintain the 1945 Constitution, despite their manifest claim that they differ from Sukarno's Old Order. The Puritans were initially uncompromising in their demand to make Indonesia an Islamic state, reflected in their repeated call to constitutionally re-entrench the "Jakarta Charter," also known as "Piagam Jakarta," the initial rendition of the Preamble of the 1945 Constitution, commonly referred to as *Pancasila*. What set the Jakarta Charter apart from the current or government-

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[39] Hefner notes: "[i]t is well known that throughout his career President Suharto has relied on Javanese spiritual advisers commonly referred to as *dhukun.* One of the president's two personal aides during the early years of the New Order, Sujono Humardani, was a leading patron of Javanist organisations and a master of the mystical art himself. Sujono is said to have been a tireless spokeperson for Javanist interest before the president. He was also the president's spiritual mentor in the matters of mystical power." See Hefner, *supra* note 23 at 83. Moreover, Jenkins maintained that "Suharto made no secret of the fact that he was an abangan Muslim, as most insiders were well aware. He also made it clear that he was strongly opposed to any suggestion that Islamic law be applied in all its rigor to those who were only nominally Muslim." *See* David Jenkins, *Young Soeharto: The Making of a Soldier, 1921-1945* (Singapore: ISEAS–Yusof Ishak Institute, 2021) at 83. During the Suharto's New Order, there was growing confidence among adherents of folk religious traditions to assert their identity. See Hamish McDonald, *Suharto's Indonesia* (Sydney: Fontana, 1980) at 131–132.

[40] Ward, *supra* note 19 at 31.

[41] David Bourchier & Vedi R Hadiz, eds, *Indonesian Politics and Society: A Reader*, translated by David Bourchier & Vedi R. Hadiz (London: RoutledgeCurzon, 2003) at 30–54.

sanctioned version of *Pancasila* was the inclusion of "seven words" that placed responsibility on "the state to ensure that the Muslim population of Indonesia fulfills their religious duties." Thus, the first principle of *Pancasila* became "One God with the obligation to carry out Islamic Shari'a for its adherents." The Pancasilaists knew that the Puritans were unwavering in demanding that Islam be constitutionally privileged. As a result, they initiated a "creative action" to ensure that the seven words were not included in the final draft. While the seven words had been accepted anonymously by the Drafting Committee of the 1945 Constitution, including by the non-Muslim representatives, for some unknown reason Mohammad Hatta, a prominent figure of the Pancasilaists and Indonesia's inaugural vice-president, deleted them because they deterred the Eastern regions, predominantly non-Muslim, from joining Indonesia.[42] Seeing this, it was plausible for the Puritans to perceive that the New Order would reinstate the rightful position of Islam within the constitutional framework. But the New Order saw the Puritans' unwavering stance on the constitutional status of Islam as a hindrance to their own vision of a harmonious Indonesia.

There has been enduring distrust of Pancasilaists towards Puritans, who were believed to have either directly or indirectly aided regional uprisings intending to create an Islamic government.[43] The New Order Pancasilaist government strengthened the institutionalisation of "Azas Tunggal Pancasila," which required all organisations to pledge their loyalty exclusively to *Pancasila* and the 1945 Constitution, and was motivated by its apprehension of the Puritans as a political entity that could disturb national harmony.[44] Thus, the Puritan Islamist movement in Indonesia was effectively excluded from the country's formal state structure, while *rasa* was cemented as the constitutional sensibility of Indonesia.

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[42] There is a lingering doubt about the truthfulness of Hatta's account. Isa Anshary, one of the leading Puritan figures, described the disappearance of the seven words phrase was as a "dishonest politics." See Saifuddin Anshari, *The Jakarta Charter of June 1945: A History of the Gentleman's Agreement between the Islamic and the Secular Nationalists in Modern Indonesia* (Master of Arts Thesis, McGill University, 1976) [unpublished] at 41–47.
[43] Feith validated the Puritans' association with the short-lived rebellion. See Herbert Feith, "The Study of Indonesian Politics: A Survey and An Apologia" in Benedict R O'G Anderson & Audrey Kahin, eds, *Interpreting Indonesian Politics: Thirteen Contributions to the Debate* Interim Reports Series 62 (Ithaca: Cornell Modern Indonesia Project, 1982) 41 at 48. The direct involvement of leading Puritan figures in the rebellion is acknowledged in *The Foundation of the Partai Muslimin Indonesia*, Monograph Series, by K E Ward, Interim Reports Series - Modern Indonesia Project Monograph Series (Ithaca, NY: Southeast Asia Program - Cornell University, 1970).
[44] See Edward Aspinall, *Opposing Suharto: Compromise, Resistance, and Regime Change in Indonesia* (Stanford, CA: Stanford University Press, 2005) at 38–39.

III. *Pancasila*'s Second Coming

Since the New Order's collapse in 1998, *Pancasila*'s public appeal has dwindled significantly, due to it being closely linked to an oppressive government.[45] This new landscape presented a fresh avenue for the once inactive Puritan movement to engage in formal politics once again. It was not unexpected that post-New Order Indonesia would seek to modify or even substitute the 1945 Constitution, given its connection to the New Order that repressed Puritans and other political groups.[46] With the intellectual backing of Indonesia's budding Puritan pundits,[47] President B. J. Habibie, the successor and protégé of Suharto, sought to reshape Indonesia into a "masyarakat madani,"[48] self-proclaimed as Indonesia's counterpart to the Western notion of "civil society"[49] that connotes the veneration of the initial Islamic state—or, more precisely, community—founded by Prophet Mohammad in Medina.[50] This was a symbolic rejection of the syncretic Indic and un-Islamic *Pancasila*. With this new vision of Indonesia without *Pancasila*, "New Indonesia," was introduced, but did not last long.[51] This Section therefore explores how post-New Order constitutional reform (1999–2002) could be interpreted as the starting point for the rebirth of Indonesia's commitment to the 1945 constitutional order.

The peak of Puritan Islam's resurgence was the annulment shortly after Suharto resigned of Decision Number 2 (1998) of the People's Consultative Assembly, the country's highest political body which mandates every Indonesian to embrace and implement *Pancasila* in their daily lives.[52] Although the Assembly Decision that replaced Decision Number 2 also explicitly

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[45] Nadirsyah Hosen, *Shari'a and Constitutional Reform in Indonesia* (Singapore: ISEAS, 2007) at 79.
[46] François Raillon, "The Return of Pancasila: Secular vs. Islamic Norms, Another Look at the Struggle for State Dominance in Indonesia" in Michel Picard & Rémy Madinier, eds, *The Politics of Religion in Indonesia: Syncretism, Orthodoxy, and Religious Contention in Java and Bali* (Abingdon, Oxon: Routledge, 2011) 92 at 93.
[47] Robert W Hefner, "A Muslim Civil Society? Indonesian Reflections on the Conditions of Its Possibility" in Robert W Hefner, ed, *Democratic Civility: The History and Cross Cultural Possibility of a Modern Political Ideal* (New York: Routledge, 2017) 285.
[48] Muhamad Wahyuni, "Habibie Sebut Enam Prinsip terwujudnya Masyarakat Madani [Habibie Enumerates Six Principles [the Foreground] the [Creation of] the Medina Society]", *Antara News* (18 July 2012), online: <https://jogja.antaranews.com/berita/302062/habibie-sebut-enam-prinsip-terwujudnya-masyarakat-madani>.
[49] Nurcholish Madjid, *Cita-cita Politik Islam Era Reformasi [The Political Aspirations of Islam in the Era of the Post-New Order]*, Muhamad Wahyuni Nafis, ed (Jakarta: Paramadina, 1999) at 145.
[50] *Ibid* at 163.
[51] John Titaley, "The Pancasila of Indonesia: A Lost Ideal?" in Eddy AJG Van der Borght, Dirk van Keulen & Martien E Brinkman, eds, *Faith and Ethnicity* (Leiden and Boston: Brill, 2002) 37 at 37.
[52] See *Instruksi Presiden Republik Indonesia Nomor 29 tahun 1998 tentang Tindak Lanjut Ketetapan-Ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia [The Instruction of the President of the Republic of Indonesia No. 29 of 1998 as a Follow Up on the Reviewing of the Decisions of the People's Consultative Assembly]*, 1998.

mandated that "*Pancasila*, as written in the Preamble of the 1945 Constitution, must be implemented in a consistent manner in Indonesia's constitutional life,"[53] it was evident that Pancasilaists perceived this as a significant upending of the country's constitutional identity.[54] The 1999 general election opened the door for political parties that identified as Puritan Islam, thanks to implementing a reformed constitutional structure. The discourse within the constitutional drafting committee reflected the power dynamics between the Puritan and Pancasilaist factions, given that the 1999 national election preceded constitutional reform, and prompted the Pancasilaists to propose multiple constitutional measures to establish *Pancasila* as the highest constitutional principle within the 1945 constitutional order.

In response, there was an incremental effort by the Pancasilaists to reclaim the supremacy of *Pancasila,* culminating in the post-New Order's constitutional amendment (1999-2002). This amendment illustrated their unwavering commitment to the symbolism of the 1945 Constitution and reaction to the erosion of Pancasila in the constitutional domain by Puritans during the post-New Order era (1998—present). As Ellis noted, what was at stake was "not only the substance of the 1945 Constitution but the symbol of 'the 1945 Constitution'" itself.[55] For that reason, the constitutional reform from 1999 to 2002 can be viewed as a political settlement between two opposing factions in Indonesia's political landscape. On the one hand, some advocated a significant restructuring of the nation's constitutional framework, namely the Puritans and other political groups; on the other hand, the Pancasilaists and the military advocated the preservation of the existing 1945 constitutional order, which can be seen as a combination of both proponents of the Old Order and New Order. Thus, the constitutional amendment was a site for rejecting the notion of a "New Indonesia," where "*Pancasila* is no longer part of the discourse."[56] This meant the return of *Pancasila*, and consequently prolonged the existence of the 1945 constitutional order.

Throughout the constitutional reform, the ultimate authority to determine the direction of Indonesia's constitutional amendment rested with the Pancasilaists. Excluding the Preamble from

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[53] *Ketetapan Majelis Permusyawaratan Rakyat Nomor XVIII/MPR/1998 Tahun 1998 [The Decision of the People's Consultative Assembly No. 18 of 1998]*, 1998.
[54] See e.g., John Andhi Oktaveri, "Dicabut MPR 1998, Pancasila bukan Asas Tunggal lagi. Harus Dikembalikan [Revoked by the 1998 People's Consultative Assembly, Pancasila is No Longer the Only Principle. [Pancasila] must be reinstated [as the Only Principle]]", *Kabar 24* (9 December 2019), online: <https://kabar24.bisnis.com/read/20191209/15/1179487/dicabut-mpr-1998-pancasila-bukan-asas-tunggal-lagi.-harus-dikembalikan>.
[55] *Constitutional Reform in Indonesia: A Retrospective*, by Andrew Ellis (Stockholm: International Institute for Democracy and Electoral Assistance (IDEA), 2005) at para 3.
[56] Titaley, *supra* note 51 at 37.

the amendment process was crucial in ensuring that *Pancasila* remained the paramount constitutional source in Indonesia. However, this decision does not necessarily imply that the Puritans abandoned their aspiration to constitutionalise Islam. Instead, the focus of their reform agenda shifted to the Fourth Amendment which aimed to rephrase Article 29(1) which affirms Indonesia as a state based on the One-ness of God. The Puritans sought to add seven words to this Article, "with the obligation for the Muslims to perform their religious obligations," that were previously part of "the Jakarta Charter." Their proposed version would declare Indonesia a One-ness of God-based state where the Muslim population must perform their religious duties. The Puritans believed that adding these seven words to Article 29(1) will have the same impact as altering the Preamble. The Pancasilaists, led by the Sukarnoist Partai Demokrasi Indonesia the country's biggest Pancasilaist party, were aware of the Puritans' hidden agenda and rallied against the proposed constitutional amendments, arguing that they exceeded the reasonable limits tacitly established between the Pancasilaists and the Puritans.[57] Thus, Endiartono Sutarto, the Chief General of the Indonesian Armed Forces, asserted that the amendment had strayed from its initial objectives, thereby endangering the state's responsibility to uphold diversity among followers of various religions.[58] Consequently, the Puritans abandoned their attempt to amend Article 29(1) and acquiesced to a Pancasilaist proposal described below. By forgoing their request to modify Article 29(1), the religious principles and foundation of the 1945 constitutional framework remain in harmony with Indonesia's folk religious traditions.

In exchange for their adherence to the original phrasing of Article 29(1), the Puritans were granted a concession by the Pancasilaists and received support to revise Article 31 regarding national education.[59] There, the continued presence of the folk religious orientation in the 1945 constitutional order, is evidenced by the Puritans' addition of the phrases "to increase faith ('keimanan') and people's consciousness of God ('ketakwaan')" into the Article's existing formulation. The final version of Article 31(3) reads: "The government is obligated to establish and sustain a comprehensive national education system that fosters the development of faith ('keimanan'), the cultivation of God-consciousness ('ketakwaan') and the promotion of virtuous behavior ('akhlak mulia'), while simultaneously enhancing the intellectual capacity of the

[57] Denny Indrayana, *Indonesian Constitutional Reform 1999-2002: An Evaluation of Constitution-Making in Transition* (Ph.D. Thesis, The University of Melbourne, 2005) [unpublished] at 209.
[58] *Ibid* at 209–210.
[59] *Ibid* at 235.

populace, all of which must be governed by legal regulations." Ostensibly, the inclusion of two Arabic words, "keimanan" and "ketakwaan," which are rooted in Sufism, can be considered a significant achievement, potentially fulfilling one of the Puritan's long-standing objectives to Islamise Indonesia.

However, this view may not be entirely accurate. Firstly, it is essential to emphasise the capacity of Indonesia's folk religious beliefs to imbue and provide meaning to contemporary religio-theological ideas, resulting in the localisation of imported concepts (as discussed in Chapter 6). For example, while the term "keimanan" may seem to affirm the monotheistic position of Islam to its followers, adherents of Indonesian folk religion similarly assert that the belief in the One-ness of God is fundamental to their faith. Upon closer inspection, it becomes apparent that the Pancasilaists and the Puritans interpret "One-ness" differently. In the context of Indonesian folk religious traditions, the notion of God's One-ness takes on a pantheistic overtone, consistent with the idea of *Bhinneka Tunggal Ika* (see Chapter 3).

Conversely, the One-ness of God in Islamic belief is grounded in monotheistic understanding, and both the Puritans and Pancasilaists clearly understand this distinction.[60] This reading can also be extended to the notion of "ketakwaan," translated as "the popular's consciousness of God," which refers to one's ability to be aware of the presence of God.[61] "Ketakwaan" can also be interpreted as enhancing one's spiritual sensitivity to unite with the divine. Thus, Article 31(3) can be seen as a reiteration of existing principles rather than injecting Puritan Islamist ideology into the 1945 Constitution. This partially explains why referents of Indonesian constitutional provisions do not always match their signifiers.[62] In addition, given the influence of folk religious beliefs on the constitutional actions of Pancasilaists, it is plausible that their decision to concede was motivated by a desire for "deliberation and consensus," exemplified by the principles of "musyawarah" and "mufakat" in the "Demokrasi Pancasila," which emphasises the importance of collective decision-making, integral components of the fourth *sila* of *Pancasila*.

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[60] Anshari, *supra* note 42 at 70.
[61] Arskal Salim, *Challenging the Secular State: The Islamisation of Law in Modern Indonesia* (Honolulu, Hawai'i: University of Hawai'i Press, 2008) at 105.
[62] Andrew Ellis, "The Indonesian Constitutional Transition: Conservatism or Fundamental Change?" (2002) 6 Sing J Int'l & Comp L 1–38 at 2.

Furthermore, these "constitutional trade-offs" can be interpreted as a prime example of how *rasa*, Indonesia's folk religious sensibility, consciously or unconsciously, influences the course of constitutional amendment. Pancasilaists considered that decision-making should involve a commitment to consensus, a religious obligation rooted in Indonesia's folk religious traditions that prioritise attaining communal harmony above all else. They felt a religious obligation to reach agreement, which led to a moral duty to acquiesce to the Puritans. As a result, political choices were frequently made through secretive negotiations instead of democratic processes.[63] The success of the Pancasilaists in amending Article 31(3) while preserving Article 29(1) is a practical demonstration of humility, known as "menang tanpa ngasorakè" or "winning without making your enemy lose face," which is a religious imperative ("piwulang") derived from Javanese folk traditions.[64] This approach is consistent with the philosophical framework that guided the drafting of the 1945 Constitution and the formulation of *Pancasila*. Overall, Indonesia's post-New Order era reflects a constitutional sensibility that prioritises *rasa* as the dominant principle.

The Pancasilaists' dominance over the Puritans in constitutional reform reflects a broader pattern in post-New Order constitutional politics. To explain how this could happen, one must turn to the transformation of the intellectual dialogue among Muslim scholars during the New Order period, leading to a "new thinking" ideology that favored a more practical approach towards Islam.[65] It stimulated younger generations of Puritans to highlight the "substantive" rather than "formal" elements of Islam, vehemently oppose the implementation of Shari'a law, and diminish the efforts of the post-New Order Puritan movement to establish Islam as an explicit constitutional

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[63] Ben Bland, *Man of Contradictions: Joko Widodo and the Struggle to Remake Indonesia*, A Lowy Institute Paper (Sydney: Penguin Books, 2020) at 59.

[64] Recognition of this model of "successful management" has been extensively adopted in Indonesian political circles. Its most recent application was in the context of a general election, where the victor demonstrated inclusivity by extending political appointments to those who were unsuccessful in their bid for office. See e.g., Robert Adhi, "Diplomasi Makan Siang Jokowi, 'Menang Tanpa Ngasorake' [[President] Jokowi's Lunch Diplomacy, 'Winning Without Humiliating [His Enemy]']", *Kompas* (5 December 2013), online: <https://megapolitan.kompas.com/read/2013/12/05/1607234/Diplomasi.Makan.Siang.Jokowi.Menang.Tanpa.Ngasorake>. See also Budi Sartono Soetiardjo, ""Menang Tanpa Ngasorake" [Winning without Humiliating [Your Enemy]]", *Kompas* (5 November 2019), online: <https://www.kompas.id/baca/opini/2019/11/05/surat-kepada-redaksi-369-2>. Consequently, Indonesian politics is characterised by a broad-based coalition that is structured to distribute patronage and reduce opposition, rather than facilitate efficient governance. In essence, political parties may be brought under one's influence, but it is unlikely that they can be fully directed. See Bland, *supra* note 63 at 57, 59.

[65] Robert W Hefner, "Islam, State, and Civil Society: ICMI and the Struggle for the Indonesian Middle Class" (1993) 56 Indon 1–36 at 8.

principle.[66] Consequently, this led to the inclusion of Indonesia's top two Islamic groups—the traditional Nadhlatul Ulama and the puritan Muhammadiyah—in the ranks of those who support the preservation of *Pancasila* and by extension the 1945 constitutional order. This is a remarkable turn of events, given that both organisations were once the primary sources of support for Masyumi, the Puritan Islamist political party of the Old Order that advocated for the Islamisation of the Indonesian state. Therefore, the political faction seeking to Islamise the country is now confined to the extremist elements of the Puritan Islamist movement who have had little representation in Indonesia's official political sphere.

In short, the post-New Order Puritan movement differs significantly from the Old Order era (1955–66), during which Nadhlatul Ulama, the largest traditionalist Islamic group in Indonesia, and Muhammadiyah, the most significant modernist Islamic group, provided unwavering support to fight against the *Pancasila*-based constitutional order. Following the New Order (1966–98), both groups established political parties which openly endorsed religious pluralism. Their leadership has become progressively convinced that the state can meet the needs of the Muslim community, even in the absence of formal acceptance of Shari'a within the Constitution.[67] In a communication dated 2002, for instance, the leader of Muhammadiyah opposed any proposal to modify Article 29, which seeks to establish Islam as the sole official religion of Indonesia in the 1945 Constitution.[68]

Furthermore, Persatuan Islam ("The United Islam"), Indonesia's most vocal and influential Puritan Islamic organisation, has withdrawn from the world of politics. As a result, the individuals who advocated for the institutionalisation of Islam through official channels form a disparate group of Puritan activists who lack significant ties to Indonesia's predominant Islamic establishments. Moreover, the conduct of voters after the New Order era demonstrates a tendency towards

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[66] Carool Kersten, *Islam in Indonesia: The Contest for Society, Ideas, and Values* (New York: Oxford University Press, 2015) c 3.

[67] Nadirsyah Hosen, "Religion and the Indonesian Constitution: A Recent Debate" (2005) 36:3 J Southeast Asian Stud 419–440 at 426.

[68] See The Central Board of Muhammadiyah, "Lampiran 1: Surat Keputusan Pimpinan Pusat (SKPP) Muhammadiyah No. 149/KEP/I.0/B/2006, untuk membersihkan Muhammadiyah dari Partai Keadilan Sejahtera (PKS) [Appendix 1: Decision No. 1 No. 149/KEP/I.0/B/2006 of the Central Board of Muhammadiyah to cleanse Muhammadiyah from the Prosperous Justice Party]" in Abdurrachman Wahid, ed, *Ilusi Negara Islam: Ekspansi Gerakan Islam Transnasional di Indonesia [The Mirage of the notion of the Islamic State: The Expansion of the Transnational Islamist Movement]* (Jakarta: Gerakan Bhinneka Tunggal Ika, the Wahid Institute, and the Maarif Institute, 2009) 243.

practicality rather than ideological contemplation.[69] Simply put, banking solely on ideology was not attractive for the post-New Order Indonesian electorate. Hence, the post-New Order Puritan movement had to accept compromise, by acknowledging that the current Preamble is a permanent fixture.

It can therefore be concluded that at least three interrelated suppositions were instrumental in the "second coming" of *Pancasila* in the constitutional politics of the post-New Order era. Firstly, Indonesian nationalism is deeply ingrained in the nation's folk religious traditions, making it a formidable, dominant political tradition that cannot be easily eliminated. Secondly, the fall of the New Order in 1998 ushered in increased opportunities for popular participation, which can be succinctly described as democratisation, and provided a fresh chance for the Pancasilaists as Indonesia's predominant political faction to steer the nation's constitutional direction. The 1999 election, which marked the first democratic election in the post-New Order era, was a prime example, with the Pancasilaists securing sixty-two percent of the vote.[70] The last proposition is that the process of democratisation in Indonesia has led to a shift towards a more populist orientation in the predominant constitutional discourse which underscores the increasing importance of aligning the existing constitutional discourse with folk religious sentiments. Together, they contribute to the preservation of the 1945 constitutional order, despite the seemingly notable transformation of the institutional landscape following the New Order era, most notably the establishment of the Constitutional Court in 2003.

Conclusion

The preceding paragraphs have sought to demonstrate that adherence to the 1945 Constitution through *Pancasila* is partly grounded in a pragmatic approach, compelled by the Pancasilaists wish to uphold *Bhinneka Tunggal Ika* or religious syncretism, with its roots tracing back to the ancient Indic period. Consequently, it is not unexpected that *Bhinneka Tunggal Ika* has been proclaimed as the embodiment of Indonesia's national identity. Thus, being the nation's predominant socio-

[69] Based on a survey on voter behavior, Indonesian voters are categorised as "rational" or pragmatic, as opposed to being ideological or based on emotional attachment. See Saiful Mujani, R William Liddle & Kuskridho Ambardi, *Voting Behavior in Indonesia since Democratisation: Critical Democrats* (Cambridge: Cambridge University Press, 2018) at 157–158.
[70] William R Liddle, "Indonesia in 1999: Democracy Restored" (2000) 40:1 Asian Survey 32–42 at 33.

political force, the intellectualism of the Pancasilaists through their unwavering dedication to the 1945 Constitution can be regarded as the primary source of the conceptual framework for Indonesia's constitutionalism. In contrast, the Puritan Islamists who reject traditional values, can be seen as Indonesia's catalyst for modernisation. Adding to the complexity, the Puritan Islamists are the nation's second socio-political force, greatly contributing to the development of Indonesia's "complex constitutional tradition" (see Chapter 9, Section 3) and the country's modernising force. Therefore, the persistence of Indonesia's 1945 constitutional order, surpassing its intended lifespan, can be attributed primarily to the persistent societal struggle between the imperative to adapt and the necessity to uphold continuity.

CHAPTER 5

Into Eternity?
Indonesian Islam—Toward A New Synthesis

Introduction

To conclude Part 2, this Chapter argues that the 1945 constitutional order is expected to endure, due to the recent emergence of "Indonesian Islam" or "Islam Nusantara," a loose alliance between the Traditionalist and Puritan Islamists and the Pancasilaists. One reason is that the emergence of various radical transnational Islamic movements, most notably, the Islamic State or Daesh and the Hizbut Tahrir. The recent extraconstitutional attempts by radical transnational, radical, and militant Islamism to infiltrate the Islamist movement and to roll Indonesia into one global *umma* are disruptive. This specific characteristic is commonly perceived as markedly distinct from prior Islamic rebellions in Indonesia, which typically operates within the idiom of the nation-state and hence known as "gerakan separatis" or "separatist movement." The primary objective of the prior Islamic rebellions was to secede from the Unitary State of Indonesia and establish an independent state, rather than to integrate into the global ummah.[1] For that reason, the rise of this radical transnational movement constitutes an existential threat to Indonesia that further erodes the significance of the theological schism between the Puritans and the Pancasilaists. Consequently, the Islamic transnational movement have unwittingly managed to bring together Traditionalists and Puritans into an unexpected alliance of convenience. This will ensure that *Pancasila* and the 1945 Constitution remain the guiding star of Indonesia.

There is nothing surprising about this unexpected alliance of convenience, considering that the intellectual genealogy of Indonesian Islam traces back to syncretic Indic-derived religious traditions. Indonesian Islam is more appropriately understood as a theological continuity from Indic-derived religious traditions. In a sense, Indonesian Islam is a vernacularised expression of

[1] This is clearly evidenced by the Free Aceh Movement, where the integral role of Islam primarily reflects Acehnese identity and culture rather than Islamist political ambitions. See Kirsten E Schulze, *Contesting Indonesia: Islamist, Separatist, and Communal Violence Since 1945* (Ithaca and London: Cornell University Press, 2024) at 131. See also Chiara Formichi, *Islam and the Making of the Nation: Kartosuwiryo and Political Islam in 20th Century Indonesia* (Leiden: KITLV Press, 2012).

Islam, blending various belief systems from the Austronesian ancestor cult down to the mystical traditions of Sufism.[2] Like Balinese Hinduism, Indonesian Islam is embedded in local traditions and share some theological properties with Indonesia's folk religious traditions. As I have demonstrated in Chapter 4, it is unsurprising that the Pancasilaists and Traditional Islamists share a similar understanding of Islamic religiosity, albeit with some variations. And on top of that is the emergence of a throng of second-generation Islamists who are increasingly influential in steering the Islamic popular opinion to a more favorable view of *Pancasila.* The reason is that, despite their academic qualifications from prestigious Western educational institutions, the second-generation Islamists are rooted in Sufism and hence religiously syncretic. Together, they nudged the Nadhlatul Ulama, Indonesia's largest mass organisation of traditionalist Muslims, to affirm that the Islam practiced in the Archipelago epitomised the spirit of *Bhinneka Tunggal Ika*.[3] As we have seen in Chapter 4, *Bhinneka Tunggal Ika* alludes to the Indic concept of religious syncretism, which Puritan Islamists regard as a boogeyman. Ultimately, the embrace of *Bhinneka Tunggal Ika* can also be interpreted as the second-generation Islamists' acknowledgment of the constitutional authority of *rasa* within the 1945 constitutional order.

As for the Puritans, they have a more pragmatic motivation. For starters, the radical transnational Islamist movement poses a significant threat because it targets Indonesia's urban middle-class population, a key demographic for Puritan Islamists, and more specifically the younger generation of Indonesian Muslims. This transnational movement has become synonymous with the hip and trendy ideals embraced by youth, which implicitly reject the old-fashioned

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[2] The persistence of the ancestor cult has been affirmed by various analysts. For example, Schreiner highlighted the diverse influences and ideas that contribute to syncretic worship of heroes, showcasing the wide-ranging cultural diversity in Indonesia. The notion of sacrifice and martyrdom bears a strong resemblance to Islamic concept of *syuhada* (martyrdom) and encompasses most fallen fighters for independence between 1945 and 1949. The regular visits to graves and cemeteries not only stem from the Javanese tradition of *nyekar*, but also potentially allude to remnants of ceremonies aimed at venerating the emperor, which were introduced by the Japanese military administration during their occupation. Schreiner provides a similar explanation for the origins of the practice of silence (*mengheningkan cipta*). The tradition of creating hero cemeteries reflects a Western, Christian influence. The customs of reburial, including secondary burials, the construction of monuments (known as *tugu*), and various activities such as midnight visits to graves and holy sites, *slametan* ceremonies, and rituals for achieving purity, all showcase folk concepts and traditional religious beliefs. The diverse elements of these rituals are intended to appeal to a wide range of individuals and groups in Indonesian society. See Klaus Schreiner, "'National Ancestors': The Ritual Construction of Nationhood" in Henri Chambert-Loir & Anthony Reid, eds, *The Potent Dead: Ancestors, Saints and Heroes in Contemporary Indonesia* (Honolulu, Hawai'i: University of Hawai'i Press, 2002) 183 at 190.

[3] See Bagus Prihartono Nugroho, "Islam Nusantara dan Perwujudan Bhinneka Tunggal Ika di Indonesia [The Islam of the Archipelago and the manifestation of the Bhinneka Tunggal Ika in Indonesia]", *Detik.com* (28 July 2015), online: <https://news.detik.com/berita/d-2976737/islam-nusantara-dan-perwujudan-bhinneka-tunggal-ika-di-indonesia>.

Pancasila-based constitutional order. The perceived correlation between Islamic transnationalism and youthfulness has resonated with the younger demographic of Puritan movements, simultaneously undermining the movement's position as the leading advocate for "modernisation" within the nation. In the face of this crisis of identity, the Puritans see the answer in the second-generation Islamists. As a renewal movement that transcends the traditionalist-modernist dichotomy, the ideological core of the second-generation Islamists is premised on the conviction that the uncompromising approach of the older generation of Puritans needed "radical renewal," that is, "freeing oneself from traditional values and seeking values which are oriented toward the future."[4] For one thing, this clearly points to a shared intellectual orientation between the Puritans and the second-generation Islamists, aiming to replace the past and excessive nostalgia with a forward-looking attitude.[5] For another, this sense of intellectual kinship provides a way out for the Puritans to maintain their "modernist" orientation while at the same time revamping their image to reach a younger and more nimble audience.

It is therefore not hard to see what prompts Traditionalists and Puritans, the Indonesian socio-political force for Islamisation, to join the *Pancasila* block to immortalise the syncretic 1945 constitutional order. However, this alliance does not imply any theological convergence between these opposing interpretations of Islam. Regarding *Pancasila* and the 1945 Constitution, radical transnational Islamists have forced both Traditionalists and Puritan Islamists to shift their focus from advocating the constitutionalisation of Islam to expressing their loyalty to the syncretic 1945 constitutional order. While this shift can be interpreted as a pragmatic alliance, the Traditionalist and Puritan Islamists' recent dedication to constitutional principles can also be perceived as a calculated choice to adhere to the familiar, albeit, in their eyes, flawed system. Therefore, this Chapter contributes towards the broader objective of the study, which is analysing the factors that motivate Indonesia to continually adhere to the 1945 constitutional order. Furthermore, it will elucidate the interpretation of "Indonesian Islam," occasionally referred to as "Islam Nusantara" (Islam of the Archipelago), as the brainchild of the second-generation Islamists for further consolidation of the support for *Pancasila* and the 1945 constitutional order. By accentuating its folk and hence "Indonesian" flavor, the concept "Indonesian Islam" signifies a capacity to

[4] See e.g. Nurcholish Madjid, "The Necessity of Renewing Islamic Thought and Reinvigorating Religious Understanding" in Charles Kurzman, ed, *Liberal Islam: A Sourcebook*, online ed (New York: Oxford University Press, 2022) at para 6.
[5] *Ibid*.

assimilate external and divergent ideologies, thereby suggesting its nature as theologically syncretic. This can be interpreted as a rekindling of Indonesia's folk religious sensibility, which effectively amalgamated or incorporated Sufistic or mystical aspects of Islam.

The argument in this Chapter unfolds in three Sections. The initial Section provides the Chapter's underlying premise, that is that the Indonesian interpretation of Islam—or, Sufism to be more precise—and folk religion are hardly indistinguishable. To build that claim, Section 1 identifies three interrelated propositions embraced by both the Islamists and the Pancasilaists which provide the conceptual foundation that allows the second-generation Islamists to become the point of convergence between the Islamists and the Pancasilaists. Section 2 emphasises the adaptability of Sufism as the primary catalyst for the acceptance of the syncretic orientation of the 1945 constitutional order. This is notably distinct from the Puritan or "nomos-oriented" theological standpoint.[6] Section 3 highlights the pivotal role of Sufism in shaping the new thinking of the second-generation Islamists and contextualises their support for *Pancasila* and as a result. In the end, the Chapter underscores the plausibility of the enduring nature of the 1945 constitutional order.

I. Indonesian Islam as Indonesia's Folk Religion

There is nothing surprising about the emergence of Indonesian Islam to become the point of convergence between the Islamists and the Pancasilaists. From the very beginning of Indonesian nationalist movement, Islam has always been the signifier of "nativeness."[7] There are two explanations for this. First, it has something to do with Islam itself as a domain of understanding which is highly susceptive to vernacularisation. As we have seen in Chapter 4, this led to the Islamisation of Indonesia as more fitting to be described as a transformative continuity, instead of being a disruptive change, of the Indic religion as the essence of Indonesia's folk religious traditions. In that sense, Islam is a subject of continuous reinvention. The second explanation is related to the imposition of the folk religious orientation on the skeleton of Indonesia as "the synthesis of a new political-cultural intelligence and perspective out of the fragmentation of the

[6] This distinction is borrowed from Annemarie Schimmel, *As Through a Veil: Mystical Poetry in Islam* (New York: Columbia University Press, 1982) at 9, 24.
[7] Formichi, *supra* note 1 at 21.

colonial and early postcolonial period, and the restoration of a unity of consciousness such as has not existed since the initial confrontation with Dutch colonialism."[8] Together, they serve as the conceptual premise for the embeddedness of Islam within Indonesian modern social imaginary. More importantly, they have legitimated the project of Indonesian Islam.

This suggests the existence of a minimum of three interrelated propositions that establish the conceptual coherence of Indonesian Islam with the prevailing interpretation of Islam, thereby gaining acceptance from both the traditional and Puritan Islamists and Pancasilaists. The first proposition is that the Indonesian traditional comprehension of Islam is profoundly ingrained in Sufism, which represents its mystical tradition. This means Sufism and Indonesia's folk religious traditions share a mutual aspiration of achieving oneness with the ultimate reality or "God."[9] Moreover, as "the undisputed leader of the Iraqi school of mysticism" puts it, "Sufism is not [achieved] by much praying and fasting, but it is the security of the heart and the generosity of the soul."[10] Hence, the most important thing is "to act according to God's orders and law, which are understood in their deepest spiritual sense without denying their outward form."[11] This has resulted in the amalgamation of spiritual or mystical orientations with the folk religious traditions prevalent in the country, particularly those of Javanese[12] and Sundanese origin.[13] In short, both Sufism and Indonesia's folk religious traditions, rooted in religious mysticism, prioritise personal experience

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[8] Benedict R O'G Anderson, *Language and Power: Exploring Political Cultures in Indonesia* (Ithaca: Cornell University Press, 1990) at 124.

[9] As Nasr, a leading modern theorist and practitioner of Sufism put it: "[t]here is no monasticism in Islam, and to follow this supreme command of the Quran to remember and invoke God throughout life does not require formal and organised withdrawal from the world, as we find in some forms of Christianity, Buddhism, and Hinduism." See Seyyed Hossein Nasr, *The Garden of Truth: The Vision and Promise of Sufism, Islam's Mystical Tradition*, paperback ed (New York: HarperOne, 2008) at 31–32, 117.

[10] Quotation is from Annemarie Schimmel, *Mystical Dimensions of Islam* (Chapel Hill: University of North Carolina Press, 1975) at 14. Furthermore, Sufism sees "[t]rue gnosis, namely the gnosis of the One, is not attained through books, and many a legend tells how a Sufi who had reached, or thought he had reached, his goal threw away his books, for: 'Books, ye are excellent guides, but it is absurd to trouble about a guide after the goal has been reached.'" See *Ibid* at 17.

[11] Schimmel, *supra* note 10 at 15.

[12] In the Javanese case, one can point to *Serat Wirid Hidayat Jati*, the literary work of Ranggawarsita that blurred the distinction between Javanese folk religious traditions and Sufism, and hence Islam. There, he claims that the unity of being between humans and God is the ultimate goal of being religious. *See* Simuh, *Mistik Islam Kejawen [Islamic Javanese Mysticism]* (Jakarta: Kepustakaan Populer Gramedia, 2019) at 315–316.

[13] In the Sundanese case, the work of Hasan Mustapa is a case in point. He is arguably the foremost Sundanese reconciler between the mysticism of folk religious traditions and Sufism. See Hasan Mustapa, "The Teaching of Our Islamic Heritage [Gelaran Sasaka di Kaislaman]" in Julian Millie, ed, *Hasan Mustapa: Ethnicity and Islam in Indonesia* (Melbourne: Monash University Publishing, 2017) 25.

through Gnosticism ("awang uwung" or "suwung")[14] and view rituals merely as vehicles or tools that can be discarded once communion with the ultimate reality is attained (and also shed light on why Sufism embraces a relativistic standpoint).[15]

Secondly, Sufistic orientation toward achieving oneness with the ultimate reality or "God" is aligned with the monism of Indic religious orientations. In monism, every entity that seemingly exists as a tangible reality in the world is a manifestation of the ultimate reality in its diverse forms. Simultaneously, all beings reside within the ultimate reality, establishing an inseparable connection. As the Upanishads conclude, "[b]ut where there is unity, one without a second, that is the world of Brahman. This is the supreme goal of life, the supreme treasure, the supreme joy. Those who do not seek this supreme goal live on but a fraction of this joy."[16] Given that communion with the ultimate reality—be it "Brahman" in Hinduism, "(Gusti) Allah" in Indonesian Islam, or "Sang Hyang" in Indonesia's folk religious traditions—is the ultimate goal of the Indonesian idea of being religious, the polysemic *rasa* has continuously persisted as "the [Indonesian high road] to insight in reality" for both the folk religionists or in the Sufists' religious endeavor to gain gnosis ("ma'rifah"), despite their outward differences.[17] Having said that, Sufism and Indonesia's folk religious traditions are, to a certain extent, interchangeable venue for the Indonesian religiosity.

From the above, one can proceed to the third, that is Sufism is the mother of all things Islamic in Indonesia. That means, Sufism is not only foundational to the Traditionalist Islamists, but also the mainstay of the intellectualism of Indonesia's Islamic Puritanism. For instance, Muhammadiyah, Indonesia's largest Puritan organisation, is noted as emphasising the internalisation of the concept of *ihsan,* or *insan-i-kamil*, through the cultivation of *rasa* as one of its key programs.[18] To be sure, *ihsan* is one of the key concepts in Sufism. This refers to "the complete [or perfect] self," the Islamic ideal self. As a reference to "the human self at its final stage

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[14] As Simuh puts it, in both Sufism and Javanese Islam there is no teaching about God considering that their main assumption is "human is God manifested in flesh." Simuh, *supra* note 12 at 6.

[15] Pringle asserts that there is minimal uncertainty regarding the capability of Sufi masters to engage with leaders deeply immersed in Hindu-Buddhist traditions in a manner that aligns with their respective beliefs and practices. See Robert Pringle, *Understanding Islam in Indonesia: Politics and Diversity* (Singapore: Editions Didier Millet Pte Ltd, 2010) at 33.

[16] *The Upanishads*, 2d ed, translated by Eknath Easwaran (Tomales, CA: Nilgiri Press, 2007) at 112.

[17] Niels Mulder, *Mysticism and Everyday Life in Contemporary Java: Cultural Persistence and Change* (Singapore: Singapore University Press, 1978) at 15.

[18] Ahmad Muttaqin, Ustadi Hamsah & Robby Habiba Abror, "Muhammadiyah, Sufism, and the Quest for 'Authentic' Islamic Spirituality" (2023) 13:1 Indon J of Islam & Muslim Soc'y 199–226 at 205.

of perfection and completion," this is a condition where "all the ontological states of God as well as all those of creation" are being contained within the self.[19] This signifies what Charles Taylor's defined as the porous (or relational) self, implying the interconnectedness of the self with the world. This is in contrast with the modern "bounded" or "buffered" self, indicating the individuality or uniqueness of every self. Most importantly, the porous self implies the orientation of communal way of life, that is the importance of harmonious relationship.[20] By embracing *ihsan*, an activist of Muhammadiyah espouses an interpretation of the idea of knowing and understanding God properly is essentially "behave[ing] to other people nicely."[21] Furthermore, it is no surprise that maintaining "a balance between human-God and human-human relationships" is integral to the Muhammadiyah personality.[22]

Now, we can say that Indonesian Islam is a natural outcome that results from the nature of Sufism itself that is congruent with Indonesia's folk religious traditions. That means, the ability or success of the second-generation Islamists to bring the Traditionalists and the Puritans on board is not a surprise in and of itself. It is true, as will soon be discussed, the second-generation Islamists in Indonesia, are known for their "new thinking" ("pembaruan"), which some believe as Indonesia's "civil,"[23] "neo-modernism,"[24] or even "liberal"[25] voices of Islamism. However, it is misleading to think that their theological basis for supporting *Bhinneka Tunggal Ika* is developed in a vacuum. Their embrace of *Pancasila* and, by extension, the 1945 Constitution as a superior approach to addressing Indonesia's condition as a religiously diverse nation is based Indonesia's folk way of doing religion. Hence, instead of echoing the conventional claim that the New Thinking of the "second-generation" is "a next phase of Islamic modernism"[26] that actively advocates for additional aspects of a liberal society,[27] I contend that these second-generation

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[19] William C Chittick, "The Perfect Man as the Prototype of the Self in the Sufism of Jāmī" (1979) 49 Studia Islamica 135–157 at 137.
[20] Charles Taylor, *Modern Social Imaginaries* (Durham, NC: Duke University Press, 2004) at 54–57.
[21] Muttaqin, Hamsah & Abror, *supra* note 18 at 209.
[22] *Ibid* at 212.
[23] Robert W Hefner, *Civil Islam: Muslims and Democratisation in Indonesia* (Princeton and Oxford: Princeton University Press, 2000).
[24] Greg Barton, "Neo-Modernism: A Vital Synthesis of Traditionalist and Modernist Islamic Thought in Indonesia" (1995) 2:3 Studia Islamika 1–75.
[25] Charles Kurzman, "Introduction" in Charles Kurzman, ed, *Liberal Islam: A Sourcebook* (New York: Oxford University Press, 1998) 3 at 19.
[26] Barton, *supra* note 24 at 5.
[27] Hefner, for instance, suggests that the New Thinking advocates, among others, the advancement of women's rights, fostering inter-religious dialogue, and striving to establish a democratic and pluralistic political system. See Hefner, *supra* note 23 at xvii–xviii.

Islamists with their Indonesian Islam are revitalising Indonesia's traditional or syncretised interpretation of Islam and hence reinforcing the commitment to the 1945 constitutional order.

II. The Mystical Tinge of the 1945 Constitutional Order

To contend that the fundamental premise underlying the 1945 constitutional order is tinged with religious mysticism, it is necessary to start with an historical account of the sort of Islam that prevails in Indonesia. The reception of Islam in Hindu-Buddhist (or Indic) Indonesia is a complex phenomenon, making it challenging to pinpoint a single factor that decisively influenced this transition. Nevertheless, it is widely agreed that the prevalence of Sufism played a significant role in facilitating the assimilation of Islamic teachings in the region.[28] The receptiveness of the Hindu-Buddhist tradition, which forms the foundation of Indonesia's folk religious practices, towards Sufism which aims to attain mystical experiences by profound states of absorption, can be attributed to their shared pursuit of experiencing the sacred, or "mystical experience." Mystical experience refers to an altered state of consciousness that is highly subjective, emotional, or incapable of being reduced to empirical factual knowledge.[29] In both the folk religious traditions of Indonesia and Sufism, altered states of consciousness are described or known as a state of unity or communion with the divine entity, commonly referred to as the Oneness or God. Practices such as repetitive recitation of verses from the Qur'an or trance-inducing music and chanting may have generated significant interest among the general population because they resemble certain rituals associated with existing folk religious practices.[30]

The starting point is the mystical experience commonly referred to in Indonesia's folk religious traditions and Sufism as the state of oneness or divine communion (unio mystica). The state of oneness or divine communion is the doctrine of the unity of Being, namely pantheism and/or monism.[31] By focusing on the experience of being united or having communion with the

[28] Anthony H Johns, "Sufism as a Category in Indonesian Literature and History" (1961) 2:2 J Southeast Asian Hist 10–23 at 13–14.
[29] Jerome Kroll & Bernard Bachrach, *The Mystic Mind: The Psychology of Medieval Mystics and Ascetics* (New York and London: Routledge, 2005) at 42.
[30] Barbara Watson Andaya & Leonard Y Andaya, *A History of Early Modern Southeast Asia, 1400-1830* (Cambridge: Cambridge University Press, 2015) at 94.
[31] Zoetmulder's differentiation is worth noting: "in pantheism the world merges with the God, the world in some way a part of His being; in monism God merges with the world, the world is the only absolute BEING which because of its may perhaps be indicated with the name of God, but regarding which there is no place for God

One or God, the mystical experience that Indonesia's folk religious traditions and Sufism seek implies the primacy of the condition or experience of One-ness between humans and their God. By implication, it postulates the non-separation between God and humans, which is the central doctrine for the theosophy of Indonesia's folk religious traditions and Sufism.[32] In Javanese folk religious traditions, this non-separation is encapsulated in the phrase "Manunggaling Kawulo Gusti" or "the One-ness between God or Lord with Its Servant." In Sufism, it is comparable to "Wahdatul Wujud" ("the Unity of Existence" or "the Transcendent Oneness")[33] and "Insan Kamil" ("the Perfect Man").[34] Considering that Sufism is an integral part of Javanese folk religious traditions, the phrase "Manunggaling Kawulo Gusti" is interchangeable with both *Wahdatul Wujud* and *Insan Kamil* in teaching Javanese folk religions.[35] It is thus entirely plausible that the first principle of *Pancasila*, the One-ness of God ("Ketuhanan Yang Maha Esa"), has been interpreted in the image of the phrase "Manunggaling Kawulo Gusti."[36] For others, the phrase "Manunggaling Kawulo Gusti" is a reference to the *Pancasila*'s fourth principle, namely, "the idea of a people led or governed by the inner wisdom that is earned from the process of deliberation and consensus" ("Kerakyatan yang Dipimpin oleh Hikmat Kebijaksanaan dalam Permusyawaratan Perwakilan").[37]

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adoration or for religion. So, the difference between monism in the more restricted sense and pantheism we could characterise as follows: the first is a-religious, often materialistic, the second religious with a preference for what is beyond the physical. But fundamentally both have their roots in the tenet of the oneness of all BEING, from which consequently follows the denial of the existence of a personal God whose being strictly distinguished from that of the world." See Peter J Zoetmulder, *Pantheism and Monism in Javanese Suluk Literature: Islamic and Indian Mysticism in an Indonesian Setting*, translated by M. C. Ricklefs (Leiden: KITLV Press, 1995) at 2–3.

[32] See Zoetmulder, *supra* note 31. Anthony H Johns, "Sufism in Southeast Asia: Reflections and Reconsiderations" (1995) 26:1 J Southeast Asian Stud 169–183 at 176.

[33] See Abdul Munir Mulkhan, *Intisari Ajaran Syekh Siti Jenar: Wihdatul Wujud dalam Pemikiran Islam-Jawa [The Essence of the Teaching of Syekh Siti Jenar: Wihdatul Wujud in a Islamic-Javanism Thought]* (Yogyakarta: Narasi, 2015); Nasr, *supra* note 9 at 37–41.

[34] Simuh, *Sufisme Jawa: Transformasi Tasawuf Islam ke Mistik Jawa [Javanese Sufism: The Transformation of Islamic Tasawuf to the Javanese Mysticism]* (Jakarta: Kepustakaan Populer Gramedia, 2019) at 29–30.

[35] Suwardi Endraswara, *Mistik Islam Kejawen [Islamic Javanese Mysticism]*, revised 4 ed (Yogyakarta: 2006) at 46–50.

[36] David Reeve, *Golkar of Indonesia: An Alternative to the Party System* (Singapore: Oxford University Press, 1985) at 311.

[37] See Soetrisno Prawiro Harjono, *Falsafah Hidup Pancasila seba[ga]imana tercermin dalam Falsafah Hidup Orang Jawa [Pancasila's Way of Life as reflected in the Javanese Way of Life]* (Yogyakarta: Lembaga Pengembangan Masyarakat Universitas Gadjah Mada [The University of Gadjah mada's Center for the Development of the Indonesian Society] and Pandawa, 1977). *Cf.,* Michael Morfit, "Pancasila: The Indonesian State Ideology According to the New Order Government" (1981) 21:8 Asian Survey 838–851 at 841. Morfit recognises that "[it is] a great mistake simply to translate this as a commitment to Western liberal democracy." However, he only recognised the mundane dimension of the fourth principle which meant, he failed to see the religious significance of the fourth principle of *Pancasila*.

The underpinning assumption of Indonesian constitutional understanding of the Oneness of God is implicit in the above. Presented as "Ketuhananan Yang Maha Esa" in Bahasa, Indonesia's national language, the Oneness of God is adopted as the first principle of the *Pancasila*. By choosing the adjective "Ketuhanan" ("Godly") for the noun "Tuhan" ("God"), suggests the hybrid or syncretic understanding of the concept of God originated from Indonesia's folk religious traditions and Sufism. Indeed, *Ketuhanan* refers to God's attributes or characters, not to God itself. By highlighting the attributes or characters of God, the decision to choose the adjective *Ketuhanan* hints at the supremacy of the mystical experience. As noted in the previous paragraph, mystical experience signifies the Unity of Being; that is, between the servant ("Kawulo" or human as God's creation) and the master ("Gusti" or Ultimate Reality or Divine Being or God). Thus, the phrase "Ketuhanan Yang Maha Esa," translated here as "the Oneness of God," can be construed as the condition of being united or in communion with the Ultimate Reality or Divine Being or God, but differs from the Puritan Islamists' literal or monotheistic understanding of God as distant from its creations, signifying it is indescribable and cannot be translated.

Indonesia's folk syncretic conception of God is characterised by the humility conveyed through positioning the speaker as lesser or subservient to God, yet acknowledging a sense of "familiarity" with God due to the perceived kinship bond.[38] Furthermore, the use of familiarity implies that the Islamic concept of God belong to "the unfamiliar category," serving "only as a formal guide, or as a *wadhah* (container) for Javanese culture, while letting their inner spiritual life adhere to the essential values and ideals of Javanese culture, namely the search for spiritual purification and perfection, as well as the attainment of the Divine Unity, or the ultimate experience of the unity of Man and God."[39] Thus, the Javanese folk religious traditions use *Gusti* (master or lord) to refer to God, and *Kawulo*, (servant) as its devotees. The metaphor of servant and lord to describe the relationship between God and humans is also recognised in Sufism, because gnosis ("ma'rifah") can only be attained "through the realisation of our perfect servanthood"[40] and is imperative in emphasising the subordinate relationship between God and its creation.[41] Arguably,

[38] Koentjaraningrat, "Javanese Terms for God and Supernatural Beings and the Idea of Power" in R Schefold, JW Schoorl & J Tennekes, eds, *Man, Meaning and History: Essays in Honour of HG Schulte Nordholt* (The Hague: Martinus Nijhoff, 1980) 127 at 127. See also S O Robson, "Speaking to God in Javanese" (1994) 132 Homme 133–142.
[39] Koentjaraningrat, *supra* note 38 at 131.
[40] Nasr, *supra* note 9 at 12–13.
[41] Johns, *supra* note 28 at 15.

the reason behind the preference for *Kawulo* and *Gusti* is the persistence of the Austronesian ancestor cult in which God is the deified ancestor in syncretic Islam Indonesia. Furthermore, the adjective "Yang Maha Esa," accompanying *Ketuhanan*, probably refers to the psychological or emotional experience of being united or communing with the Divine Being. Simply put, the adjective "Yang Maha Esa" refers to "Oneness." Originating from both Indonesia's folk religious traditions and Sufistic interpretation of Islamic Tawhid ("monotheism"), *Ketuhanan Yang Maha Esa*, the first principle of *Pancasila*, can be considered an implicit message about the condition of Oneness is Indonesia's overarching goal in the 1945 constitutional order, in which *rasa* is the indispensable means of getting there.

As previously stated, Sufism is Indonesia's most widely accepted interpretation of Islam, and the religious equivalent of Indonesia's folk religious traditions can be attributed to it. With their deep understanding of esoteric knowledge, the Sufis were recognised by pre-Islamic Indonesia as the guardians of ancient wisdom, thereby entrenching their role as preservers of the past.[42] Scholars agree that Islamic missionaries ingeniously established links between Sufism and various elements of this spiritual backdrop that encompassed veneration of nature and the land and incorporation of yogic concepts.[43] In addition, the appeal of Sufism to the Hindu-Buddhist Indonesians can be attributed to the remarkable sophistication of Sufism as a speculative framework.[44] Thus, it can be confidently asserted that Sufism is Indonesia's dominant interpretation of Islam. The Sufistic interpretation of Islam gives rise to the term "traditional Islam."[45] The essence of Indonesia's "traditional Islam" is chiefly delineated in opposition to modernist, puritan, scripturalist, or reformist Islam, which emerged during Indonesia's pre-independence political era.[46] That said, traditional Islam is more antagonist to and well-versed in

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[42] Clifford Geertz, *Islam Observed: Religious Development in Morocco and Indonesia* (New Haven: Yale University Press, 1968) at 25–29.
[43] Clinton Bennett, "Syncretistic Sufi Gnosticism in South and South East Asia" in Garry W Trompf, Gunner B Mikkelsen & Jay Johnston, eds, *The Gnostic World* (London: Routledge, 2018) 595 at 597.
[44] Johns, *supra* note 28 at 14.
[45] Rinaldo notes that Sufi mentors played a crucial role in the establishment of Nadhlatul Ulama, and their impact has been apparent in the organisation's customs and beliefs. Consequently, while Nadhlatul Ulama also perceives itself as upholding Islamic orthodoxy, it has gained recognition for its extensive acceptance of Javanese cultural traditions, its conventional Islamic educational institutions, recitation of revered scriptures, and its focus on the elucidation of fiqh. See Rachel Rinaldo, "Spirituality and Islam: Sufism in Indonesia" in Brian Steensland, Jaime Kucinskas & Anna Xiao Dong Sun, eds, *Situating Spirituality: Context, Practice, and Power* (New York: Oxford University Press, 2022) 297 at 302.
[46] The traditionalists perceive the emergence of the Puritans as a peril to the fundamental principles and customs that constituted the essence of their religious existence. In response to the ever-growing presence of the Puritan or Modernist Islam, the traditionalists organise themselves as Nadhlatul Ulama ("the Revival of the [Islamic]

all things modern. Moreover, the modernist, fundamentalist, Puritan, or literalist interpretation of Islam has been described as Islam's response—if not the Islamic analog—to the Christian Puritan movement that launched modernity.[47] In addition to introducing a novel worldview within the Muslim community, Puritan Islam vehemently opposes and occasionally confronts Sufism or traditional Islam, which is deemed to encompass non-Islamic rituals, pre-Islam or polytheistic beliefs, and thus needs to be abandoned.[48] Puritan Islamists have therefore played a significant role in Indonesia's struggle for independence, given their proficiency in adapting to the changing circumstances of pre-independence Indonesia.[49] However, traditionalist Islamists deserve recognition for incorporating the "esoteric" element of *Pancasila* which provided a cultural and potentially religious foundation for the 1945 constitutional framework. To support this assertion, one must examine the preliminary dialogue that took place during the drafting of the 1945 Constitution between traditionalist Islamists and Sukarno at the residence of Muhammad Yamin, widely regarded as a prominent, if not the founding, scholar in Indonesian constitutionalism.

The original version of the 1945 Constitution is widely regarded as one of the briefest documents fraught with inaccuracies in the history of written constitutions. One reason for this is that there were irreconcilable differences in the BPUPKI or drafting committee members' perspectives on the raison d'être ("dasar negara") of the state.[50] Being conscious of the irreconcilable differences within the drafting committee, Sukarno visited Yamin's residence where three delegates from the traditionalist Islamic faction stayed during the drafting phase. His purpose was to persuade the traditionalist Islamists to embrace the importance of national harmony, thereby relinquishing their pursuit of establishing Indonesia as an Islamic state.[51]

Scholars"). See Robin Bush, *Nahdlatul Ulama and the Struggle for Power within Islam and Politics in Indonesia* (Singapore: ISEAS–Yusof Ishak Institute, 2009) at 32.

[47] See e.g., James L Peacock, *Purifying the Faith: The Muhammadijah Movement in Indonesian Islam* (Durham, NC: The University of North Carolina Press, 2017); James L Peacock, *Muslim Puritans: Reformist Psychology in Southeast Asian Islam* (Berkeley: University of California Press, 1978).

[48] The disdain of contemporary scholars towards the adherents of traditional Islamic practices is epitomised by the use of the acronym TBC, which represents *takhayul* (myth, in Arabic *takayyul*), *bid'a* (religious innovation), and *churafat* (superstition). Evidently, the deliberate choice to use "TBC" aims to equate the traditionalists' interpretation of Islam with Tuberculosis. See Faried F Saenong, "Nahdlatul Ulama (NU): A Grassroots Movement Advocating Moderate Islam" in Muhammad Afzal Upal & Carole M Cusack, eds, *Handbook of Islamic Sects and Movements* (Leiden: Brill) 129 at 131.

[49] Kevin W Fogg, *Indonesia's Islamic Revolution* (Cambridge: Cambridge University Press, 2019).

[50] Petra Stockmann, *Indonesian Reformasi as Reflected in Law* (Münster: LIT Verlag Münster, 2004) at 29.

[51] This account is based on the testimony of Masjkur in his authorised biography. See I N Soebagjo, *KH Masjkur: Sebuah Biografi [KH Masjkur: A Biography]* (Jakarta: Gunung Agung, 1982) at 54.

During that meeting, Sukarno initiated the discussion by stating that if Indonesia were to adopt an Islamic state as its *raison d'être* ("dasar negara"), it would veer off course from its intended path of becoming a harmonious place for diverse religious communities. He then turned to Yamin, asking for his insights on the common religious practices in Indonesia. Drawing from the rich tapestry of Javanese folk religious traditions, Yamin proceeded to outline a series of "common approaches" of Javanese people to establish a profound connection or oneness ("manunggal") with the Ultimate Reality or God. Based on his encyclopedic knowledge, he identified several activities contributing to a sense of spirituality among Indonesians, including engaging in meditation known as "semedi," making pilgrimages to the graves of saints ("ziyarah") to seek divine favor, cultivating mindfulness of God ("selamat" or "harmony"), and participating in various other non-Islamic practices. Yamin's insights prompted Sukarno to acknowledge the inherent religiosity of Indonesians and he and the traditionalists expounded upon the remaining tenets of *Pancasila*, deriving them from the initial proposition that Indonesia is a nation with a mystical-religious identity.[52] Hence, it is no surprise that the Nadhlatul Ulama wholeheartedly endorsed the 1945 constitutional order based on *Pancasila*.[53]

Nonetheless, what was the driving force behind the traditionalists' decision to support Sukarno's suggestion of abandoning the notion of establishing Indonesia as an Islamic state? Arguably, this can be attributed to the Sufistic inclination of the traditionalist Islamists which offered insights into a wide range of worldly issues. To understand the perspective of traditionalists on the status of Islam in a constitution, one must begin by acknowledging the Sufistic belief in the existence of two distinct truths or realities. The first is the manifest truth ("lahir"), which refers to the surface-level or external truth evident in the text. Adhering to the literal interpretation of the Islamic law is a prime example. However, Sufism emphasises a second, implicit truth ("batin"),

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[52] The entire transcript of this conversation is available in Zudi Setiawan, "Peran Tokoh Nadhlatul Ulama dalam Proses Perumusan Pancasila sebagai Dasar Negara Republik Indonesia [The Role of the Figures of Nadhlatul Ulama in the Formulation of Pancasila as Indonesia's Raison d'être]" (2021) 18:2 Spektrum 80–95 at 86–87.

[53] For instance, the official website of Nadhlatul Ulama asserts that Sukarno derived the foundational principles of *Pancasila* from consultations with traditionalist Muslims. See Nur Kholik Ridwan, "Perumusan Dasar Negara di BPUPKI-PPKI, Memilih Musammah-nya bukan Isim-nya [The Formulation of the State's Raison d'être in the Drafting Committee, Referring the Essence, Not the Form]", (26 November 2016), online: *Nadhlatul Ulama Online* <https://nu.or.id/opini/perumusan-dasar-negara-di-bpupki-ppki-memilih-musammah-nya-bukan-isim-nya-sX7i6>. In another webpage, Nadhlatul Ulama proudly claims to be the determining factor for Indonesia's success in returning to the 1945 constitutional order. See A Khoirul Anam, "NU sebagai Penentu Langkah Kembali ke UUD 1945 [The Nadhlatul Ulama is the Determining Factor for the Success of Returning to the 1945 Constitution]", (24 June 2016), online: *Nadhlatul Ulama Online* <https://www.nu.or.id/fragmen/nu-sebagai-penentu-langkah-kembali-ke-uud-1945-aHeXt>.

the Truth they seek.[54] In contrast, traditionalists prioritise the essence, significance, or core message ("musammah") over external appearance, symbolic representation, or form ("isim").

Said Aqil Siradj, a traditionalist intellectual and former chairman of the Nadhlatul Ulama (2010–21), suggests that Puritan Islamists have an agenda to establish a society that showcases the outward manifestations of Islam and labels every facet of life as "Islamic", in order to align with the process of modernisation.[55] In the jargon of Indonesia's folk religious traditions, the traditionalists see the importance of *rasa* (essence, substance, or meaning) over *wadhah* (form, appearance, or container). In this context, Malay Sufistic poetry is characterised by its portrayal of God as a vast and all-encompassing ocean that must be navigated by the vessel (*wadhah*) of Shari'a to reach the heavenly islands of paradise.[56] Having said that, the traditionalists' understanding of the deep meaning of the concept of an Islamic state ("dar al-Islam") refers to being in submission to the will of God.[57] As discussed in the next Section, this viewpoint is similarly advocated by the Indonesian Islamic community as a rationale for no longer endeavoring to Islamise Indonesia. This belief is encapsulated in the declaration of Nadhlatul Ulama delegates who perceive *Pancasila* as a mere symbol ("mussamah"), while unequivocally acknowledging Islam as its true essence ("isim"). Although this perspective resembles the esoteric interpretation of texts known as "ta'wil," commonly practiced among the Sufis,[58] the Nadhlatul Ulama representatives firmly believed Islam

[54] Nasr notes that Sufism sees "the supreme goal of human life is to attain Truth, which is also Reality, the source of all reality, and whose attainment, as also stated by Christ, makes us free, delivering from the bondage of ignorance." One reason is that "Sufism is at the highest level a path of knowledge (*ma'rifah* in Arabic and *irfan* in Persian), a knowledge that is illuminative and unitive, a knowledge whose highest object is the Truth as such, that is, God, and subsequently the knowledge of things in relation to God." See Nasr, *supra* note 9 at 30.
[55] Michael Laffan, "National Crisis and the Representation of Traditional Sufism in Indonesia: The Periodicals 'Salafy' and 'Sufi'" in Julia Day Howell & Martin van Bruinessen, eds, *Sufism and the "Modern" in Islam* (London: I. B. Tauris & Co Ltd, 2007) 149 at 167.
[56] Michael Laffan, *The Makings of Indonesian Islam* (Princeton: Princeton University Press, 2011) at 11.
[57] Paul Stange, *Kejawen Modern: Hakikat dalam Penghayatan Sumarah [A Modern Javanese Folk Religious Tradition: The Essence of Practicing Submission]*, translated by Chandra Utama, Paul Stange, ed (Yogyakarta: LKIS, 2009) at 8. The book is an updated version of the author's dissertation. See Paul Stange, *The Sumarah Movement in Javanese Mysticism* (PhD Dissertation, The University of Wisconsin-Madison, 1980) [unpublished].
[58] Peter Awn, "Classical Sufi Approaches to Scripture" in Steven T Katz, ed, *Mysticism and Sacred Scripture* (New York: Oxford University Press, 2000) 138 at 139.

embodied the essence of the 1945 constitutional order.[59] Consequently, their voice became pivotal in obstructing the realisation of an Islamic state in Indonesia while drafting the 1945 Constitution.[60]

III. The Making of the Islamic Clothing of *Pancasila*

This Section aims to explain how the second-generation Islamist movement, called Indonesian Islam, not only complemented but reinvigorated the Pancasilaists' commitment to the 1945 constitutional order. Their arrival on Indonesia's national political scene during the New Order era (1966—98), made the nation's commitment to the 1945 constitutional order more vigorous than ever. To understand the origins of Indonesian Islam, this Section highlights the Janus-faced nature of the ever-increasing marginalisation of various folk religious expressions and Sufism. Arguably, the marginalisation results from the state's suspicion of the followers of these traditions as the leading supporters of the failed communist coup. It led to the decimation of all kinds of religious traditions that did not conform to the Puritans' preference for religion as a "sober" undertaking in approaching God, as opposed to the "intoxicated" Sufism. Thus, this is attributable to the increasing influence of the Puritans in the state's administrative structures, most notably the Ministry of Religious Affairs, plus the Pancasilaists' obsession with national development or modernisation. Their socio-religious orientation sees material achievement as integral religious piety.[61] Conversely, the marginalisation has not only failed to tame less sober religious traditions, but reinvigorated them in post-New Order Indonesia.

To understand the origins of the second generation, it is crucial to begin with the Old Order era under Sukarno's leadership when the traditionalist group known as Nadhlatul Ulama took the significant step of dissociating itself from the Masyumi Party. This Islamist political party

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[59] "Maklumat Nahdlatul Ulama untuk Dukung Pancasila dan UUD 1945 [The Decision of the Nadhlatul Ulama to Support Pancasila and the 1945 Constitution]", (31 June 2016), online: *Nadhlatul Ulama Online* <https://www.nu.or.id/taushiyah/maklumat-nahdlatul-ulama-untuk-dukung-pancasila-dan-uud-1945-zATMn>.
[60] Andrée Feillard, *NU Vis-a-Vis Negara: Pencarian Isi, Bentuk dan Makna [Nadhlatul Ulama vis a vis State: The Contribution of Nadhlatul Ulama into the Formation of the State of Indonesia]*, translated by Lesmana (Yogyakarta: LKIS, 1999) at 36.
[61] An analysis of various educational programs of Muhammadiyah, Indonesia's largest modernist organisation, and the discourse of its intellectuals regarding contemporary conditions affirm the prioritisation of equipping students with skills and knowledge relevant to modern life. Consequently, Muhammadiyah schools and universities have placed significant emphasis on modern general knowledge and skills, often at the detriment of religious subjects. See Muhammad Fuad, "Islam, Modernity and Muhammadiyah's Educational Programme" (2011) 5:3 Inter-Asia Cult Stud 400–414.

consisted of individuals, commonly called ordinary members, and religious organisations. The two largest religious factions within the party were the traditionalist Nadhlatul Ulama and the modernist Muhammadiyah. Despite its apparent unity, Masyumi is a divided political party. As the previous discussion established, the teaching of Nadhlatul Ulama was firmly rooted in Sufism. Conversely, the modernists, in which Muhammadiyah was the most prominent organisation, emerged as Indonesia's primary socio-political force to eradicate, or at least counteract, Sufism. The growing influence of modernist figures within Masyumi was unstoppable, and it was radically transforming Masyumi into "the representative of another vision of political action founded more on coherence than consensus."[62] Previously, the prevailing internal governance approach relied on consensus-building and a grassroots-oriented progression which privileged the position of the traditionalists within Masyumi. Consequently, the Nadhlatul Ulama decided to disassociate from Masyumi which set the groundwork for Indonesia's return to the 1945 constitutional order.[63] On closer inspection, Nadhlatul Ulama's decision to support Sukarno's return to the 1945 Constitution can be interpreted as another high point of the ideological convergence, hinting that they shared the same conviction with the Pancasilaists in maintaining the constitutional supremacy of *Bhinneka Tunggal Ika*'s model of managing religious pluralism.

In order to comprehend Nadhlatul Ulama's alignment with Pancasilaists, it is essential to consider two historical contexts. First, the backing of the regional rebellion by leaders of Puritans, and second, the Indonesian Communist Party's manipulation of Sukarno to distort the official interpretation of *Pancasila*, presenting it as an ideology that only legitimised their political programs.[64] Believing that Sukarno had taken sides with the Communist Party, the Nadhlatul Ulama decided to support the military to oust Sukarno and, in the process, massacre the communist sympathisers. The military's rise to power was critical not only to fomenting the second-generation

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[62] Rémy Madinier, *Islam and Politics in Indonesia: The Masyumi Party between Democracy and Integralism*, translated by Jeremy Desmond (Singapore: NUS Press, 2015) at 378.

[63] Anam, *supra* note 53; Fathoni Ahmad, "Peran Besar Fraksi NU dalam Dewan Konstituante [The Critical Role pf the Nadhlatul Ulama Members in the Constitutional Assembly [1956-59]]", (26 July 2021), online: *Nadhlatul Ulama Online* <https://www.nu.or.id/fragmen/peran-besar-fraksi-nu-dalam-dewan-konstituante-eakoe>. Also, it is crucial to acknowledge that the endorsement from Nadhlatul Ulama was specifically for the concept of "Islamic *Pancasila*," implying that it pertains to the *Pancasila* which incorporates the stipulation for Muslims to fulfill their religious obligations. Nevertheless, the support of Nadhlatul Ulama for the "Islamic *Pancasila*" is believed to stem from their apprehension of being perceived as less devout, compared to the modernists who openly emphasise their Islamic identity. See Merle C Ricklefs, *A History of Modern Indonesia since c. 1300*, 3d ed (Houndmills, Basingstoke: Palgrave, 2001) at 321.

[64] Ricklefs, *supra* note 63 at 324. (Noting that Sukarno did not know or ignore PKI's exclusivist interpretation, because he was forced to rely on PKI support.).

Islamists, which led to Indonesian Islam, but also to prompting Nadhlatul Ulama to give unqualified support to the 1945 constitutional order. Interestingly, the military not only showed unwavering conviction of the validity of Sukarno's "Konsepsi" as the most appropriate model for post-Sukarno Indonesia, but, also blatantly self-proclaimed it as the New Order, emphasising its distance from Old Order's chaotic politics. The New Order introduced a series of harsh policies that restricted the Islamists' political activity to impose order. While the response of a small number of the modernist Islamists to this policy was to initiate an underground movement to continue their mission to constitutionalise Islam, the traditionalists no longer participated in practical politics, known as "returning to the original mission of 1926" ("kembali ke khittah 1926").[65] It can therefore be concluded that the threat to the 1945 constitutional order was practically nonexistent during the reign of the military New Order.

This condition allowed the New Order to adopt a more open and friendly approach to the West which, in turn, contributed to the formation of the second-generation Islamists as the additional force to support the 1945 constitutional order in Indonesia's post-New Order. It was part of the New Order's economic development strategy of adopting a more sober approach to governance, compared to Sukarno's Old Order, in an attempt to win the West's support in bringing back the nation from the brink of collapse.[66] To accomplish that objective, one of the New Order's development programs was to present more opportunities for Indonesia's most talented lecturers at the State Institute of Islamic Studies ("Institut Agama Islam Negeri" or "IAIN," now "Universitas Islam Negeri" or "the State University of Islam") to study abroad, most notably at McGill University's Institute of Islamic Studies and, to a lesser extent, the University of Chicago.[67] The State Institute of Islamic Studies was the aspiration of some Islamist figures who believed that

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[65] 1926 has significant symbolic value, not only for the establishment of Nadhlatul Ulama, but also because it is regarded as the year when it became infused with purity, untainted by worldly influences. See Fathoni Ahmad, "Perjuangan NU Kembali ke Khittah 1926 [The NU's Struggle to Return to the Khittah 1926]", (12 July 2017), online: *Nadhlatul Ulama Online* <https://www.nu.or.id/fragmen/perjuangan-nu-kembali-ke-khittah-1926-mjuW4>.

[66] The account of the chaotic socio-political conditions that surrounded the Old Order can be found in Amry Vandensbosch, "'Guided Democracy' in Indonesia" (1961) 41:244 Curr Hist 329–334, 370 at 370.

[67] The connection between Indonesia and McGill goes back to Sukarno's Old Order era. On the suggestion of Wilfred Cantwell Smith, the founding director of Islamic Studies, Sukarno was given an Honorary Degree LLD from McGill Faculty of Law. See The Registrar, *McGill University Principal and Vice-Chancellor F. Cyril James* (1956); T H Matthews, *Memoranda to the Principal from the Register: Special Convocation on Friday, 6th June 1956* (1956). Arguably, what prompted Smith to build a strong connection with Indonesia as a predominantly Muslim country was his belief that to provide an emphatic, objective, and comprehensive picture of Islamic civilisation, it was necessary to have devout Muslim students and professors attending the Institute that he founded. See also Megan Brankley Abbas, *Whose Islam? The Western University and Modern Islamic Thought in Indonesia* (Stanford, CA: Stanford University Press, 2021) at 52.

religious knowledge and Western science are in harmony and should be studied side by side. To understanding how McGill's Institute of Islamic Studies could be the "midwife for the [Indonesian] Islamic reformation" that led to the persistence of the 1945 constitutional order beyond the post-New Order period, it is necessary to begin with Wilfred Cantwell Smith's pluralistic conception of Islam.[68]

According to Smith, Islamic law ("Sharia"), as a concept, did not hold significance during the formative and classical periods. Simply put, "the evidence suggests that before the sixth century, Islamic law was certainly not as central to Muslims' conceptualisation of Islam as it came subsequently to be—and as it is today."[69] By decentering Shariah in defining what Islam is, Smith's conception of Islam deprived the modernists' purist and static understanding of Islam of its status as the privileged interpretation of Islam. As a result, the reputation of Sufism as "the Islam which is not Islam" fell into disrepute.[70] Traditionalists saw this as their Sufistic-oriented and hence syncretic Islam, which had suffered from the modernists' accusation of being the diluted Islam, finally receiving the recognition it deserved.

Upon his return as a student from McGill, and inspired by Smith's pluralistic understanding of religion, Harun Nasution, the doyen of the second-generation Islamists, published a two-volume book claiming there was nothing wrong with the plurality of Islam and that Sufism was a valid expression of Islam as long as the Oneness of God was admitted.[71] Soon, Mohammad Rasjidi, a Sorbonne-educated modernist, published a rebuttal of Nasution's work as "a product of being

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[68] Supposedly, Smith's pluralistic conception of Islam derived from his study of Muslim theologians ("*Mutakallimun*") during the initial six centuries of Islamic history. Smith and Makdisi argued that Sharia among Muslim theologians was not extensively discussed, analysed, or emphasised by writers, nor did they strive to draw readers' attention to it. Even as late as the fifth century of Islam, the concept of Sharia was acknowledged and accepted, but it was not deemed indispensable for Muslims in conceptualising their faith. See Wilfred Cantwell Smith, "The Concept of Shari'a among Some Mutakallimun" in George Makdisi, ed, *Arabic and Islamic Studies in Honor of Hamilton AR Gibb* (Cambridge, Mass.: Dept. of Near Eastern Languages and Literatures of Harvard University, 1965) 581. Smith's anti-essentialist understanding of Islam and religion as something that should not be seen as having any essence, is propounded in Wilfred Cantwell Smith, *The Meaning and End of Religion* (New York: Mentor Books, 1964). There, he "argue[s] . . . that the term 'religion' should be dropped; but if there is anything in the world to which it can legitimately be applied, surely it is in the sense that there are as many religions in the world as there are people." See *Ibid* at 220. See also Asad's book review Talal Asad, "Reading A Modern Classic: W. C. Smith's 'The Meaning and End of Religion'" (2001) 40:3 Hist Rel 205–222.

[69] Shahab Ahmed, *What Is Islam? The Importance of Being Islamic* (Princeton, New Jersey: Princeton University Press, 2015) at 129.

[70] Julia Day Howell, "Sufism and the Indonesian Islamic Revival" (2010) 60:3 J Asian Stud 701–729 at 706.

[71] Harun Nasution, *Islam ditinjau dari Berbagai Aspeknya ["Seeing Islam from Every Angle"]* (Jakarta: Universitas Indonesia Press, 1979) at 30–31.

misguided by the Orientalist mode thought."[72] Ultimately, what were supposedly academic and distant from practical questions, became the hidden force that enlivened the intellectual revival of traditional Islamists into Indonesian Islam, articulating the Islamic legitimation of the 1945 constitutional order.

The importance of Smith's pluralistic conception of Islam, which required one to speak not of "Islam" but rather "Islams," was not immediately apparent in the second-generation Islamists' defense of *Pancasila*-based constitutional order. One reason was that the Indonesian style of communication and scholarly debate, still reflecting the Javanese "cult of beauty" centered around the conceptual distinction between the refined ("alus") and the coarse ("kasar"). Consequently, the ensuing debate is encapsulated in the metaphor of "looking north and hitting south," hinting at the importance of *rasa* here best defined as "cultural sensibility" in Indonesian political communication.[73] To unveil Smith's pluralistic conception of Islam as the animating spirit of the second-generation Islamists' thought for "renewal" ("pembaruan") of Indonesia's Islamic thought, requires inferences based on interpretive reading strategies. To do so, I will start with the activism agenda of the second-generation Islamists who, instead of promoting the Islamic State, strove to maintain "pluralisme agama" ("inter-religious harmony"). Their disavowal of the agenda of an Islamic state was a symbolic rejection of modernist Islamism as "neo-traditionalism" or "neo-Sufism."[74] By self-proclaiming "neo-Sufism," the second-generation Islamists were implying their distinctiveness from the traditionalists. What made them distinct from their predecessor was their familiarity with various Western-inspired academic concepts and categories they appropriated in advancing their ideas, as explained below. One reason for their "half-hearted" embrace of Western values was their conviction that Islamic spirituality was still needed in Indonesia. Therefore, their idea of "inter-religious harmony" as the kernel of their project to renew the Islamic thought in the

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[72] See Mohammad Rasjidi, *Koreksi terhadap DR. Harun Nasution tentang "Islam ditinjau dari berbagai aspeknya" [A Counterargument to Dr Harun Nasution's "Seeing Islam from Every Angle"]* (Jakarta: Bulan Bintang, 1977) at 12.

[73] Clifford Geertz, *The Religion of Java* (Chicago and London: The University of Chicago, 1976) at 238–241. The use of ambiguity in public communication is considered a religious objection, as it demonstrates respect ("hormat"), which holds significant value in Javanese folk religious traditions. See Franz Magnis-Suseno, *Etika Jawa: Sebuah Analisa Falsafi tentang Kebijaksanaan Hidup Jawa [The Javanese Ethical System: A Philosophical Analysis of the Javanese Idea of the Good Life]*, 5th ed (Jakarta: Gramedia Pustaka Utama, 1993) at 126.

[74] Myer maintains that the use of the terminology "neo-Sufism" began with Nurcholish Madjid, one of the founding leaders of the second-generation Islamists. See Verena Meyer, "From Taṣawwuf Modern to Neo-Sufism: Nurcholish Madjid, Fazlur Rahman, and the Development of an Idea" in *Modern Sufis and the State: The Politics of Islam in South Asia and Beyond* (New York: Columbia University Press, 2020) 40 at 45. *Cf.,* Barton, *supra* note 24.

New Order Indonesia needs to be scrutinised. It reveals uninterrupted continuity between the traditionalists and the second-generation Islamists as the proponent of *Bhinneka Tunggal Ika*'s model of managing religious pluralism in Indonesia.

In that regard, it is worth noting that the second-generation Islamists' religious orientation was Sufism, which enables one to see them as the intellectual progenitor of Indonesian Islam that legitimises *Pancasila* in post-New Order Indonesia. Hence, the second-generation Islamists were not interested in ending various folk mystical practices that the modernist Islamists considered heretical and inimical to Islam. Indeed, they appeared to embrace and practice several Islamic rituals deemed heretical in the eyes of the modernists. For instance, visiting *Pesantren* Suryalaya—renowned as the center of Sufism in West Java in which one of its core rituals is to make supplications through Abd al-Qadir, a local Saint—constitutes one of their core spiritual training programs.[75]

What is more, by recognising its intellectual roots in Sufism, one can explain the conceptual disparity between the second-generation Islamists' concept of religious toleration and that of liberalism that promotes and protects individual rights or dignity as its starting point. The second-generation Islamists' concept of religious toleration is never about promoting and protecting individual rights or dignity; rather, it is about protecting the sanctity of religion.[76] Hence, the concept of Indonesia embraced by the second-generation Islamist proclaims that "it is neither an Islamic state nor a secular state," as the Islamic answer about the relationship between state and religion.[77] Widely acknowledged as Indonesia's constitutional premise,[78] this catchphrase points to the embodiment of *Bhinneka Tunggal Ika* in the 1945 Constitution as Indonesia's answer to its condition as a religiously plural nation. In this vein, the Chief Justice of the Constitutional Court who is also a proponent of the second-generation of Islamists argued that "'[the] bureaucracy and its officials who work for the government cannot be atheist [as] according to the Law and State

[75] See Julian Millie, *Splashed by the Saint: Ritual Reading and Islamic Sanctity in West Java* (Leiden: KITLV Press, 2009) at 81–84.
[76] *Putusan Nomor 140/PUU-VII/2009 [Decision no 140/PUU-VII/2009]*, [2010] Fadzlun Budi .
[77] Nurcholish Madjid, "Pengantar: Umat Islam Memasuki Zaman Modern [Introduction: Muslims and Modernity]" in *Islam: Doktrin dan Peradaban [Islam: Doctrines and Civilization]* (Jakarta: Gramedia Pustaka Utama, 2019) xxi at cxxxix.
[78] Team Viva, "Mahfud MD: Indonesia Bukan Negara Agama, Bukan Sekuler [Mahfud MD, [the Chief Justice of the Constitutional Court]: Indonesia is not a Religion-based State, or a Secular [State]]", *Viva News* (23 August 2018), online: <https://asset.viva.co.id/appasset-2018/desktop-2018/img/icon-profile-team.png?v=5.13>.

officials and employees have a clear mandate to believe and trust the one almighty God."[79] Having said that, the second-generation Islamists' understanding of religious pluralism is comparable to that of the Pancasilaists' *Bhinneka Tunggal Ika*, with its concept of a managed religious pluralism that does not condone toleration of that outside religion—meaning no one is allowed to be non-religious, let alone to be an atheist. Supposedly, this limited religious toleration has something to do with the primary goal of the second-generation Islamists as anything but advocating "internal relativism" ("prinsip kenisbian ke dalam"); that is, religious toleration does not encompass heterodoxy and anti-religious views.[80] Hence, the second-generation Islamists' idea of religious toleration slightly differs from the Pancasilaists' conception of *Bhinneka Tunggal Ika*, which is based on the proposition that "all religions are in principle similar."

That said, it is difficult to say that second-generation Islamists have less commitment to *Pancasila* compared to the Pancasilaists or nationalists. From its inception, the second-generation Islamist movement has aimed to establish that Sufism and modernity are not mutually exclusive.[81] This difference accommodates those who embrace a stricter understanding of Islam.[82] Thus, it is no surprise that all the second-generation Islamists have been the staunchest promoters of the 1945 constitutional order and their intellectual legacy has been to provide solid ground for supporting the 1945 constitutional order as the defining identity of Indonesian Islam.

Now, we can turn to Indonesian Islam as the late defender of the 1945 constitutional order. As the previous paragraph has noted, the intellectual foundation of Indonesian Islam can be found in the thought of the second-generation Islamists as an attempt to revive Sufism in Indonesia. However, what prompted Indonesian Islam to emerge in Indonesia's constitutional struggle was the rise of a variety of transnational Islamism that were entirely different from the existing Islamism, traditionalism, and modernism. Unlike Traditionalists and Puritans, which are the children of the nation-state, radical transnational Islamism's political allegiance is to the global *umma* or caliphate political order. They disavow the Pancasilaists' idea of Indonesia. It is not uncommon for them to advocate Indonesia's dissolution into the not-yet-materialised global *umma*. The London-based Hizbut Tahrir is a case in point. Its phenomenal rise in the post-New

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[79] Jimly Asshidiqie, *Pancasila dan Agenda Pembaruan Birokrasi [Pancasila and the Agenda to Revitalize the Bureaucracy]* (Semarang, Central Java, 2011) at 5.
[80] Madjid, *supra* note 77 at xxii–xxiv.
[81] Meyer, *supra* note 74 at 48.
[82] Julia Day Howell, "Modernity and Islamic Spirituality in Indonesia's New Sufi Networks" in Julia Day Howell & Martin van Bruinessen, eds, *Sufism and the "Modern" in Islam* (London: I. B. Tauris & Co Ltd, 2007) 217 at 236.

Order period (1998—present) coincided with the fall of the militaristic New Order, in which liberalisation of Indonesian public life became the norm. With unprecedented access to information as a result of the internet, many highly educated and technology-literate young Indonesians are lured by the ideology of transnational Islamism, as the interpretation of Islam from both Traditionalist and Puritans is increasingly considered out of step with Indonesia's new condition of being intellectually transnationalised.[83]

Seeing the phenomenal rise of the Hizbut Tahrir as an existential threat to *Pancasila*, in 2017, Joko Widodo's administration issued a Government Regulation to outlaw the movement, arguably the first public manifestation of Indonesian Islam as a countermovement for infiltrating "foreign" or "Arab" Islamism.[84] Moreover, the 2017 Regulation signaled a more explicit commitment of traditionalist Islamists to *Bhinneka Tunggal Ika* as the 1945 Constitution's conception of religious toleration. The uncompromising interpretation of Islam by radical transnational Islamists and the endorsement of militant methods was an additional catalyst for the emergence of Indonesian Islam. Strictly adhering to the principles of Islam is also a defining trait of Puritans, compelling them to emphasise the significance of establishing an Islamic state following the teachings of the Qur'an. Consequently, individuals with a more Puritan or modernist religious orientation are more inclined to embrace religious intolerance.[85] However, what draws the existing Islamist movements' ire is transnational Islamism's rigid take-no-prisoners attitude in

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[83] The transnational Islamist movement, such as Hizbut Tahrir, originates and draws their membership from Indonesia's most prestigious institutes of technology. See Yon Machmudi, *Islamising Indonesia: The Rise of Jemaah Tarbiyah and the Prosperous Justice Party (PKS)* (Canberra, ACT: ANU Press, 2008) at 110–113. See also Nur Hanifah, *Pergerakan Hizbut Tahrir Indonesia (HTI) Studi kasus aktivitas HTI di Institut Pertanian Bogor (IPB) [The Indonesian Hizbut Tahrir Movement: A Study on the Activism of the Hizbut Tahrir at the Bogor Institute of Agriculture]* (B.A. Thesis in the Middle East Studies, Universitas Indonesia, 2007) [unpublished]; Elz, "Menurut Kajian TNI, Hizbut Tahrir Indonesia Didirikan di IPB Bogor 1982 Lalu [According to A Study by the Military, Hizbut Tahrir was Founded in the Bogor Institute of Agriculture in 1982]", *Harian Pijar* (17 May 2017), online: <https://www.harianpijar.com/read/2017/05/17/15682/menurut-kajian-tni-hizbut-tahrir-indonesia-didirikan-di-ipb-bogor-1982-lalu>; Tiara Sutari, "Dibekukan ITB, Organisasi Mahasiswa HATI Bantah Terkait HTI [The Bandung Institute of Technology Disbands Hizbut Tahrir, the Students Denied Their Involvement]", *CNN Indonesia* (7 July 2018), online: <https://www.cnnindonesia.com/nasional/20180607134548-20-304266/dibekukan-itb-organisasi-mahasiswa-hati-bantah-terkait-hti>.

[84] See Hayder Affan, "Polemik di balik IstiIah 'Islam Nusantara' [Polemics behind the term 'Islam Nusantara']", *BBC News Indonesia* (15 June 2015), online: <https://www.bbc.com/indonesia/berita_indonesia/2015/06/150614_indonesia_islam_nusantara>. See also Ahmad Irfan Fauzi, *Kepentingan Ideologis Negara, Hizbut Tahrir Indonesia, dan Nahdlatul Ulama: Studi Pembubaran Hizbut Tahrir Indonesia [The Interest of Defending the State's Ideology, Hizbut Tahrir Indonesia, and the Nadhlatul Ulama: A Study on the [Politics] of Abolishing the Hizbut Tahrir of Indonesia]* (B.A. Thesis in Political and Social Sciences, Universitas Indonesia, 2020) [unpublished].

[85] This is the conclusion of Jeremy Menchik, *Islam and Democracy in Indonesia: Tolerance without Liberalism* (Cambridge: Cambridge University Press, 2016) at 19.

propagating their religious understanding. That said, the transnational Islamists do not hesitate to stealthily appropriate various institutions and resources of either the Puritan Muhammadiyah or the traditionalist Nadhlatul Ulama.

In response, the leadership of Muhammadiyah issued an executive decision explicitly stating that the transnational Islamist movement does not align with their interpretation of Islam. Meanwhile, the traditionalist Nadhlatul Ulama takes a much stronger stance, condemning their idea of the caliphate system and Islamic state as having no basis in Islamic teaching.[86] Most importantly, the arrival of radical transnational Islamism in Indonesian constitutional politics has prompted an alliance of convenience between the traditionalist Nadhlatul Ulama and the Puritan Muhammadiyah. While they have nothing in common in terms of their religious orientation, the alliance between them gravitates toward preserving the status quo, that is, the *Pancasila*-derived *Bhinneka Tunggal Ika* management of religious pluralism.

Interestingly, the arrival of radical transnational Islamism on the Indonesian constitutional scene has also stimulated the "traditionalist" impulse within Muhammadiyah, Indonesia's largest Puritan organisation. It appears that the origin of Muhammadiyah's *Pancasila*-friendly stance was the publication of a short article by Amien Rais arguing that neither the Qur'an nor the traditions of Muhammad ("hadits") confirmed the existence of the religious obligation for Muslims to establish an Islamic state.[87] Given his celebrated status as a young intellectual who later became the chairman of Muhammadiyah, Rais' statement has induced a new conceptual cleavage between the first and the second generation of modernist or Puritan Islamists. Most notably, this has provoked other young Islamists to explore how best to conceive religious toleration in plural Indonesia, without abandoning their commitment to Islam. As discussed above, one answer is Nurcholish Madjid's new thinking ("pembaruan"), better known as the theology of Inclusive Islam ("Islam Inklusif").[88] Not only is Madjid an intellectual, but also an effective organiser. With his

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[86] The Central Board of Nadhlatul Ulama, "Lampiran 2: Dokumen Penolakan Pengurus Besar Nadhlatul Ulama terhadap Ideologi dan Gerakan Ekstremis Transnasional [Appendix 2: Documents on the Nadhlatul Ulama's Condemnation of the Ideology and Movement of the Transnational Extremists]" in Abdurrachman Wahid, ed, *Ilusi Negara Islam: Ekspansi Gerakan Islam Transnasional di Indonesia [The Mirage of the notion of the Islamic State: The Expansion of the Transnational Islamist Movement]* (Jakarta: Gerakan Bhinneka Tunggal Ika, the Wahid Institute, and the Maarif Institute, 2009) 251 at 254.

[87] Amien Rais, "Tidak Ada Negara Islam [There is No Islamic State]" in Agus Edi Santoso, ed, *Tidak Ada Negara Islam: Surat-surat Politik Nurcholish Madjid - Mohamad Roem [There is No Islamic State: The Political Correspondence between Nurcholish Madjid and Mohammad Roem]* (Jakarta: Penerbit Djambatan, 1997) xxii at xxii.

[88] Hefner, *supra* note 23 at 113–119.

Paramadina, a discussion group turned into a university, he planted the seed of an inter-denominational community of activist-cum-intellectuals with a solid commitment to the 1945 constitutional order, as an attempt to preserve the *Bhinneka Tunggal Ika* Indonesia.

Conclusion

It is therefore contended that the 1945 constitutional order may persist due to a political alliance and a potential convergence of ideologies between the Traditionalist Islamists, who constitute the largest faction within Indonesia's Islamist movement, and the Pancasilaists. Initially, this proposition may appear counterintuitive, given the evident animosity between the Traditionalists and the Pancasilaists, as demonstrated in the preceding Chapter which nevertheless alluded to a rivalry between the Traditionalists and the Puritans. From the very start, it was evident that the Indonesian Islamist movement has been plagued by internal discord. Thus, the initial Section of this Chapter examined the theological foundation of the traditionalist Islamists, who align more closely with the Pancasilaists as guardians of Indonesia's folk religious traditions. Both the Traditionalists and the Pancasilaists share a common belief in religious syncretism (*Bhinneka Tunggal Ika*), placing great importance on preserving Indic or folk religious traditions, in contrast to the Puritan Islamists who actively seek religious renewal through embracing socio-cultural change. Moreover, the rise of radical transnational Islamist factions has altered the power dynamics, tilting the scales in favor of the Pancasilaists as the predominant force behind the nation's commitment to constitutional conservatism (see Section 3), because they aim to dismantle Indonesia as a nation-state. Consequently, their emergence has compelled the Puritans to align themselves with the Pancasilaists to safeguard Indonesia as a national project. Taking all these factors into account, it is undeniable that the 1945 constitutional order will continue to shape Indonesia's future, for better or worse.

PART III

A Vernacularisation of Constitutionalism? Indonesia's Three Constitutional Postulates

Having discussed Indonesia's cultural premises and religious rivalry as the underlying forces that sustained the 1945 constitutional order in Parts I and II, Part III will discuss how they have shaped the Indonesian conception of constitutionalism as a form of vernacularisation. It will focus on *negara kesatuan* or *negara Pancasila* (Chapter 7), *negara hukum* (Chapter 8), and *hukum tata negara* (Chapter 9)—Indonesia's three most ubiquitous and essential constitutional postulates in the nation's constitutional and public law discourse.[1] It is arguable that these three constitutional postulates are the functional equivalence of what may be termed the "ideals of political morality" that are critical for capturing what sort of constitutionalism Indonesians had in mind.[2] However, no work to date has provided a sustained, let alone satisfying, account of what these three concepts are supposed to mean.[3] Despite their significance, to date there has been no research that has conceptualised these three constitutional postulates, thus depriving the prevailing constitutional discourse of a clear conceptual basis. In a word, the available accounts overlooked the vernacular meaning that underpins the cultural and religio-ideological basis of the invocation or entrenchment of these three postulates in Indonesian constitutionalism.

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[1] See e.g., Andrew Ellis, "The Indonesian Constitutional Transition: Conservatism or Fundamental Change?" (2002) 6 Sing J Int'l & Comp L 1–38; Jakob Tobing, *The Essence of the 1999-2002 Constitutional Reform in Indonesia: Remaking the Negara Hukum* (Ph.D. Thesis, Leiden University, 2023) [unpublished].

[2] The "ideals of political morality" phrase or concept is derived from Waldron's endeavour to delineate the concept of the rule of law. There, Waldron states that "*the* Rule of Law is one of the ideals of our political morality and it refers to the ascendancy of law as such and of the institutions of the legal system in a system of governance." *See* Jeremy Waldron, "The Rule of Law" in Edward N Zalta & Uri Nodelman, eds, *The Stanford Encyclopedia of Philosophy*, fall 2023 ed (Palo Alto, CA: Stanford Encyclopedia of Philosophy, 2023) at para 1. (Emphasis is in original).

[3] Currently, the majority, if not all, foreign and domestic scholarly works addressing Indonesia's ideals of political morality lack an appreciation of their profound conceptual depth. Essentially, they perceive them as a simplistic adaptation of Western ideals, such as the rule of law, *Rechtsstaat*, or constitutional state. See e.g. Tim Lindsey, "Indonesia: Devaluing Asian Values, Rewriting Rule of Law" in Randall Peerenboom, ed, *Asian Discourses of Rule of Law* (London: Routledge, 2003) 281; Daniel S Lev, "Judicial Authority and the Struggle for an Indonesian Rechtsstaat" (1978) 13:1 L & Soc'y Rev 37–71; David Bourchier, *Illiberal Democracy in Indonesia: The Ideology of the Family State* (Abingdon, Oxon: Routledge, 2014); Marsillam Simanjuntak, *Pandangan Negara Integralistik: Sumber, Unsur, Riwayat Persidangan UUD 1945 [The Idea of Integralistic State: Sources, Elements, [and] the Historical Origin of the 1945 Constitution]* (Jakarta: Pustaka Utama Grafiti, 1994); Tobing, *supra* note 1.

At its core, this Part argues it is essential that these three constitutional postulates not be simply understood as a secular—or worse, a literal—translation of Western ideals of political morality. As Anderson emphasises, it is critical to acknowledge that the terms socialism, democracy, and revolution no longer strictly correspond to their dictionary definitions as *sosialisme, démokrasi,* and *révolusi*. Instead, they "have acquired free-floating meanings of their own."[4] Similarly, Yamin elucidated that the 1945 Constitution was fundamentally intended to encapsulate Indonesia's folk normative principles which are rooted in the nation's civilisational attributes, and that the absence of such integration would render the process of nation-building religiously meaningless.[5] Sukarno and Supomo, two other influential members of the BPUPKI (the Investigating Committee for Preparatory Work for Independence), the 1945 constitutional drafting committee, were of the same opinion.[6] It is suggested that the successful integration of Indonesia's indigenous normative frameworks into the 1945 Constitution significantly facilitated the PPKI (the Preparatory Committee for Indonesian Independence), the successor to the BPUPKI, in achieving consensus on the ratification of the 1945 Constitution in less than one month. Reid claimed that "what bound the country together positively, however, were ideas and sentiment rather than political institutions."[7]

Against this background, Part III further asserts that these three constitutional postulates should be given meaning or significance within the idiom of Indonesia's folk religious traditions

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[4] See Benedict R O'G Anderson, *Language and Power: Exploring Political Cultures in Indonesia* (Ithaca: Cornell University Press, 1990) at 147.

[5] See Muhammad Yamin, "Azas dan Dasar Negara Kebangsaan Republik Indonesia [Principle and Foundation of the Republic of Indonesia]" in Muhammad Yamin, ed, *Naskah Persiapan Undang-Undang 1945, memuat Segala Naskah Resmi Penggalang Undang-Undang '45 jang Berlaku Kembali dalam Negara Kesatuan Républik Indonésia* [Travaux Préparatoires of the 1945 Constitution, including Every Official Material Supporting the Reintroduction of the 1945 Constitution], vol. 3 (Jakarta: Jajasan Prapantja, 1959) 83 at 92.

[6] See Sukarno, "Susunlah Konstitusi jang Benar-benar Konstitusi Res Publica [Write the Right Constitution that Truly Reflects the People's Constitution]" in Muhammad Yamin, ed, *Naskah Persiapan Undang-Undang 1945, memuat Segala Naskah Resmi Penggalang Undang-Undang '45 jang Berlaku Kembali dalam Negara Kesatuan Républik Indonésia* [Travaux Préparatoires of the 1945 Constitution, including Every Official Material Supporting the Reintroduction of the 1945 Constitution], vol. 1 (Jakarta: Jajasan Prapantja, 1959) 627. Supomo's opinion can be found in Supomo, "Pidato Pada Tanggal 31-5-1945 Rapat Badan Penjelidikan Untuk Persiapan Indonesia Merdeka, Di[ ]Gedung Chuoo Sangi-in di Jakarta [Speech at May 31, 1945 during the Meeting of the Constitutional Drafting Committee in the Preparation of the Free Indonesia]" in Muhammad Yamin, ed, *Naskah Persiapan Undang-Undang 1945, memuat Segala Naskah Resmi Penggalang Undang-Undang '45 jang Berlaku Kembali dalam Negara Kesatuan Républik Indonésia* [Travaux Préparatoires of the 1945 Constitution, including Every Official Material Supporting the Reintroduction of the 1945 Constitution], vol. 2 (Jakarta: Prapantja, 1959) 109.

[7] See Anthony Reid, *To Nation by Revolution: Indonesia in the 20th Century* (Singapore: National University of Singapore Press, 2011) at 42.

in which the distinction between the profane and the sacred absent.[8] Indonesia, as previously mentioned, has not undergone the process of secularisation. In fact, the drafting of the 1945 Constitution clearly indicated the indispensability of the sacred in the construction of Indonesia's constitutional life. In that regard, one needs look no further than the BPUPKI itself which was responsible for designing the 1945 Constitution. Thus, uncovering the BPUPKI's real intention behind the 1945 Constitution is paramount in building a conceptual account of Indonesia's three constitutional postulates.

To be clear, the BPUPKI, since its inception, was never meant to represent the entire spectrum of Indonesia's ideology. To a certain extent, it is arguable that the BPUPKI is simply channeling Sukarno's ideological viewpoint. To ensure that his ideology could be secured, Sukarno appointed Dr. Radjiman Wedyodiningrat, one of the founders of Budi Oetomo, an organisation fighting for the revival of Javanese folk religious values and unsurprisingly "a fervent advocate of the diverse adat law or local customary law traditions [which he strongly believed] should inform the constitutional foundation of what he called the 'integral state.'"[9] Ostensibly, the appointment of Radjiman was a strategy to secure the entrenchment of the folk religious vision in independent Indonesia. For this reason, it was also known as "the Radjiman committee."[10] Importantly, Sukarno also included Yamin and Supomo who were both well-versed in Indonesia's folk religious traditions as well as the Western tradition of political discourse. Yamin and Supomo went on to be the most defining voices in the process of designing the 1945 Constitution. It is therefore safe to say that the BPUPKI was driven by folk religious values. Hence, the 1945 Constitution as the brainchild of the BPUPKI was an attempt to entrench and realise these values.

The strategy for recovering the "intended" meaning behind Indonesia's three constitutional postulates is to perform what one might call an expansive or contextual reading of BPUPKI materials to illuminate the key phrases, concepts, or words that are not initially obvious. This interpretive strategy is necessary because the primary sources do not yield sufficient understanding of the postulates. For instance, this strategy becomes imperative in the case of connecting the folk

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[8] In the context of understanding Islamic law, Salaymeh contends that the inadvertent and coerced implementation of the division between worldly affairs and religious matters has led to a "secular distortion of [Islamic] law." In essence, this has compelled Islamic law to be comprehended through the lens of Western ideals or the colonial system of meaning. See Lena Salaymeh, "Decolonial Translation: Destabilising Coloniality in Secular Translations of Islamic Law" (2021) 5:1 J of Islamic Ethics 250–277 at 264–266.

[9] See Martin Ramstedt, "Introduction" in Martin Ramstedt, ed, *Hinduism in Modern Indonesia: A Minority Religion Between Local, National, and Global Interests* (London and New York: Routledge Curzon, 2004) 1 at 4.

[10] See *Ibid* at 3–4.

concept *Kawulo Manunggaling Gusti* and *negara kesatuan* ("the unitary state"). In articulating his concept of *negara kesatuan* at a meeting of the BPUPKI, Supomo did not explicitly invoke *Kawulo Manunggaling Gusti*. However, the association between *Kawulo Manunggaling Gusti* and Supomo's idea of *negara kesatuan* can be discerned through his word choice. He used *Kawulo* as a reference to the people and *Gusti* as the state, to describe what he believed was Indonesia's indigenous conception of the relationship between the state and individuals.[11] In this interpretive framework, Supomo's choice of *Kawulo* and *Gusti* can justify the reliance on insights that come from other disciplines, such as anthropology and comparative religious studies, to explain the Indonesian idea of *negara kesatuan*.

The discussion in Part III is structured as follows. Chapter 6 examines the Indonesian idea of *negara kesatuan* (unitary state), founded on Indonesia's folk religious traditions, because it is Indonesia's most foundational constitutional postulate. This implies that the other constitutional postulates must be understood in light of *negara kesatuan*. Thus, Chapter 7 argues that *negara hukum* should be understood as more than Indonesia's translation of the rule of law. Despite being a derivative of *negara kesatuan*, Chapter 8 identifies *negara hukum* as Indonesia's own political ideal of morality, meaning that it contains the religious vision of the Pancasilaists. Chapter 8 also discusses *hukum tata negara*, Indonesia's presumptive conceptual equivalent of modern Western constitutional law. While originally a derivative of *negara kesatuan*, chapter 9 argues that *hukum tata negara* has become Indonesia's own complex constitutional tradition.

[11] See Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia [the Investigating Committee for Preparatory Work for Independence], *Lahirnya Undang-Undang Dasar 1945: Memuat Salinan Dokumen Otentik Badan Oentoek Menyelidiki Oesaha2 Persiapan Kemerdekaan* [The Birth of the 1945 Constitution: With Copies of the Documents of the Investigating Committee for Preparatory Work for Independence], revised ed, A.B. Kusuma, ed (Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2009) at 126.

CHAPTER 6

Negara Kesatuan:
From an Invented Tradition to the Indonesian Theory of State?

Introduction

In Indonesian constitutional discourse, *negara kesatuan* is without a doubt the most important constitutional postulate. It therefore deserves to be called Indonesia's controlling political idea, determining the conceptual understanding that underlies and animates Indonesia's two other constitutional postulates—*negara hukum* (Chapter 8) and *hukum tata negara* (Chapter 9). *Negara kesatuan* embodies the Indonesian model of the relationship of ruler-ruled, or state and its citizens on which the 1945 constitutional order is premised.[1] It is derived from *Manunggaling Kawulo Gusti*, the metaphor of the mystical union between God and humans as understood in Indonesia's folk religious traditions.

The preeminent status of *negara kesatuan* can be recognised by its placement in Article 1(1) of the 1945 Constitution. It is stated that "the State of Indonesia is a Unitary State which has the form of a Republic."[2] To further support its preeminent status, the Annotations to the 1945 Constitution, which are meant to elucidate certain key concepts of the constitution, state that *negara kesatuan* is "incorporated" within the inviolable Preamble (or *Pancasila*).[3] In other words, although *negara kesatuan* is not explicitly included in the Preamble or *Pancasila*, the Annotations provide that the concept is an essential component of it. Beyond this treatment, however, no further explanation is provided within these primary materials regarding the

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[1] Certainly, the relationship between the ruler and the ruled, the state and its people, is fundamental to the project of constitutionalisation. In particular, the relationship between the ruler and the ruled determines the understanding behind Western notions such as popular sovereignty and democracy. See Denis J Galligan & C Palmer, "Patterns of Constitutional Thought from Fortescue to Bentham" in Denis J Galligan, ed, *Constitutions and the Classics: Patterns of Constitutional Thought from Fortescue to Bentham* (Oxford: Oxford University Press, 2016) 1 at 5.
[2] On the inviolability of the provision on *negara kesatuan* during the amendment process, see Jakob Tobing, *The Essence of the 1999-2002 Constitutional Reform in Indonesia: Remaking the Negara Hukum* (Ph.D. Thesis, Leiden University, 2023) [unpublished] at 143.
[3] *The 1945 Constitution*, (August 1945) , s 2.

meaning of *negara kesatuan*. Thus, the extant explications of the idea of *negara kesatuan* as Indonesia's most important constitutional postulate are mostly based on conjecture. Nonetheless, the symbolism of the concept *negara kesatuan* evokes a strong emotional reaction among the Pancasilaists, so much so that there is no other option for Indonesia but *negara kesatuan*.[4] Its inviolability is encapsulated in the rallying cry, along the lines of "*negara kesatuan* or die."[5]

The symbolic and emotional attachments to this constitutional postulate have stood the test of time. With the fall of the New Order regime, some power was transferred from the central to regional governments. For instance, a survey of the current constitutional arrangement concluded that "provinces and regencies are now accorded wide ranging autonomy in all spheres except those that, by law, were specified as within the jurisdiction of the central government."[6] Thus, "the Indonesian state has moved from a strong unitarist approach toward a quasi-federal posture; meanwhile, it has resisted any tendency toward a pluralist federation."[7] While this "quasi-federal posture" has become "the most stabilising feature of the Indonesian polity,"[8] it is highly unlikely that Indonesia will abandon its infatuation with *negara kesatuan* anytime soon. Recent constitutional reform is a case in point. Instead of taking a sober approach to structuring Indonesia's constitutional order, it has further entrenched not only *negara kesatuan*, but also a commitment to *negara hukum*, another constitutional postulate (the main subject of Chapter 7).[9] To a certain extent, it is appropriate to interpret constitutional reform as a venue for making commitment to Indonesia's folk religious values more explicit.

So, what is *negara kesatuan*? Literally, it is "unitary state." Beyond that, there is not much to know. There is no body of scholarship to explicate the technical aspects of the term. Indeed, there has been no effort to clarify, let alone systematise, the concept. The Pancasilaists tend to contrast *negara kesatuan* with a kind of federalism that has been associated with the Dutch ploy to recolonise Indonesia. As a commentator puts it, federalism was interpreted as "the

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[4] See e.g., Suwoto, *Negara Kesatuan Republik Indonesia [The Unitary State of the Republic of Indonesia]* (Jakarta: Balai Pustaka, 2012); Arif Agustin, "Negara Integralistik Soepomo [Supomo's Unitary State]", (29 December 2017), online: *Think Tank* <https://megawati-institute.org/negara-integralistik-soepomo/>; As'ad Said Ali, *Negara Pancasila: Jalan Kemaslahatan Berbangsa [Pancasila State: The Path to Prosperity]* (Jakarta: LP3ES, 2009).
[5] Kusnadi, "'NKRI Harga Mati' Bukan Semboyan Belaka ["The Unitary State of Indonesia is Non-negotiable" is More Than Just A Slogan]", *InfoPublik* (14 September 2019), online: <https://infopublik.id/kategori/nusantara/373230/nkri-harga-mati-bukan-semboyan-belaka>.
[6] Jacques Bertrand, "Indonesia's Quasi-federalist Approach: Accommodation amid Strong Integrationist Tendencies" (2007) 5:4 Int'l J Con L 576–605 at 592.
[7] *Ibid* at 581.
[8] *Ibid*.
[9] Tobing, *supra* note 2 at 143.

Dutch's cheap trick to present the [then widespread] conflict as a purely internal affair. Giving a significant number of dark-skinned people a seat at the table didn't make the issue any less colonial."[10] According to the Pancasilaists, federalism as a model of governance that introduces a clear demarcation between the regional and the central governments is a divide and rule strategy of the Dutch to re-establish themselves as overlord of Indonesia.[11] For that reason, federalism has become Indonesia's "f-word."[12] In the face of the practical need for a looser relationship between the central and regional governments, consistent with a federal arrangement, the Pancasilaists stubbornly support a stronger role of central government, thus indicating a sign of the influence of this nonrational conception of *negara kesatuan*.[13] So, the Pancasilaists' deep-seated aversion to federalism is rooted in their conviction that *negara kesatuan* promotes paternalistic relations between the central and regional governments.

To explain the emotional attachment of *negara kesatuan* to the Pancasilaists—and hence its status as Indonesia's most important constitutional postulate—this Chapter argues that it is essential to shift the focus away from understanding its instrumentality to its ideological roots. That means *negara kesatuan* is best understood as a form of invented tradition which is a common practice in forging national identity. Being an invented tradition, this Chapter further argues that its primary value is not contingent on its practicality; what is important is the presumed existence of a religio-cultural assumption underpinning the concept. For that reason, the Pancasilaists emphasise that the concept of *negara kesatuan* is rooted in a theological assumption derived from the nation's folk religious traditions.

Thus, Section 1 of this Chapter provides the context for *negara kesatuan,* regarded as a concept that encapsulates the Indonesian model of the ruler-ruled relationship, following the

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[10] David Van Reybrouck, *Revolusi: Indonesia and the Birth of the Modern World*, translated by David Colmer & David McKay (New York: W.W. Norton & Company, 2024) at 415.

[11] Anthony Reid, "Indonesia's Post-revolutionary Aversion to Federalism" in Baogang He, Brian Galligan & Takashi Inoguchi, eds, *Federalism in Asia* (Cheltenham, U.K.: Edward Elgar Publishing Ltd., 2007) 144 at 150–151. Another commentator has suggested that federalism was the Dutch's endeavor to undermine the nascent, yet unacknowledged Republic. See Justus M van der Kroef, "Indonesia: Federalism and Centralism" (1950) 19:3 Curr Hist 88–94 at 88.

[12] Gabriele Ferrazzi, "Using the 'F' Word: Federalism in Indonesia's Decentralisation Discourse" (2000) 30:2 Publius: J of Federalism 63–85. Consequently, the Indonesian discourse on federalism is largely underdeveloped. The only available document that thoroughly discusses federalism in Indonesian national language is a short magazine article. *See* "Debat Ide Negara Federasi [The Debate on Federal State]" *Tempo* (25 January 1999), online: <https://majalah.tempo.co/read/laporan-utama/93311/debat-ide-negara-federasi>.

[13] This leads a commentator to describe how Indonesia has moved towards "a quasi-federal form, while resisting any tendency toward a pluralist federation." See Simon Butt, "Regional Autonomy and Legal Disorder: The Proliferation of Local Laws in Indonesia" (2010) Sing J Leg Stud 1–21. Another commentator describes Indonesian model as "federalism-by-another-name." See Reid, *supra* note 11 at 156.

main tenet of Indonesia's folk religious traditions. In other words, it is an extrapolation of *Manunggaling Kawulo Gusti* in the context of constitutional matters. Section 2 then argues that *negara kesatuan* is best understood as an invented tradition whose significance lies in its performative value as Indonesia's own folk concept. It also clarifies why *negara kesatuan* is significant to the Indonesian constitutional order, despite its absence of practical utility. Finally, Section 3 argues that *negara kesatuan* plausibly reflects a distinct concept of state that makes it difficult to categorise Indonesia as either an Islamic or secular state.

I. The Birth of *Negara Kesatuan*

To understand *negara kesatuan* as an invented tradition, it is necessary to comprehend the context in which it was introduced. *Negara kesatuan* as Indonesia's folk conception of statehood, began as the New Order Pancasilaists' defense of their claim that the central and regional governments were treated as one unit.[14] One implication was that all governmental power of the regions must come from the centre. It stands for the ideal of the integration of Indonesia as a state-building project that aims to transcend the ethnic divide was idealised.

Previously, this Indonesian indigenous conception of state was known by various terms including *negara integralistik* ("integralistic state"), *negara totaliter* ("totalitarian state"), *negara kekeluargaan* ("family state"), and *negara organis* ("organic state"). All these terms originate in Supomo's speech in the meeting of the BPUPKI in 1945, a body that identified the foundations of the idea of the Indonesian state. Importantly, Supomo's speech was the only one to discuss what the ruler-ruled relationship in Indonesia was supposed to look like.[15] It was no coincidence, then, that Supomo would write in the Annotations to the 1945 Constitution that the idea of

[14] Soeprapto, Saafroedin Bahar & Ismail Arianto, "Pendahuluan [Introduction]" in Soeprapto, Saafroedin Bahar & Ismail Arianto, eds, *Cita Negara Persatuan Indonesia [The Ideal of the Indonesian Unitary State]* (Jakarta: BP-7 Pusat, 1996) 1 at 3.

[15] Supomo, "Pidato Pada Tanggal 31-5-1945 Rapat Badan Penjelidikan Untuk Persiapan Indonesia Merdeka, Di[ ]Gedung Chuoo Sangi-in di Jakarta [Speech at May 31, 1945 during the Meeting of the Constitutional Drafting Committee in the Preparation of the Free Indonesia]" in Muhammad Yamin, ed, *Naskah Persiapan Undang-Undang 1945, memuat Segala Naskah Resmi Penggalang Undang-Undang '45 jang Berlaku Kembali dalam Negara Kesatuan Républik Indonésia [Travaux Préparatoires of the 1945 Constitution, including Every Official Material Supporting the Reintroduction of the 1945 Constitution]* (Jakarta: Prapantja, 1959) 109.

negara kesatuan had been entrenched in the Preamble, or *Pancasila*.[16] Implicit in this claim was a strategic move to further cement the Pancasilaists' ideology.

What prompted the Pancasilaists to rally around the term *negara kesatuan* was a Master of Laws thesis written by Marsillam Simanjuntak, a democracy activist. In its published version, Simanjuntak made it clear that this was a work that aimed at providing "a counterargument in defense [of] popular sovereignty and human rights."[17] To accomplish that, Simanjuntak assessed the coherence between the idea behind Supomo's *negara integralistik* with his own belief that the 1945 Constitution was written to implement various Western ideals of political morality, such as popular sovereignty and individual rights. The justification for Simanjuntak's assessment was straightforward: the 1945 Constitution was replete with literal translations of Western ideals of political morality and therefore must be judged by how faithful it was to these ideals.[18] Furthermore, one of the book's argumentative devices was the consistent use of the phrase *negara integralistik* or integralistic state, as a reference to Supomo's theory of the state. Supposedly, this was a strategy to connect Supomo's theory of the state to the fascist traditions of the theory of the state via Hegel. In Simanjuntak's view, one must accept that Hegel, correctly or not, was the intellectual architect of the fascist theory of state.[19]

Simanjuntak's book became an important stimulant in galvanising the detractors of the New Order regime as the custodian of the 1945 constitutional order. Arguably, one of the most important developments was the publication of a 21-page section in *Forum Keadilan,* a popular magazine focusing on legal issues, which portrayed Supomo as a puppet of the colonial government of Japan with a messiah complex, a trait of folk religious traditions which is commonly associated with uneducated villagers.[20] More specifically, Supomo's theory of state premised on the union between ruler and the ruled was proof of his delusional belief that *adat*

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[16] Bernhard Dahm, *Sukarno and the Struggle for Indonesian Independence*, translated by Mary F. Somers Heidhues (Ithaca: Cornell University Press, 1969) at 299.
[17] Marsillam Simanjuntak, "Prakata [Preface]" in *Pandangan Negara Integralistik: Sumber, Unsur, Riwayat Persidangan UUD 1945 [The Idea of Integralistic State: Sources, Elements, [and] the Historical Origin of the 1945 Constitution]* (Jakarta: Pustaka Utama Grafiti, 1994) ix at x.
[18] Marsillam Simanjuntak, *Pandangan Negara Integralistik: Sumber, Unsur, Riwayat Persidangan UUD 1945 [The Idea of Integralistic State: Sources, Elements, [and] the Historical Origin of the 1945 Constitution]* (Jakarta: Pustaka Utama Grafiti, 1994) at 41.
[19] *Ibid* at 10.
[20] David Bourchier, *Illiberal Democracy in Indonesia: The Ideology of the Family State* (Abingdon, Oxon: Routledge, 2014) at 221–222.

embodies a theory of the state.[21] Presumably, the broader goal of this publication was not only to attack Supomo's reputation but, more importantly, to associate the Pancasilaists' constitutional order with backwardness. Moreover, the delegitimation of Supomo's theory and in Simanjuntak's book led David Bourchier to argue that Supomo's theory was "best understood as part of the structural legacy of colonialism, which was developed and used as a political–ideological formula by sections of the elite that felt threatened by populist pressures."[22] In a word, Supomo's theory is merely a second rate appropriation of "[the] illiberal European streams of political and legal thinking."[23] Important to note, this assertion was drawn despite Bourchier's own acknowledgment of the insufficient evidence in Supomo's character or literary contributions indicating his true endorsement of the fascist regime.[24]

Believing that their controlling political idea was under attack, the New Order's Pancasilaists gathered several eminent constitutional theorists to defend and further articulate the indigenous basis of Supomo's theory of the state. One way to do so was by unanimously deciding that the best phrase to convey its originality was *negara kesatuan*, best translated as "unitary state." It is important to note that the idea behind *negara kesatuan* in 1945 was more expansive than the conventional meaning of unitary state; that is, as a system of political organisation in which most or all of governing power resides in a centralised government.[25] To the Pancasilaists, *negara kesatuan* indicated the existence of a folk religious proposition underpinning the concept, embodied in the word *kesatuan* (or unitary). With *kesatuan* as the preferred adjective for the noun *negara* (state), the Pancasilaists were aiming to make more explicit the conceptual connection between Supomo's theory of state and *Manunggaling Kawulo Gusti*, the core doctrine of Indonesia's folk religious traditions.

In defense of the indigeneity of *negara kesatuan*, Colonel Abdulkadir Besar, arguably the New Order's most important constitutional theorist, made the claim that Supomo's theory of state must be understood in light of Indonesia's folk religious traditions. In developing this claim, Besar started by maintaining that Sukarno's agenda to "Return to the 1945 Constitution" was

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[21] *Ibid* at 222.
[22] *Ibid* at 6.
[23] David Bourchier, "Organicism in Indonesian Political Thought" in Leigh K Jenco, Murad Idris & Megan C Thomas, eds, *The Oxford Handbook of Comparative Political Theory* (Oxford: Oxford University Press, 2019) 598 at 603–604.
[24] See *Ibid* at 608.
[25] See Craig Calhoun, *Unitary State* (New York: Oxford University Press, 2002).

essentially the program of the New Order, a regime that he served,[26] thereby establishing the credentials of the New Order as the legitimate heir of BPUPKI to make interpretive claim over the 1945 Constitution. In doing so, Besar legitimated his interpretation of Supomo's BPUPKI speech. In particular, he established a more explicit conceptual connection between Supomo's theory of state that was premised on the organic unity ("persatuan hidup") between ruler and ruled, as the application of *Manunggaling Kawulo Gusti* in the realm of constitutional matters.[27] Previously, one could only make an implicit inference that there was a conceptual connection between Indonesia's folk religious traditions and Supomo's theory of state, given that he did not provide any explicit statement to that effect, despite frequent use of folk religious metaphors. Therefore, Besar's important contribution was to claim the folk aspiration behind the articulation of the 1945 Constitution. By drawing parallels with *Manunggaling Kawulo Gusti*, Besar, moreover, highlighted that Indonesia's folk mystical religious traditions form the foundation of *negara kesatuan*, as opposed to fascism.[28] Interesting to note, recent research points out that the Dutch played a significant role in disseminating the depiction of the Pancasilaists' conception of the state is a translation of Japanese fascism.[29]

Besar was not alone in his attempt to link Supomo's theory of state to Indonesia's folk religious traditions. Most if not all Pancasilaist constitutional theorists pursued the same line of reasoning that sought to show the folk religious foundation of Supomo's theory of the state. Thus, none of them appeared to have any interest in responding to criticism that Supomo's theory of the state must be assessed according to criteria that the Western ideals of political morality embody. As will be argued in the next Section, the Pancasilaists' disinterest may have had something to do with the nature of *negara kesatuan* as a form invented tradition, aiming for a more practical goal of connecting with real-life Indonesians as a religious people.

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[26] Abdulkadir Besar, "Cita Negara Integralistik: Faham Indonesia [The Idea of Integralistik: The Indonesian Idea]" in Soeprapto, Saafroedin Bahar & Ismail Arianto, eds, *Cita Negara Persatuan Indonesia [The Ideal of the Indonesian Unitary State]* (Jakarta: BP-7 Pusat, 1996) 51 at 56.
[27] *Ibid* at 59–76.
[28] Whitman posits that fascism represents a continuum of the preceding political-legal ideologies in Continental Europe, thereby facilitating the recognition of dignity for the common populace. See James Q Whitman, "Two Western Cultures of Privacy: Dignity versus Liberty" (2004) 113:6 Yale L J 1151–1221 at 1165.
[29] Reybrouck, *supra* note 10 at 332.

II. *Negara Kesatuan* as a Form of Invented Tradition

This Section explores the claim that *negara kesatuan* is best understood as a form of what Eric Hobsbawm termed an "invented tradition" which, taken as an "attempt to establish continuity with a suitable historic past."[30] The foundation of *negara kesatuan* primarily resides in a mythical essence, embodying symbols that foster loyalties more profound than mere technical or secular concepts can articulate. In a word, this reference to a historic past is never meant to be taken literally. Indeed, the supposed continuity of an invented tradition with the past is "largely factitious."[31] A second, and less important, feature of an invented tradition is that its significance lies with its ritual or symbolic function. Moreover, the inherent characteristic of an invented tradition is that its justification is ideological.[32] Let us take each of Hobsbawm's observation in turn to examine the characterisation of *negara kesatuan* as an invented tradition.

A. Continuity with "a Suitable Historic Past"

A continuity with "a suitable historic past" can be found in Supomo's claim that the referent behind the concept *negara kesatuan* is ancient, pointing to Indonesia's autochthonous model of the state-people relationship and its extrapolation from *Manunggaling Kawulo Gusti*. Implicit in Supomo's claim was that *negara kesatuan* has its roots in time immemorial. In short, for the Pancasilaists, *negara kesatuan* is believed to have existed in Indonesia's faraway past, "stretching back into the assumed mists of time."[33] By implication, *negara kesatuan*, despite its recent formulation, is also believed to be a product of the Indonesian soil. This is different from the Western conception of the state in which the ideology of modernisation, that is the important of making "a complete and total break with the past in intellectual, religious, and social life," serves as its defining character.[34]

Awareness of the significance of the existence of continuity with a suitable historic past is nothing new to Indonesia. For a start, the pre-independence nationalist movement, the progenitor

[30] Eric Hobsbawm, "Introduction: Inventing Traditions" in Eric Hobsbawm & Terence Ranger, eds, *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983) 1 at 1.
[31] *Ibid* at 2.
[32] *Ibid* at 3.
[33] *Ibid* at 2.
[34] Steven Pincus, *1688: The First Modern Revolution* (New Haven: Yale University Press, 2011) at 37–38.

of the Pancasilaists, recognised that "[h]istory had to become an armoury in the anti-colonial struggle, and certain stereotypes quickly developed as the most useful weapons."[35] Sukarno emphasised the significance of instilling in his fellow countrymen a sense of their "precolonial greatness" to preserve the folk identity, while concurrently veiling the communication from external observers, as a pivotal component in the nationalist pursuit of independence.[36] In fact, this anti-colonial movement promoted *negara kesatuan* as the model of the state-people relationship in Majapahit, arguably the greatest Indic empire, as a historical fact.[37] This means that the significance of *negara kesatuan* in the political imagination of Indonesia long predated Supomo's BPUPKI speech, originating in the emergence of Indonesia's anti-colonial struggle in the early 20th century.

It should not be a surprise for the Pancasilaists to be seen as playing fast and loose with historical facts. Arguably, the most of notorious fabulator was Mohammad Yamin who attempted to establish what might be described as the Indonesian constitutional tradition. His four volume publication, published in the 1960s, has been condemned by mainstream historians as nothing more than pseudo-history.[38] Long before his time, the establishment of Budi Utomo, the progenitor of the nationalist movement and arguably established the groundwork for *Pancasila* ideology, is thought to have drawn inspiration from the publication of the Dutch rendition of the *Nagarakertagama*, a *kakawin*—an ancient literary composition often attributed with mystical qualities—depicting the grandeur of the Indic Majapahit empire.[39] The tendency to romanticise and engage in the aggrandisement of the past has persisted. A notable example is Yudi Latif, who occupies a position in modern Indonesia comparable to that of Yamin. In 2011, Latif published a tome that offers a pseudo-historical foundation for the concept of *negara kesatuan*, which has been met with considerable acclaim within Pancasilaist circles.[40]

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[35] Anthony Reid, *To Nation by Revolution: Indonesia in the 20th Century* (Singapore: National University of Singapore Press, 2011) at 131. See also S Supomo, "The Image of Majapahit in Later Javanese and Indonesian Writing" in Anthony Reid & David Marr, eds, *Perceptions of the Past in Southeast Asia* (Singapore: Asian Studies Association of Australia and Heinemann Educational Books (Asia) Ltd., 1979) 171 at 171.
[36] Sukarno, *Sukarno: An Autobiography as Told to Cindy Adams* (Indianapolis: The Bobbs-Merrill Company, Inc., 1965) at 178–179.
[37] Reid, *supra* note 11 at 131.
[38] "Yamin, si Penyulap [Yamin, the Magician]" *Tempo* (5 September 1981) Nasional. For the most recent attempt to set the history straight, see Wayan Jarah Sastrawan, "Setting the Record Crooked", (5 July 2017), online: *New Mandala* <https://www.newmandala.org/setting-the-record-crooked-conspiracy-history-in-indonesia/>.
[39] Supomo, *supra* note 15 at 180.
[40] See e.g., Yudi Latif, *Negara Paripurna: Historisitas, Rasionalitas, dan Aktualitas Pancasila [The Par Excellence State: Historicity, Rationality, and Actualising Pancasila]*, 8th ed (Jakarta: Gramedia Pustaka Utama, 2021); Yudi

Interestingly, the Pancasilaists' fascination with reinventing tradition or fabricating history finds reception with the general Indonesian audience. For instance, it is worth quoting at length one of Geertz's informants who recognised that:

> the *Pancasila* . . . was an effort to re-establish the old Hindu system, which was very good. [The informant] said that in his view the times go in circles; history repeats in cycles and one keeps going back to the time before. This is the will of nature, the will of God . . . . What is important is not for the exact society of the past to be re-established, which is impossible, but just that people know each what his duty is.[41]

The quote suggests that the Pancasilaists' reinterpretation of Indonesian history resonates with the prevailing folk religious sentiments of the people. The primary objective of manipulating historical narratives appears to be the construction of a national mythology. Consequently, the concept of *negara kesatuan*, like *Pancasila*, is not intended as a scholarly endeavor to theorise about the state. Its value does not rest on historical veracity but on its efficacy in unifying a diverse population. *Negara kesatuan* serves as a symbolic tool for the Pancasilaists to align their emerging nationalist ideology with the deeply rooted folk beliefs of the Indonesian people.

Arguably, this discussion also underscores the importance of appearance, not reality, suggesting that *negara kesatuan* is meant to be a form of "legal ideology." In this regard, Douglas Hay's analysis of the eighteenth-century English criminal law as a legal ideology is worth mentioning. Similar to *negara kesatuan*, the English criminal law, as a legal ideology, served as both an instrument of authority and a generator of values, facilitating the perception of "English justice" as a significant focal point in beliefs concerning the nation and societal structure.[42]

Latif, *Revolusi Pancasila [The Revolution of Pancasila]* (Jakarta: Mizan, 2015); Yudi Latif, *Wawasan Pancasila [Pancasila's Understanding]* (Jakarta: Mizan, 2020).

[41] Clifford Geertz, *The Religion of Java* (Chicago and London: The University of Chicago, 1976) at 231.

[42] Douglas Hay, "Property, Authority, and the Criminal Law" in Douglas Hay, Peter Linebaugh & E P Thompson, eds, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (New York: Pantheon Books, 1975) 17 at 58–59.

B. Symbolic Function

In relation to the second feature of *negara kesatuan* as an invented tradition, it is necessary to start by expounding the nature of *Manunggaling Kawulo Gusti* as a symbol of what is known, in the words of its proponents as "cita negara Indonesia."[43] This refers to what might best be portrayed as "the very aspiration behind the idea of Indonesian state." Like many other symbols, *Manunggaling Kawulo Gusti* is a multivalent concept. At its core, it refers to a certain model of social relationship.[44] As Supomo himself explained, this model of the relationship between ruler and ruled is the spiritual structure of village life, believed to be the indigenous form of Indonesian life, and it is therefore reasonable that this model of the relationship should be the lodestar for the Indonesian idea of the state, as will be discussed in the next Section.

By being a symbolic reference to *Manunggaling Kawulo Gusti*, *negara kesatuan* also hinted at an attempt to provide the indigenous footing to the idea of the Indonesian state itself. It can also be interpreted as a veiled condemnation of colonialism and individualism, two systems of belief that were considered by members of the BPUPKI to be the most heinous crime.[45] This stance was also unequivocally articulated in the Preamble of the 1945 Constitution. In that sense, *negara kesatuan* and *Pancasila* are often two sides of the same coin and the Pancasilaists interpret any act against *negara kesatuan* as analogous to anti-*Pancasila*.[46]

It can further be argued that *negara kesatuan* points to another important component of invented tradition; that is, being an ideological rather than technical source, it functions as the Indonesian ideal ("cita negara").[47] By paraphrasing Supomo, Poespowardojo, a New Order's Pancasilaist constitutional theorist, described *negara kesatuan* as an open-ended concept. In

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[43] In general, see Soeprapto, Saafroedin Bahar & Ismail Arianto, eds, *Cita Negara Persatuan Indonesia [The Idea of the Indonesian Unitary State]* (Jakarta: BP-7 Pusat, 1996).
[44] Sartono Kartodirdjo, "Agrarian Radicalism in Java: Its Setting and Development" in Claire Holt, ed, *Culture and Politics in Indonesia* (Ithaca: Cornell University Press, 1972) 71 at 83.
[45] This model of the relationship is also known as suwita. As Kartodirdjo describes it: "the essence of this [relationship is] an asymmetrical exchange of services, with the client providing products or labor in return for physical protection, chances for advancement, and enhanced status. The villages supplied the productive base of the state and were protected, at least in theory, by the ruler. . . . This system of clientship was not confined to the royal court but extended throughout the bureaucratic hierarchy." See Soerjanto Poespowardojo, "Cita Negara Integralistik" in Soeprapto, Saafroedin Bahar & Ismail Arianto, eds, *Cita Negara Persatuan Indonesia [The Aspiration of the Indonesian Unitary State]* (Jakarta: BP-7 Pusat, 1996) 23 at 24–25.
[46] "NKRI dan Pancasila Sebagai Harga Mati [The Unitary State of Indonesia and Pancasila is Non-negotiable]", (04/24/20016), online: *Kementerian Pertahanan Republik Indonesia [The Ministry of Defence of the Republic of Indonesia]* <https://www.kemhan.go.id/badiklat/2016/04/24/nkri-dan-pancasila-sebagai-harga-mati.html>.
[47] Hobsbawm, *supra* note 30 at 3–4.

other words, it must be subjected to continuous interpretation and improvement to meet Indonesia's ever-changing circumstances.[48]

Thus, it becomes apparent how the concept of *negara kesatuan* has remained nominally intact while simultaneously undergoing substantive modifications that challenge its characterisation as corresponding to a unitary Indonesian state. The political landscape following the New Order era underscored the relevance of federalist principles in Indonesia's governance. Notwithstanding the practical significance of federalism, it has not been sufficient to convince the Pancasilaists of the value of the federal model for Indonesia. Rather, the shift from a unitary to quasi federal model is the work of the so-called "team seven" experts, a group of civil servants and academics charged by President Habibie in 1998 with drafting a series of political reform laws, who championed the introduction of the American model of federalism in a bid to align with Western models.[49] Although there have been significant shifts in the power dynamics between the central and regional governments, the constitutional discourse in Indonesia continues to be articulated through the paradigm of *negara kesatuan*, as if the shift towards a federal model never happened.

III. *Negara Kesatuan*: The Indonesian Theory of the State?

In this Section, I argue that *negara kesatuan* may account for a vernacular theory of the modern state that differs significantly from the conceptual framework of the Western theory of the modern state with its secular basis. The Western theory is founded on the so-called "new science of politics," most notably in the expositions of Thomas Hobbes, John Locke, Hugo Grotius, Montesquieu, and Jean-Jacques Rousseau, which allows "politics [to] acquire[] a new legitimacy as the polity acquired a new importance detached from theological questions regarding its origin."[50] In contrast, *negara kesatuan* is premised on the significance of the religious dimension, implying interdependence between sacred and profane realms. This premise rests on a folk

[48] Poespowardojo, *supra* note 45 at 23–24.
[49] Benjamin Smith, "The Origins of Regional Autonomy in Indonesia: Experts and the Marketing of Political Interests" (2008) 8 J of Southeast Asian Stud 211–234 at 220–224. Interestingly, this Team also advocated the adoption of the U.S.'s electoral college as part of their political reform agenda. See Donald Horowitz, *Constitutional Change and Democracy in Indonesia* (New York: Cambridge University Press, 2013) at 110.
[50] Daniel J Elazar, *Covenant and Commonwealth: From Christian Separation through the Protestant Reformation*, The Covenant Tradition in Politics (New York: Routledge, 1996) at 45. See also Martin Loughlin, "The Constitutional Imagination" (2015) 78:1 Mod L Rev 1–25 at 5–11.

religious worldview, which is implied in Indonesia's insistence on being "neither secular, nor Islamic or theocratic, but a religious state."[51] This hints at the symbolism of national unity within the phrase the Oneness of God ("Ketuhanan Yang Maha Esa") which can be understood as either an immanent God or an encompassing All-Soul.[52] Accordingly, *negara kesatuan* is more than a mundane concept where local governments are limited to exercising only the powers granted by the central government. Ultimately, this diverges from the presupposition that the prevailing methodology in comparative legal studies implies a uniform interpretation of the definition of the state.[53]

To substantiate that claim, Subsection A examines the Pancasilaists' answer to the question of the original source or legitimating power of the 1945 constitutional order. In the Pancasilaists' mind, the answer lies in the metaphor of *Manunggaling Kawulo Gusti* which resembles what might be described as the Indonesian alternative for the concept of constituent power. Unlike the modern state that conceives the people as its only constituent power, *negara kesatuan* as a derivative of *Manunggaling Kawulo Gusti* prefers the totality of the state—that is state and people as one—as its answer. In this context, Subsection B further expounds on how *Manunggaling Kawulo Gusti* can legitimate a different kind of democracy. Better known as *Demokrasi Pancasila*, this Indonesian theory of democracy is rooted in the idea that consensus between the state (executive) and its people (legislative) is imperative.

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[51] Team Viva, "Mahfud MD: Indonesia Bukan Negara Agama, Bukan Sekuler [Mahfud MD, [the Chief Justice of the Constitutional Court]: Indonesia is not a Religion-based State, or a Secular [State]]", *Viva News* (23 August 2018), online: <https://asset.viva.co.id/appasset-2018/desktop-2018/img/icon-profile-team.png?v=5.13>; The Ministry of Religious Affairs in the Province of East Nusa Tenggara, "Indonesia Bukan Negara Agama Dan Juga Bukan Negara Sekuler [Indonesia is a state that is not based on any particular religion, nor is it a secular state.]", (8 March 2016), online: *The Ministry of Religious Affairs in the Province of East Nusa Tenggara* <https://ntt.kemenag.go.id/berita/388736/indonesia-bukan-negara-agama-dan-juga-bukan-negara-sekuler>.

[52] See Niels Mulder, *Mysticism in Java: Ideology in Indonesia* (Amsterdam and Singapore: The Pepin Press, 2004) at 145.

[53] See e.g., H Patrick Glenn, "The Nationalist Heritage" in Pierre Legrand & Roderick Munday, eds, *Comparative Legal Studies: Traditions and Transitions* (Cambridge: Cambridge University Press, 2003) 76 at 90; William Twining, "Implications of 'Globalisation' for Law as a Discipline" in Maksymilian Del Mar, William Twining & Michael Giudice, eds, *Legal Theory and the Legal Academy* (London and New York: Routledge, 2010) 129 at 140–141.

A. Indonesian Idea of Constituent Power

The idea of constituent power was invented as a response to a European challenge: how does one justify a constitution and legal order in the face of the ever-increasing significance of reason? More importantly, constituent power is not simply a rhetorical symbol but also an active force in the European discourse of constitutional law.[54] With the invention of constituent power, as Loughlin puts it, "[t]he nation [or people] is prior in time and prior in authority: 'It is the source of everything. Its will is always legal; indeed, it is the law itself.'"[55] The concept of constituent power is typically interpreted as an allusion to a form of authority that exists beyond legal jurisdiction, thus rendering it impervious to legal regulation.[56]

With that in mind, the concept of constituent power is the same power that legitimises the constitutional amendment process[57] and is so fundamental that constituent power carries a supra-constitutional status in the sense that it cannot be amended.[58] This implies an authority that can validate or contest the legal legitimacy of various manifestations of a state's political power. Accordingly, constituent power is commonly perceived as the ultimate force that validates or legitimises both the existence and operation of a particular constitutional order.[59]

It is crucial to note that the people as the referent of constituent power is a relatively recent development in human history, with its roots firmly planted in the European tradition of secular political thought.[60] This association links the notion of constituent power being vested in the people with the concept of sovereignty, which emerged as a political response to the religious conflicts of the sixteenth century in Europe.[61] More specifically, the act of designating the people

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[54] Martin Loughlin, "Constituent Power Subverted: From English Constitutional Argument to British Constitutional Practice" in Martin Loughlin & Neil Walker, eds, *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* (Oxford: Oxford University Press, 2017) 27 at 28.
[55] Martin Loughlin, "The Concept of Constituent Power" (2014) 13:2 Eur J Pol Theory 121–237 at 220.
[56] Joel Colón-Ríos, *Constituent Power and the Law* (New York: Oxford University Press, 2020) at 4.
[57] Yaniv Roznai, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers* (Oxford: Oxford University Press, 2017) at 7.
[58] This is encapsulated in the proposition that Abbé Sieyes, the first articulator of constituent power, proposed that a people or nation possesses the constituent power of the political establishment. See Loughlin, *supra* note 55 at 220.
[59] Thus, the Israeli Supreme Court is of the opinion that "the Knesset, when acting as the constituent branch, cannot de facto or de jure deny Israel's core identity characteristics as a 'Jewish and democratic state.'" See Aeyal Gross, "Did the Israeli Supreme Court Kill the Constitutional Coup?", (9 January 2024), online: *Verfassungblog* <https://verfassungsblog.de/did-the-israeli-supreme-court-kill-the-constitutional-coup/>.
[60] One theory posits that "This idea of constituent power not simply as a rhetorical symbol but as an active force emerges for the first time in modern European discourse and as a product these English constitutional conflicts." See Loughlin, *supra* note 54 at 28.
[61] Dieter Grimm, "Sovereignty and Religious Norms in the Secular Constitutional State" in Jean Cohen & Cécile Laborder, eds, *Religion, Secularism, and Constitutional Democracy* (New York: Columbia University Press, 2015)

is a derivative of the secularisation process engendered by the Enlightenment within the European tradition of political thought. In alignment with the Enlightenment's agenda of promoting social progress through privileging human reason and making liberal democratisation its political accomplishment, the introduction of constituent power facilitates the introduction of secularised constitutional authority within the idea of modern states or political systems.[62] Given its roots in European experience, "it would be premature to accept that there has been a paradigm shift in favour of what sometimes is described as an 'internationalised *pouvoir constituant*,'" implying that there is a plurality in the idea of constituent power.[63]

Turning to Indonesia as a case in point of what is known as "old societies and new states,"[64] one needs to grapple not only with an entirely different context but also to invoke a different ontology to justify the transformation from a colony to an independent state on a par with its former coloniser.[65] In terms of context, Indonesia was and still is a society in which the condition of being free from its religious background is unthinkable.[66] Regarding the ontological argument, the most pressing agenda was to come up with a justification for being an independent state. For the BPUPKI, this meant articulating that Indonesia had the necessary materials for being equal with the Western powers. In its response, the BPUPKI, consciously or not under Supomo's influence, chose Indonesia's folk religious traditions as the basis for constructing the idea of Indonesia. Thus, the BPUPKI turned to its folk religious traditions. This combination of context and the need to develop a different ontological argument locked in *Manunggaling Kawulo Gusti* as the BPUPKI's preferred source for Indonesia's constitutional normativity.

This relationship model had long been entrenched in Indonesia's past as a collection of peasant societies. Also known as *suwita*, *Manunggaling Kawulo Gusti* is in essence, "an asymmetrical exchange of services, with the client providing products or labor in return for

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341 at 341. Grimm arrgues that "[i]n the eyes of the theoreticians of sovereignty, the restoration of peace and the coexistence of people with different beliefs required a new order independent of the religious truths and instead based on secular principles."

[62] Loughlin, *supra* note 54 at 27.

[63] Cheryl Saunders, "Designing and Operating Constitutions in Global Context" in Mark Elliot & David Feldman, eds, *The Cambridge Companion to Public Law* (Cambridge: Cambridge University Press, 2015) 256 at 263.

[64] Edward Shils, "On the Comparative Studies of the New States" in Clifford Geertz, ed, *Old Societies and New States: The Quest for Modernity in Asia and Africa*, second printing ed (New York: The Free Press, 1965) 1 at 1.

[65] This characterisation originates from Charles Taylor, *A Secular Age* (Cambridge, Mass.: Harvard University Press, 2007) at 12. See also Chapter 1 above.

[66] Jimly Asshidiqie, *Pancasila dan Agenda Pembaruan Birokrasi [Pancasila and the Agenda to Revitalise the Bureaucracy]* (Semarang, Central Java, 2011) at 4.

physical protection, chances for advancement, and enhanced status."[67] Importantly, this model of clientelist relationships is far reaching, extending throughout all levels of society, and still remains largely intact. It is believed to be critical for the success of the Indonesian state in expanding social protection in Asia in terms of coverage and generosity.[68] Hence, "the hierarchy of the state, and the bureaucracy in particular, was integrated not by formal institutional or organisation means, but by the myriad dyadic linkages of the client system."[69] More specifically, Indonesia's indigenous model of the state "come[s] close to the model (often rejected by social scientists) of the polity formed by voluntary association, or at least held together more by perceived mutual benefit than by force."[70] That marks it as different from the Western theory of the modern state which is contingent on the existence of a centralised (coercive) power. Needless to add, one of the main reasons that the Pancasilaists earned support among Indonesian general public was largely due to "the increasing erosion of communalistic relationship and the concomitant individualistic social orientations," i.e. a yearning to return to Indonesia's indigenous form of social relationship.[71]

This model of relationships has allowed the Indonesian concept of the role or power of the state to be couched in the metaphor of the state as a benevolent father who takes full care of his children or people. *Negara kesatuan* therefore assumes a much broader role in the development of society, compared to the Western model, in particular to the laissez faire state. The Pancasilaists replaced the blind-folded goddess with the Banyan tree as Indonesia's symbol of its ministry of justice. While the Banyan tree provides shelter from rain and sun ("pengayoman"), its symbolism emphasises the paternalistic role of the Indonesian state and the continuity between the modern state of Indonesia and its mythical past in which "tranquility and regularity was the state's main aim, *not* active stimulation towards progress."[72] With that in mind, *negara kesatuan* is expected to dispense what might be described as context-based justice,

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[67] Kartodirdjo, *supra* note 44 at 83.
[68] Tauchid Komara Yuda, "The Complementary Roles between Clientelism and Familism in Social Policy Development" (2021) 55:2 Soc & Pol Admin 1370–1392 at 1371.
[69] Kartodirdjo, *supra* note 44 at 84.
[70] Jan Wisseman Christie, "State Formation in Early Maritime Southeast Asia; A Consideration of the Theories and the Data" (1995) 151:2 Bijdragen tot de taal-, land- en volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia 235–288 at 271.
[71] George McT Kahin, *Nationalism and Revolution in Indonesia*, reprinted ed (Ithaca: Cornell University Press, 2018) at 42.
[72] Moertono Soemarsaid, *State and Statecraft in Old Java: A Study of the Later Mataram Period, 16th to 19th Century* (Ithaca: Cornell Modern Indonesia Project, 1968) at 92.

not faceless or objective justice. As I will argue further in next Chapter, *negara kesatuan* becomes the legitimating ideology for the implementation of *negara hukum,* a variant of the rule of law which is based on relationality.

Finally, it should be noted that the use of *Manunggaling Kawulo Gusti* as a metaphor explaining Indonesia's constituent power derives from folk religious traditions. The Indonesian practice of using religious metaphor cannot be considered exceptional. In fact, the English constitutional tradition on the relationship between state and people is premised on the metaphor of "the king's two bodies," "the idea that just as 'the physical body grows out of the embryo, regulated by one head, so the kingdom issues from the people, and exists as a body mystical (*corpus mysticum*), governed by one man as head.'"[73] Through this metaphor, the English seventeenth century constitutional discourse "spoke of the 'body politic' by analogy to the body natural and of 'constitution' as the state of health and well-being of the body politic."[74] Furthermore, by adding health and well-being, this discourse established the connection between law and the constitution as being pivotal to the health of the nation.[75] Hence, like *Manunggaling Kawulo Gusti*'s folk religious resonance, the king's two bodies provided further evidence of how a folk religious metaphor can substantiate the concept of constituent power.[76]

On a more profound level, the use of metaphor is "not just a matter of language, that is, of mere words. . . . [O]n the contrary, human *thought processes* are largely metaphorical."[77] With this in mind, the deliberate or subconscious choice by Pancasilaists to model the *negara kesatuan* on the *Manunggaling Kawulo Gusti* metaphor can be interpreted as an endeavor not merely to cloak their state theory in vernacular symbolism but, more critically, to engage with the quotidian religious experiences of their audience, thereby ensuring a more profound resonance.

It is necessary to quote at length Sukarno's own admission as the self-proclaimed "architect of [the Indonesian] nation," on the importance of metaphor:

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[73] Martin Loughlin, *Foundations of Public Law* (Oxford: Oxford University Press, 2010) at 42.
[74] Denis J Galligan, "The People, the Constitution, and the Idea of Representation" in Denis J Galligan & Mila Versteeg, eds, *Social and Political Foundations of Constitutions* (Cambridge: Cambridge University Press, 2013) 134 at 140.
[75] *Ibid* at 142.
[76] Kantorowicz points out that this provides evidence that "the doctrine of theology and canon law, teaching that the Church, and Christian society in general, was a '*corpus mysticum* the head of which is Christ,' has been transferred by the jurists from the theological sphere to that of the state the head of which is the king." See Ernst H Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology*, princeton classics ed (Princeton and Oxford: Princeton University Press, 2016) at 15–16.
[77] George Lakoff & Mark Johnson, *Metaphors We Live By*, paperback ed (Chicago: The University of Chicago Press, 2003) at 6.

> I am a master at choosing words so foreigners who speak the language cannot catch the regional idioms. I'd play on *Mahabharata* stories because 80 percent of all Indonesians were weaned on them. They know Arjuna is the hero of five brothers whose kingdoms were falsely taken in a great war. Those five represent good. The invaders represent evil. Each name brings to our minds a human character. Arjuna signifies a figure of self-control. His brother, Wekoodoro, means one who is truthful. Mention Gatutkatja and everybody thinks of Sukarno. Refer to Buto Chakli and they know it's the demon. In Wayang good figures always sit on the right, evil on the left. Gold, white, or black faces mean the good men, red mean the villains. It was easy to convey my real thoughts. Another method was animal symbolism. From my prewar writings . . . I coined my famous metaphor: "Under the blanket of the Rising Sun the Chinese dragon cooperated with the white elephant of Thailand, the caribou of the Philippines, the peacock of Burma, the Nandi cow of India, the hydra snake of Vietnam and, now, with the Banteng buffalo of Indonesia, in ridding our continent of Imperialism."[78]

Metaphors and figurative language play a crucial role in legal texts, being intricately linked to the articulation of legal concepts to such an extent that the most foundational concepts are metaphorically conveyed.[79] This approach is acknowledged as a form of reasoning by analogy that facilitates comprehension of abstract domains by rendering them more tangible. For instance, the metaphor of "the blindfolded Lady Justice" effectively communicates the concept of justice by associating it with specific attributes embodied by the image. One of the attributes is symbolised by a sword, while another is represented by a shield. The remaining two attributes are depicted by a blindfold and scales, emphasising impartiality and equilibrium in decision-making, akin to the principles underlying the British civil rules of evidence that require judgments to be based on a "balance of probabilities." The sword serves to mete out punishment to the unjust, piercing the hearts of those who transgress, whereas the shield offers protection to the innocent who face unjust attacks. This symbolism contrasts sharply with the characteristics associated with the Banyan Tree, as previously discussed.

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[78] Sukarno, *supra* note 36 at 70, 179.
[79] Isabelle Richard, "Metaphors in English for Law: Let Us Keep Them!" (2014) 8 Lexis: Journal in English Lexicology at para 18.

B. *Pancasila* Democracy

To understand how *Manunggaling Kawulo Gusti* could lead to the conceptualisation of the so-called *Pancasila* Democracy ("Demokrasi Pancasila"), it is useful to consider one of *Manunggaling Kawulo Gusti*'s most important derivatives or implied meanings: a condition called "bulat" which refers to a mystico-religious state that promotes what might best be described as the Indonesian idea of common good. In the context of public life, *bulat* is a polysemous word, associated with reaching a decision with which everyone unanimously and wholeheartedly agrees. This achievement is the primary indicator of a condition in which everyone is in a harmonious relationship ("rukun"), signifying the spirit of mutual help ("gotong royong"). Furthermore, this is believed to be Indonesia's folk model that one normally finds in village life. It is one of the principles of *Pancasila*. Thus, when Sukarno decided to "Return to the 1945 Constitution," one of its programs was to make it imperative as "the decision-making rule for Parliament."[80] The introduction of this consensus-based model is presented as a symbolic rejection of majority rule, instituted by the colonial power, as alien and hostile to the nation's quest for "kerukunan nasional" (national harmony).

The significance of this model of decision-making was translated into the institutional structure of the 1945 constitutional order. Most notably, this is evidenced in the pre-amendment 1945 Constitution. For example, the adoption of the now-less-influential People's Consultative Assembly (Majelis Permusyarakatan Rakyat or "MPR")—comprising the legislative and executive branches—as the supra quasi-legislative body positioned at the apex of Indonesia's constitutional hierarchy meant that, as a kind of joint session, the MPR stands as the ultimate symbol of the principle of consensus decision making.[81] Rather, as noted by Hamid Attamimi, an influential constitutional scholar of the New Order, Indonesia possesses "a division of power"—distinct from the Western concept of "separation of power," suggesting the primacy of

[80] Martha G Logsdon, "Traditional Decision Making in Urban Neighborhoods" (1978) 26 Indonesia 95–110 at 96.
[81] There is a persistent endeavor to reinstate the MPR as Indonesia's highest political institution. See e.g., Fitria Chusna Farisa, "Kompaknya MPR dan DPD Usulkan MPR Kembali Jadi Lembaga Tertinggi Negara [How Solid the Support for Reinstituting MPR as the Highest Political Institution]", *Kompas* (18 August 2023), online: <https://nasional.kompas.com/read/2023/08/18/11591761/kompaknya-mpr-dan-dpd-usulkan-mpr-kembali-jadi-lembaga-tertinggi-negara>; Romy Roosyana, "PDIP ingin kembalikan MPR jadi lembaga tertinggi negara [PDIP [the Pancasilaists' Largest Political Party] Wants to Reinstitute MPR as Indonesia's Highest Political Institution]", *Beritagar* (11 August 2019), online: <https://beritagar.id/artikel/berita/pdip-ingin-kembalikan-mpr-jadi-lembaga-tertinggi-negara>.

consensus-driven approaches over decisions made by the majority.[82] As the concluding statement of the PPKI—the core members of BPUPKI—puts it, the reason is that "unity brings power, power bring unity."[83] In short, the BPUPKI declined a model of governance resembling Western parliamentary democracy, opting instead to prioritise Indonesia's traditional system of deliberation in order to reach consensus ("musyawarah untuk mufakat").[84] Anderson observes that this appeal for unity is a recurring theme in Indonesia and can in part be attributed to folk religious beliefs.[85] Moreover, the implicit impetus behind the MPR is to convey the symbolism of *rukun* as folk cosmic harmony between various elements of Indonesian society.

While it is true that constitutional reform has introduced structural changes to the extent that "the changes [that have been] made amounted to a repudiation of its essential philosophy,"[86] one must not jump to a conclusion that the spirit of Indonesia's folk religious traditions no longer animates the nation's constitutional theory and practice. In his 2023 address on Indonesian Independence Day, the chairman of MPR called for reintroduction of the original constitutional design, with the MPR at the apex.[87] On its official website, the MPR described this call as signifying the importance of "mufakat" or "kesepakatan" ("consensus") and semangat ("rasa" or "spirit"). This was not the first call to reinstitute the status of MPR as the highest political institution and to reintroduce the Broad Guidelines of Steering the State ("Garis-garis Besar Haluan Negara" or "GBHN").[88] With the reintroduction of GBHN, the work agenda of the

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[82] Hamid Attamimi, *Peranan Keputusan Presiden Republik Indonesia dalam Penyelenggaraan Pemerintahan Negara: Suatu Studi Analisis Mengenai Keputusan Presiden yang Berfungsi Pengaturan dalam Kurun Waktu Pelita I-Pelita IV [Exploring the Influence of Presidential Decision-Making on State Government Operations: An Analytical Examination on the Regulatory Aspects of Presidential Decisions During the I to IV Five Yearly Development Phases]* (PhD Dissertation, Universitas Indonesia, 1990) [unpublished] at 116.

[83] Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia [the Investigating Committee for Preparatory Work for Independence], "Rapat Besar pada tanggal 10 Juli 2605 [The Plenary Meeting on 10 July of the Islamic Year of 2605]" in Muhammad Yamin, ed, *Naskah Persiapan Undang-Undang 1945, memuat Segala Naskah Resmi Penggalang Undang-Undang '45 jang Berlaku Kembali dalam Negara Kesatuan Républik Indonésia [Travaux Préparatoires of the 1945 Constitution, including Every Official Material Supporting the Reintroduction of the 1945 Constitution]* (Jakarta: Prapantja, 1959) 145 at 145.

[84] Dahm, *supra* note 16 at 298.

[85] Benedict R O'G Anderson, *Language and Power: Exploring Political Cultures in Indonesia* (Ithaca: Cornell University Press, 1990) at 36.

[86] Mark Cammack, "Changing Indonesia's Constitution: A Review Essay" (2006) 81 Indon 151–163 at 152.

[87] Willy Nababan, "Tirani Lebih Mudah Berkuasa jika MPR Jadi Lembaga Tertinggi [The Reversion of the People's Consultative Assembly to Its Original Structure May Facilitate the Resurgence of Political Absolutism]", *Kompas* (17 August 2023), online: <https://www.kompas.id/baca/english/2023/08/17/tirani-lebih-mudah-berkuasa-jika-mpr-jadi-lembaga-tertinggi?open_from=Translator_Mark>.

[88] Farisa, *supra* note 81.

executive is not only defined by MPR but, more importantly, it indicates the constitutional supremacy of MPR over the executive.

Demokrasi Pancasila has also been entrenched in Indonesian constitutional practice. In fact, the process of Indonesian constitutional reform itself has been guided by the attempt to reach *bulat* (consensus). In the words of the chairman of the constitutional reform committee, "it could be said that we worked in the spirit of musyawarah, as embedded in the *Pancasila*."[89] One consequence was that, as Crouch has noted, Indonesian constitutional reform has become a very slow and cumbersome undertaking.[90] The obsession with achieving *bulat* is so pervasive that it can be argued it has been undermined by the textual basis for the separation of power that the amended constitution introduced. This drive for *bulat* has prompted the interpretation that the president must not only give final assent to legislation, but that presidential representatives must be present and involved in every step of the legislative process, from developing legislative priorities through to deliberation on each clause of a bill. The executive branch has veto power over every key decision in the lawmaking process, from planning to promulgation. In effect, the lawmaking process becomes extremely complicated and deserves to be considered as one of Indonesia's distinctive features of constitutionalism.[91]

At a more profound level, *Demokrasi Pancasila* with its *bulat*-orientation points to a different conception of "human flourishing," responding to questions such as "what constitutes a fulfilled life," "what is worth the effort," "what makes life worth living," or "what do we admire others for." In the Western or "modern" social imaginaries, human flourishing is premised on "the immanent frame," signifying "a clear distinction of natural from supernatural, which was originally made in order to mark clearly the autonomy of the supernatural."[92] In modern social imaginaries shaped by the immanent frame, social order is perceived as offering a schema for how things, in the human realm, can hang together independently of God.[93] However, with its *bulat*-orientation, *Demokrasi Pancasila* is a manifestation of an entirely different kind of social imaginaries premised on the conviction that a human being is not only part of the unity of

[89] Tobing, *supra* note 2 at 495.
[90] Harold Crouch, *Political Reform in Indonesia After Suharto* (Singapore: ISEAS, 2010) at 62. Similar observation is also appeared in Horowitz, *supra* note 49.
[91] Stephen Sherlock, "The Consequences of Halfway Constitutional Reform: Problems of Lawmaking in Indonesia's Parliament" in Melissa Crouch, ed, *Constitutional Democracy in Indonesia* (Oxford: Oxford University Press, 2023) 29 at 41.
[92] Taylor, *supra* note 65 at 542.
[93] *Ibid* at 543.

existence, but also a microcosm in relation to macrocosm (universe). This indicates a mode of being in the enchanted world in which the self is conceived as "porous," open to "develop his inner core and train his intuitive inner feeling (*rasa*) to become attuned to higher truth ('the voice in the quiet')."[94] With this unity of existence, it is safe to say that reaching *bulat*, that is consensus, and by implication, preserving communal harmony ("rukun") have a folk religious resonance.[95] Ultimately, this *bulat* orientation significantly influences Indonesia's inclination towards the unitary state as their primary choice for structuring the state.

Conclusion

It can be asserted from the preceding discussion that *negara kesatuan* transcends mundane conceptualisation. It primarily encapsulates an ambition to construct Indonesia as a socio-political organisation congruent with the nation's folk religious disposition. More specifically, it represents a drive to actualise harmony, or "rukun," by preserving *Manunggaling Kawulo Gusti* as Indonesia's own constituent power. Therefore, one can plausibly contend that the concept of *negara kesatuan* underscores the persistent relevance of these traditions within the nation's contemporary constitutional order. *Manunggaling Kawulo Gusti* is not just an abstract concept that derives from Indonesia's folk religious traditions, it is a metaphor that embodies what might best be described as the very basis of the Indonesian social condition. With the *Manunggaling Kawulo Gusti* as the premise, it becomes evident that *negara kesatuan* is more than just a mere technical term denoting a conception of state organisation. It symbolises Indonesia's folk religious inclination towards actualising *rukun* (communal harmony) as a material existence, by underscoring the unity in existence required to attain *bulat* ("consensus"). Consequently, one could posit that the importance of *negara kesatuan* is intertwined with its symbolic quality as a demonstration of allegiance to the unified Indonesia. Given its significance, it is not surprising that *negara kesatuan* became Indonesia's primary constitutional postulate on which the other two

[94] Niels Mulder, *Inside Southeast Asia: Religion, Everyday Life, Cultural Change* (Amsterdam and Kuala Lumpur: The Pepin Press, 1996) at 143.
[95] Interestingly, the ancient Javanese tradition of the state implied that maintaining equilibrium was the monarch's principal preoccupation, encompassing protection from external adversaries and the prevention of domestic transgressions or anomalies that could disrupt the symmetry between the dual cosmic realms. See Soemarsaid, *supra* note 72 at 83.

are based on. Consequently, this substantiates the main thesis of this study, that the 1945 constitutional order is predicated on folk religious suppositions.

CHAPTER 7

Negara Hukum:
The Rule of Law's *Confrère* in the Vernacular

Introduction

This Chapter articulates the argument that *negara hukum* is a distinct variant of the rule of law that emphasises creating and maintaining harmonious interpersonal relationships ("kerukunan masyarakat"). In the minds of the Pancasilaists, *negara hukum* differs from the rule of law and *Rechtsstaat,* which aims to create an environment where communal interests take priority over individual interests or rights. To be clear, this does not in any way constitute a denial of the idea of human rights.[1] Nevertheless, this ratification does not indicate Indonesia's willingness to adopt the international conception of human rights framed in the secular and liberal language. As will be elaborated below, it is Indonesia's distinct conception of the rule of law has shaped the notion of the individual right to religious freedom. The difference in orientation between the rule of law and *Rechtsstaat* on the one hand and *negara hukum* on the other can be attributed to the "background understanding" or "social imaginaries" that underpin them. In *negara hukum*, that background understanding is Indonesia's folk religious traditions that inculcate village life, which fits the profile of Asian legal culture that "to a certain extent [is] represented as irrational, because of the important role of morals, of religion, and of the [communal] conception of the natural order of things."[2] Thus, *negara hukum* signifies a communal-oriented rule of law, implying continuity with the communal-oriented *adat* (folk or customary) law that played a crucial role in the anti-colonial discourse in the Netherland Indies or colonial Indonesia, this topic will be further explored in Section 3.

In contrast, the rule of law and *rechtsstaat* is premised on the background understanding of "the modern Western social imaginaries," which derives from liberal individualism as the

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[1] For that reason, Indonesia has ratified a total of ten human rights treaties up to this point. See "Ratification of 18 International Human Rights Treaties" (16 October 2024), online (International Organization): *United Nations Human Rights Office of the High Commissioner of Human Rights* <https://indicators.ohchr.org>.

[2] Mark Van Hoecke & Mark Warrington, "Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law" (1998) 47:3 Int'l & Comp L Q 495–536 at 506.

predominant ideology in the industrialised West. With their liberal-individualistic orientation, it is hardly surprising that the rule of law and *rechtsstaat* have been understood as "a guide to legal modernisation."[3] Indeed, it makes no surprise that "[A.V.] Dicey's account was . . . thoroughly ideological, . . . It is an expression of classical liberalism."[4] With this comparison, it is arguable that *negara hukum* is not so much a translation of the rule of law or *Rechtsstaat*, but rather a distinct vision of the role of law in the state. Or, to borrow from the Indian discourse of the architectural borrowing, *negara hukum* is best described as "unhappy bastard" which requires one to "renounce metropolitan standards and view [it] as product of a different context and experience."[5]

Similarly, *luck nititham,* the Thai equivalent of the rule of law, suggests a legal framework based on the fusion of justice and virtue.[6] Essentially, the fundamental goal across different constitutional initiatives is the establishment of virtuous governance. By upholding virtue, the ostensibly modernised Thai monarchy retains an intrinsic political authority that diverges from modern notions of political legitimacy. By integrating virtue into the framework of legal principles, one could argue that *luck nititham* embodies a folk interpretation of legal norms rooted in Thai Buddhism. This has led to the development of a legal framework focused predominantly on maintaining communal peace and order instead of prioritising objectives aligned with liberal notions of justice based on rights advocacy.[7] In a similar vein, *fazhi* ("law rules" or "law[-based] governance") and *yifa zhiguo* ("governing the country in accordance to the law"), China's concept of the rule of law, exemplified another vernacularised manifestation of the rule of law.[8] The import of *fazhi* is underpinned by the conviction that it is deeply rooted in a Chinese folk tradition known as Legalism that championed "the role of law in governance."[9] This means, "*fazhi*'s primary differences from the rule of law are the reliance on bureaucratic

[3] Loughlin argues that *Rechtsstaat* is "'a superficially similar terminology' with the rule of law." See Martin Loughlin, "The Rule of Law: A Slogan in Search of a Concept" (2024) Hague J Rule Law at 3. See also Girish Bhat, "Recovering the Historical Rechtsstaat" (2007) 32:1 Rev of Ctr & East Eur L 65–97 at 66.
[4] Martin Loughlin, "The Apotheosis of the Rule of Law" (2018) 89:4 Pol Q 659–666 at 660.
[5] Partha Mitter, *Indian Art* (Oxford: Oxford University Press, 2001) at 182–183.
[6] Vitit Muntarbhorn, "Rule of Law and Aspects of Human Rights in Thailand: From Conceptualisation to Implementation?" in Randall Peerenboom, ed, *Asian Discourses of Rule of Law* (London: Routledge, 2003) 340 at 341.
[7] Duncan McCargo, *Fighting for Virtue: Justice and Politics in Thailand* (Ithaca and London: Cornell University Press, 2020) at 2.
[8] Ruiping Ye, "Shifting Meanings of Fazhi and China's Journey toward Socialist Rule of Law" (2021) 19:5 Int'l J Con L 1859–1881 at 1861.
[9] *Ibid* at 1862.

law, the expedient commitment to generality and uniformity, and the limited latitude permitted to a distinct legal doctrine, methodology, or permission. . . . [In a word,] due process is secondary to the overriding goal of social control and social harmony. . . ."[10]

So far, the prevailing understanding of *negara hukum* has failed to recognise the explanatory power of Indonesia's folk religious traditions in revealing their "relative differences," entrenched in the Pancasilaists' interpretation of the concept.[11] By explaining these relative differences, this Chapter does not assert that *negara hukum* implies a complete divergence from the rule of law and *Rechtsstaat*. *Negara hukum* is oriented more towards communal interests rather than individual rights. However, most, if not all, literature recognises *negara hukum* as "an imported concept," a mere translation of *Rechtsstaat* or, more recently, the rule of law.[12] The rationale behind this is that in the Annotation where the concept of *negara hukum* was first introduced, *Rechtsstaat* is parenthetically associated with *negara hukum*. This diverges from the emerging "consensus" in the rule of law scholarship, asserting that law constitutes a normative framework embedded within the collective consciousness of a community, with its efficacy primarily contingent upon the notions of justice and legitimacy.[13] Therefore, it is argued that "an extensive set of institutional reforms" is no longer necessary to achieve the rule of law.[14]

To understand how this conflation can happen, one must start with Daniel S. Lev, the American "doyen" of Indonesian legal studies, for whom *negara hukum* figured as a "key concept."[15] Naturally, it was not the concept belonging to the conservatives, but to "professional advocates [who] have been its most articulate, and generally most liberal spokespeople" as they

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[10] Haiyan Lee, *A Certain Justice: Toward an Ecology of the Chinese Legal Imagination* (Chicago and London: The University of Chicago Press, 2023) at 7.
[11] James Q Whitman, "Two Western Cultures of Privacy: Dignity versus Liberty" (2004) 113:6 Yale L J 1151–1221 at 1163.
[12] See Daniel S Lev, "Judicial Authority and the Struggle for an Indonesian Rechtsstaat" (1978) 13:1 L & Soc'y Rev 37–71 at 43–49. See also Melissa Crouch, "The Limits of Transformational Authoritarian Constitutions: The Indonesian Experience" in Melissa Crouch, ed, *Constitutional Democracy in Indonesia* (Oxford: Oxford University Press, 2023) 1 at 11.
[13] Francisco Javier Fonseca, "Deficiencies of the Rule of Law and the Legal Culture, and Its relationship to Underdevelopment" (2015) 6:2 Asian J of L & Econ 231–248 at 238–239. Randall Peerenboom, "Competing Conceptions of Rule of Law in China" in Randall Peerenboom, ed, *Asian Discourses of Rule of Law* (London: Routledge, 2003) 109 at 109.
[14] Dany Rodrick, "Getting Institutions Right" in *One Economics, Many Recipes* (Princeton and Oxford: Princeton University Press, 2007) 184 at 191.
[15] Melissa Crouch, "The Judicial Reform Landscape in Indonesia: Innovation, Specialisation and the Legacy of Dan S. Lev" in Melissa Crouch, ed, *The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia* (Cambridge: Cambridge University Press, 2019) 1 at 13.

are the ones who "leaned to the 'European' [understanding of the] concept."[16] With this proposition, Lev did not carefully examine the Pancasilaists' folk conception of *negara hukum*; its diminution may have something to do with his perception that cultural analysis will "divert attention from proximate causes and to relieve political leadership of responsibility for their actions."[17] In Lev's mind, "the more you knew about a society, the less you needed 'culture' to explain what was happening."[18] In an introductory chapter to a volume as a paean to his works, Lev "exhorts us [the younger generation of Indonesian law students] to interrogate 'grand myths' and in doing so warns us not to use 'culture' as a lazy label or gloss to explain everything."[19] By exclusively focusing on liberal understanding, Lev's account of *negara hukum* does not provide us the whole picture.

What is more, Lev argues that the liberal view of *negara hukum* was initially introduced as a mere ideological slogan for conveying the sentiment of the anti-Sukarno effort to return to the 1945 Constitution.[20] However, this perspective does not accurately represent the historical reality that the concept of *negara hukum* is intended to embody Indonesia's lived experience as a multitude of communal societies that prioritise harmonious social relationship above individual rights. It is a derivative of *negara kesatuan* (unitary state), the Indonesian theory of the state grounded in *Kawulo Manunggaling Gusti* (Oneness of God or unio mystica), the article of faith of the nation's folk religious traditions—emphasising the mystical and social unity between the state and its citizens. As the next Section will show, *negara hukum* was an invention of Supomo, who also introduced *negara kesatuan*.[21] Accordingly, one cannot develop a grounded understanding of *negara hukum* without considering the Pancasilaists' interpretation of the notion. The Pancasilaists are Indonesia's predominant political force. The interpretation of *negara hukum* that gained currency was developed within their ideological framework.

Lev himself acknowledged that "[s]ince May 1998 minimal legal reform efforts [toward the liberal view of *negara hukum*] have had minimal success under three presidents, partly

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[16] Daniel S Lev, "Between State and Society: Professional Lawyers and Reform in Indonesia" in Tim Lindsey, ed, *Indonesia: Law and Society*, 2nd ed (Sydney, Australia: The Federation Press, 2008) 48 at 52.
[17] Daniel S Lev, "Conceptual Filters and Obfuscation in the Study of Indonesian Politics" (2005) 29:4 Asian Stud Rev 345–356 at 347–348.
[18] Theunis Roux, "The Constitutional Court: A Levian Take on Its Place in the Reformasi" in Melissa Crouch, ed, *The Politics of Court Reform* (Cambridge: Cambridge University Press, 2019) 245 at 245.
[19] Crouch, *supra* note 15 at 3.
[20] Lev, *supra* note 12 at 54–55; Lev, *supra* note 16 at 45–57.
[21] Supomo, "An Integralistic State" in Herbert Feith & Lance Castles, eds, *Indonesian Political Thinking, 1945-1965* (Ithaca and London: Cornell, 1970) 188 at 190.

because of resistance from within and without the legal system, but also for lack of realistic political strategies—or, for that matter, any strategies at all."[22] It is safe to say that Lev's liberal view of *negara hukum* only matches the understanding of a fraction of Indonesians for whom it "would be more accurate to say [it is] a foreign element within the social and ideological world of Indianised Indonesia, especially Java."[23] Despite the conservatives' claim of the distinctiveness of *negara hukum*, there has been no fully developed conceptual work regarding what it means.

This prompted the Chief Justice of the Constitutional Court in 2017 to call for a "massive and systematic collective effort to instill *negara hukum* Pancasila."[24] This call may have been issued in support of the 1999-2002 constitutional amendment in which *negara hukum* was no longer to be a phrase in the Annotations to the 1945 Constitution but enshrined in Article 1(3) of the Constitution. The symbolism behind this inclusion into Article 1 was that *negara hukum* now occupied the same position as *negara kesatuan,* hinting at its status as a proposition that gives Indonesia its raison d'etre.[25] As the Chief Justice of the Constitutional Court made clear, the constitutional amendment further emphasised the vernacularity of *negara hukum* by deleting *Rechtsstaat* in the parentheses.[26] Therefore, as most commentators believe, this can be read as further evidence that constitutional reform was never about changing the "spirit" of the 1945 Constitution.[27] Instead, it was an effort to entrench the conservatives' folk religious worldviews.

Thus, this paper argues that *negara hukum* conveys an Indonesian variant within the genus of the rule of law, one that is embedded in "relationality," a social imaginary that emphasises the importance of interpersonal relationships. This social imaginary is contingent on the "porous individuals" who define themselves in relationship to others. In contrast, the rule of

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[22] Daniel S Lev, "The State and Law Reform in Indonesia" in Tim Lindsey, ed, *Law Reform in Developing and Transitional States* (London: Routledge, 2006) 236 at 254.S

[23] Harry J Benda, "Democracy in Indonesia" DOI.org (Crossref) (1964) 23:3 J of Asian Stud 449–456 at 454.

[24] Arief Hidayat, *Negara Hukum Berwatak Pancasila [Law-based State (Negara Hukum) with Pancasila Characteristic]* (Universitas Atmajaya, Yogyakarta: The Constitutional Court of Indonesia, 2017) at 1.

[25] Jakob Tobing, *The Essence of the 1999-2002 Constitutional Reform in Indonesia: Remaking the Negara Hukum* (Ph.D. Thesis, Leiden University, 2023) at 143–146.

[26] Hidayat, *supra* note 24 at 2.

[27] Gary F Bell, "Minority Rights and Regionalism in Indonesia: Will Constitutional Recognition lead to Disintegration and Discrimination?" (2001) 5 Sing J Int'l & Comp L 784–806 at 784. Bell notes that the constitutional amendment "has brought a significant change in the orientation of Indonesian constitutional law." See also Tim Lindsey, "Indonesia: Devaluing Asian Values, Rewriting Rule of Law" in Randall Peerenboom, ed, *Asian Discourses of Rule of Law* (London: Routledge, 2003) 281 at 301. Lindsey comments that the inclusion of international human rights norms is "lengthy and impressive, granting a full range of protections extending well beyond those guaranteed in most developed state."

law and *Rechtsstaat* are usually premised in the Western modern social imaginaries in which every individual is "bounded," or "buffered."[28] What is more, from the Indonesian viewpoint, relationality is synonymous with religiosity.[29] In a word, being religious is signalling one's social embeddedness.[30] This indicates that relationality functions as the guiding political principle in Indonesia, emphasising its divergence from a secular modern state where individuals engage in politics independently of divine influence.[31] In terms of historical continuity, Indonesia as a political entity continues to be, in certain aspects, connected to, rooted in, or validated by a belief in God or an ultimate reality of some kind.[32] This seems to instantiate in the Indonesian conception of religious freedom which is premised on the absence of the choice for the individual to be non-religious. As such, *negara hukum* conceives law not simply as a tool to establish an environment for individual freedom to thrive, as one finds in the rule of law or *Rechtsstaat*. Rather, *negara hukum* signals the paternalistic role of law, providing active guidance for creating and maintaining communal harmony ("kerukunan"), Indonesia's folk religious ideal. To borrow from Isaiah Berlin's dichotomy of freedom, one of the primary functions of law in *negara hukum* is not promoting negative freedom but advancing positive freedom.[33] In the case of Indonesia, the positive freedom is to realise harmonious interpersonal relationships (*kerukunan*) as the nation's ultimate common good.

In that sense, this Chapter is the first attempt to formulate *negara hukum* as a concept that is initially inchoate, or confused, or poorly formulated. Its uniqueness lies in its focus on articulating the vernacular, as opposed to the original, meaning of *negara hukum* as a member of the family of the translated rule of laws. To do so, this Chapter is divided into three Sections to reveal the folk religious basis behind *negara hukum*. In the first Section, the discussion focuses on the emergence of the phrase *negara hukum,* which Supomo coined. By ascribing the phrase to

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[28] Charles Taylor, *A Secular Age* (Cambridge, Mass.: Harvard University Press, 2007) at 540–541.
[29] See Retno H Ninin, "Religious Self: The Multi-Construal Model of Indonesian Self" in Ralph H Hood & Sariya Cheruvallil-Contractor, eds, *Research in the Social Scientific Study of Religion* (Leiden: Brill, 2020) 103 at 112.
[30] See Deni Miharja & Idrus Ruslan, *Religiosity of the Indigenous Kasepuhan Sunda Community in West Java* (Lampung, Indonesia: Atlantis Press, 2019) at 323–324.
[31] Taylor, *supra* note 28 at 1.
[32] Arguably, this is one of the meanings of the Pancasilaist phrase or rallying cry that Indonesia is "neither a secular, nor an Islamic, but a religious state." See Team Viva, "Mahfud MD: Indonesia Bukan Negara Agama, Bukan Sekuler [Mahfud MD, [the Chief Justice of the Constitutional Court]: Indonesia is not a Religion-based State, or a Secular [State]]", Jakarta *Viva News* (23 August 2018), online: <https://asset.viva.co.id/appasset-2018/desktop-2018/img/icon-profile-team.png?v=5.13>. See also Taylor, *supra* note 28 at 1.
[33] Isaiah Berlin, "Two Concepts of Liberty" in Henry Hardy, ed, *Liberty*, 2nd ed (New York: Oxford University Press, 2002) 166 at 169–172.

Supomo, Section 1 establishes the ideological connection between the concept and the conservatives. Section 2 then puts folk ideological flesh on the concept, implying that *negara hukum* is a folk concept. It explains how it became the Pancasilaists', if not Indonesia's, ideal of political morality. Finally, Section 3 establishes *negara hukum* as the rule of law's "correlative formulation," an ideal of political morality on a par with the rule of law and *Rechtsstaat*.[34]

I. The Nativity of *Negara Hukum*

As a phrase, *negara hukum* made its first appearance in the "Penjelasan tentang Undang-Undang 1945" or "Annotations to the 1945 Constitution" (after this: Annotations), which serves as an addendum to the 1945 Constitution. Important to note, the Annotations have been widely recognised by scholars of Indonesian constitutional law as the "authentic" interpretation of the 1945 Constitution.[35] The Annotations claim that: "Indonesia is a law-based state ([*R*]*echtsstaat*), rather than one ruled by mere power (*machtsstaat*)."[36] Beyond the parenthetical *Rechtsstaat*, the drafters provided no other explanation for *negara hukum*, resulting in two competing interpretations of *negara hukum* emerging—the liberal and the conservatives. The most dominant is the liberal *negara hukum* version adopted by foreign academics. As Lev pointed out, the liberal *negara hukum* originated as an ideological symbolic resource for the Islamist Puritans, as a rallying cry against Sukarno's Old Order plan to "Return to the 1945 Constitution" when the "legal process had no reliable political or ideological base."[37] To be clear, this is not surprising considering that the Islamist Puritans are Indonesia's foremost supporters of modern values, most notably parliamentary democracy, federalism, and human rights.[38]

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[34] I borrow "correlative formulation" from Martin Loughlin, *The Idea of Public Law* (Oxford: Oxford University Press, 2004) at 313.

[35] This is explicitly stated in what is arguably the most significant textbook on *hukum tata negara,* see Mohammad Kusnardi & Harmaily Ibrahim, *Pengantar Hukum Tata Negara Indonesia [[An] Introduction to Indonesia's Hukum Tata Negara]*, 5th ed (Depok and Jakarta: Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia [The University of Indonesia Faculty of Law's Centre for Hukum Tata Negara Studies] and C.V. Sinar Bakti, 1983) at 99.

[36] In Bahasa Indonesia, it states: "Indonesia adalah negara yang berdasar atas hukum (*Rechtsstaat*) tidak berdasar atas kekuasaan belaka (*machtstaat*)." See *The 1945 Constitution*, (August 1945) app 6.

[37] Lev, *supra* note 12 at 42.

[38] *Ibid* at 45–46. See also James L Peacock, *Muslim Puritans: Reformist Psychology in Southeast Asian Islam* (Berkeley: University of California Press, 1978) at 104–108.

Nonetheless, there is a critical clue in establishing the connection between *negara hukum* and Indonesia's folk religious traditions; that is, by determining that the sole author of the Annotation was Supomo.[39] For a start, Supomo was the articulator of *Kawulo Manunggaling Gusti* as the premise of *negara kesatuan*. It is, therefore, necessary to discuss the context that shapes Supomo's intellectual orientation for recovering folk religious traditions as the central theme for Indonesian independence because he never produced any writing to explain his political ideology other than his BPUPKI speech of August 1945.[40] Most, if not all, of his writings, are focused on technical questions such as the constitutional structure of the 1950 constitution and various aspects of the Sundanese *adat* laws.[41] However, Supomo's writings on technical questions must not be understood as him being merely a technocrat. A biography of Supomo published under the auspices of the Ministry of Education, depicting how he fully understood the Pancasilaists' conception of nationalism, described him as "a prodigy who absorbs the spirit of his age who went on to work together with his colleagues to draft the 1945 Constitution."[42] Let us start with Supomo's folk religiosity.

According to the Ministry of Education biography, Supomo was born into an aristocratic family that was part of the extended Royal family of the Surakarta Palace, a center of Javanese culture. This background allowed Supomo to internalise the Javanese way of life (*cara Jawa*). As his biography put it, Supomo grew into a refined ("alus") Javanese, characterised by hard work and modesty without talking much.[43] Important to note, this description is perfectly aligned to the Javanese idea of the ideal self in which "[a]voiding self-assertion is very much in agreement

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[39] According to Tobing, the Annotation, the document where *negara hukum* initially surfaced, was incorporated subsequent to the adoption of the 1945 Constitution. More precisely, the phrase was informally appended when Supomo assumed the role of Indonesia's inaugural justice minister in October 1945. The formal incorporation of the Annotation as a component of the 1945 Constitution, however, was enacted via the Presidential Decree on the 5th of July 1959. See Tobing, *supra* note 25 at 81.

[40] See Supomo, "Pidato Pada Tanggal 31-5-1945 Rapat Badan Penjelidikan Untuk Persiapan Indonesia Merdeka, Di[ ]Gedung Chuoo Sangi-in di Jakarta [Speech at May 31, 1945 during the Meeting of the Constitutional Drafting Committee in the Preparation of the Free Indonesia]" in Muhammad Yamin, ed, *Naskah Persiapan Undang-Undang 1945, memuat Segala Naskah Resmi Penggalang Undang-Undang '45 jang Berlaku Kembali dalam Negara Kesatuan Républik Indonésia [Travaux Préparatoires of the 1945 Constitution, including Every Official Material Supporting the Reintroduction of the 1945 Constitution]* (Jakarta: Prapantja, 1959) 109.

[41] See e.g., Supomo, *Hubungan Individu dan Masyarakat dalam Hukum Adat [The Relationship between the Individual and Society in the Adat Law]* (Jakarta: Gita Karya, 1963); Supomo, *Hukum Perdata Adat Jawa Barat [The Private Adat Law of West Java]*, 2nd ed (Jakarta: Penerbit Djambatan, 1982); Supomo, *Bab-bab tentang Hukum Adat [The Chapters on Adat Law]* (Jakarta: Pradnya Paramita, 1996).

[42] A T Soegito, *Prof. Mr. Dr. Supomo* (Jakarta: Departemen Pendidikan dan Kebudayaan Indonesia, 1980) at 11.

[43] *Ibid* at 6.

with [the Indonesian] culture in the real sense, which is characteristically anonymous."[44] Supposedly, this signifies the folk religious ideal called "sampurna" (perfect or complete), indicating "the individual personality completely disappears after death and nothing is left of the person but dust."[45] The biography also emphasises Supomo's ability to perform Javanese folk dances, one of the most critical vehicles for conveying the teaching of Indonesia's folk religious traditions.[46] For instance, *Bedhaya* dance, the most sacred dance in Javanese folk religious traditions, contains the Javanese conception of kingship.[47]

Also relevant in his support for the revival of Indonesia's folk religious traditions was his European experience as a law student in Leiden in The Netherlands, where he was exposed to the European Romanticism, an intellectual movement that promotes a broad elevation of feelings above logic and of sensory experience over rational thought, via his mentor Cornelis van Vollenhoven. It is suggested that Supomo, via van Vollenhoven, embraced Von Savigny's assertion that law originates solely from the communal corporate existence and is therefore dependent on cultural circumstances.[48] This led him to consider that Indonesia also had the ideological resources to become a state, consistent with the romantic viewpoint that every nation was unique.[49] In Supomo's mind, this meant that every nation was equal, which led him to see Indonesia's folk religious laws or *adat* law as Indonesia's functional equivalent of the European

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[44] Sawarno Djaksonagoro, "The Village as a Model" in Herbert Feith & Lance Castles, eds, *Indonesian Political Thinking, 1945-1965* (Ithaca and London: Cornell University Press, 1970) 198 at 198.
[45] Clifford Geertz, *The Religion of Java* (Chicago and London: The University of Chicago, 1976) at 75.
[46] Soegito, *supra* note 42 at 16. In the context of Cambodia, dances have been observed to carry religious connotations. "Each dance involved thousands of movements, each keyed to moments in a particular story and to the mythological character being portrayed. None of the gestures was improvised. Although some dancers might be more beautiful or more graceful than others, their movements depended on memory, tradition, and practice—in other words, on what they had been thought—rather than on what the individual wanted to express. The dancers were vehicles for tradition rather than its interpreters. Effacing one's creativity by memorising what the teacher imparts is an integral part of traditional Hindu and Buddhist teaching for vocations as diverse as dancing and monastic life." See David P Chandler, *Brother Number One: A Political Biography of Pol Pot*, revised ed (Chiang Mai, Thailand: Silkworm Books, 2000) at 10–11.
[47] Merle C Ricklefs, *The Seen and Unseen Worlds in Java: History, Literature and Islam in the Court of Pakubuwana II 1726-49* (St. Leonard, New South Wales: Allen & Unwin, 1998) at 7–9.
[48] Peter Burns, *The Leiden Legacy: Concepts of Law in Indonesia* (Leiden: KITLV Press, 2004) at 295.
[49] Supomo, *supra* note 21 at 188. Supomo states that "[t]he basis and the structural form of a state are closely connected with the legal norms which have grown out of its history and with its social structure. What is good and just for one state is therefore not necessarily good and just for another, because the situations of the two are not the same."

idea of law. Moreover, Supomo saw *adat* law as a vehicle to construct his theory of state and, in independent Indonesia, it would serve as the normative source for the 1945 Constitution.[50]

Many other Indonesians shared Supomo's view about the plausibility of folk religious traditions as the very foundation for the independence of Indonesia. The first local movement that genuinely reflected the proto-Pancasilaists' ideological orientation was Budi Utomo ("the First Intellect," "the First Deed," or "Noble Endeavor"), of which Supomo was a leader.[51] Budi Utomo was arguably the organisation that provided the foundation for what would become the Pancasilaists' constitutional thought. However, it was a regional rather than a national organisation whose main objective was to revive Javanese folk religious traditions to construct an anti-colonial ideology. A significant implication is that the strength of folk viewpoints makes it incorrect or impractical to perceive "the development of national movement or even its individual components solely in linear terms of right and left, radical and conservative."[52]

Nonetheless, Budi Utomo contributed to the ideological development of the conservatives; their fascination with making folk religious traditions as their primary materials for the conceptual foundation of a new nation received strong support, including from Indonesians from a non-Javanese cultural background. As a consequence, it is difficult, if not impossible, to distinguish between radical nationalism and Javanese traditionalism.[53] The fascination with folk religious traditions also animated another proto-Pancasilaists movement known as Sarekat Islam Indonesia (the Union of Indonesian Islam).[54] Thus, while the organisation labelled itself as Islamic, Sarekat Islam Indonesia was essentially conservatives or Pancasilaists at heart and provided most of the ideological orientation for the conservatives who drafted the 1945 Constitution. This context explains what the biography meant by describing

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[50] Bono Budi Priambodo, "Positioning Adat Law in Indonesia's Legal System: Historical Discourse and Current Development on Customary Law" (2018) 2:2 Udayana J of L & Cul 140–164 at 152.
[51] Martin Ramstedt, "Introduction" in Martin Ramstedt, ed, *Hinduism in Modern Indonesia: A Minority Religion Between Local, National, and Global Interests* (London and New York: Routledge Curzon, 2004) 1 at 4.
[52] Ruth T McVey, "Taman Siswa and the Indonesian National Awakening" DOI.org (Crossref) (1967) 4 Indon 128–149 at 130.
[53] Herbert Feith & Lance Castles, "Javanese Traditionalism" in Herbert Feith & Lance Castles, eds, *Indonesian Political Thinking, 1945-1965* (Ithaca and London: Cornell University Press, 1970) 178 at 178.
[54] Justus M van der Kroef, "Javanese Messianic Expectations: Their Origin and Cultural Context" DOI.org (Crossref) (1959) 1:4 Comp Stud Soc'y & Hist 299–323 at 311. It is important to note that the leadership of Sarekat Islam comprised batik entrepreneurs and certain lower-ranking officials from the *Kasunanan* (Javanese kingdom). Additionally, the term "Islam" served primarily as a marker of nativeness, analogous to the roles of Christianity for the Dutch and Confucianism for the Chinese. See Takashi Shiraishi, *An Age in Motion: Popular Radicalism in Java, 1912–1926* (Ithaca and London: Cornell University Press, 1990) at 42–43.

Supomo as "absorbing the spirit of his age."[55] It is, therefore, necessary to flesh out the prevailing ideology among the proto-Pancasilaists.

Long before Supomo delivered his BPUPKI speech, the aspiration to put Indonesia's folk religious traditions as an alternative, if not superior, worldview to the Western ideology that became the prevailing vehicle for social progress in the colony was high on the agenda of many proto-Pancasilaists.[56] They believed that reviving these traditions could be vital in reclaiming the original Javanese's position as the ruler ("Gusti"), not as the ruled ("Kawulo").[57] This aspiration led the Pancasilaists to designate the short-lived Budi Utomo as Indonesia's first proper "nationalist" movement.[58] Even though they unabashedly promoted Javanese, not Indonesian, worldview, folk religious worldviews did not undermine the nationalism of the proto-Pancasilaists in the eyes of the post-independence Pancasilaists.[59] Noted commentators suggest that this had to do with the fact that the Javanese were so numerous (comprising about half the population) and their non-Islamic traditions so developed that their folk religious traditions became a crucial ideological force at the national level. In effect, Balinese or Minangkabau folk religious traditions became reduced to local traditions.[60] Therefore, it is difficult to draw a line between Javanese folk religious traditions and the ideology of radical nationalism.[61]

With that background, we can now turn to how the ideological orientation of Indonesia's proto-Pancasilaist organisations was infused into the 1945 Constitution, which eventually defined the meaning of *negara hukum*. The BPUPKI, which produced the 1945 Constitution. It was established under the auspices of colonial Japan at the behest of the Pancasilaists. One crucial link was the Pancasilaists' affinity for communalism. Supomo, in his BPUPKI speech, invoked the model of the Japanese theory of the state in a favorable light,[62] which led to the marginalisation of the Islamist Puritans. The Pancasilaists' viewpoint then dominated the drafting

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[55] Soegito, *supra* note 42 at 3.
[56] Farabi Fakih, "Conservative Corporatist: Nationalist Thoughts of Aristocrats: The Ideas of Soetatmo Soeriokoesoemo and Noto Soeroto" DOI.org (Crossref) (2012) 168:4 Bijdragen tot de taal-, land- en volkenkunde / J of the Hum & Soc Sci of Southeast Asia 420–444 at 422–423.
[57] Anthony Reid, *To Nation by Revolution: Indonesia in the 20th Century* (Singapore: National University of Singapore Press, 2011) at 125.
[58] "Hari Kebangkitan Nasional [The National Awakening Day]" (20 May 2023), online (Government Ministry): *Kementerian Pendayagunaan Aparatur Negara dan Reformasi Birokrasi [The Ministry of the State Bureaucracy]* <https://sippn.menpan.go.id/berita/59848/dinas-kependudukan-dan-pencatatan-sipil/hari-kebangkitan-nasional>.
[59] Farabi Fakih, "Akar-akar Kanan daripada Nasionalisme Indonesia: Nasionalisme Jawa dalam Konteks Kesejarahannya" DOI.org (Crossref) (2017) 11:1 Lembaran Sejarah 37–50 at 41.
[60] Feith & Castles, *supra* note 53 at 178.
[61] *Ibid* at 180.
[62] Supomo, *supra* note 40 at 189.

of the 1945 Constitution, and they had no difficulty in ensuring that *Pancasila*, Sukarno's formulation of the spirit of the traditional Indonesian village, was adopted as the guiding "proposition" for the drafting of the 1945 Constitution.[63]

The Pancasilaists were mindful of the significance and influence of various Western concepts, leading to their inevitable excessive incorporation, further complicating the situation.[64] Thus, '"the conservatives' [or Pancasilaists] most creative ideas tend[ed] to come from the confluence of traditional and modern thought, and it is impossible to credit the one or the other exclusively."[65] As Benda puts it, "[t]hough they may often speak in deceptively modern terminology, [they] seem to represent just that specifically Javanese culture."[66] It is, therefore, no exaggeration to argue that Supomo, with his *negara hukum,* was simply channeling the spirit of his age ("semangat zaman").

II. The *Negara Hukum-Adat* Connection

One way to begin explaining the Pancasilaists' *negara hukum* is by starting with Supomo's little book, which lays out the foundation of the relationship between the individual and the community or the state as conceived by *adat* laws as the foundation for the modern state of Indonesia.[67] The symbolism of *adat* law is critically significant as a central concept in, or even the premise for Indonesia's anti-colonial struggle. By establishing *adat* law as a legal framework that encapsulates the native understanding of land ownership and sovereignty, Van Vollenhoven asserts that Indonesia "was not constitutionally 'barren and empty.' It was replete with institutions of governance and authority: there existed governance by and over tribes, villages, federations, republics, and principalities."[68] In consequence, he argues that The Netherlands could neither invoke domain theory to establish legal certainty regarding land rights nor should it do so, given that the indigenous population had been exercising what he termed

[63] Ramstedt, *supra* note 51 at 4.
[64] Sukarno, *Sukarno: An Autobiography as Told to Cindy Adams* (Indianapolis: The Bobbs-Merrill Company, Inc., 1965) at 222.
[65] McVey, *supra* note 52 at 130.
[66] Benda, *supra* note 23 at 454.
[67] Supomo, *supra* note 41 at 37.
[68] Cited in Burns, *supra* note 48 at 59.

"*beschikkingsrecht* (rights of allocation) over wastelands."[69] Against this background, Supomo's reason for focusing on *adat* laws was that every Indonesian village was defined by its unique *adat*, which was unwritten and derived from vernacular memory in oral tradition, which defined not only the relationship between segments of the village but also the village itself.[70] Implicit in Supomo's strategy to elucidate the relationship between the individual and the community is his vision of an Indonesian understanding of the rule of law. Interestingly, Michael Oakeshott also sees the English concept of the rule of law as grounded in the proposition that it was an expression of "a specific mode of human association."[71] While the concept of *negara hukum* as the conservatives' correlative formulation of the rule of law will be discussed in the next Section, this Section will examine the Indonesian mode of human association as the basis for *negara hukum*.

The Indonesian mode of association was essentially communalistic—given that Indonesian societies are embedded in an agricultural or peasant mode of being—and emphasised the importance of interpersonal relationships.[72] In his BPUPKI speech, Mohammad Hatta, an influential member of BPUPKI who went on to be Sukarno's vice president, argued that close cooperation resulted from the Indonesian farmer being unable to work their fields by themselves.[73] Furthermore, this emphasis signifies a view of human relationships that is not transactional, unlike industrial societies; thus, the Indonesian or communalistic mode of association is purposive—it sees its members as being engaged with one another to satisfy particular needs and desires. In contrast, transactional association is best exemplified in a

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[69] Upik Wira Marlin Djalins, *Colonial Knowledge and The Native Scholar: Supomo, Adat Land Rights and Agrarian Reorganisation in Surakarta 1900-1920s* (Master of Science Thesis, Cornell University, 2008) [unpublished] at 16.
[70] Donald G McCloud, *Southeast Asia: Tradition and Modernity in the Contemporary World*, 2nd ed (New York: Routledge, 2019) at 41. See also John S Lansing, *Evil in the Morning of the World: Phenomenological Approaches to a Balinese Community* (Ann Arbor, Michigan: Center for Southeast Asian Studies, The University of Michigan, 1974) at 2.
[71] Michael Oakeshott, "The Rule of Law" in *On History and Other Essays* (Oxford: Blackwell, 1983) 119 at 137–138. Oakeshott assumes that "the first condition of this mode of association is for the associates to know what the laws are and to have a procedure, as little speculative as may be, for ascertaining their authenticity and that of the obligations they prescribe." See also Martin Loughlin, *Foundations of Public Law* (Oxford: Oxford University Press, 2010) at 24.
[72] Niels Mulder, *Individual and Society in Java: A Cultural Analysis*, 2nd ed (Yogyakarta: Gadjah Mada University Press, 1994) at 36–43. See also Richard E Nisbett, *The Geography of Thought: How Asians and Westerners Think Differently . . . and Why* (New York: The Free Press, 2003) at 34; Stephanie de Oliveira & Richard E Nisbett, "Culture Changes How We Think About Thinking: From "Human Inference" to "Geography of Thought"" (2017) 12:5 Perspect Psychol Sci 782–790.
[73] Quoted in John R Bowen, "On the Political Construction of Tradition: *Gotong Royong* in Indonesia" DOI.org (Crossref) (1986) 45:3 J of Asian Stud 545–561 at 549.

commercial contract for service or goods between buyer and seller. In this context, trading is closely linked to Islamic puritanism.[74] As Loughlin observes, the transactional association is "intrinsically a power relationship, with the nature of the bargain dependent on the ability to make or refuse offers to transact."[75] Thus, transactional association implies a theoretical equality or individual autonomy between buyer and seller. On the other hand, given that it puts primacy on the interpersonal relationship, the Indonesian mode of association downplays, if not discards, equality between the transacting parties.[76] What matters most is the purpose or goal: achieving and maintaining harmonious communal relationships ("rukun").

Discussing the nature of *desa* ("village") as the most basic unit of Indonesia's mode of association is necessary. Notably, the drafters of the 1945 Constitution used *desa* as the state model in which Indonesian law would function, which was related to the fact that "the sovereign—be it monarch or government—ranks supreme."[77] As Rahardjo, a celebrated professor of Indonesian law and society, recognised, the drafters of the 1945 Constitution

> conceived of the *desa* republic as an organic construction that embodies the traditional view of the individual and society. To make the Republic of Indonesia a modern state along the lines of the *desa* republic, all the apparatus and institutions of the old republic were given new forms. The kepala desa (head [of] the *desa*) was transformed into the president, and the *rapat desa* [village's meeting] into the modern Majelis Permusyawaratan Rakyat [The People's Consultative Assembly], the highest representative council in the republic.[78]

From the above, it is arguable that the 1945 constitution was infusing folk religious values into the Indonesian conception of the rule of law. To be clear, *desa* refers to "an organic construction that embodies the traditional view of the individual and society."[79] Most

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[74] Geertz, *supra* note 45 at 133–134.
[75] Loughlin, *supra* note 71 at 325.
[76] However, "[i]n Javanese, it is nearly impossible to say anything without indicating the social relationship between the speaker and the listener in terms of status and familiarity." See Geertz, *supra* note 45 at 248.
[77] Jens Meierhenrich, "Rechtsstaat versus the Rule of Law" in Jens Meierhenrich & Martin Loughlin, eds, *The Cambridge Companion to the Rule of Law* (Cambridge: Cambridge University Press, 2021) 39 at 48.
[78] Satjipto Rahardjo, "Between Two Worlds: Modern State and Traditional Society in Indonesia" (1994) 28:3 L & Soc'y Rev 493–502 at 495–496. See also Djaksonagoro, *supra* note 44.
[79] Rahardjo, *supra* note 78 at 495.

importantly, *desa* is not merely an institution or a form of social organisation but holds religious significance, symbolising *rukun* (communal harmony), the most essential value in Indonesia's folk religious traditions.[80] Given this assumption, it is not uncommon for the market, predicated on regulated conflict or negotiation principles rather than harmony and reciprocity, to be located far from the *desa* or the village, ensuring that it remains a distinct and remote entity.[81] As a *rukun*-oriented mode of human association, *desa* projects the conception of law as intrinsically linked to *rukun*.

In contrast, the rule of law projects the conception of law as requiring us to extricate values from it. Moreover, Loughlin maintains that the rule of law "appeals to the condition of justice implicit in the idea of the rule of law being reduced to a purely formalistic notion and, at the same time, it resists the importation of substantive values derived from natural law (e.g., bodily integrity) or conventional politics (e.g., democracy)."[82] In a similar vein, Dieter Grimm, a widely celebrated constitutional theorist and former justice of Germany's Constitutional Court, concluded that "the rule of law is only achieved if the state can pursue certain goals only on the basis of a statutory authorisation to do."[83] Ultimately, this should also help explain why the militaristic New Order (1966-98), despite its notorious reputation for being heavy-handed in enforcing its decisions, found it absolutely necessary to build a consensus that included dissenters.[84]

It should be noted that the Indonesian conception of law is not uncommon in non-Western societies, for example, in states where Islam is the predominant religion. Like Indonesia's folk religious traditions with *rukun*, Islamic legal traditions also posit preserving a community of believers (*umma*) free from social chaos (*fitna*) as their foremost goal.[85] Thus, the Islamic functional equivalent of the rule of law is best defined as "the rule of justice" (*'adl*). Islam's "rule of justice" underscores the principle of justice, highlighting the significance of reciprocity and emphasising proportionality over uniform equality, focusing on individuals rather

[80] Abdulkadir Besar, "Cita Negara Integralistik: Faham Indonesia [The Idea of Integralistik: The Indonesian Idea]" in Soeprapto, Saafroedin Bahar & Ismail Arianto, eds, *Cita Negara Persatuan Indonesia [The Ideal of the Indonesian Unitary State]* (Jakarta: BP-7 Pusat, 1996) 51 at 60–61.
[81] McCloud, *supra* note 70 at 46.
[82] Loughlin, *supra* note 71 at 332.
[83] Dieter Grimm, *Constitutionalism: Past, Present, and Future* (Oxford: Oxford University Press, 2016) at 347.
[84] McCloud, *supra* note 70 at 278.
[85] Lawrence Rosen, "Islamic Conceptions of the Rule of Law" in Jens Meierhenrich & Martin Loughlin, eds, *The Cambridge Companion to the Rule of Law* (Cambridge: Cambridge University Press, 2021) 86 at 89.

than impersonal institutions.[86] This approach contrasts with Western legal traditions, prioritising abstract principles, generalisation, and consistency. Consequently, the primary objective of legal forums within this framework is not merely to adjudicate facts and rights but to facilitate a context conducive to the parties' negotiation and resolution of disputes.[87] Consequently, Islamic law has allowed "difference to flourish, settlements to be varied, and the ability to negotiate relationships to be the point of origination for freedom rather than rendering freedom of maneuver a threat to uniform outcome."[88] This can also be observed in the Indonesian Constitutional Court that "has been more interested in doing justice to the people it serves than in becoming a model of rational legal-decision making."[89]

Indonesian self-construal, self-conception, or selfhood serves as the bedrock of the concept of *negara hukum*.[90] Reflecting its communal orientation, Indonesia's mode of self-construal is "relational," suggesting that "[t]he habit of looking toward the social world could have carried over to a tendency to look to the field in general; and the need to attend to social relations could have extended to an inclination to attend to relations of all kinds."[91] In a word, the relational self is intertwined with an understanding of essential others, with each connection reflecting a relationship between self and other.[92] This acknowledgment of the relational self can explain the insistence of the Indonesian Constitutional Court to interpret individual constitutional rights in light of the communal interests.[93] More specifically, as I will elaborate in the next Section, this relational conception of the self informs the Indonesian meaning of the individual right to religious freedom. The Constitutional Court stated that "the protection of human rights in the context of the Indonesian community is . . . particularly directed towards the achievement of

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[86] Lawrence Rosen, *Islam and the Rule of Justice: Image and Reality in Muslim Law and Culture* (Chicago and London: The University of Chicago Press, 2018) at 167.
[87] Rosen, *supra* note 85 at 96–97.
[88] Rosen, *supra* note 86 at 96–97.
[89] Mark Cammack, "Legal Certainty in the Indonesian Constitutional Court: A Critique and Friendly Suggestion" in Melissa Crouch, ed, *Constitutional Democracy in Indonesia* (Oxford: Oxford University Press, 2022) 275 at 277.
[90] Charles Taylor, "Self-Interpreting Animals" in *Human Agency and Language: Philosophical Papers* (Cambridge: Cambridge University Press, 1985) 45 at 47.
[91] Nisbett, *supra* note 72 at 35.
[92] Ninin, *supra* note 29 at 104. Ninin states that: "In Indonesia, a person, or self, connected to God is likely to be conceptualised as 'religious self,' a model of self that is hypothetically suggested of an Indonesian self." On the importance of the relational self is also asserted in Djaksonagoro, *supra* note 44 at 198.
[93] Nadirsyah Hosen, "Human Dignity in the Jurisprudence of the Indonesian Constitutional Court" in Jimmy Chia-Shin Hsu, ed, *Human Dignity in Asia: Dialogue between Law and Culture* (Cambridge: Cambridge University Press, 2022) 139 at 154. See also *Putusan No 140/PUU-VII/2009*, 2010 Mahkamah Konstitusi Republik Indonesia [The Constitutional Court of the Republic of Indonesia].

harmony and balance within the community."[94] In *negara hukum*, as the chairman of the Constitutional Court himself put it, "the ultimate objective is to allow the state to create harmony and balance between individual and society so that the ideals of Pancasila can be realised."[95]

At the core of *negara hukum* is the centrality of "*rasa*" or "*perasaan*" (heart or emotion), instead of "*nalar*" or "*akal*" (brain or reason). The centrality of *rasa* is hardly surprising given the previous claim that Indonesia is a continuation of *desa.* In the communal life of the *desa*, where incessant and intimate interpersonal interactions among members are imperative for fulfilling personal objectives, proficiency in discerning and managing *rasa* is critical to individual and communal aspirations. It is believed that the ability to master *rasa* can "contribute to the development of respect for others and the desire to avoid conflict and confrontation."[96] In Javanese folk religious traditions, for instance, mastering emotions and self-control is believed to create harmony, respect, and unity.[97] With that in mind, it is not surprising that the culture of shame ("budaya malu") is widely believed to be the Indonesian legal consciousness that animates *negara hukum*.[98] The primacy of *rasa* within the *negara hukum* paradigm often mandates a series of concessions to legal certainty attributable to the intrinsic malleability that *rasa* introduces to the juridical processes in Indonesia.[99] Nonetheless, the Deputy Chief Justice of the Indonesian Constitutional Court contended that such flexibility was essential for *negara hukum*, consonant with the principles of justice as envisaged by the *Pancasila*.[100]

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[94] Hosen, *supra* note 93 at 154.
[95] Hidayat, *supra* note 24 at 4.
[96] Mulder, *supra* note 72 at 26.
[97] Ayu Sutarto, "Becoming a True Javanese: A Javanese View of Attempts at Javanisation" DOI.org (Crossref) (2006) 34:98 Indon & the Malay World 39–53 at 45.
[98] Faizal Amrul Muttaqin & Wahyu Saputra, "Budaya Hukum Malu Sebagai Nilai Vital Terwujudnya Kesadaran Hukum Masyarakat [The Legal Culture of Shame as the Critical Component of the [Indonesian] Legal Consciousness]" (2019) 1:2 As Syakhsiyyah 187–207. See also Sudjito, *Bernegara Hukum Tanpa Budaya Malu [A Rule of Law Based State without the Culture of Shame]* (Yogyakarta: UGM Press, 2017).
[99] Mohammad Faishol Hasanudian, "Dimensi Non Yuridis Rasa Keadilan dalam Putusan Pengadilan [The Sensibility of Justice as Extrajudicial Element in Indonesian Court Decisions]" (15 August 2023), online (State Higher Institution): *Mahkamah Agung Republik Indonesia [The Supreme Court of the Republic of Indonesia]]* <https://pta-samarinda.go.id/artikel-pengadilan/1779-dimensi-non-yuridis-rasa-keadilan-dalam-putusan-pengadilan-dr-dr-h-moh-faishol-hasanuddin-s-h-m-h>.
[100] *Putusan MAHKAMAH AGUNG Nomor 2112 K/PidSus/2*, 2013 Supreme Court of Indonesia.

III. *Rechtsstaat* is the Embryo of *Negara Hukum,* but Not the Final Say

In the Annotations, Supomo parenthesised *Rechtsstaat* after the phrase *negara hukum,* which begs an explanation given that this paper's main objective is to establish that *negara hukum* is not merely *Rechtsstaat*'s functional equivalent. In this Section, I argue that the most plausible explanation for Supomo's action was that it had to do with the conception of the state that *Rechtsstaat* espouses; that is, the active role of the state is indispensable. This is close to Indonesia's conception of *negara kesatuan,* in which the state acts as the paternalistic father. This differs from the rule of law, which does not see the state as a constitutive factor but rather a symbol for curtailing its power. Moreover, the cultural assumption that underpins *Rechtsstaat* and *negara hukum* differs. With that in mind, this Section proposes the most plausible explanation of why Supomo parenthesised *Rechtsstaat.* This Section is crucial because the primary reason for the conflation of the concept of *negara hukum* with *Rechtsstaat* is using the latter as the parenthetical phrase for the former.

To further substantiate this claim, this Section proceeds in two Subsections. The first is devoted to establishing the more active role of the state, as the similarity between *Rechtsstaat* and *negara hukum* is. In the case of *Rechtsstaat*, this is justified by the Enlightenment orientation and *negara hukum* is legitimated by the Indonesian folk conception of the state, *negara kesatuan*. In the second Subsection, I discuss the impact of these different assumptions. By making the Enlightenment aspiration its assumption, *Rechtsstaat* embraces liberal individualism. *Rechtsstaat* adopts a hands-on approach to promoting individual rights to realise its objective. In contrast, *negara kesatuan*, as a logical consequence of its communal orientation, is pivoted towards collective rights, at times at the expense of individual rights. This is shown in the Indonesian interpretation of the right to religious freedom which is premised on the assumption that the human condition of being religious is nonnegotiable. Findings in Indonesian religious studies indicate that for the Indonesian people, religiosity is intrinsically linked to social embeddedness.[101]

[101] See e.g., Ninin, *supra* note 29 at 112; Miharja & Ruslan, *supra* note 30; Geertz, *supra* note 45.

A. *Negara Hukum* is More Than Just *Rechtsstaat*

His scholarly history might be an initial reference to comprehend why Supomo parenthesised *Rechtsstaat* rather than the rule of law after *negara hukum*. This suggests a link to Supomo's experience as a doctoral student at Leiden Faculty of Law in The Netherlands where he articulates "his own reading of agrarian reorganisation in Surakarta in his dissertation."[102] His academic journey was the presumed influence that aligned *negara hukum* with the Dutch interpretation of *Rechtsstaat*. While nothing is wrong with this conjecture, it falls short of persuasiveness, failing to elucidate why Supomo favored *Rechtsstaat* over alternatives like the rule of law. (It is important to highlight that Supomo's thesis focused on the adat law of West Java, developed under the mentorship of Van Vollenhoven's concept of *adat* law related to land rights, while also engaging with discussions surrounding land rights in the Netherlands.[103]) Given the breadth of knowledge displayed in his BPUPKI address, the connection to his education must extend beyond the superficial. Regrettably, to my knowledge, the absence of documented evidence precludes a definitive explanation for this preference.

Arguably, it is the more active role of the state that *Rechsstaat* envisages by contrast to the English rule of law, allowing Supomo to see the kinship between it and his *negara hukum*. Both *Rechsstaat* and *negara hukum* see the indispensability of the paternalistic role of the state. This refers to the belief in the importance of the state's interference in the affairs of its citizens, assuming that the latter are incapable of acting in their best interests.[104] This is markedly different from the state's fiduciary duty, which supplies content to the rule of law that seeks to uphold "freedom as non-domination," implying the imperative in restraining the state's power.[105] *Negara kesatuan* also implies a more significant and active role for the state, likened to a benevolent father. This belief was predominant in continental Europe, where *Rechtsstaat* was flourishing. Indeed, as Meierhenrich points out, Immanuel Kant, the supposed first theorist of *Rechtsstaat* and the "Godfather" of nineteenth-century German liberalism, "took a shine" to the

[102] Djalins, *supra* note 69 at 25.
[103] *Ibid* at 9.
[104] Loughlin, *supra* note 3 at 2.
[105] Evan Fox-Decent, *Sovereignty's Promise: The State as Fiduciary* (Oxford: Oxford University Press, 2011) at 38.

paternalistic vision of the law.[106] In the case of the Dutch variant of *Rechtsstaat*, for instance, it implies the obligation of its citizens to obey the law.[107]

This differs from the rule of law, where the state's role is seen as noncentral, if not inimical. To a certain extent, some have argued that the central theme in the rule of law is about curtailing the state. If anything, the rule of law symbolises curtailing the state's role. In effect, the rule of law sees the legitimacy of law as equally important as its legality.[108] In other words, "the rule of law implies constitutionalism, and all states or societies that struggle towards the rule of law are also working towards constitutional government, to control power with reason."[109] For this reason, Friedrich Hayek, a foremost libertarian theorist, dismisses *Rechtsstaat* as "mere legality" and sees the rule of law as the most appropriate concept for advancing libertarian ideals.[110] Thus, it is unsurprising that the rule of law does not designate the state as a constitutive element for its effective operation.

Another indication highlighting the paternalistic characteristics of a rule-of-law state is its association with *Pancasila.*[111] It is noteworthy that a comparative analysis of the similarities between *negara hukum* and the Malaysian and Singaporean conceptions of the rule of law can provide valuable insights. Notably, Malaysian and Singaporean interpretations of the rule of law are significant for discussion due to their foundation on "soft constitutional law," influenced by Indonesia's *Pancasila*.[112] In Malaysia, the soft constitutional law known as *Rukunnegara* encompasses a five-point national philosophy, including belief in God, loyalty to the king and country, upholding the Constitution, adherence to the rule of law in the sense of *negara hukum*,

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[106] Meierhenrich, *supra* note 77 at 45.
[107] Thus, Dutch variant of *Rechtsstaat* "has become a (neo-)republican concept in which it is assumed to bind the citizen as much as state organs to the major principles and norms of political society." See Leonard F M Besselink, "The Evolution and Gestalt of the Dutch Constitution" in Armin von Bogdandy, ed, *The Max Planck Handbooks in European Public Law: Constitutional Foundations* (Oxford: Oxford University Press, 2023) 381 at 420.
[108] Meierhenrich, *supra* note 77 at 54. David Dyzenhaus, "Recrafting the Rule of Law" in David Dyzenhaus, ed, *Recrafting the Rule of Law: The Limits of Legal Order* (Oxford: Hart Publishing, 1999) 1 at 3. Dyzenhaus highlights the issue of the legitimacy of law is central to debate about the rule of law.
[109] Mortimer N S Sellers, "An Introduction to the Rule of Law in Comparative Perspective" in Mortimer N S Sellers & Tadeusz Tomaszewski, eds, *The Rule of Law in Comparative Perspective* (London: Springer Science+Business Media B.V., 2010) 1 at 4.
[110] Hayek identifies "the central issue [in the rule of law is] . . . the prevention of arbitrary action of government." Cited in Meierhenrich, *supra* note 77 at 52.
[111] Hidayat, *supra* note 24 at 4.
[112] Thio Li-ann, "Soft Constitutional Law in Nonliberal Asian Constitutional Democracies" (2010) 8:4 Int'l J Con L 766–799 at 781. See also "Rukun Negara and Pancasila: The Parallels", Kuala Lumpur *Astro Awani* (29 August 2014), online: <https://www.astroawani.com/berita-malaysia/rukun-negara-and-pancasila-parallels-42810>.

and promoting good behavior and morality.[113] As an articulator of the Malaysian concept of law recognise it, like *Pancasila* to Indonesia, "no study of contemporary of law and good behaviour in Malaysia can neglect this particular document (even if from time to time it appears to fall into eclipse) since it offers a profile of the model citizen: monotheist, patriotic, submissive to authority, obedience to the dictates of morality and the law."[114]

In Singapore, a similar framework is outlined in the "Shared Values White Paper," which directs the government to abide by the law and allows for swift and easy modifications within Singapore's regulated democratic system, marked by a culture of limited rights.[115] Similar to the communalism-oriented concept of *negara hukum*, the Malaysian interpretation of the rule of law has been portrayed as being built around the *muhibbah* ("tolerance") spirit, a folk religious value in reaction to the pressure for adopting a multi-party governmental system and the liberal perspectives on human rights originating from Europe and North America.[116] In Singapore, the Shared Values White Paper has acted as a conduit for Confucian ideologies to validate a paternalistic approach to the rule of law.[117] Ultimately, the paternalistic orientation inherent in the concept of *negara hukum* and the conceptions of the rule of law in Malaysia and Singapore underscores the endeavor toward fostering and upholding national unity, in a manner consistent with the Indonesian understanding of *negara hukum*.

B. The Divergent Framings of *Negara Hukum* and *Rechtsstaat*

In this Subsection, I argue that the similarity between *negara hukum* and *Rechtsstaat* should not be taken as the end of the discussion because their divergence is embedded in two different worldviews or ideologies that serve as their framing. In the context of *negara hukum*, it is Indonesia's folk religious traditions that, as we have seen earlier, project a religio-communal-oriented way of life. This has resulted in *negara hukum* framing constitutional or fundamental

[113] H P Lee, "Competing Conceptions of [the] Rule of Law in Malaysia" in Randall Peerenboom, ed, *Asian Discourses of Rule of Law* (London: Routledge, 2003) 222 at 222.
[114] R H Hickling, *Malaysian Law: An Introduction to the Concept of Law in Malaysia*, 2nd ed (Selangor Darul Ehsan, Malaysia: Pelanduk Publications, 2001) at 15.
[115] Thio Li-ann, "Rule of Law within A Non-Liberal "Communitarian" Democracy: The Singapore Experience" in Randall Peerenboom, ed, *Asian Discourses of Rule of Law* (London: Routledge, 2003) 180 at 205.
[116] Asohan Satkunasingham, "Place National Values as National Interest", Kuala Lumpur *Malaysia Kini* (21 March 2019), online: <https://www.malaysiakini.com/letters/468997>; Tan Sri Lee Thye, "Rukun Negara: A Timeless Guide for Malaysia's Path to Harmony", Kuala Lumpur *New Straits Times* (26 November 2023), online: <https://www.nst.com.my/opinion/letters/2023/11/982968/rukun-negara-timeless-guide-malaysias-path-harmony>.
[117] Li-ann, *supra* note 115 at 192–195.

rights as less individual-centered. The model is most prominently illustrated in the Indonesian conception of the right to religious freedom. It is important to note that this less individual-centered approach is anchored in Indonesia's cryptic and popular proposition as being "neither a secular, nor an Islamic, but a religious state."[118]

Indonesia's insistence on being "religiously ambiguous" is not without reason. The quality of being religious here refers to Indonesia's folk understanding of being religious; that is, syncretic religiosity, which suggests the fundamental tenet of Indonesia's folk religious traditions. For one thing, *negara hukum*'s positive perception of the state's role can be attributed to the belief that there is an indivisible union between the people and the state. More precisely, this is rooted in *Manunggaling Kawulo Gusti* (Oneness of God), the core doctrine of Indonesia's folk religious traditions. For another, this serves as further evidence that Indonesia's folk religious traditions have contributed to the substantiation of the 1945 Constitutionalism.

By rejecting the theocratic model of an Islamic state and the strict separation between the sacred and the secular in the same breath, *negara hukum* represents a manifestation of the folk rule of law in which state neutrality is inconceivable. It concerns the proposition of the folk religious traditions, which conceive that "when all men faithfully follow their religious injunctions, earthly conditions should be good."[119] To be clear, "following religious injunctions" refers to one's ability to recognise the importance of social connectedness and interdependence with others, contributing to creating and maintaining a harmonious society.[120] Furthermore, this proposition has imposed the constitutional obligation of every Indonesian to have a religious identity.[121] In line with this reasoning, the Minister of Religious Affairs has recently emphasised the significance of preserving the portion of the Indonesian ID card that indicates the holder's religious identity, arguing against its elimination.[122] In a word, *negara hukum* is best understood as a pan-religious good.

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[118] Team Viva, *supra* note 32.
[119] Niels Mulder, *Mysticism and Everyday Life in Contemporary Java: Cultural Persistence and Change* (Singapore: Singapore University Press, 1978) at 33.
[120] Ninin, *supra* note 29 at 111.
[121] *The 1945 Constitution*, *supra* note 36 art 28E.
[122] "Menag: Kolom Agama Harus Tetap Dipertahankan [The Minister of Religious Affairs: The Section on Religious Affiliation Must Be Preserved]" (7 November 2014), online (Government Ministry): *The Ministry of Religious Affairs of the Republic of Indonesia* <https://kemenag.go.id/nasional/menag-kolom-agama-harus-tetap-dipertahankan-f4t1er>.

Considering that it embodies the Enlightenment's aspiration, *Rechtsstaat,* on paper at least, necessitates state neutrality.[123] Thus, religious values or norms, as a standard of legality, can only be drawn on if approved by statutory legal order or jurisdiction.[124] This means that religious values occupy a lower rank than state norms, based on the premise that state norms are the product of or must derive from impartial public reason, not parochial religious values.[125] This differs from *negara hukum,* where the belief in the Oneness of God is foundational.[126] So much so that, as the Vice Chief Justice of the Constitutional Court has made clear, it becomes a logical imperative to forbid atheism and communism, considering that they do not subscribe to the Oneness of God, or the Indonesian idea of being religious.[127] In a comparable manner, the Chief Justice of the Constitutional Court clearly asserts that it is essential for government officials to have faith in the Oneness of God.[128] It is crucial to highlight that, in this context, the Oneness of God is most effectively understood as representing an indivisible connection with others or the community.[129] Supposedly, the opposite of this would be French *laïcité*, a constitutional system that recognises simultaneously the right to believe and not to believe, all while ensuring that religion remains separate from public matters.

To understand how *negara hukum* plays out practically, one can start with the Indonesian conception of the human right to religious freedom. In the framework of *negara hukum*, human rights are believed to be the gift of God.[130] Arguably, this is the most essential characteristic of the Indonesian conception of human rights, which means the conception of human rights within the framework of *negara hukum* is premise on the belief that religiosity is non-negotiable. The reason is that religiosity is a signifier of one's social embeddedness. In effect, being religious is a token of being aligned with the ideology of relationality or *Pancasila*. As a result, the Indonesian conception of human rights has been interpreted as a basis for not recognising the right for not

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[123] Jens Meierhenrich, *The Remnants of the Rechtsstaat: An Ethnography of Nazi Law* (Oxford: Oxford University Press, 2018) at 75.
[124] Matthias Koetter, "Rechtsstaat and Rechtsstaatlichkeit in Germany" (6 December 2013) at para 5, online (University): *Understandings of the Rule of Law* <https://wikis.fu-berlin.de/display/SBprojectrol/Germany>.
[125] A Anthony Smith, "Kant's Political Philosophy: Rechtsstaat or Council Democracy?" (1985) 47:2 Rev Pol 253–280 at 258.
[126] *The 1945 Constitution*, *supra* note 36 art 29 (1).
[127] Hidayat, *supra* note 24 at 4–5.
[128] Jimly Asshidiqie, *Pancasila dan Agenda Pembaruan Birokrasi [Pancasila and the Agenda to Revitalise the Bureaucracy]* (Semarang, Central Java, 2011) at 6.
[129] See Ninin, *supra* note 29 at 112; Miharja & Ruslan, *supra* note 30 at 323–324.
[130] *Law no. 39 of 1999 on Hak Asasi Manusia*, 2000 art 1 (1).

having a religious belief. In contrast, the international conception of human rights is simply because of one's quality of being a human.

The religious conception of human rights is most readily felt in the Indonesian conception of religious freedom, which is less about protecting the individual's right in religious life and more about maintaining communal harmony, which is most often at the expense of interest of the individuals. In that sense, religious freedom in *negara hukum* is not an end but an instrument to maintain communal harmony ("rukun"). Furthermore, the Indonesian idea of religious freedom implies an interventionist state approach. This reasoning underpins the formulation of the Statute on the Protection of the Religious Communities, in which the center of its protection is preserving the religio-communal harmony, not protecting the individual right to religious freedom.[131]

The above understanding has been the rationale for the 2013 decision of the Supreme Court of Indonesia No. 2112 K/Pid.Sus/2. This decision pertains to Mr. Alexander Aan, a junior public official who self-identifies as an atheist on Facebook. In this case, the Supreme Court decided that Mr. Aan was guilty of being against the ideology of *Pancasila*.[132] This affirmed the decisions of the district and the higher (or provincial) courts. Interestingly, this decision confirms that what the law protects is the religio-communal harmony, not the individual right of Mr. Aan or preventing harm to others. This is substantiated by the fact that the only basis for prosecuting Mr. Aan was the expression of his opinion. As the decision made it clear, there is no indication that Mr. Aan was attacking any natural person. Mr. Aan's perceived guilt is intrinsically associated with his adherence to atheism, which exemplifies an individualistic worldview. By doing so, Mr. Aan's atheistic identity exemplifies a clear rejection of the Pancasila or relational self.

The same reasoning also prompted the Constitutional Court to uphold the constitutionality of the Law of Anti-Religious Defamation. As the title of the law may suggest, the primary, or even sole, objective of this law is to criminalise any public acts deemed to denigrate religions or religious teachings. What is so illustrative about this law is that the Court has time and again stated that protecting religion is necessary for preserving communal harmony while at the same time recognising its potential for being in contravention of the right to religious

[131] Fathudin, "Kebebasan Beragama dalam Bingkai Otoritas Negara [Religious Freedom within the Ambit of State Jurisdiction]" (2015) 12:2 Jurnal Legislasi Indonesia 1–25 at 6.
[132] *Putusan MAHKAMAH AGUNG Nomor 2112 K/Pid.Sus/2*, *supra* note 100 at 7–8.

freedom. In its 2010 decision, the Court explained that the freedom to express, advocate, or proselyte religious belief to the public could potentially stir social conflict, eventually leading to political instability and national disintegration. However, this does not imply that the Law forbids the freedom of every individual to interpret and practice their religious belief in their private sphere. In short, the Court added, the Law is a preventive action to avoid social discord.[133] In a 2023 decision, the Court reiterated the constitutionality of the Law of Anti-Religious Defamation with the same reasoning. Furthermore, the Court clarified that the Law can be applied in the academic setting.[134]

In conclusion, it is noteworthy to reiterate that the communal orientation of *negara hukum* in Indonesia may be closely associated with the nation's stance of being characterised as "neither an Islamic nor secular state, but a religious state." It is essential to recognise Indonesia's folk religious traditions as a legitimate religious manifestations rooted in immanentism to fully grasp this orientation, indicated by *Kawulo Manunggaling Gusti* or unio mystica as its main tenet. By acknowledging its immanentist root, one can understand the Pancasilaists' stubbornness for conceiving the role of law as more than just a matter of procedural question. Rather, it is a means to realise a communal harmonious relationship or *rukun*, the folk religious ideal. Furthermore, this root confirms that the concept of *negara hukum* possesses both religious and practical significance. This clarifies the opposition seen among different Indonesian leaders, such as the previously mentioned Chief Justice of the Constitutional Court, regarding the rule of law and, as a result, the *Rechtsstaat*, which they perceive as rooted in and fostering a secular and individualistic worldview—which is anathema to the Pancasilaists' folk religious sensibility.

Conclusion

This Chapter has sought to situate the Pancasilaists' conception of *negara hukum* as a correlative formulation, if not an unhappy bastard, of the rule of law and *Rechtsstaat*. In a sense, *negara hukum* is best understood as an infusion of folk religious orientations within the framework of *Rechtsstaat*. Furthermore, what makes *negara hukum* diverge from *Rechtsstaat* can be attributed to its heavy orientation toward communal interests. In contrast, *Rechtsstaat* is perceived as

[133] *Putusan No 79/PUU-XXI/2023 [The Decision no 79/PUU-XXI/2023]*, 2023 Mahkamah Konstitusi Republik Indonesia [The Comstitutional Court of Republic of Indonesia] at 79.
[134] *Ibid*.

embodying the principles of secular and individualistic liberalism. In short, the rationale behind Supomo's decision to make *Rechtsstaat*, not the rule of law, as the parenthesised phrase after *negara hukum,* related to *Rechtsstaat*'s positive embrace of the more active role of the state. This stands in contrast to the rule of law that conceives the state as at best a necessary evil. However, the similarity between *negara hukum* and *Rechtsstaat* ends there. While they both acknowledge the indispensability of the state, they have two different ideological orientations. *Negara hukum* conceives the state as playing a paternalistic role in the life of its people so that they can function in a communal framework. Meanwhile, *Rechtsstaat* sees the state's paternalistic role as guiding people to achieve their individualistic freedom.

CHAPTER 8

Hukum Tata Negara: Indonesia's Syncretic Constitutional Concept

Introduction

In Indonesian legal literature, *hukum tata negara* ("law of state order") is presumed to be merely the equivalent of the Western sense of "constitutional law" within the Indonesian context.[1] This implicit assumption is so ingrained that critical inquiries on the nature of *hukum tata negara* have never been raised.[2] Constitutional scholars doubted whether there was anything uniquely Indonesian about *hukum tata negara*. For them, there is no Pancasilaist understanding of *hukum tata negara*, only the translation of the English concept of constitutional law presented in the Indonesian language; that is, the concept differs in the language used, not in meaning.[3] Therefore, they are happy to get on with describing and elaborating the translation of constitutional law in the Indonesian context. There appears to be no literature on the nature of *hukum tata negara* within the Pancasilaist conceptual framework, with the consequence that the enduring influence of *rasa* as Indonesia's folk constitutional sensibility in the constitutionalisation of Indonesian contemporary life remained unacknowledged. In response, there are numerous legal scholars in Indonesia have consistently raised this matter. The latest

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[1] See e.g., Tim Lindsey & Simon Butt, *Indonesian Law* (Oxford: Oxford University Press, 2018); Jimly Asshidiqie, *Pengantar Ilmu Hukum Tata Negara [Introduction to the Science of Hukum Tata Negara],* vol. 1 (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006).

[2] The two-volume publication, published under the auspices of the Constitutional Court and written by the renowned authority in Indonesian constitutional studies and first Chief Justice of the Constitutional Court, provides an extensive analysis of fundamental concepts in constitutional law across diverse European contexts. However, it falls short of explicitly recognising or extensively exploring the historical or conceptual linkages between Indonesia's indigenous or folk tradition and the 1945 constitutional order. See Asshidiqie, *supra* note 1; Jimly Asshidiqie, *Pengantar Ilmu Hukum Tata Negara [Introduction to the Science of Hukum Tata Negara],* vol. 2 (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006). See also another most widely adopted and hence important textbook on *hukum tata negara*: Mohammad Kusnardi & Harmaily Ibrahim, *Pengantar Hukum Tata Negara Indonesia [[An] Introduction to Indonesia's Hukum Tata Negara]*, 5th ed (Depok and Jakarta: Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia [The University of Indonesia Faculty of Law's Centre for Hukum Tata Negara Studies] and C.V. Sinar Bakti, 1983) at 22–23.

[3] The case against the universalisability of constitutional law can be found, for example, in Abdullahi Ahmed An-Na'im, "Islam, Sharia and Comparative Constitutionalism" in Susanna Mancini, ed, *Constitutions and Religion* (Cheltenham, U.K.: Edward Elgar Publishing Ltd., 2020) 172 at 173.

assertion was put forth by Arief Hidayat, the Chief Justice of the Constitutional Court (2015-18).[4]

Virtually all English language scholarship on Indonesian constitutional law has centered chiefly on the discrepancy between the expected functionality of constitutional law and its actual implementation, with the implicit assumption that underpins the Western rule of law. The common objective of these studies is to evaluate Indonesia's commitment to its written constitution, without attending its underpinning understanding.[5] Constitutional law is often casually misconstrued as a universal legal framework, disregarding its intrinsic association with the cultural practices of Western societies.[6] In this regard, Jeremy Waldron posits that the application of constitutional rights is more reliant on ethical deliberation than on traditional legalistic approaches.[7] Similarly, John Austin's view that constitutional law should be viewed as "positive morality" rather than genuine law is not without merit; he suggests that it comprises moral norms that exist beyond the legal system and are unrelated to the legitimacy of law.[8] Considering this, treating *hukum tata negara* as an exact conceptual analog of constitutional law is a clear instance of the reduction and homogenisation of the moral language and moral thinking in both domains.[9] Moreover, this scholarship has unintentionally bolstered Indonesia's minority legal tradition, the Puritan Islamists' legalist orientation, which emerged as Indonesia's agent of

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[4] See Arief Hidayat, *Negara Hukum Berwatak Pancasila [Law-based State (Negara Hukum) with Pancasila Characteristic]* (Universitas Atmajaya, Yogyakarta: The Constitutional Court of Indonesia, 2017) at 1.

[5] See e.g., Melissa Crouch, "The Limits of Transformational Authoritarian Constitutions: The Indonesian Experience" in Melissa Crouch, ed, *Constitutional Democracy in Indonesia* (Oxford: Oxford University Press, 2023) 1; Simon Butt, "Constitutions and Constitionalism" in Robert W Hefner, ed, *Routledge Handbook of Contemporary Indonesia* (Abingdon, Oxon: Routledge, 2018) 54; *Obstacles to Reform The 1945 Constitution: Constitutions do not Perform Miracles*, by Gary F Bell, Van Zorge Report on Indonesia: Commentary and Analysis on Indonesian Politics and Economics 3 (Jakarta: Van Zorge, Heffernan & Associates, 2001).

[6] As a noted medievalist has pointed out, it was "the canonistic ideas on the internal structure of corporations . . . that were . . . mutated into principles of constitutional law." See Brian Tierney, *Religion, Law and the Growth of Constitutional Thought, 1150-1650* (Cambridge: Cambridge University Press, 1982) at 22–23. See also Paul W Kahn, "Comparative Constitutionalism in a New Key" (2003) 101:8 Mich L Rev 2677–2705 at 2679. 2697.

[7] Cited Mitchell N Berman, "Constitutional Law" in John Tasioulas, ed, *The Cambridge Companion to the Philosophy of Law* (Cambridge: Cambridge University Press, 2020) 271 at 283.

[8] Cited in David Dyzenhaus, "The Idea of a Constitution: A Plea for Staatrechtslechre" in David Dyzenhaus & Malcolm Thorburn, eds, *Philosophical Foundations of Constitutional Law* (New York: Oxford University Press, 2016) 9 at 15.

[9] Taylor points out that the modern moral reasoning that tends to "ignore the problematic the problematic distinctions between different qualities of action or modes of life" is "historically parochial." See Charles Taylor, "The Diversity of Goods" in *Philosophical Papers: Philosophy and the Human Sciences* (Cambridge: Cambridge University Press, 1985) 230 at 231–232.

modernity.[10] From the Puritan's standpoint, a close reading of ancient texts was not enough to confront the problem of the day and that means it is imperative for the Indonesian Muslims to come to terms with modernity, untied from such ancient constraints.[11] Specifically, this scholarship overlooked—or worse, disregarded—the Pancasilaist folk conception of constitutional law, which not only resulted in a thin conception of *hukum tata negara* but, more importantly, has left our conceptual understanding of *hukum tata negara* incomplete, if not distorted.

In this Chapter, I argue that *hukum tata negara* is not an exact conceptual analog of constitutional law. The words that make up this phrase can be translated as law (*hukum*), order (*tata*), and state (*negara*). I suggest that "law of state order" is the nearest rendering of *hukum tata negara* in English. To get to the essence of its meaning, one should start with *tata*. In the literature on Javanese folk religious traditions, *tata* refers to a divine sanction of order in which the moral task and/or teaching (*darma*) of all that exists is to maintain it.[12] In other words, *tata* projects a folk ideal of morality. As Indonesia's variant of constitutional law, *hukum tata negara* aims to induce *rukun* (communal harmony), the core value of Indonesia's folk religious traditions. Like other folk religious means, such as *pétungan* (numerology), *hukum tata negara* coordinates earthly events with cosmic conditions. By implication, it is of religious significance. In contrast, constitutional law is purportedly understood as an entirely modern and secular project, tied to the idea of the state.[13] Meanwhile, *hukum tata negara* aimed to assist the government or the state in keeping the day-to-day operation of the 1945 Constitution consistent with the divine order.[14] With that in mind, to accord with established usage, I will inevitably use

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[10] See e.g., James L Peacock, *Purifying the Faith: The Muhammadijah Movement in Indonesian Islam* (Durham, NC: The University of North Carolina Press, 2017) at 6, 8–12; James L Peacock, *Muslim Puritans: Reformist Psychology in Southeast Asian Islam* (Berkeley: University of California Press, 1978).

[11] For example, Muhammad Iqbal, a prominent Pakistani Islamic thinker revered by Puritanical circles, did not advocate for a nostalgic revival of a bygone Muslim golden age. He recognised that societies encounter distinct challenges in varying historical contexts. Iqbal's intellectual contributions significantly influenced the Puritan Islamist movement in Indonesia. See Adeel Hussain, "Muhammad Iqbal's Constitutionalism" (2018) 2:2 Indian L Rev 135–158 at 137.

[12] Niels Mulder, *Mysticism and Everyday Life in Contemporary Java: Cultural Persistence and Change* (Singapore: Singapore University Press, 1978) at 20.

[13] It is asserted that the term "constitution" originated with the emergence of the modern sovereign state, as constitutionalism represented a specific response to the challenges associated with sovereignty. See Graham Maddox, "Constitution" in Terence Ball, Farr, James & Russell L Hanson, eds, *Political Innovation and Conceptual Change* (Cambridge: Cambridge University Press, 1989) 50 at 63. See also H Patrick Glenn, *The Cosmopolitan State* (Oxford: Oxford University Press, 2013) at 126.

[14] This was articulated by the Chief Justice of the Constitutional Court. See "Peran Penting Pancasila Membangun Indonesia sebagai Religious Welfare State [The Primary Role of Pancasila in the Articulation of Indonesia as

"constitutional" as an adjective when discussing Indonesian law, but, understood here in the sense of the "law of state order."

By undertaking a kind of "translation" from one world to another, this Chapter attempts to provide a fair account of the Pancasilaists which reside deeply in Indonesia's constitutional experience. This translation effort is similar to the process of understanding religious belief which demands a willingness to confront and reassess our deeply ingrained habits of thought and expression, or necessitating "a kind of pledging or commitment of the self to another."[15] One reason is that *hukum tata negara* as both moral language and moral thinking originates in social relations, meaning its most profound motives and meaning being inherently relational or social.[16] In so doing, this Chapter seeks to elucidate specific assumptions regarding *hukum tata negara* that informs its support from the Pancasilaists and its repudiation by critics or Islamic Puritans. These specific assumptions are intended to exist on a plane that transcends *hukum tata negara*'s textual meaning.[17] For that matter, this Chapter is an attempt to develop a synthetic conceptual understanding of *hukum tata negara*, thereby contributing to a more comprehensive account of Indonesian constitutionalism as a signifier of the nation's sense of belonging.[18] Therefore, Section 1 delineates the religious significance of *hukum tata negara* within the framework of Indonesia's folk religious traditions. Section 2 explains the significance of what may be termed as Indonesia's "non-separation thesis"—the belief in the indissoluble intertwining of the sacred and the secular. More specifically, Section 2 identifies how the nonseparation thesis serves the implicit assumption determining Indonesian understanding of constitutionality or of being in accord with the deep or symbolic meaning of the 1945 Constitution. Section 3 describes *hukum tata negara* as a contentious domain characterised by the increasing influence of Islamic Puritanism and the concurrent assertion of Western-oriented academics competing for predominance. Consequently, *hukum tata negara* may be acknowledged as a syncretic

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Religious Welfare State]", (6 December 2017), online: *Mahkamah Konstitusi Republik Indonesia [The Constitutional Court of the Republic of Indonesia]* <https://www.mkri.id/index.php?page=web.Berita&id=14187&menu=2>.

[15] See James Boyd White, "Talking about Religion in the Language of Law: Impossible but Necessary" (1998) 81:2 Marq L Rev 177–202 at 186; James Boyd White, "Introduction" in James Boyd White, ed, *How Should We Talk About Religion? Perspectives, Contexts and Particularities* (Notre Dame, Indiana: University of Notre Dame Press, 2006) 1 at 3.

[16] See James Boyd White, *Justice as Translation: An Essay in Cultural and Legal Criticism* (Chicago and London: The University of Chicago Press, 1990) at 233.

[17] See also *Ibid* at 31.

[18] The idea of constitutionalism as a signifier of the nation's sense of belonging is adapted from White, *supra* note 15 at 190.

constitutional concept where diverse, and, at times contradictory, constitutional ideas and aspirations blend into a unified whole.

I. *Hukum Tata Negara*'s Folk Roots

One way of decoding *hukum tata negara*'s folk religious significance is by unveiling the thinking behind the formulation of the phrase. Mohammad Yamin coined the phrase *hukum tata negara.* More specifically, the phrase appears for the first time in *Tatanegara Majapahit: Sapta Parwa,* Yamin's 1960 four-volume treatise on Indonesia's indigenous constitutional order. There, he used the phrase *hukum tata negara* to refer to what might be stated as "ways of ordering the state." According to Yamin, Indonesian history suggests that *hukum tata negara* is more than just a field of legal knowledge. Instead, it is "a manifestation of the local spirituality in which culture is part."[19] This statement corresponds with Van Vollenhoven's idea of *adat* law (traditional, indigenous, chthonic, or folk law) as "the totality of rules of conduct for natives and foreign orientals that have, on the one hand, sanctions (therefore law) and, on the other, are not codified (therefore *adat*)," where there is no clear boundary separating the two.[20] Thus, any attempt to fully understand *hukum tata negara* must be an intellectual exercise in comparative law where *adat* law, both in its present and past manifestations, takes center stage.[21]

Yamin's treatise was not meant to be merely an armchair scholarly exercise. It was prompted by the conviction that Indonesia's national independence was an attempt to reify the constitutional order based on Indonesia's national character as a *Pancasila* nation.[22] As we will see in Section 3 below, this instigated a backlash from the Islamist Puritans. As Yamin himself put it, the underlying method was his belief in the science of jurisprudence and history, which merge in *filsafah chalduniah* (folk philosophy).[23] Yamin's treatise was consistent with the

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[19] Muhammad Yamin, *Tatanegara Majapahit: Sapta Parwa [Constitutional Law of the Majapahit Empire: Seven Parts]* (Jakarta: Jajasan Prapantja, 1960) at 48. To reiterate, Yamin, along with Supomo, is arguably Indonesia's most important constitutional theorist.

[20] Consequently, Van Vollenhoven has been recognised for employing *adat* law as "a broad analytical concept, which is not by definition tied to the organisation of the state." See Franz von Benda-Beckmann & Keebet von Benda-Beckmann, "Myths and Stereotypes about Adat Law: A Reassessment of Van Vollenhoven in the Light of Current Struggles over Adat Law in Indonesia" (2011) 167:2–3 Bijdragen tot de taal-, land- en volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia 167–195 at 171.

[21] Yamin, *supra* note 19 at 50.

[22] *Ibid* at 36.

[23] *Ibid* at 35.

characters of *kakawin,* Indonesia's folk hymns or literary works. Defined as "verbal magic" or "sacred script," *kakawin* is a "potential weapon . . . intended to bring about a change in the utterances of the community concerned, the members being expected to conform [its] priestly statement."[24] Like verbal magic, Yamin's treatise also is more than just a hymn to the Pancasilaists' constitutional vision. It reflects Indonesia's folk belief that "a word has the power to affect what it expresses because there is a kind of identity between the word and what it stands for."[25] Yamin's original plan was to present the treatise in seven volumes because, as Yamin himself stated, the number seven has religious significance in Indonesian minds.[26] Hence, despite his inability to complete the entire seven volumes, the four published volumes retain the Sanskrit "Sapta Parwa" (Seven Parts) as their subtitle.

Making *hukum tata negara* the folk conceptual basis for articulating Indonesia's variant of constitutional theory was not just Yamin's intention: a score of other notable Pancasilaists can be included as supporters of Yamin's undertaking, including Sukarno, Mohammad Hatta, and Supomo, making it a Pancasilaist initiative.[27] Explaining the political context of the treatise's publication is necessary to elucidate the ideological assumptions that underpin *hukum tata negara*. It was a chaotic time, when the governing agenda was "returning to the 1945 Constitution." Thus, the treatise was part of the government's political propaganda supporting its agenda. In that light, one can understand Yamin's claim that the treatise was part of a series of publications meant to provide a comprehensive delineation of Indonesia's constitutional structure from the early period to when the treatise was published.[28]

This background informs the interpretation of *hukum tata negara* to understand its magico-religious significance. To begin with, like many other vital expressions in the Indonesian political lexicon, *hukum tata negara* is best defined as "verbal magic," implying "the purpose of magic, [in which its utterance can] . . . bring about the desired effect."[29] It is similar to other deeply emotive phrases such as *Pancasila*, UUD 45 (the acronym for the 1945 Constitution),

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[24] See Cornelis C Berg, "The Javanese Picture of the Past" in Soedjatmoko et al, eds, *An Introduction to Indonesian Historiography* (Ithaca: Cornell University Press, 1965) 87 at 90–91.
[25] Supomo Suryohudoyo, "The Sovereignty of Beauty: Classical Javanese Writing" in Ann Kumar & John H McGlynn, eds, *Illuminations: The Writing Traditions of Indonesia* (New York and Tokyo: Weatherhill, Inc., 1996) 13 at 25.
[26] Muhammad Yamin, *Tatanegara Majapahit: Sapta Parwa [Constitutional Law of the Majapahit Empire: Seven Parts]* (Jakarta: Jajasan Prapantja, 1960) at 94–97. See also Yamin, *supra* note 19 at 37.
[27] Yamin, *supra* note 19 at 31.
[28] *Ibid* at 36–37.
[29] Berg, *supra* note 24 at 89.

semangat 45 (spirit of the 1945 [revolution]), *revolusi*, and *merdeka* ([national] independence or freedom), which are "connected to the struggle and violence of a physical revolution."[30] *Hukum tata negara* originates in the Republic's early days, a period marked by profound self-realisation as the embodiment of a promising new endeavor and national unity.[31] In that sense, *hukum tata negara* not only reflects sociological and cultural characteristics of "post-revolutionary" Indonesia but also underscores its religious significance as the nation's verbal magic that can create positive change, most notably, the harmonious condition ("rukun") in the world.[32]

As I have pointed out in Chapter 2, one of the most important and conspicuous features in Indonesia's 1945 constitutional order is the persistent use of "verbal magic," that is, the belief that words bring about the desired effect. The Indonesian tradition of verbal magic can be traced to the Indic period, which is replete with "text[s] [that] are unintelligible unless we suppose the author to have practiced magic, and that many other texts are easier to understand and fit better into a framework of facts if interpreted based on that supposition, we shall have to reckon with the possibility that in Java 'poetical style' and magical function were concomitant."[33]

In addition, the persistence of verbal magic can also be understood as "a sign of Java's defense against Arabic culture [or Islamisation] and its final conquest of this alien infiltration. . . . [Accordingly,] Islam had forbidden the continued use of Shivaitic and Tantric mantra; Java answered by turning the Quran into a book mantra."[34] Furthermore, Fogg asserts that verbal magic was pivotal in the Indonesian War of Independence by sparking widespread mobilisation within the Muslim grassroots community. He contends that verbal magic was instrumental in shaping the Indonesian revolution into an Islamic movement.[35]

Similarly, Yamin claimed that there was historical continuity between *hukum tata negara* and the constitutional laws of Srivijaya and Majapahit, Indonesia's two great Indic empires, in which both laws were legitimated by verbal magic.[36] Indeed, the concept of *hukum tata negara* is

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[30] Benedict R O'G Anderson, *Language and Power: Exploring Political Cultures in Indonesia* (Ithaca: Cornell University Press, 1990) at 140.
[31] Paul W Kahn, "Constitutional Culture: Opening a Space between Law and Power" (2019) 189 Telos: Critical Theory of the Contemp 15–33 at 31–33.
[32] Anderson, *supra* note 30 at 141.
[33] Berg, *supra* note 24 at 89.
[34] Anderson, *supra* note 30 at 127.
[35] Kevin W Fogg, *Indonesia's Islamic Revolution* (Cambridge: Cambridge University Press, 2019) at 91.
[36] Muhammad Yamin, "Bagian Kesatu: Tinjauan Hukum terhadap Kerangka dan Isi Undang-Undang 1945 [Part One: A Legal Overview of the Form and Substance of the 1945 Constitution]" in Muhammad Yamin, ed, *Naskah Persiapan Undang-Undang 1945, memuat Segala Naskah Resmi Penggalang Undang-Undang '45 jang Berlaku*

an expression of religious syncretism, hinting at the influence of the Indic syncretic religious orientation in Indonesia's constitutional thought. Classifying *hukum tata negara* as "verbal magic" allows it to function like a performative utterance or speech act. It is not in the business of "describing," "reporting," or constating anything. It is never meant to be empirically verified or found "true or false." Being a performative utterance, *hukum tata negara* is simply meant to be "the utterance that is, or is a part of, the doing of an action, which . . . would not *normally* be described as saying something."[37] By establishing *hukum tata negara* as verbal magic, one can answer what it is trying to do or bring about.

One way to answer this question is to revisit the Guided Democracy period (1965-98), whose main agenda was to return to the 1945 Constitution (see Chapter 4). The zeitgeist of that period was to bring "tata" (or "order"), that is, "the traditional mystical harmony of the old Javanese mythology and world order," in the "negara" or state of Indonesia.[38] Considering the Arabic origin word "hukum" as its prefix, it is plausible to conceive *hukum tata negara* as implying its quality of being an imperative. In the Islamic legal tradition, "a *huk[u]m* is a binding and enforceable legal determination, but a *fatwa* (responsa) is a legal opinion on a particular dispute, problem, or novel issue, which, by definition, enjoys only persuasive authority."[39] Moreover, the term "hukum" can also be perceived as a symbolic gesture acknowledging the legalistic inclination of Puritan Islamists.

Yamin was fully aware of the animosity his conception of *hukum tata negara* would incite from the Puritans and that its underpinning assumption would not sit well with their Islamic religious sensibility.[40] While this subject will be further discussed in Section 3 below, it is sufficient to say that *hukum tata negara* is another invented concept akin to *negara kesatuan* and *negara hukum*. Moreover, incorporating the term "hukum" can be interpreted as reinforcing the inclination of Indonesia's folk religious traditions to embrace diverse religious orientations without adhering to any specific religious tradition. Like *Pancasila* or *slametan*, which are

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Kembali dalam Negara Kesatuan Républik Indonésia [Travaux Préparatoires of the 1945 Constitution, including Every Official Material Supporting the Reintroduction of the 1945 Constitution] (Jakarta (?): Jajasan Prapantja (?), 1960) 15 at 56–59.

[37] John L Austin, *How To Do Things With Words* (Oxford: Clarendon Press, 1962) at 5.

[38] Justus M van der Kroef, "Sukarno, The Ideologue" (1968) 41:2 Pac Aff 245–261 at 248.

[39] Khaled Abou El Fadl, "Islamic Legal Tradition" in Mauro Bussani & Ugo Mattei, eds, *The Cambridge Companion to Comparative Law* (Cambridge: Cambridge University Press, 2012) 295 at 304.

[40] Yamin, *supra* note 19 at 67. The rivalry between two conflicting religious sensibilities is deeply entrenched, as evidenced by various folklores. In the context of Sundanese folklores, see Ajip Rosidi, *Manusia Sunda [The Sundanese Self]* (Jakarta: Inti Idayu Press, 1984) at 50–51.

central rituals in these traditions, the concept of *hukum tata negara* should not be viewed as an analytical concept but rather as a syncretic device highlighting *rasa* or emotion for the achievement of communal harmony (*rukun*).[41]

It is important to note that *hukum* shares the same trilateral root word, hkm, with *hikmah* or the "(esoteric universal) wisdom," one of the central concepts in Sufism.[42] Most importantly, *hikmah* can also be taken as an allusion to *rasa*, considering that "[its] meaning includes both the wisdom belonging to the rational and mental place or philosophy and the wisdom which transcends the level of the ordinary human mind and which, properly speaking, belongs to the angelic order."[43] Hence, not only does it indicate consistency with Sufism as Indonesia's predominant interpretation of Islam, but the adjective *hukum* sealed the supreme position of *hukum tata negara* within the Indonesian legal system. In addition to expressing religious syncretism, the *hukum tata negara* concept conveys a distinctive public order model with an Indic religious connotation. It hints at the enduring influence of the Indic syncretic religious orientation in Indonesia's "constitutional" thought. To put it differently, *hukum tata negara* connotes a religious obligation to bring about *tata* (order) into a human or worldly realm called Indonesia.

Hukum tata negara marked the revival of cultural conservatism, which is consistent with the idea that the independence of Indonesia itself was an attempt to reassert the supremacy of indigenous culture in national life.[44] This is also consistent with Yamin's claim that "what happened was that [by proclaiming its independence,] the people of Indonesia were resurrecting their own "kedaulatan" [best understood here as "the Indonesian ways of life," not just as "sovereignty" or the ability to decide or act without external interference] standing on the rubble of the demise of the unlawful colonising nation that had established illegitimate power over our motherland."[45] Similarly, Supomo underscores the crucial importance of envisioning the

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[41] Eka Darmaputera, *Pancasila: Identitas dan Modernitas [Pancasila: Identity and Modernity]*, revised ed (Jakarta: BPK Gunung Mulia, 2017) at 99–107.

[42] Given its centrality, Mulla Sadra, an important figure in Islamic mystical tradition, is believed to have spent "so much of his life in teaching and writing about *Hikmat* only and regarded all the other sciences as its subsidiaries." See Seyyed Hossein Nasr, *The Islamic Intellectual Tradition in Persia*, Mehdi Amin Razavi, ed (London: Routledge, 1996) at 276–278.

[43] *Ibid* at 297.

[44] Geertz presents a similar argument about the phenomenon of Sanskrit-derived terminologies in Indonesian symbolism. See Clifford Geertz, "Are the Javanese Mad?" (1966) 38:424 Encounter 86–90.

[45] Muhammad Yamin, *Tatanegara Majapahit: Sapta Parwa [Constitutional Law of the Majapahit Empire: Seven Parts]* (Jakarta: Jajasan Prapantja, 1960) at 66.

framework of the 1945 Constitution in alignment with *tata negara*, understood as the "semangat kebatinan" (inner spirit) of the people of Indonesia.[46] In that regard, *hukum tata negara* embodies the tensions between long-held traditions and the values and mores of modern and secular life. Arguably, *hukum tata negara* is a form of narrative, serving as an interpretive framework designed to provide Indonesians with meaning, assisting them in transcending cultural disparities and uncertainties regarding their shared identities.

By combining the impulse of cultural conservatism with the earlier assertion about performative utterance, it is now possible to think of *hukum tata negara* as distinct from constitutional law and premised on the 1945 Constitution as a different kind of basic law whose foremost value lies in its context or symbol, not in its text.[47] With its explicit association of the supremacy of text as a token of the supremacy of reason, constitutional law is understood as an attempt to domesticate "the Enlightenment hope in written constitutions."[48] Taking human rationality as the primary, if not the only, factor that constructs its materiality, constitutional law "focuses on constitutional texts or jurisprudence, often construed as the study of judicial interpretation of constitutional provisions and constitutional principles."[49] In contrast, *hukum tata negara* is here presented as the nationalists' last-ditch effort to preserve the supremacy of *rasa* or *perasaan*, comparable to "feeling" or "emotion" in the face of the Islamists' modernising pressure. By making *rasa* indispensable in the conception of Indonesia's constitutional sensibility, *hukum tata negara* develops from an entirely different assumption: the implicit rejection of the supremacy of reason or rationality. In doing so, emotion ("rasa") is celebrated in *hukum tata negara*, not human reason, as one finds in constitutional law.

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[46] Muhammad Yamin, ed, "Bagian Kedua: Sidang Pertama--29-V Sampai 1-VI-1945 [Second Part: The First Meeting--29 May to 1 June 1945]" in *Naskah Persiapan Undang-Undang 1945, memuat Segala Naskah Resmi Penggalang Undang-Undang '45 jang Berlaku Kembali dalam Negara Kesatuan Républik Indonésia [Travaux Préparatoires of the 1945 Constitution, including Every Official Material Supporting the Reintroduction of the 1945 Constitution]* (Jakarta: Jajasan Prapantja, 1960) 59 at 113.

[47] Muhammad Yamin, "Rapat Besar pada Tanggal 11-7-1945 [Plenary Meeting on 11 July 1945]" in *Naskah Persiapan Undang-Undang 1945, memuat Segala Naskah Resmi Penggalang Undang-Undang '45 jang Berlaku Kembali dalam Negara Kesatuan Républik Indonésia [Travaux Préparatoires of the 1945 Constitution, including Every Official Material Supporting the Reintroduction of the 1945 Constitution]* (Jakarta: Jajasan Prapantja, 1959) 199 at 207. See also Yamin, *supra* note 45 at 34.

[48] Bruce Ackerman, "The Rise of World Constitutionalism" (1997) 83:4 Va L Rev 771–797 at 772.

[49] Ran Hirschl, "Comparative Methodologies" in Roger Masterman & Robert Schütze, eds, *Cambridge Companion to Comparative Constitutional Law* (Cambridge: Cambridge University Press, 2019) 11 at 13.

II. Indonesia's Non-separation Thesis

The objective here is to elucidate the import of Indonesia's folk religious traditions on the Pancasilaists' conception of *hukum tata negara*, warranting its characterisation as a vernacularised form of constitutional law. This vernacularisation emerges from the theological underpinnings of *hukum tata negara*, which are embedded in folk religious traditions, in contrast to the foundations of modern constitutional law originating in Judeo-Christian religious traditions. This discrepancy has engendered divergent policy preferences, reflecting differing views concerning the function of the sacred (*gaib, Ilahi,* or *Ketuhanan Yang Maha Esa*) in constitutional reasoning. Within *hukum tata negara*, the sacred is so integral that it defines the validity of judicial rulings and legislative enactments.[50] This is rooted in the Indonesian *Weltanschauung*, embedded in folk religious traditions, which posits the indivisibility of religious and secular components.[51] By contrast, Judeo-Christian traditions have influenced the apparent exclusion of the sacred from constitutional legal discourse.[52] Thus, this Section argues that *hukum tata negara* embodies the specificity of Indonesian historical experience, culminating in the aphorism of "Indonesia is neither an Islamic nor secular state, but it is a religious state."[53]

One way to reveal *hukum tata negara'*s policy preference as different from Western constitutional law is to establish the indispensability of the sacred as the source of the 1945 constitutional order. In the process of determining the constitutionality of a statutory provision that criminalises adultery, Chief Justice Arief Hidayat reminded a human rights expert who

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[50] See e.g., Yopi Junaidillah, *Makna Irah-Irah "Demi Keadilan Berdasarkan KeTuhanan Yang Maha Esa" Pada Sertifikat Hak Tanggungan [The Meaning of the Preamble of "In the Name of Justice on Behalf od the Oneness of God"]* (LLM Thesis, Universitas Brawijaya, 2016) [unpublished]; M Y S Ali, "Mengenang Bismar: Irah-Irahirah, Kepala Putusan yang Bermakna Sumpah", (12 July 2015), online: *HukumOnline* <https://www.hukumonline.com/berita/baca/lt55a26de809417/irah-irah--kepala-putusan-yang-bermakna-sumpah/.>.

[51] JA Niels Mulder, "Aliran Kebatinan as an Expression of the Javanese Worldview" (1970) 1:2 J of Southeast Asian Stud 105–114 at 105.

[52] This argument is extrapolated from Charles Taylor's interpretation of secularity, which posits that public spaces are increasingly "emptied of God, or of any reference to ultimate reality," or "belief in God is no longer axiomatic." Charles Taylor, *A Secular Age* (Cambridge, Mass.: Harvard University Press, 2007) at 2–3. See also Maddox, *supra* note 13 at 55. Maddox claims that "the most valuable political bequest of the Romans to Western society was probably the rule of reason, further to be elaborated by St. Thomas Aquinas and later jurists who would find cause to insist on the separation of the sacred from the secular. The foundation of Western constitutionalism, therefore, was popular sovereignty, rooted in *nomos* of the Greeks, and hallowed in the jurisprudence of the Romans as the rule of right reason deriving from the universal law of nature."

[53] Worthy of note, the aphorism in question has been substantiated by the historical documentation of the constitutional amendment process, signifying its paramount importance in the discourse surrounding the elucidation of Indonesia's constitutional state. See Jakob Tobing, *The Essence of the 1999-2002 Constitutional Reform in Indonesia: Remaking the Negara Hukum* (Ph.D. Thesis, Leiden University, 2023) [unpublished] at 401.

"merely points out the international conception of human rights" which is based on the assumption that the sacred and the profane are strictly separated, that in Indonesia, the founding assumption is that human rights and other legal norms must derive from the sacred, "whatever that may be."[54] By "whatever that may be," Hidayat referred to any religion, not necessarily Islam, that Indonesia recognises.[55] Hidayat concluded that the international concept of human rights does not align with Indonesian constitutionalism, where "the constitution must identify itself as the guarantor of [the Indonesian conception of] freedom of religion and not *freedom from religion*."[56] Furthermore, he pointed out that every written legal act in Indonesia must begin with the statement "in the name of the Oneness of God's justice," a consequence of the first principle of *Pancasila*.[57] Without it, the said legal act has no constitutional validity. Within that framework, the Indonesian Constitutional Court functions as "the guardian of the constitution" and "the guardian of the ideology of *Pancasila*."[58]

This interpretation substantiates Indonesia's constitutional premise: "*Pancasila* is the source of all sources of law."[59] With this "preeminence status," *Pancasila* is "the theoretical determinant of validity of all law and government action," which many Indonesian legal scholars regard as "unalterable" through any legal mechanisms.[60] With that status, *Pancasila* has been widely acknowledged as the quintessential embodiment of "our nation's ethical and existential philosophy."[61] Its ethical and existential philosophy is primarily derived from Javanese folk

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[54] Agus Sahbani, "Ketua MK: Sistem Hukum Indonesia Mesti 'Disinari' Nilai Ketuhanan [The Chief Justice of the Constitutional Court: Indonesian Legal System Should Be Interpreted in the 'Light' of the Divine Values]", *Hukum Online* (25 September 2016), online: <https://www.hukumonline.com/berita/a/ketua-mk--sistem-hukum-indonesia-mesti-disinari-nilai-ketuhanan-lt57e75880d9bc6/>.

[55] To date, Indonesia recognises: (1) Islam; (2) Christianity (Protestantism); (3) Catholicism; (4) Hinduism; (5) Buddhism; and (6) Confucianism ("KongHu Cu"). See *Undang-undang No. 1 PNPS tahun 1965 tentang Pencegahan Penyalahgunaan dan/atau Penodaan Agama [The Law no. 1 of 1965 concerning the Prevention, Abuse, and Defamation of Religion]*, 1965 art 1.

[56] *Putusan Nomor 46/PUU-XIV/2016 [Decision No 46/PUU-XIV/2016]*, 2017 Mahkamah Konstitusi Republik Indonesia [The Constitutional Court of the Republic of Indonesia] at 465. (Emphasis is in original).

[57] See Junaidillah, *supra* note 50.

[58] Sahbani, *supra* note 54.

[59] Pusat Data dan Informasi BPIP [The Centre of Data and Information]], "Pancasila sebagai Sumber dari Segala Sumber Hukum, Apa Artinya? [Pancasila as Source of all Sources of Law, What Does It Mean?]", (28 July 2021), online: *Badan Pembinaan Ideologi Pancasila [The State Agency for the Cultivation of the Ideology of Pancasila]*; *Ketetapan MPR No. III/MPR/2000 tentang Sumber Hukum Dan Tata Urutan Peraturan Perundang-Undangan [The Statement of the People's Consultative Assembly No. III of 2000 on the Sources of Law and the Hierarchy of Laws]*, Ketetapan MPR 2000.

[60] Lindsey & Butt, *supra* note 1 at 39.

[61] Soetrisno Prawiro Harjono, *Falsafah Hidup Pancasila seba[ga]imana tercermin dalam Falsafah Hidup Orang Jawa [Pancasila's Way of Life as reflected in the Javanese Way of Life]* (Yogyakarta: Lembaga Pengembangan

religious traditions and the broader spectrum of Indonesia's folk religious traditions.[62] Consistent with *Pancasila*'s existential philosophy, as derived from Indonesia's folk religious tradition, *hukum tata negara*'s non-separation thesis is manifested in the assumption that the inner realm ("batin," "spiritual," "microcosmos," or "psychological" realm) is the direct reflection of the external realm ("lahir," "social," "macro cosmos," or "physical" realm). In other words, "human existence is inescapably related to [the] supernatur[al], and it is senseless to sharply distinguish between the here and now and the beyond and timeless."[63] Accordingly, *hukum tata negara* is a vehicle for realising "the moral task of all that exists to be and to live in harmony with that universal order."[64] Consequently, *hukum tata negara* is primarily a project of securing a flourishing existence in the here and now, thus a vital signifier of an "immanentist" religious tradition.[65]

This is different from modern Western constitutional law that, among other functions, is a means of entrenching "state neutrality;" that is, state acts should not be justified by appealing to the authority of the sacred or a specific religion. It can be contended that this stems from the Deuteronomic conception of the power of the ruler, "going back as far as three thousand years."[66] In this conception, the ruler is nothing more but "a model citizen and servant of the people [who] were prohibited from, and never developed into human-divine mediators between God and the people, as was the case in the neighboring empires of Egypt, Babylon, and later

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Masyarakat Universitas Gadjah Mada [The University of Gadjah mada's Center for the Development of the Indonesian Society] and Pandawa, 1977) at vii.

[62] See e.g., Suharto, *Pandangan Presiden Suharto tentang Pancasila [The President Suharto's Point of View on Pancasila]*, 2d ed, Krissantono, ed (Jakarta: Centre for Strategic and International Studies, 1976); Suharto, *Butir-Butir Budaya Jawa: Hanggayuh Kasampurnaning Hurip Berbudi Bawaleksana Ngudi Sejatining Becik [The Essentials of the Javanese Culture: In Search of Perfect Life Noble and Generous Mind In Quest of the Essence of Goodness]*, Siti Hardiyanti Rukmana, ed (Jakarta: Yayasan Purna Bhakti Pertiwi, 1987).

[63] Mulder, *supra* note 51 at 105.

[64] In the case of Javanese folk religious traditions, Mulder describes: "The Javanese *Weltanschauung* (Javanism) is based on the conviction of the essential unity of all Existence. This worldview is more encompassing than religion: it views human existence within a cosmological context, making life itself a religious experience. In this view of life it is not possible to separate the religious from the non-religious elements; human existence is inescapably related to supernature and it is senseless." See *Ibid*.

[65] Being the rival of immanentist religious traditions, transcendental religious traditions are believed to be "an all-out assault on the immanentist project of securing a flourishing existence in the 'here and now' by insisting that any such 'flourishing' is relatively worthless. Ultimate purpose is drained out of profane existence in order to concentrate it in the attainment of the transcendentalist objective. This is salvation, liberation, or enlightenment:" See Alan Strathern, *Unearthly Powers: Religious and Political Change in World History* (Cambridge: Cambridge University Press, 2019) at 51–52.

[66] Jonathan Burnside, "Old Testament: Torah and Constitutionalism" in Nicholas Aroney & Ian Leigh, eds, *Christianity and Constitutionalism* (Oxford: Oxford University Press, 2023) 33 at 38.

Rome."[67] In contrast, through the doctrine of *Kawula Manunggaling Gusti*, Indonesia's folk conception of the ruler, reflecting an immanentist conception, that is the distinction between the divine and the ruler cannot clearly be defined.[68] In this conception, constitutional law becomes a primary site for ensuring the state does not reward or penalise conceptions of the good life. Instead, it should provide a neutral framework within which different and potentially conflicting conceptions of the good can be pursued. The Canadian treatment of the sacred is illustrative. While the Canadian Charter of Rights and Freedoms Preamble acknowledges both "the supremacy of God and the rule of law," the latter principle, ostensibly secular, has attained profound constitutional and political importance. Conversely, the supremacy of God clause has been largely marginalised in constitutional interpretation.[69]

Hukum tata negara's non-separation thesis implies a different conception of the role of the sacred as one would find in a constitutional theocracy, which is rooted in transcendentalist religious traditions. For starters, theocracy is the term that denotes the politico-religious system that appears in the Old Testament. The primary purpose was to emphasise the peculiarities of Judaism's political-religious system.[70] As exemplified by the concept of the Jewish theocracy or "halakhic state," constitutional theocracy, similar to *hukum tata negara,* espouses a non-separation thesis.[71] Constitutional theocracy differs by articulating a national identity from a single religious tradition and presenting it as a unitary constitutional system that applies to

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[67] *Ibid* at 44.

[68] For this reason, "[n]ot only king referred to as the *lingga* of the world [Shiva's phallus]; but also, since 'on earth, the ruler acts on behalf of Siva, and the essence of his royal power is embodied in the *lingga* [which] the brahman . . . obtains . . . from Siva and hands . . . over to the founder of the dynasty as the palladium of his royalty.'" See Clifford Geertz, *Negara: The Theatre State in Nineteenth-Century Bali* (Princeton: Princeton University Press, 1980) at 106. A fundamental text within Javanese folk religious customs communicates the idea that: "Lord and servant—i.e. God and mankind, represented by *dalang* [Puppeteer] and *wayang* [Puppets]—stand in a fully equal state of dependence upon one another as two relativities which cannot exist without each other. If there is no Lord there is no servant, yet equally, if there is no servant there is no Lord." See Peter J Zoetmulder, *Pantheism and Monism in Javanese Suluk Literature: Islamic and Indian Mysticism in an Indonesian Setting*, translated by M. C. Ricklefs (Leiden: KITLV Press, 1995) at 261.

[69] Penney and Danay argue that this marginalisation was linked with the increasing popularity of the secularised idea of human rights. See Jonathon W Penney & Robert J Danay, "The Embarrassing Preamble? Understanding the 'Supremacy of God' and the 'Charter'" (2006) 39:2 UBC L Rev 287–332 at 290. Cf., Dwight Newman, "God in the Constitution: The Supremacy of God Clause in the Preamble to the Canadian Charter of Rights and Freedoms" (2022) 105:1 Supreme Ct L Rev 39–56 at 40–41. Newman argues that "the Supreme Court of Canada's ultimately developed case law [which] would logically lead to a position that the preambular constitutional clause concerning the Supremacy of God should have significant implications."

[70] Christoph Levin, "Israel, the People of God, as Theocracy" in Juhás, Róbert Lapko & Reinhard Müller, eds, *Theokratie: Exegetische und wirkungsgeschichtliche Ansätze* (Berlin and Boston: De Gruyter, 2022) 65 at 65.

[71] Alexander Kaye, *The Invention of Jewish Theocracy: The Struggle for Legal Authority in Modern Israel* (Oxford: Oxford University Press, 2020) at 11.

diverse religio-cultural group.[72] In contrast, *hukum tata negara* is premised on *Pancasila*, a set of pan-religious values aimed at transcending religious parochialism while at the same time avoiding secularism. This contrast originates in the distinct religious foundations of *hukum tata negara* and constitutional theocracy. *Hukum tata negara* is rooted in the immanentist religious tradition, emphasising the constitutional primacy of religious syncretism, implying the relativity of religious truth. Conversely, constitutional theocracy is founded on a transcendentalist religious tradition, asserting the existence of a single absolute religious truth.[73]

The different conceptions of the relationship between the sacred and the profane that *hukum tata negara* and constitutional law embrace point to their parochial nature as a response to their contexts. Constitutional law embodies the European historical experience, culminating in erecting a "wall of separation" between the sacred and the secular. Berman argues that the contemporary understanding of the division between worldly and religious matters can be attributed to the proponents of the Papal Revolution. He also contends that their distinction between ecclesiastical and secular authorities led to the establishment of the initial legal systems in the modern era.[74] To reiterate, *hukum tata negara* is, in contrast, an embodiment of the aphorism "Indonesia is neither an Islamic nor secular state, but it is a religious state,"[75] signifying the specific Indonesian historical experience to preserve the sacred and the secular as inseparable, with the sacred holding great importance for the secular.[76]

To better understand what makes Western constitutional law and *hukum tata negara* conceptually and analytically different, let us start with Daniel Elazar's claim that the Judeo-

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[72] Ran Hirschl, *Constitutional Theocracy* (Cambridge, Mass.: Harvard University Press, 2010) at 3.

[73] A Azfar Moin & Alan Strathern, "Sacred Kingship in World History: Between Immanence and Transcendence" in A Azfar Moin & Alan Strathern, eds, *Sacred Kingship in World History: Between Immanence and Transcendence* (New York: Columbia University Press, 2022) 1 at 5–24. It is worth noting, the transcendentalist conviction on the existence of a single absolute religious truth has been understood as foundational for the modern understanding of the word religion. In that sense, "[t]here were no 'religion' in pagan societies, only 'cults' and 'culture.'" In short, "'[r]eligion,' like 'paganism,' is an invention of monotheism." Jan Assmann, *Of God and Gods: Egypt, Israel, and the Rise of Monotheism* (Madison, WI: University of Wisconsin Press, 2008) at 10.

[74] See Harold J Berman, *Law and Revolution: The Impact of the Protestant Reformations on the Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 2003) at 22. Also, Martin Loughlin, a noted constitutional theorist, shares the conviction that "the biblical theme of the covenant provided a fruitful device for conceptualizing the nature of the political obligation" among the Western constitutional theorists, including John Locke. Hence, Loughlin argues that "[r]eligion may have ceased to provide the foundation of governmental ordering, but it continued to exert a powerful influence as culture." See Martin Loughlin, *Foundations of Public Law* (Oxford: Oxford University Press, 2010) at 47–48.

[75] Tobing, *supra* note 53 at 401.

[76] The first articulation of this thesis can be found in *Conceptions of State and Kingship in Southeast Asia*, Data Paper, by Robert Heine-Geldern, Southeast Asia Program Publications Data Paper 18 (Ithaca: Cornell University, 1956). For its most comprehensive exposition, see Geertz, *supra* note 68.

Christian covenantal tradition is the socio-cultural base of constitutional law in a federal context.[77] Berman's seminal work, spanning two volumes, also merits recognition here. He contends that the Calvinist covenant theology was more significant than the doctrine of predestination or the so-called Protestant work ethic. He posits that transformative developments in economic institutions during the late seventeenth and early eighteenth centuries, both in Holland and England, were predicated on establishing innovative credit transaction mechanisms. Berman asserts that the advent of the stock market, national debt, the tax state, and the negotiability of promissory notes were all underpinned by the foundational concept of credit. This system relied on trust, contingent upon a mutual covenant among community members, embodying a collective commitment to uphold one's promises and maintain the integrity of one's word.[78] Ultimately, it is the covenant that provides not only a founding act, but, also, a sense of cultural, if not national, identity.[79]

In that regard, it is necessary to recall that the Judeo-Christian covenantal tradition emerged from various covenantal peoples whose political cultures were informed by covenantal and related concepts long before Judaism and Christianity took shape.[80] In this light, constitutional law should be regarded as an amalgamation of pre-existing folk ideas, in particular, "the body politic" and "the king's two bodies" that were previously scattered.[81] However, the covenant tradition in politics that informed and shaped modern constitutional law

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[77] See e.g., Daniel J Elazar, *Covenant and Polity in Biblical Israel: Biblical Foundations and Jewish Expressions* (London and New York: Routledge, 1995); Daniel J Elazar, *Covenant and Commonwealth: From Christian Separation through the Protestant Reformation*, The Covenant Tradition in Politics (New York: Routledge, 1996); Daniel J Elazar, *Covenant and Constitutionalism: The Great Frontier and the Matrix of Federal Democracy*, The Covenant Tradition in Politics (New York: Routledge, 1996); Daniel J Elazar, *Covenant and Civil Society: Constitutional Matrix of Modern Democracy*, The Covenant Tradition in Politics (New York: Routledge, 1998). Michael Burgess, *In Search of the Federal Spirit: New Theoretical and Empirical Perspectives* (Oxford: Oxford University Press, 2012); Irving Louis Horowitz, "Daniel J. Elazar and the Covenant Tradition in Politics" (2001) 31:1 Publius: J of Federalism 1–7. See also Michael Walzer, *Exodus and Revolution* (New York: Basic Books, 1985) at 75. Walzer states "[c]ovenant is the political invention of the Book of Exodus."

[78] Berman, *supra* note 74 at 348.

[79] Walzer, *supra* note 77 at 76.

[80] Elazar, *supra* note 77 at 22.

[81] Berman, who specialises in the study of law and religion asserts that the ideology driving the English Revolution, which laid the foundation for contemporary constitutional law, can be characterised as conservative. Throughout its various stages, this ideology purported to reinstate the traditions of England, particularly English common law, although it actually brought about a significant transformation. The pinnacle of this movement was marked by a proclamation that emphasised the "true, ancient, and indubitable rights of Englishmen," rather than the universal and eternal "rights of man." See Harold J Berman, "The Impact of the Enlightenment on American Constitutional Law" (1992) 4:2 Yale J L & Hum 311–334 at 317.

is believed to be premised in Judaism and later Reformed Protestantism with its federal theology.[82] With that in mind, Elazar proposes the idea of covenant as:

> A morally informed agreement or pact based upon voluntary consent, established by mutual oaths or promises, involving or witnessed by some transcendent higher authority, between peoples or parties having independent status, equal in connection with the purposes of the pact, that provides for joint action or obligation to achieve defined ends (limited or comprehensive) under the conditions of mutual respect, which protect the individual integrities of all the parties to it.[83]

A crucial phrase needs highlighting here to reveal the distinctiveness of Western conception of constitutional law, as opposed to *hukum tata negara*. The phrase is that a covenant is "a morally informed agreement or pact based upon voluntary consent, established by mutual oaths or promises, involving or witnessed by some transcendent higher authority." To break it down, this phrase hints at the nature of covenant as (1) a moral relationship that is based on (2) mutual promises and (3) indicating God as a transcendent entity, cannot be subjected to a mystical union with human. With these three components, one can further extrapolate that the idea of covenant implies that "one has a moral obligation towards God, then God, or, more precisely, the relation of human beings to God, is not beyond morality but falls under the same moral rules that govern the relations between human beings."[84] Being conceived as not beyond morality, God is seen as no different from other members of the moral community; that is to say, God is a member to whom we have obligations similar to those of other community members.[85] In contrast, *hukum tata negara*, grounded in immanentist religious traditions, believes God is a presence within each societal member, not a transcendental entity. In that sense, the immanentist conceives God as beyond the bounds of morality, that is, indicated by "his capacity for arbitrary violence, and the deliberate breaking of convention."[86]

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[82] Elazar, *supra* note 77 at 22.
[83] *Ibid* at 22–23.
[84] Daniel Statman, "The Difficulty of Finding A Moral Basis for Accepting the Covenant" in Ellen Spolsky, ed, *Summoning: Ideas of the Covenant and Interpretive Theory* (New York: State University of New York Press, 1993) 71 at 73.
[85] *Ibid*.
[86] Moin & Strathern, *supra* note 73 at 16. Furthermore, Moint and Strathern states that the reason for this conception to be plausible is that "the whole field of relations with metapersons is not ethicised in a transcendentalist manner."

We will now turn to explicating the idea of the transcendental conception of God as a window to reveal the contractual foundation of constitutional law, which differs from *hukum tata negara* with its immanent conception of God. By conceiving it as a transcendental entity, God is a vision that is "literally ineffable, transcending any capacity of the human mind to represent it."[87] In transcendental religious traditions, God is utterly distinct from his creation and does not share a common spiritual essence with the latter.[88] Nonetheless, God is another member of the moral community; covenant signifies a "contract" between humankind and God.[89] To Rousseau's mind, this "kind of bondage in freedom" represented Moses's significant accomplishment, as he transformed the Israelites from a heard of Pharaoh's "wretched fugitives," devoid of both virtue and courage, into "a free people."[90] Thus, constitutional law signifies a body politic in which God "must limit (cut back) His supernatural declarations so that they can function within the dimensions of time and space and intersect with human language."[91] The transcendental perception of God holds utmost significance as it enables Calvinists to assert that the establishment of political governance within each community resulted from a trilateral covenant involving God, the rulers, and the people. This covenant-based political governance subsequently laid the foundation for the separation of powers (see also Chapter 1).[92]

Moreover, the covenant tradition in politics has been regarded as the forefront of the revitalised "secularised" contractual state tradition in an attempt to demonstrate whether individuals possess the capability of establishing a well-functioning government through rational thought and deliberate decision-making or if they are perpetually reliant on chance and coercion for their political structures.[93] This revival is evident in diverse political theories of the modern

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[87] Strathern, *supra* note 65 at 5.
[88] Michael Horton, *Introducing Covenant Theology* (Grand Rapids, Michigan: Baker Books, 2009) at 29.
[89] Elazar, *supra* note 77 at 20.
[90] Walzer, *supra* note 77 at 53.
[91] Gerda Alster-Elata & Rachel Salmon, "Biblical Covenants as Performative Language" in Ellen Spolsky, ed, *Summoning: Ideas of the Covenant and Interpretive Theory* (New York: State University of New York Press, 1993) 27 at 37.
[92] John Witte Jr, "Reformation: The Protestant Reformation of Constitutionalism" in Nicholas Aroney & Ian Leigh, eds, *Christianity and Constitutionalism* (New York: Oxford University Press, 2022) 126 at 126, 139, 143. To explore the significance of a covenantal political culture in fostering a dynamic equilibrium within constitutional institutions refer to Elazar, *supra* note 77 at 21.
[93] The contractual state tradition is a direct response to the challenge posed by Hamilton in Federalist No. 1. In this seminal work, he questions the inherent ability of individuals to establish effective governance through deliberate thought and decision-making, or if they are perpetually bound to rely on chance occurrences and coercive measures for their political systems. See Fred D'Agostino & Gerald Gaus, "Contemporary Approaches to the Social Contract" in Edward N Zalta, ed, *Stanford Encyclopedia of Philosophy*, online ed (Palo Alto, CA: Stanford Encyclopedia of Philosophy, 2021) at para 4. According to Springborg, the lineage of the classical republican tradition can be traced

state, aiming to establish rational justifications for social regulations encompassing moral, political, legal, and other aspects. The significance of the rise of the "secular" contractual state in our discussion in this section lies in indicating the importance of a "wall of separation" between the realms of state and religion.[94] Before Thomas Jefferson penned a letter that proclaimed a "wall of separation between church and state" as "the rule of law," this conviction had been a familiar theme in both the Renaissance and the Reformation eras.[95] The early modern Anabaptists were acknowledged as the pioneers of the theory of two kingdoms, which extensively distinguished the sacred domain of faith and the church from the secular realm of politics and the state.[96]

However, the most critical contributor to the wall of separation was the Calvinists, who "charted a course between Lutherans, who subordinated the church to the state, and Anabaptists, who withdrew the church from the state and society."[97] As Witte described, John Calvin laid the groundwork for separating church and state in the Ecclesiastical Ordinances of Geneva (1541/1561), a principle resonating in numerous subsequent Calvinist cities. Calvin posited that there was a substantial disparity and dissimilarity between the ecclesiastical and civil authority of the church and state, emphasising the necessity to consistently differentiate between these two distinct realms of responsibility, namely the civil and the ecclesiastical.[98]

Consequently, the church lacks the jurisdiction to impose penalties for criminal offenses, address civil injustices, levy taxes, engage in warfare, or involve itself in governmental matters. Conversely, the state lacks the authority to disseminate religious teaching, administer sacraments, enforce spiritual disciplinary measures, collect tithes, interfere with church assets, appoint or dismiss clergy members, impede bans or excommunication, or meddle in the internal affairs of a religious congregation. Calvin argued that allowing any form of interference between the church

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back to the contractual state tradition. See Patricia Springborg, "The Contractual State: Reflections on Orientalism and Despotism" (1987) 8:3 Hist Pol Thought 395–433 at 406–411.

[94] D'Agostino & Gaus, *supra* note 93 at para 4. It is not unexpected that recent scholarly examination of Thomas Hobbes' renowned work, *Leviathan*, has determined that several aspects of covenant theology play a fundamental role in shaping his theory of social contract. See Franck Lessay, "Hobbes's Covenant Theology and Its Political Implications" in Patricia Springborg, ed, *The Cambridge Companion to Hobbes's Leviathan* (Cambridge: Cambridge University Press, 2007) 243 at 248–251.

[95] Daniel L Dreisbach, *Thomas Jefferson and the Wall of Separation Between Church and State* (New York: New York University Press, 2002) at 72.

[96] Witte Jr., *supra* note 92 at 136.

[97] *Ibid*.

[98] *Ibid* at 139.

and state would imprudently blend these two entities, which possess inherently distinct characteristics.[99]

In contrast, Indonesia's folk religious traditions, as the socio-cultural basis for *hukum tata negara*, conceive God as immanent, potentially present in the world and influencing it for the good or ill of human society.[100] Instead of presupposing a trilateral covenant between God, the rulers, and the people as one finds in English constitutional law, *hukum tata negara* is premised on the indivisible unity between these three entities. As Supomo puts it, during the process of the constitutional drafting committee, Indonesia's folk constitutionalism assumed "*Manunggaling Kawulo Gusti*," the mystical unity between God and his creation ("unio mystica").[101] Indeed, it is the idea behind the first principle of *Pancasila*'s One-ness of God or the (mystical) unity between God and his creation. As we have seen in Chapter 6, this mystical unity between God and his creation ("unio mystica" or *Manunggaling Kawulo Gusti*) is also the premise for the Indonesian idea of *negara kesatuan* ("unitary state").[102] Chapter 3 pointed out that Indonesia's folk religious traditions see God as immanence in his creation. Thus, *hukum tata negara* derives from an expression of the immanentist religious tradition. As the default mode of human religiosity, this tradition reflects the tendency to imagine that the world plays host to supernatural forces and beings with whom we must interact to flourish.[103] It also signifies a distinct existential orientation in which knowing the will of the sacred (or heaven) is plausible[104] and is critical to making sense of the day-to-day operation of the human world.[105]

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[99] *Ibid*.
[100] With that assumption, it is believed that *rasa* serves as the intermediary between the world of God(s) (macrocosmos) and the world of humans (microcosmos). See Suwardi Endraswara, *Agama Jawa: Ajaran, Amalan, Asal-Usul Kejawen [Religion of Java: Teachings, Deeds, Origins of Javanism]*, revised ed (Yogyakarta: Narasi, 2002) at 250.
[101] See Supomo, "Pidato Pada Tanggal 31-5-1945 Rapat Badan Penjelidikan Untuk Persiapan Indonesia Merdeka, Di[ ]Gedung Chuoo Sangi-in di Jakarta [Speech at May 31, 1945 during the Meeting of the Constitutional Drafting Committee in the Preparation of the Free Indonesia]" in Muhammad Yamin, ed, *Naskah Persiapan Undang-Undang 1945, memuat Segala Naskah Resmi Penggalang Undang-Undang '45 jang Berlaku Kembali dalam Negara Kesatuan Républik Indonésia [Travaux Préparatoires of the 1945 Constitution, including Every Official Material Supporting the Reintroduction of the 1945 Constitution]* (Jakarta: Prapantja, 1959) 109 at 113. Ferry Y Mamahit, "Abangan Muslims, Javanese Worldview, and Muslim–Christian Relations in Indonesia" (2021) 38:1 Transformation 3–101 at 37–38; Zoetmulder, *supra* note 68.
[102] Yamin, *supra* note 46 at 315.
[103] "These beings are 'supernatural' because scientific knowledge finds no place for them in its account of the natural world: they include ghosts, spirits, demons, ancestors, gods, and the indwelling inhabitants of totems, masks, fetishes, and features of the landscape." Strathern, *supra* note 65 at 4.
[104] Clifford Geertz, *The Religion of Java* (Chicago and London: The University of Chicago, 1976) at 30–37.
[105] The Javanese tradition of divination, referred to as *pétungan*, holds significant importance as a fundamental "science" aimed at achieving a state of harmonious existence. See Suwardi Endraswara, *Memayu Hayuning*

It is, therefore, arguable that Western constitutional law originates from a covenant tradition and represents a manifestation of transcendental religiosity. Constitutional law, through its embodiment of transcendental religiosity, incorporates the rejection of meaninglessness and relativism within Judeo-Christian traditions. According to Charles Taylor, the transcendent aspect of human existence is marked by moral absolutism, where any ethical ambiguity is eradicated from cosmic reality. Consequently, this pristine conception of "the good" is central to religious life.[106] Constitutional law, as an extension of transcendental religiosity, endeavors to generate significantly broader, conceptual, and unambiguous apprehensions of morality, established on the principle of reciprocity and striving for widespread relevance, and is an integral component of the transcendental endeavor.[107] It is based on a distinct set of assumptions and strives to achieve objectives fundamentally opposed to *hukum tata negara*, manifesting Indonesia's syncretic folk religious traditions. These traditions are deeply rooted in immanentism, representing humanity's "default" religiosity.[108]

III. *Hukum Tata Negara* as Indonesia's Syncretic Constitutional Concept

In this Section, I argue that *hukum tata negara* is best understood as Indonesia's syncretic constitutional concept, where diverse and, at times, contradictory, constitutional ideas and aspirations merge into a unified whole. One reason is that *hukum tata negara* embodies the syncretic orientation of Indonesia's folk religious traditions. As I have pointed out, this syncretic orientation has prompted the Indonesian Constitutional Court to function as "the guardian of the constitution" and "the guardian of the ideology of *Pancasila*," maintaining Indonesia's constitutional character as "neither an Islamic nor secular state, but it is a religious state." This

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Bawana: Laku Menuju Keselamatan dan Kebahagiaan Hidup Orang Jawa [To Beautify the Universe: The Ritual toward Happines and Tranquility of Life [as Practiced] among the Javanese] (Yogyakarta: Narasi, 2013) at 17. Hence, it is not unexpected that *pétungan* has maintained a prominent position in Indonesian socio-political customs and serves as a prime example of the belief in the interrelatedness of the macrocosmos and microcosmos. This age-old tradition showcases the firm belief that these two domains exert reciprocal influence on each other. See e.g., Marchio Irfan Gorbiano, "'Good Days' Find Outsize Role in Jokowi's Javanese Leadership Style", *The Jakarta Post* (19 January 2021), online: <https://www.thejakartapost.com/news/2021/01/19/good-days-find-outsize-role-in-jokowis-javanese-leadership-style.html>.

[106] See Taylor, *supra* note 52 at 152; Charles Taylor, "What Was the Axial Revolution?" in Robert N Bellah & Hans Joas, eds, *The Axial Age and Its Consequences* (Cambridge, Mass.: The Belknap Press of Harvard University Press, 2012) 30 at 33–39.

[107] Strathern, *supra* note 65 at 53.

[108] *Ibid* at 51–52.

indicates the relativistic nature of religious truth, suggesting that no single religion can assert a monopoly on absolute religious truth. *Hukum tata negara*, like the previous *negara kesatuan* and *negara hukum,* is part of Indonesia's "invented traditions."[109] Despite being a relatively new invention, it is formulated based on pre-existing rules that were either explicitly or implicitly acknowledged and possess a ceremonial or emblematic essence. For that reason, one can understand why Indonesia put so much effort into the articulation of the cultural foundation of the 1945 constitutional order. Thus, the contributions of Yamin and Supomo, arguably the two figures most responsible for providing the building blocks for the theoretical underpinning of *hukum tata negara*, should be understood as part of the national effort to invent Indonesia's own constitutional concept within the interpretive framework of its complex legal tradition.

For starters, the notion of "complex legal tradition" is extrapolated from Glenn, which he characterises as embodying "multivalent reasoning," encapsulating the principle that you are allowed to have your cake and eat it too. Multivalent reasoning is best defined in terms of what it is not, that is, the dichotomy-based thinking or assumption which is "at the heart of 'thinking like a lawyer' and prohibiting, as a logical impossibility, the coexistence of contradictory notions, arguments or norms."[110] The dichotomy-based thinking implies the centrality of the "classical," "formal," "rule-based," or "analytic" logic of non-contradiction and the excluded middle and believed to be tied to "an understanding of the State and its legal system as wholly self-contained."[111] As Glenn clarified, dichotomy-based thinking does not align or correspond to "many Asian ways of thought."[112] Instead of relying on the method of dichotomising, these "many Asian ways of thought" have been defined as "holistic," "intuitive," "experience-based," or "context-based" modes of thought.[113] In Indonesian folk logic, this mode of thought manifests as a tendency to syncretise all elements that enter Indonesia's religio-cultural sphere and hence

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[109] The concept of "invented tradition" refers to a collection of practices that are guided by explicitly or implicitly accepted rules and are of a ritualistic or symbolic nature. These practices aim to instill specific values and behavioral norms through repetition, thereby implying a sense of continuity with the past. In fact, whenever feasible, they strive to establish a connection with a relevant historical past. See Eric Hobsbawm, "Introduction: Inventing Traditions" in Eric Hobsbawm & Terence Ranger, eds, *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983) 1 at 1. See also Chapter 6.

[110] H Patrick Glenn, "Asian Thought and Legal Diversity" in Gary F Bell, ed, *Pluralism, Transnationalism and Culture in Asian Law: A Book in Honour of MB Hooker* (Singapore: ISEAS-Yusof Ishak Institute, 2018) 31 at 32.

[111] Lionel D Smith, "Preface" in H Patrick Glenn & Lionel D Smith, eds, *Law and the New Logics* (Cambridge: Cambridge University Press, 2017) xi at xii.

[112] Glenn, *supra* note 110 at 33.

[113] Ara Norenzayan et al, "Cultural Preferences for Formal versus Intuitive Reasoning" (2002) 26:5 Cognitive Sci 653–684 at 654. See also Michael E W Varnum et al, "The Origin of Cultural Differences in Cognition: The Social Orientation Hypothesis" (2010) 19:1 Curr Dir Psychol Sci 9–13 at 9.

the constitutional basis for interpreting *Pancasila* in terms of religious relativism (see also Chapter 3 above).

To elucidate further, one may consider the rationale that led Indonesia to adopt a conciliatory stance toward Arabic and the Quran.[114] This adoption occurred despite a clear understanding that Islam prohibited the ongoing use of Shivaitic and Tantric mantras, which constituted the foundation of Indonesia's pre-Islamic or folk religious practices. The response of the folk religious practices to the conflict between Islam and Indonesia's folk religious practices defies conventional expectations of dichotomy-based reasoning. Rather than a binary or either-or solution, the folk response involves reinterpreting the Quran as a collection of Javanese mantras. As noted by Anderson, the retention of Arabic as the language of sacred initiation was deliberate precisely because of its incomprehensibility; the efficacy of a spiritual ritual conducted in an unintelligible language lies in its perceived potency, reflecting a purposefully "non-rational mode of cognition."[115]

To complicate things, "the conciliatory dimensions of Asian thought are enhanced by explicit recognition of the need for 'congenial' or 'friendly' debate amongst proponents of different methods of thought."[116] In this context, the syncretic character of *hukum tata negara* arises from its tolerance and capacity to forge connections. Such concepts extend beyond mere tolerance to embrace acceptance, notwithstanding divergent views. They exhibit a multivalence by eschewing absolute repudiation and exclusion. A more apt characterisation of these concepts may be their inherent interdependence or the principle of inseparability, a fundamental tenet underpinning the existence of significant, complex legal concepts.[117]

In that light, it is also logical to conceive *hukum tata negara* as a constitutional concept that entrench complexity of its own. One reason is that it has something to do with the ongoing religious rivalry between the Pancasilaists and the Islamist Puritans, which is not just a matter of theological dispute but an existential question concerning the very idea of Indonesia as a pluri-

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[114] The Indonesian mode of engaging the Quran is described as follows. "[T]he process begins with Quran becoming embodied in human memory and subsequently working through other faculties of understanding. Indonesian Quranic discourse similarly often articulated a close relation between 'menghapal' (memorising) and 'menghayati' (internalising, with a root meaning 'heart' in Malay and Bahasa Indonesia)." See Anna M Gade, *Perfection Makes Practice: Learning, Emotion, and the Recited Quran in Indonesia* (Honolulu, Hawai'i: University of Hawai'i Press, 2004) at 83.

[115] Anderson, *supra* note 30 at 127.

[116] Glenn, *supra* note 110 at 37.

[117] H Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law*, 5th ed (Oxford: Oxford University Press, 2014) at 372–373.

religious nation. Given that *hukum tata negara* plays a directive role in translating *negara kesatuan* (Chapter 6) and *negara hukum* (Chapter 7), it has become a significant point of contention for implementing Indonesia's two competing social imaginaries originating from two competing religious traditions. Nonetheless, as the "syncretic constitutional concept" aims to impart, the ongoing religious rivalry does not directly translate into an either-or condition. Instead, it has led to a situation where you can have your cake and eat it too.

Two interrelated propositions need to be mentioned to understand how this situation has impacted the conception of *hukum tata negara*. The first is that the ideological orientation of the Islamist Puritans is in contradiction with that of the Pancasilaists, who espouse the communal vision of the good life ("hidup rukun"). More importantly, the Puritans' ideological orientation is entrenched in the modern social imaginary that produces modern constitutional law. Thus, there is nothing surprising about the "revisionist" account of the ideological origin of Islamic Puritanism in presenting Islam as a rational, scientific, and modernist religion instigated by intellectual encounters with Western literature.[118] In the context of Indonesia, a study on Mohammad Natsir, Indonesia's critical voice in Islamic Puritanism, notes that "his thought is completely framed by categories developed in modern European thought—and, indeed, elsewhere in his writings he refers directly to Émile Durkheim and William James in constructing his working definition of 'religion' (*agama*), and derives his vision of Islam in history from other modern works including Lothrop Stoddard's *New World of Islam*."[119]

It is, therefore, logical to associate the Puritans to the introduction of the Western understanding of constitutional law into the Indonesian legal framework. In this light, Lev posits that the Puritans' advocacy stems from an amalgamation of commercial ambitions and political disenfranchisement.[120] Consequently, it was reasonable for them to perceive constitutional law as a mechanism to rectify their marginal influence and restrict entry into the core echelons of political authority. Hence, from the Puritans' viewpoint, constitutional law embodies a program for modernisation, if not Westernisation, in Indonesia.

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[118] For example, Geertz compares the intellectual function of Indonesian Islamic puritanism to that of Protestantism within Christianity. See Clifford Geertz, *Peddlers and Princes: Social Development and Economic Change in Two Indonesian Towns* (Chicago: The University of Chicago Press, 1963) at 49.

[119] Michael R Feener, "Constructions of Religious Authority in Indonesian Islamism: 'The Way and the Community' Reimagined" in Anthony Reid & Michael Gilsenan, eds, *Islamic Legitimacy in a Plural Asia* (London and New York: Routledge, 2007) 139 at 142–143.

[120] Daniel S Lev, "Judicial Authority and the Struggle for an Indonesian Rechtsstaat" (1978) 13:1 L & Soc'y Rev 37–71 at 45–46.

Arguably, the most crucial phase of the infusion of the Western conception of constitutional law can be discerned in the post-New Order era (1998 to the present). In the first few years after the New Order was toppled, three events marked a further entrenchment of constitutional law in *hukum tata negara*. The first was further erosion of the Pancasilaists' idea of *negara kesatuan* by introducing more autonomy for regional governments. The growing clout of modern constitutional law traditions was that more regional autonomy reflected the increasing marginalisation of the role of the central government ("pusat"), which was supposedly central to the ideal of *negara kesatuan*. In Indonesia's folk conception of state ("negara"), the reason that makes central government as "paradigmatic, not merely reflective, of social order," is that it is "at once a microcosm of the supernatural order—'an image of . . . the universe in smaller scale'—and the material embodiment of political order."[121] Given that the center is "the high and concentrated location of the spiritual potency on which the fertility and prosperity of the realm and the individual person alike were thought to depend," the central ("pusat") government can also be identified as synonymous with "sumanged," or "semangat." As Sulawesi's traditional conception of *pusat* as "a word that refers not only to the human navel but to all sorts of vital centers" has shown, "[it] was the center of the world itself, the place of Batara Guru, a spirit from the Upper World, descended to the middle world with his myriad followers and retainers to become the first *Datu* [Chief] of Luwu."[122] In the political discourse of Southeast Asia, the concept of the "center" serves as a parallel to the Western metaphor of the "head," which is often employed to signify political authority. In a word, "navels or centers, not heads, are the locations of power and effectiveness of in the societies."[123] In the long run, this will give a new direction for *hukum tata negara* to move toward Anglo-American constitutional law in which the regional states, not the central state, play a substantive role.[124]

The second is the constitutional amendment (1999–2002), which can be considered a milestone in the infusion of constitutional law into *hukum tata negara* and is related to the quantitative inflation of constitutional rights provisions in the amended 1945 Constitution. This

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[121] See Geertz, *supra* note 68 at 13. See also

[122] The most comprehensive discussion on the supposition of the center as "the realm's most central and socially highest point [and hence] considered crucial to the prosperity and peace of the entire realm," see Shelly Errington, *Meaning and Power in a Southeast Asian Realm* (Princeton: Princeton University Press, 1989) at 33.

[123] *Ibid* at 95.

[124] Louis Beaudoin, "Legal Translation in Canada: the Genius of Legal Language(s)" in Frances E Olsen, Alexander Lorz & Dieter Stein, eds, *Translation Issues in Language and Law* (London: Palgrave Macmillan, 2009) 136 at 270–271.

quantitative inflation's occurrence remains unexplainable unless one considers the syncretic tendency of the Pancasilaist mode of thought, given the absence of evident incentives or coercion for their engagement in such endeavors. In other words, the interpretation of the amendment as an endeavor to reinvigorate "the constitutional promise of a [liberal vision] *negara hukum*" represents only a partial understanding of the endeavor.[125] This development has prompted many human rights adjudications due to the expansion of what constitutes human rights violations.[126] Indonesia has recently embraced extraterritorial jurisdiction concerning human rights violations, a notable development given the historical stance of Pancasilaists against the concept of human rights that they deemed as individualistic and hence "un-Indonesian."[127]

The third as the most recent development that may indicate further infusion of modern constitutional law into *hukum tata negara* is the widening schism within the Association of the Indonesian Lecturers of *Hukum Tata Negara* and Administrative Law ("APHTN-HAN") that culminated in the establishment of a Constitutional and Administrative Law Society ("CALS") as a rival organisation. To show their unequivocal support for constitutional law, CALS deliberately chose English constitutional law, in defiance of *hukum tata negara,* as its symbolism for "a service to truth and humanity," and as soon as it was established, adopted a "Manifesto on Constitutionalism."[128] There, they explicitly condemned the prevailing model of constitutionalism, i.e., *hukum tata negara,* that allowed the manipulation of the general election to become a means of concealing authoritarian power under the cloak of "illiberal democracy."[129]

The assault of CALS on *hukum tata negara* can also be inferred from their consistent attack on the practice and doctrine of the "pembagian" (division) of power between Indonesia's three branches of government: the executive, legislative, and judiciary (the supreme court). The articulation of the doctrine of the *pembagian* of power was first presented by Hamid Attamimi,

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[125] Simon Butt & Tim Lindsey, *The Constitution of Indonesia: A Contextual Analysis* (Oxford: Hart Publishing, 2012) at 24.
[126] "Kondisi HAM Sepanjang Tahun 2021 [The Human Rights Condition in 2021]", (13 August 2022), online: *Komisi Nasional HAM [The National Commission on Human Rights]* <https://www.komnasham.go.id/index.php/news/2022/8/13/2209/kondisi-ham-sepanjang-tahun-2021.html>.
[127] "Konstitusi Indonesia Melindungi HAM Setiap Orang Termasuk WNA [The [1945] Constitution of Indonesia Protect Human Rights of Everyone, including Non-Citizens]", (16 January 2023), online: *Mahkamah Konstitusi Republik Indonesia [The Constitutional Court of the Republic of Indonesia]* <https://www.mkri.id/index.php?page=web.Berita&id=18835&menu=2>.
[128] Ady Thea, "Ingatkan Esensi Hukum Administrasi dan Tata Negara, CALS Terbitkan Manifesto Kenegaraan [Reminding the Essence of the Administrative and Constitutional Law, CALS issues Manifesto on Constitutionalism]", *Hukum Online* (9 March 2022), online: <https://www.hukumonline.com/berita/a/ingatkan-esensi-hukum-administrasi-dan-tata-negara--cals-terbitkan-manifesto-kenegaraan-lt6228403b776dc/>.
[129] *Ibid*.

one of the New Order's leading constitutional theorists.[130] Here, "division" distinguishes the doctrine from "Montesquieu's *trias politica* and Ivor Jennings' material definition of separation of powers."[131] In short, the word division signifies Indonesia's conception of dividing power between three branches of government without necessarily violating Supomo's idea of *negara kesatuan*. This doctrine has been used to legitimate, among others, the practice of each branch of government appointing justices in the Indonesian Constitutional Court, ensuring equal representation in the Court (see Chapter 6).

The assumption is that this will translate into harmonious coordination between all branches ("kerukunan antar lembaga negara") in translating constitutional ideals into statutory norms. Considering that each justice is accepted by the branch that appoints them, it is logical for the appointing branch to replace the Justice they consider no longer representing their interests. Under this logic, the House of Representatives dismissed Constitutional Justice Aswanto and replaced him with "the more obedient" Guntur Hamzah, the chairperson of APHTN-HAN.[132] In their collective response, CALS invoked the importance of the non-interference doctrine as fundamental in constitutional law. To further entrench their interpretation of the "division" of power, CALS filed a case with the Constitutional Court stating that a social phenomenon, "court capture," a condition where the court as an institution is no longer partial, marked by the appointment of Guntur Hamzah, had arrived in Indonesia.[133]

With these three developments, it is evident that the concept of *hukum tata negara* cannot be singularly defined as emblematic or straightforward manifestation of a single constitutional model. Rather, it embodies a multifaceted or intricate constitutional idea or model where two divergent constitutional thoughts not only vie for dominance but also interact and influence each

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[130] Hamid Attamimi, *Peranan Keputusan Presiden Republik Indonesia dalam Penyelenggaraan Pemerintahan Negara: Suatu Studi Analisis Mengenai Keputusan Presiden yang Berfungsi Pengaturan dalam Kurun Waktu Pelita I-Pelita IV [Exploring the Influence of Presidential Decision-Making on State Government Operations: An Analytical Examination on the Regulatory Aspects of Presidential Decisions During the I to IV Five Yearly Development Phases]* (PhD Dissertation, Universitas Indonesia, 1990) [unpublished] at para 116.

[131] M Solly Lubis, "Hubungan Pemerintahan dengan Perwakilan Rakyat Menurut UUD 1945" in Selo Soemardjan, ed, *Hukum Kenegaraan Republik Indonesia: Antara Teori, Tatanan dan Terapan* (Jakarta: Grasindo, 1993) 95 at 95.

[132] "Alasan DPR Copot Aswanto dari Jabatan Hakim Konstitusi [The House's Reason for Letting Aswanto Go from the Constitutional Court]", *CNN Indonesia* (22 October 2022), online: <https://www.cnnindonesia.com/nasional/20221002092202-32-855230/alasan-dpr-copot-aswanto-dari-jabatan-hakim-konstitusi>.

[133] Ajid Fuad Muzaki, "Ketidakmandirian MK yang Mengancam Pemilu 2024 [The Constitutional Court that has no Independence Threatens the 2024 General Election]", *Rumah Pemilu* (16 November 2023), online: <https://rumahpemilu.org/ketidakmandirian-mk-yang-mengancam-pemilu-2024/>.

other. Furthermore, this condition indicates a logical outcome of Indonesia's state as religiously fragmented, as detailed in Part II above.

Conclusion

In this Chapter, I have presented an argument that *hukum tata negara*, as one of Indonesia's ideals of political morality, is more than just a crude replication or analog of the Western concept known as constitutional law. Far from being confined to religious matters, Indonesia's folk religious traditions have continued to influence the nation's conception of constitutionalism or *hukum tata negara*. This is consistent with the nature of Indonesia's folk religious traditions as an expression of the religious immanentist tradition, which emphasises the importance of the here and now. Nonetheless, its importance does not necessarily mean that Indonesia's folk religious traditions made *hukum tata negara* secular and individualistic oriented. Rather, *Hukum tata negara* necessitates the continuing engagement of the sacred as the prerequisite for understanding profane matters. Furthermore, it embodies religious syncretism in the image of Indonesia's folk religious traditions. Ultimately, *hukum tata negara* is fundamentally rooted in the deeply ingrained Indonesian folk identity as a religious nation, characterised by the embrace ("penghayatan") and practice ("pengamalan") of religious tolerance ("kerukunan beragama") informed by the relativity of religious truth.

Concluding Thoughts

The discussion in the foregoing chapters has sought to offer an interpretative framework that deciphers the vernacular dimensions of the 1945 constitutional order and accounts for its enduring nature. One enabling factor is attachment to the 1945 Constitution as the "only" home for *Pancasila,* symbolic of Indonesia's folk religious traditions (Chapter 4). Consequently, there is a symbolic association between Indonesia's folk religious traditions and the 1945 Constitution (Chapter 3). This is unsurprising, given that folk religious traditions provide a foundational narrative for understanding behavioral norms within traditional, agricultural, or non-industrialised societies.[1] Thus, in their most recent guise as Indonesian Islam, they give Indonesia its national identity, and the 1945 constitutional order is deeply embedded in the country's own local knowledge (Chapter 6). This points to the plurality of modern social imaginaries (Chapter 1). Hence, there are multiple human visions of modernity behind the operation of various constitutional orders.[2] This concluding chapter seeks to contextualise the persistence of the 1945 constitutional order within a broader comparative framework.

The central thesis of this study is that the persistence of Indonesia's 1945 constitutional order is inextricably linked to the unique spirit of the nation. This study has highlighted the significance of folk religious traditions as the overarching and organising spirit within Indonesian theory and practice of constitutionalism. The attempt to articulate the "spirit" that animates a constitutional order can be traced back, at the very least, to *The Spirit of the Law* of Montesquieu. While he refused to assign "natural law" as its great organising principle, he seemed to recognise the "spirit" as "the same source of rule [that] can be exercised in such different ways that the government must be said to be different."[3] While there is no explicit reference to folk religious traditions in Montesquieu's work, he attempted to draw the binary line between the ancient and the modern so that he can contrast them as two different mentalité, mental systems, or frames of

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[1] Jerome Weiss, *Folk Psychology of the Javanese of Ponorogo* (PhD Dissertation, Yale University, 1977) at 1.
[2] Arguably, the first articulation of this point can be found in Charles Taylor, *Modern Social Imaginaries* (Durham, NC: Duke University Press, 2004) at 2.
[3] Furthermore, it is noted that "[t]his notion that the kinds of governments are a consequence of the way rule is exercised, which in turn is due to the entire complex of political and social groupings and institutions, marks a new way of viewing government, . . . although they express their distress at Montesquieu's continued use of political categories." Anne M Cohler, "Introduction" in Anne M Cohler, Basia Carolyn Miller & Harold Samuel Stone, eds, *Montesquieu: The Spirit of the Laws*, paperback ed (Cambridge: Cambridge University Press, 1989) xi at xxii.

mind.[4] He was seminal in recognising mentalité as a crucial element of constitutionalism and advocated the establishment of a liberal order predicated on mores tailored to its distinctive requirements.[5] Reflecting upon the discussion in Chapter 3 regarding the definition of religion, it is tenable to assert that in Indonesia mentalité is synonymous with folk religious traditions and Sufism, as their scope extends beyond the folk European conception of religion. Montesquieu's work can be interpreted as an argument for making lived religious traditions, as opposed to "religion" that exists in the mind of theologians, central in understanding the republican model of constitutional order.[6]

Against that background, Niels Mulder, a noted commentator on *kejawén*—the folk spiritual system of Java—characterises this tradition as a "Weltanschauung" (worldview), suggesting that *kejawén* emanates from a deep-seated belief in the fundamental interconnectedness of all beings. In that sense, the sacred and profane are inextricably intertwined, viewing them as interconnected domains where the well-being of the latter is dependent on the former, and hence rendering any demarcation between the temporal and the transcendent both artificial and futile.[7] To be clear, there is nothing surprising about this claim as a comparative survey confirm that "in most cultures, the social order is moral order that may mean it is sacred as well."[8] As discussed in Chapter 8 regarding the Indonesian theory of the state, there is a folk religious basis for the Indonesian approach to constitutionalism that exhibits minimal inclination towards distinguishing between the sacred and the profane.[9] Therefore, it becomes plausible to interpret the persistence

[4] Montesquieu's delineation of the ancient and modern paradigms across three critical domains—commerce, international law and conquest, and governance and liberty—served as a catalyst for Benjamin Constant's formulation of the divergent ancient and modern notions of liberty. His foundational work subsequently informed Isaiah Berlin's development of two concepts of liberty, specifically positive and negative liberty. See Manjeet Ramgotra, "Time, Modernity and Space: Montesquieu's and Constant's Ancient/Modern Binaries" (2022) 48:3 Hist Eur Ideas 263–279 at 264.

[5] Thus, Callanan deduces that "[i]t is a mistake to speak of an 'opposition' in Montesquieu's analysis between 'a world of tradition, of unreflective and unwritten *moeurs*" and 'the modern world of written law.'" See Keegan Callanan, *Montesquieu's Liberalism and the Problem of Universal Politics* (New York: Cambridge University Press, 2018) at 148.

[6] Thomas L Pangle, *The Theological Basis of Liberal Modernity in Montesquieu's "Spirit of the Laws"* (Chicago and London: The University of Chicago Press, 2010) at 57.

[7] See JA Niels Mulder, "Aliran Kebatinan as an Expression of the Javanese Worldview" DOI.org (Crossref) (1970) 1:2 J of Southeast Asian Stud 105–114 at 105.

[8] Jonathan Haidt & Craig Joseph, "The Moral Mind: How 5 Sets of Innate Moral Intuitions Guide the Development of Many Culture-specific Vrtues, and Perhaps even Modules" in Peter Carruthers, ed, *The Innate Mind: Foundations and the Future* (New York: Oxford University Press, 2007) 367 at 371.

[9] Thio Li-ann, a proponent of the "Singapore school" of non-liberal constitutionalism noted that in Asia, the secularisation thesis is not applicable due to the significant role of religion in personal identity and public life, even

of the 1945 constitutional order as a derivative of Indonesia's folk religious traditions. In a sense, this is a call for the theoretical framework known as "law *as* religion, as opposed to showing the parallels between law *and* religion,"[10] and for applying the underpinning assumptions of law as religion in making sense of constitutional phenomena beyond the confines of the Western world.

The foregoing discourse requires not only an acknowledgment of the significance of the expressions of vernacular religious traditions but also of the need to be attentive to its peculiar manifestation within every constitutional order. Joshua Mauldin's recent finding that the "'religious question' in China is deeply intertwined with broader questions about the very shape of social and political life in Chinese society today," can further corroborate the Indonesian case.[11] One important lesson is that "[w]hen the question is properly framed (and not forced into a Western conceptualisation of religion), it turns out that China remains a highly religious society."[12] The enduring significance of folk religious traditions may be attributed to their comprehensive nature as systems of belief, as discussed in Chapter 4. This not only reinforces the view that these practices are distinct from formal religions, but it also leads to the absorption of formal religion into the folk religious traditions, as observed in Indonesia. This is evident in the fact that the Islamic concept of monotheism ("tawhid") has been integrated into, if not subsumed under *Kawulo Manunggaling Gusti*, the mystical unity between Lord and servant.[13] Consequently, despite the reality that these folk traditions shape the essence of formal religions, they appear to have vanished for those who ignore the historical specifities of the concept of religion.

One might wonder why folk religious traditions play a constitutive role Indonesian constitutionalism. One explanation is that it has something to do with the very nature of folk religious traditions as an all-encompassing system of belief, but also as deeply rooted in human psyche because of their orthopraxy (practice-oriented).[14] Claiming that Chinese folk religions have

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within ostensibly secular, contemporary states, which are the birthplace of numerous major religions. See Thio Li-ann, "Varieties of Constitutionalism in Asia" (2021) 16:2 Asian J Comp L 285–310 at 293.

[10] Daniel F Piar, "Keepers of the New Covenant: The Puritan Legacy in American Constitutional Law" (2010) 49:1 J of Catholic Leg Stud 143–193 at 145, 146. For the most recent statement of law as religion, see David C Flatto & Benjamin Porat, "Introduction" in David C Flatto & Benjamin Porat, eds, *Law as Religion, Religion as Law* (Cambridge: Cambridge University Press, 2022) 1.

[11] Joshua T Mauldin, "Law, Religion, and Society in China: A Contested Terrain" (2020) 35:1 J L & Rel 102–112 at 105.

[12] *Ibid* at 104.

[13] Peter J Zoetmulder, *Pantheism and Monism in Javanese Suluk Literature: Islamic and Indian Mysticism in an Indonesian Setting*, translated by M. C. Ricklefs (Leiden: KITLV Press, 1995) at 261.

[14] For an overview of how the orthopraxy of Eastern spiritual traditions enhances its integration within the cognitive framework of their followers see Giles Yeates, "Eastern Spirituality, Mind–Body Practices and Neuro-

intricately shaped the Chinese cultural identity by integrating with the population's psychosocial fabric over millennia is not an exaggeration.[15] Considering this quality, folk religious traditions are also known as, to name a few, primary or natural religion, folk theory, folk psychology, the intentional stance, and propositional attitude psychology, implying their status as a familiar, native, or innate way of making sense of our actions and those of others but also underwriting a range of moral, legal, educational, clinical, and therapeutic practices.[16] It can be established that it is through folk religious traditions that one interprets the world and therefore explains its meaning.[17] With their innateness, it is not surprising that folk religious traditions not only survive the "invasion" of various world, organised, formal, or scriptural religions but, more importantly, it is not uncommon for the latter to be remade in the image of the former. As Part II of this study has argued, this is exactly what happens when Islam or Sufism is transformed into what is now known as "Indonesian Islam" (see Appendix 5 below).[18] The persistence of the folk religious traditions is a portent of the vernacularisation of constitutionalism in Indonesia.

In this context, there is a justified necessity to transition from a top-down approach, where constitutionalism is often viewed as a state or elite-driven endeavor centered on Western understanding and frameworks, to a bottom-up approach where folk religious traditions assume a central role in which the vernacularisation of constitutional theory and practices becomes the focal point. Viewing constitutionalism through this bottom-up approach suggests a willingness for understanding a specific constitutional order to deviate from the standard model. As a consequence, it is necessary to identify the fundamental elements that give rise to the potent "psychologic," the impetus for the individuals within a particular constitutional order. In the Indonesian context, this potent psychologic stems from its folk religious traditions. That makes

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Rehabilitation" in Alasdair Coles & Joanna Collicutt, eds, *Neurology and Religion* (Cambridge: Cambridge University Press, 2019) 191 at 197–199.

[15] Rachel Sing-Kiat Ting, Siew-Chung Mah & Kejia Zhang, "Chinese Traditional Religions and Mental Health: An Indigenous Psychology Perspective" in Timothy A Sisemore, Joshua J Knabb & West Conshohocken, eds, *The Psychology of World Religions and Spiritualities: An Indigenous Perspective* (Philadelphia, PA: Templeton Press, 2020) 237 at 240.

[16] Daniel D Hutto, "Folk Psychology as a Theory" in Edward N Zalta, ed, *Stanford Encyclopedia of Philosophy*, online ed (Palo Alto, CA: Stanford Encyclopedia of Philosophy, 2021) at para 2.

[17] Jim Brown, "The Role of Folk Consciousness in the Modern State: Its Efficacy, Use and Abuse" (2010) 6:1 Storytelling, Self, Soc'y 39–57 at 42.

[18] As Rosen puts it, "First, there is the widely recognised idea that whatever does not clearly contradict a central tenet of Islam is not to be regarded as incompatible with the faith. Obviously, a belief in one God and Muhammad as the last in the line of prophets is not to be adulterated. Beyond that, however, Islam, as many commenters have noted, is what Muslims believe and do." Lawrence Rosen, *Encounters with Islam: Studies in the Anthropology of Muslim Cultures* (New York: Cambridge University Press, 2023) at 42.

Indonesia's folk religious practices as functionally equivalent to Calvin's theology, which are thought to have played a significant role in establishing an infrastructure for religious governance and social control that has been influential not only in Europe but globally as well.[19] In essence, this further implies that there is a justified need to theorise the "spirit" or "soul" of the state, beyond the manifest "body," "organisation," or "structure" of the state.

The oversight of folk religious traditions in constitutional studies is possibly linked to their immanentist root and hence syncretic tendency, where concerns for doctrinal purity are not paramount. Neglect of these traditions has led legal scholars to misinterpret Indonesian concepts by seeing them solely through Western frameworks and meanings. This has often led to portraying Pancasilaists as nationalists advocating for a "secular" constitutional order. A dichotomous struggle for constitutional dominance does arise between Pancasilaists, advocates of secularism and religious pluralism, and Islamists, perceived as hindrances to the progress of a derivative form of liberal democracy in Indonesia. In effect, this basic presupposition has hindered our ability to acknowledge the vernacularisation of various concepts in constitutional discourse, a model of constitutional discourse in which its substantive meaning is primarily determined by local knowledge, thereby denying the agency of Indonesian constitutional actors and impoverishing the constitutional discourse.[20]

Furthermore, the persistent significance of the 1945 constitutional order suggests the potential for the "vernacularisation of constitutionalism" to extend beyond the Indonesian context (see Part III). Hence, it is essential to examine the inherent human capacity for comprehension and logical reasoning, which is considered to be "embodied"[21] and implies that our mental processes, thoughts, values, and actions are inextricably linked to our physical constitution and interactions with the surrounding environment.[22] Considering that the prevailing discourse on constitutionalism derives from the Western modern social imaginary, beyond the West it is simply a certain form of disembodied understanding whereas folk religious traditions are a form of

[19] Philip S Gorski, *The Disciplinary Revolution: Calvinism and the Rise of the State in Early Modern Europe* (Chicago: The University of Chicago Press, 2003) at xvi.
[20] See Charles Taylor, "What is Human Agency" in *Philosophical Papers: Human Agency and Language* (Cambridge: Cambridge University Press, 1985) 15 at 15–16.
[21] The most recent and comprehensive presentation of a scientific perspective suggests that cognition and behavior are primarily implicit, intuitive, and closely linked to emotions, rather than explicit, deliberate, and objective. This view also proposes that the brain's natural functioning does not likely involve formal logic. See L David Ritchie, *Feeling, Thinking, and Talking: How the Embodied Brain Shapes Everyday Communication* (Cambridge: Cambridge University Press, 2022) at 82.
[22] Mark Johnson, "Embodied Understanding" (2015) 6:875 Front Psychol 1–8 at 1.

embodied knowledge. Indonesia's folk religious traditions, like many others, are a body of knowledge encapsulated in metaphors passed on from generation to generation through oral tradition. While understanding their semantic meaning is valuable, their deep meaning exceeds the mere words and phrases that are common in the oral tradition.[23] To specify, it is Indonesia's folk religious traditions that have determined the referent of the three constitutional postulates, *negara kesatuan* (Chapter 6)*, negara hukum* (Chapter 7)*,* and *hukum tata negara* (Chapter 8). Folk religious traditions are best comprehended through practical application, exemplified by the Indonesian constitutional practices.

As previous discussion of Indonesia's three constitutional postulates has shown, Indonesian constitutionalism may best be described as a "meeting point" between the Western and Indonesia's own folk "constitutional" traditions. Clearly, there is nothing surprising about this claim, to the point that it is inevitable. The rise of English as a global language can provide a good example in which a monolithic concept of English is no longer tenable, considering that globalisation signifies vernacularisation or pluralisation.[24] What makes the case of the pluralisation of English pertinent is that English is similar to constitutionalism, that is they both are a form of cultural practice. This means that they both are signifying the particulars that are home-grown and hence minimise their universalisability. One important factor that contributes to the pluralisation of cultural practice is the resilience of the recipients' folk religious traditions. One reason is that folk religious traditions serve as both the foundational knowledge and cognitive framework for individuals, collectively shaping the interpretation of constitutional concepts or principles they receive. Vernacularisation of both English and constitutionalism is further sustained by the strong sense of patriotism.[25] It is plausible to conceive Indonesia's constitutionalism as a manifestation of vernacularisation, leading to the development of a complex constitutional tradition.

Moreover, it can be deduced that folk religious traditions serve as the main vehicle for the "transcategorisation;" that is, the transformation of the 1945 Constitution from a more abstract to

[23] An influential theory on metaphor posits that they serve as a means of illustrating the fundamental conceptual framework that shapes our comprehension of the world and our lived experiences. See Ritchie, *supra* note 21 at 226.
[24] David Crystal, *English as a Global Language*, 2nd ed (New York: Cambridge University Press, 2003) at 141, 142. (Noting that: "The loss of ownership is of course uncomfortable to those, especially in Britain, who feel that the language [i.e., English] is theirs by historical right; but they have no alternative. . . . The spread of English around the world has already demonstrated this, in the emergence of new varieties of English in the different territories where the language has taken root. The change has become a major talking point only since the 1960s, hence the term by which these varieties are often known: 'new Englishes.'").
[25] *Ibid* at 142. (Pointing out the American English as a form of patriotism.).

a less abstract concept.[26] By being a less abstract concept, I refer to a condition in which the 1945 Constitution is perceived and embraced by the majority of Indonesians as a document that embodies their collective ownership. In a sense, the 1945 Constitution excites a sense of constitutional loyalty, resulting in deep psychological rootedness among most Indonesians and implying that they play a significant role in emphasising Indonesia's constitutional allegiance.[27] Indonesia's folk religious traditions, as a modern social imaginary or alternative modernity, serve as the foundation for the development of the Indonesian understanding of self. As demonstrated earlier, it is evident that the 1945 Constitution, particularly through its association with *Pancasila*, extends beyond the conventional notion of a written constitution (see Chapter 2). Hence, it can be considered as an all-encompassing—or, symbolic—constitution because it entrenches a folk religious view, transcending the sacred-secular divide characteristic of modern constitutionalism. As an all-encompassing constitution, the 1945 Constitution hints at Indonesia's moral language and moral thinking. Thus, the issue of the continuity of the 1945 constitutional order becomes a matter of existential significance.

It is important here to emphasise the holistic assumption of folk religious traditions regarding the non-separation between the sacred and the secular, as the main component of Indonesia's modern social imaginary. This assumption is critical in revealing the distinctiveness of *hukum tata negara*, the Indonesian notion of constitutional law or constitutionalism. The preference of folk religious traditions for holism allows Indonesian constitutional law to assign supremacy to *Pancasila* as the symbol of *rukun* (communal harmony) and by implication deemphasise the importance of textual meaning of the 1945 Constitution, indicating the inseparability between law and non-law norms.[28] Clearly Indonesia's holistic constitutional law is not an exception but the rule, because holism is a, if not the, shared feature of virtually every non-

[26] Ritchie, *supra* note 21 at 234.
[27] A comparable argument has been expounded within the framework of American constitutional history. See Doni Gewirtzman, "Our Founding Feelings: Emotion, Commitment, and Imagination in Constitutional Culture" (2009) 43:2 U Rich L Rev 623–683 at 625–626. For a more general discussion about the importance of emotion in sustaining constitutional arrangements, see András Sajó, "The Constitutional Domestication of Emotions" in Mortimer N S Sellers, ed, *Law, Reason, and Emotion* (Cambridge: Cambridge University Press, 2017) 55 at 55–56.
[28] Further discussion on how *rukun* must take precedence over positive law can be found in Franz Magnis-Suseno, *Etika Jawa: Sebuah Analisa Falsafi tentang Kebijaksanaan Hidup Jawa* [The Javanese Ethical System: A Philosophical Analysis of the Javanese Idea of the Good Life], 5th ed (Jakarta: Gramedia Pustaka Utama, 1993) at 70–71.

western folk religious tradition.[29] Hence, strict compartmentalisation of the sacred and the secular is a peculiarly Western phenomena. The centrality of folk religious traditions is increasingly acknowledged in interdisciplinary fields. A study on poverty in Africa, for instance, finds it necessary to look at economic, moral, philosophical, and social dimensions in order to capture the holistic nature of traditional African understandings.[30] Similarly, a study on mental health healing in Africa found that folk religious traditions are "the final source of reference in terms morals and ethics, tradition, culture and custom, a guide for daily living and social relationships, and the place of the individual in the overall socio-political scheme of society."[31]

Unfortunately, current scholarship in comparative constitutional studies still defines religion in its very narrow sense, limited to World or scriptural religions, defined in the image of the Christian, or more specifically, Protestant conception of the word.[32] For example, despite claiming to draw insights from and advocating for an interdisciplinary approach, including to religion studies and constitutional law, Ran Hirschl's widely praised book is based on the supposition that constitutional law and religion are two separate spheres.[33] Interestingly, Martha Nussbaum also shared this assumption while acknowledging many instances where "religion-infused" constitutionalism is the prevailing mode.[34] It has therefore prompted concerns about how constitutional law can create and maintain or simply deal with the boundary between the sacred and the secular in various states.[35] Should we accept that this assumption, the concern to create and maintain the boundary between the sacred and the secular is not widely shared? Indeed, the supposition that constitutional law and religion are two separate spheres is best described in parts of the world as unthinkable or out of the question. As the case of Indonesia has shown, the primary

[29] This point is implied in Taylor's assertion that the West's "secular" societies are a relatively recent development in human history and therefore exceptional. See Charles Taylor, *A Secular Age* (Cambridge, Mass.: Harvard University Press, 2007) at 1–2.
[30] Elizabeth Amoah, "African Traditional Religion and the Concept of Poverty" in Peter J Paris, ed, *Religion and Poverty: Pan-African Perspectives* (Durham, NC: Duke University Press, 2009) 111 at 112–113.
[31] Olatunde Ayinde et al, "African Religions, Spirituality, and Mental Health Healing Practices" in Alexander Moreira-Almeida, Bruno Paz Mosqueiro & Dinesh Bhugra, eds, *Spirituality and Mental Health Across Cultures* (Oxford: Oxford University Press, 2021) 277 at 278.
[32] For full treatment on this matter, see Jack Miles, *Religion as We Know It: An Origin Story* (New York: W.W. Norton & Company, 2019).
[33] Ran Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Oxford: Oxford University Press, 2016) at 111.
[34] Martha Nussbaum, "Introduction to Comparative Constitutionalism" (2002) 3:2 Chi J Int'l L 429–434 at 434.
[35] See e.g. Ran Hirschl, "Comparative Constitutional Law and Religion" in Tom Ginsburg & Rosalind Dixon, eds, *Comparative Constitutional Law* (Cheltenham, U.K.: Edward Elgar Publishing Ltd., 2011) 422 at 422; Ran Hirschl, "Comparative Constitutional Law and Religion in Asia" in Rosalind Dixon & Tom Ginsburg, eds, *Comparative Constitutional Law in Asia* (Cheltenham, U.K.: Edward Elgar Publishing Ltd., 2014) 316 at 317.

concern of *hukum tata negara* as an instance of holistic constitutional law is all about maintaining *tata* (communal order) and hence *rukun* (communal harmony), considering that the sacred and the secular are inextricably linked.

To borrow from Robert Cover, *rukun* is best defined as Indonesia's own "fundamental word" in which Indonesians can locate themselves in a normative universe. Hence, *rukun* occupies a place equivalent to the word "rights" in Western contexts or "mitzvah" in Judaism.[36] Together, "[t]hese words are connected to fundamental stories and receive their force from those stories as much as from the denotative meaning of the words themselves."[37] In other words, they are the very force that vernacularises constitutionalism as a supposedly universal concept. To elucidate their vernacularising effect, it is necessary to start with the story behind the word *rukun*; that is, *Manunggaling Kawulo Gusti*. In contrast to the story of the social contract behind the word rights in which free and independent if highly vulnerable beings are voluntarily trading a portion of their autonomy for a measure of collective security,[38] *Manunggaling Kawulo Gusti* embodies the myth of a static harmonious universe ("slamet") where the lord and the servant are in an embrace of social and cosmic solidarity.[39] By implication, it implies that the overarching goals of *Manunggaling Kawulo Gusti* are "negative and psychological—absence of aggressive feeling toward others, absence of emotional disturbance."[40] As I have pointed out in Part III, this story has been the controlling idea that not only puts flesh on Indonesia's three constitutional postulates, but has also vernacularised the (Western) theory of state as *negara kesatuan* (Chapter 6), the rule of law as *negara hukum* (Chapter 7), and constitutional law as *hukum tata negara* (Chapter 8).

By considering the idiom of folk religious traditions as its presuppositions, this study lays some of the building blocks that foster what might be described as constitutionalism studies

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[36] Interesting to note, the word *mitzvah* signifies the unique nature of Jewish legal principles compared to the rights-oriented framework of Western legal traditions, suggesting that "an entitlement without an obligation is a sad, almost pathetic thing." Robert M Cover, "Obligation: A Jewish Jurisprudence of the Social Order" in Michael Walzer, ed, *Law, Politics, and Morality in Judaism* (Princeton and Oxford: Princeton University Press, 2006) 3 at 5.
[37] *Ibid* at 3–4.
[38] *Ibid* at 4.
[39] Supomo, "Pidato Pada Tanggal 31-5-1945 Rapat Badan Penjelidikan Untuk Persiapan Indonesia Merdeka, Di[ ]Gedung Chuoo Sangi-in di Jakarta [Speech at May 31, 1945 during the Meeting of the Constitutional Drafting Committee in the Preparation of the Free Indonesia]" in Muhammad Yamin, ed, *Naskah Persiapan Undang-Undang 1945, memuat Segala Naskah Resmi Penggalang Undang-Undang '45 jang Berlaku Kembali dalam Negara Kesatuan Républik Indonésia [Travaux Préparatoires of the 1945 Constitution, including Every Official Material Supporting the Reintroduction of the 1945 Constitution]* (Jakarta: Prapantja, 1959) 109; Supomo, *Hubungan Individu dan Masyarakat dalam Hukum Adat [The Relationship between the Individual and Society in the Adat Law]* (Jakarta: Gita Karya, 1963).
[40] Clifford Geertz, *The Religion of Java* (Chicago and London: The University of Chicago, 1976) at 14.

grounded on "experience-near concepts," as opposed to "experience-distance concepts." This refers to "concepts [that] are commonplace words used in everyday contexts, whereas experience-distant concepts are words employed in extra-ordinary ways by certain kinds of specialists."[41] By being premised on experience-near or grounded in experience concepts, words such as constitutionalism need to be grounded and interpreted in light of folk or local knowledge that is largely implicit and inarticulate. Every concept is historically situated within a specific linguistic and social context.[42] This points to the importance of paying attention to metaphor as an important framing tool. Hence, the Western constitutional tradition depicts the nation in contrast to the Indonesian concept of *Kawulo Manunggaling Gusti*, which presents the state as the benevolent father ("bapak"). With this metaphor, Indonesian constitutional vision strives to make "all members of the family at the eating table and at the working table without a single exception."[43] This justifies the state's paternalistic role in the life of its citizens (see Chapter 7). In contrast, the Western constitutional tradition regards ruler as a mere "model citizen and servant of the people."[44] This encapsulates the fundamental essence of a "political society," characterised by a collective commitment to the covenant that binds all individuals within the state, supported by the shared assumption that the people as "moral agents" are able to do good.[45] Failing to acknowledge variations in concepts over time and across languages results in overlooking insights into the lived experiences of past societies and diverse geographical locations. This study asserts that a study on constitutionalism should aim to provide both empirical observations and conceptual comprehension rooted in the diverse ways in which a concept is used.

To make matters more complicated, it is worth noting that the whole gamut of concepts that underpin modern constitutionalism can themselves be said to be anchored in Protestantism as a Western folk religious tradition. The so-called "Cambridge style of undertaking the history of

[41] Frederic Charles Schaffer, *Elucidating Social Science Concepts: An Interpretivist Guide* (New York and London: Routledge, 2016) at 2.
[42] Ludwig Wittgenstein, *Philosophical Investigations*, 3rd ed by G. E. M. Anscombe, Rush Rhees & G. E. M. Anscombe (New York: Macmillan, 1972) at paras 43, 77, 139, 532.
[43] David Reeve, Golkar *of Indonesia: An Alternative to the Party System* (Singapore: Oxford University Press, 1985) at 117. (Citing Notosoetradjo).
[44] Jonathan Burnside, "Old Testament: Torah and Constitutionalism" in Nicholas Aroney & Ian Leigh, eds, *Christianity and Constitutionalism* (Oxford: Oxford University Press, 2023) 33 at 44.
[45] Michael Walzer, *Exodus and Revolution* (New York: Basic Books, 1985) at 69, 83.

political thought" has evinced this claim.[46] The concept of constitution is one important case in point that is worth considering in this regard. For a start, historical linguistics suggests the concept of constitution that was tied to corporate bodies and the body politic.[47] This conveys the impression that the constitution originates from the folk mystic fiction known as "King's Two Bodies," "an important heuristic fiction which served the lawyers . . . to bring into agreement the personal with the more impersonal concepts of government."[48] This claim hints at the difficulty of full acceptance of such modern concepts for those grounded in different folk religious traditions, such as Indonesia. Put differently, this points to a potential clash between two ways of distinguishing and organising categories in order that the world can make sense and operate as it should.[49] Moreover, this has legitimated the project of constructing a vernacular constitutionalism, a model of constitutionalism that is more attuned to local conditions. As this study has pointed out, in the context of Indonesia this has become the main proposition that justifies the articulation of various concepts that derive from the folk religious understanding in support of the 1945 constitutional order.

Implicit in the above discussion is the necessity to be mindful of the vernacular characters of the prevailing constitutional discourse, while at the same time integrating it within a comparative framework. So, an attempt to elucidate vernacular constitutionalism is an exercise within comparative constitutionalism beyond Western understanding. This refers to various exercises in which the main goal is to explicate the deep meaning of, or ideas behind, the word constitutionalism as understood in various settings. Admittedly, there is nothing new about this understanding. Nussbaum's paper on comparative constitutionalism, for instance, recognised that "social values provide not only the historical context out of which constitutions grow, but also an ongoing fabric of traditions and values that can often be vital in interpreting constitutional provisions."[50] It follows that any attempt that explicitly describes itself as comparative

[46] Gary K Browning, *A History of Modern Political Thought: The Question of Interpretation* (Oxford: Oxford University Press, 2016) at 68. See also Quentin Skinner, "Meaning and Understanding in the History of Ideas" (1969) 8:1 Hist & Theory 3–53.
[47] Gerald Stourzh, "Constitution: Changing Meanings of the Term from the Early Seventeenth to the Late Eighteenth Century" in Terence Ball & J G A Pocock, eds, *Conceptual Change and the Constitution* (Lawrence, Kansas: The University Press of Kansas, 1988) 35 at 38–39.
[48] Ernst H Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology*, princeton classics ed (Princeton and Oxford: Princeton University Press, 2016) at 5.
[49] This argument derives from Lawrence Rosen, *Law as Culture: An Invitation* (Princeton: Princeton University Press, 2017) at 170.
[50] Nussbaum, *supra* note 34 at 432.

constitutionalism doesn't go far enough in suggesting the plausibility of considering mentalité or worldview as a factor in the practice and theory of constitutionalism. In Asian scholarship on constitutionalism, for instance, the underlying assumption of major scholarly works appear to be based on the supposition that it is still at an early stage of conceptual development. In a word, "the notion of an 'Asian constitutionalism' has not gone beyond the application of liberal constitutionalism to Asian historical and cultural backgrounds."[51]

Ultimately, it may be worth considering the plausibility of the continuity of Indonesia's 1945 constitutional order as a case for incorporating moral pluralism, the notion that morality is grounded on multiple foundations, within the framework of studying constitutionalism. The Indonesian 1945 constitutional order, as indicated in this research, symbolises Indonesia's folk religious perspective on moral order, emphasising moral relativism. This contrasts with the Western or contemporary concept of constitutional order, which is rooted in moral monism or universalism, assuming a singular basis for morality such as justice, avoidance of harm, or well-being. The unique reliance of Indonesia's 1945 constitutional order on moral pluralism is likely influenced by its folk religious traditions, characterised as a form of immanentism, as discussed in Chapter 3. Integrating moral pluralism holds significant analytical value as it offers a pathway towards developing a more representative understanding of constitutionalism beyond Western contexts. Recent research in moral psychology emphasises the importance of moral pluralism in laying the foundation for a comprehensive non-WEIRD (Western, Educated, Industrialised, Rich, and Democratic) approach to studying morality.[52] This approach underscores the necessity of starting from non-WEIRD settings to prevent biases towards culturally atypical traits in specific populations.[53] The concept of moral pluralism shows promise for comparative constitutionalism by facilitating the future development of a theory-driven framework for comprehensively exploring non-Western constitutional orders, better accommodating human diversity.

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[51] See Yu Xingzhong, "Western Constitutional Ideas and Constitutional Discourse in China, 1978–2005" in Stéphanie Balme & Michael W Dowdle, eds, *Building Constitutionalism in China* (New York: Palgrave Macmillan, 2009) 111 at 123.

[52] Mohammad Atari et al, "Morality beyond the WEIRD: How the Nomological Network of Morality Varies across Cultures" (2023) 125:5 J of Personality & Soc Psychology 1157–1188 at 1178.

[53] For the latest statement or argument for cultural distance across countries, see Michael Muthukrishna et al, "Beyond Western, Educated, Industrial, Rich, and Democratic (WEIRD) Psychology: Measuring and Mapping Scales of Cultural and Psychological Distance" (2020) 31:6 Psych Sci 607–762. See also Joseph Henrich, *The WEIRDest People in the World: How the West Became Psychologically Peculiar and Particularly Prosperous* (New York: Farrar, Straus & Giroux, 2020).

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APPENDIX 1

Guiding Annotations of Key Concepts and Characters

Adat

The term is derived from Arabic. It is important to note that this does not mean *adat* is an Islamic concept. It simply hints at its origin in the Islamic period. Based on its usage, *adat* is best understood as culture writ large. It encompasses the entire corpus of, among others, values, belief system, and ritual practice of a particular ethnic group in Indonesia and Malaysia. This is an all-encompassing concept that cannot be disconnected from any societal sphere and, moreover, touches all aspects of community life (Engelenhoven 2021, 697). For some, *adat* denotes the wide variety of folk practices which, other than this generalised label of "tradition," are opposed to Islamic beliefs and practices. Thus, *adat* is an alternative name for Indonesia's folk religious traditions, or even "Indonesian religion" (Chambert-Loir and Reid 2002, xvi–xvii). Importantly, it is the primary source for articulating the Pancasilaist's idea of constitutionalism.

Adat law

This term is a scholarly invention which was first introduced by Cornelius van Vollenhoven, a Leiden Law Professor, who advocated that "good government and a good administration of justice […] are unthinkable without a thorough knowledge of indigenous law and indigenous conceptions" (Engelenhoven 2021, 701). As a special category within *adat*, *adat* law is meant to refer exclusively to a set of customs that are of normative significance. In other words, *adat* law is believed to be distinguishable from other customs or adat that bear no normative weight. In addition, it has been used as a reference to traditional laws or norms that differ or are in contravention of Islamic law (Lev 1972, 27). Hence, *adat* is one of the most important symbolic resources for the Pancasilaists in their effort to maintain the supremacy of *Pancasila*.

Agama

In Indonesian constitutionalism, this term has been used exclusively to refer to the Islamist Puritans' understanding of "religion." That said, it is Indonesia's statutory definition of religion, signaling that "the former Sanskrit word *agama* has in fact acquired the full meaning of the Arabic word *din* as used in the Koran" (Ramstedt 2004, 9). To be acknowledged constitutionally as an *agama*, a religious

belief system must adhere to an Islamic paradigm of an authentic religion, characterised by divine revelation delivered through a prophet, codified in sacred scripture, encompassing a comprehensive legal framework for adherents, transcending ethnic particularism, and affirming monotheism. Indeed, most Indonesians take for granted that *agama* is "a word for word translation of religion" (Picard 2011, 3). Implicit in *agama* is the Islamist Puritans' strategy of entrenching "a sharp distinction between the folk religious adherents as 'heathens' and the Puritans as 'true believers'" (Picard 2011, 5). By implication, *agama* exclusively refers to the state approved world religions. Therefore, religious belief systems which do not satisfy the definition that *Agama* embodies must be content with the classification of being *Kepercayaan*, see below. As such, they do not have the same level of constitutional protection that Islam and other *agama* enjoyed.

Agama Leluhur

Literally, this means ancestors' religions, another reference to Indonesia's folk religious traditions. Arguably, the name has something to do with their shared feature as ancestor veneration or worship. Hefner (2011, 75) observed that the two most important categories of spirit beings invoked in virtually every folk ritual in Indonesia were the ancestral and guardian spirits. In fact, this shared feature is rooted in the Austronesian religious tradition. Hence, it is widely believed among Indonesians that this is "Indonesia's indigenous religion" (Maarif 2017, chap. 2). With this acknowledgement, the Chief Justice of the Constitutional Court wondered why Indonesia prioritises foreign religions and sidelines its folk religions (Saputra 2017).

Alus

Literally, it refers to the condition of being "refined," as opposed to *kasar* (coarse), discussed below. In folk religious mysticism, this denotes "the highest realm of truth and cosmic essence" (Mulder 1978, 16). Hence, it indicates "[e]motional equanimity, a certain flatness of affect, [which] is, then, the prised psychological state, the mark of the truly *alus* character" (Geertz 1976, 240). Furthermore, it refers to the ideal that a perfect individual must embody. In a sense, alus or the perfect individual signifies the union between Lord and servant (Errington 1984, 279–80) and is the purpose of the field called *Pancasila* studies; that is, the creation of a "*Pancasila* self" indicated by their strong religious sensibility ("rasa kemanusiaan") or *Pancasila*'s fourth *sila*. That means the *Pancasila* individual can be understood as "a truly *alus* man [who] is polite all the way through" (Geertz 1976, 232). It can be concluded that "[a]

	society of perfectly *alus* [people] would be a perfect society because it would be a perfectly polite and perfectly altruistic society, everyone feeling as one and as sensitive to others' feelings as to [their] own" (Geertz 1976, 334). Additionally, it has been suggested that *alus* symbolises the Javanese royal court, contrasting with the rustic regions and Islam, labelled as *kasar* (Jong 1997, 126).
Banyan Tree	The religious significance of a tree is common in many folk religious traditions, not only symbolising the cosmos but also expressing life, youth, immortality, and wisdom (Eliade 1959, 149). In Asia, that tree is the banyan tree whose shade provided a place of learning and a site where rulers dispense justice (*The Economist* 2009). In the Javanese folk conception, the banyan tree signifies that "tranquility and regularity was the state's main aim, *not* active stimulation towards progress" (Soemarsaid 1968, 92). The banyan tree was chosen as Indonesia's official symbol of justice, replacing the blind-folded lady that had previously been used by the colonial Dutch. The decision to adopt the banyan tree was to make it clear that Indonesia had a different conception of justice (D. S. Lev 1965, 282). The proposal was initiated by the then minister of justice, Saharjo, a former protégé of Supomo. As the official symbol of the ministry of justice, the banyan tree represents the idea of "positive" justice. Similar to the shade of the banyan tree, Saharjo conceived the Indonesian idea of justice as emphasising nurturing ("pengayoman") and hence promoting harmonious relationships (*Hukum Online* 2009). Hence, the overarching goal of the Indonesian model of correctional justice is to provide active guidance for convicts to be better equipped for full integration into Indonesian communal life ("Pancasila, Pohon Beringin Pengayoman, Dan Identitas Kebangsaan [*Pancasila*, the Nurturing Banyan Tree, and the National Identity]" 2020).
Borobudur	This is Indonesia's, if not the world's, largest Buddhist stupa which was constructed from "over a million blocks of stone [in which] the spire at the top of the stupa is often perceived as a nail which physically enables the ruler to keep his land stable and peaceful" (Miksic 1990, 25, 28). The symbolism of the nail indicates the enduring influence of the Tantric Buddhist Mandala concept, so much so that Indonesia's two most important royal houses still retain the title of the "nail of the world" (Headley 2004, 59). Given Borobudur's cultural prestige, it is the pride and joy of the Pancasilaists and their symbolic resource in the ideological war against the Islamist Puritans. Through the symbolism of Borobudur,

	the Pancasilaists make their case for the imminent revival of religious traditions, while at the same time implying Islamised Indonesia as the dark period in the history of Indonesian civilisation (Mulder 2004, 23; Anderson 1996, 15). Thus, it is not surprising that Borobudur has been the primary target for bombing by Islamic extremists (Arjanto 2024).
BPIP	Badan Pembinaan Ideologi *Pancasila* (BPIP) is a high-level state institution primarily responsible for promoting and disseminating the ideology of *Pancasila*. Staffed by prominent figures in the Pancasilaist movement, it is directly under the supervision of and is responsible to the President. It was established in response to the increasing ideological threat of radical or transnational Islam. As its chairman has candidly put, "if we're going to be bluntly honest, the greatest of *Pancasila* is *agama* (religion), not ethnic [sentiment]" (Hastanto 2020). Recently, the Pancasilaist Joko Widodo administration introduced a statute to lend more weight to BPIP's legal footing as a strategy to ensure its continuity regardless of whether the Pancasilaists or Puritans occupy Indonesia's highest political office.
BPUPKI	BPUPKI stands for "Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia." It is commonly translated as "the Investigating Committee for the Preparation of Indonesian Independence." In addition to the 62 members from Indonesia, BPUPKI also had eight Japanese members. It was established by the Japanese government of occupation on 29 April 1945 and was responsible for articulating various fundamental questions. Its deliberations were the primary reference for discerning the constitutional meaning of various key concepts in the 1945 Constitution. Importantly, Sukarno was the most influential mind behind the selection of committee members and hence the drafting of the Constitution. For that reason, it is hardly surprising that the inaugural chairman of BPUPKI was Dr. Radjiman Wedyodiningrat, one the founders of Boedi Oetomo. Sukarno also included Mohammad Yamin and Supomo as two important voices in the process of writing the constitution.
Budi Utomo	Budi Utomo is composed of two important Sanskrit concepts in Indonesia's folk religious traditions. *Budi* means "endeavor," and Utomo means "primary," "noble," or "ultimate." These two words hint at an endeavor with a strong religious motive. In fact, they self-defined as a movement to revive Javanese folk cultural values that had been sidelined as a result of encroaching modernisation

(Fakih 2012, 425–26). In effect, it was Indonesia's first political organisation that aimed to revive the significance of folk religious values in the public sphere. However, Budi Utomo was never conceived as a nation-wide or nationalist movement. Rather, it is an ethno-specific movement, namely for the Javanese ethnic group. However, it is rightfully regarded as the intellectual precursor to the *Pancasila* ideology, given that its foundational principles can be traced back to this movement. Given its importance, Sukarno for instance held "a large scale celebration" for the fortieth anniversary of Budi Utomo (Reeve 1985, 94). Eventually, the founding day of Budi Utomo became "the day of national awakening," celebrated annually ("Hari Kebangkitan Nasional [The National Awakening Day]" 2023).

Cocok

This term is interchangeable with *rukun*. As an adjective, *cocok* refers to the condition of being coherent, orderly, pleasant, and getting along with people. For example, *cocok* is commonly used to refer to a situation where a couple is matched, or the clothes fits its wearer. On closer examination, *cocok* is best described as a signifier that there is a potential condition in which *rukun* can be realised. In short, this is a means to achieving something of religious significance. To unveil the condition of *cocok*, one may utilise a method called *pétungan*. This parallels astrology in its endeavor to maintain harmony with the natural order, the disruption of which is believed to precipitate misfortune (Geertz 1976, 31). By attaining *cocok*, one can experience *rasa* and access ultimate reality.

Dasar Negara

Literally, *dasar negara* is the state's conceptual foundation. It was introduced by Indonesia's constitutional theorists as a shorthand reference to what might be described as the justification that makes the existence of a state plausible. Without it, a state cannot exist. In the Indonesian context, it is believed to be manifest in *Pancasila,* and was considered a *perjanjian luhur* or "agreement with cosmic significance" among the founders of the nation (*Ketetapan MPR No. III/MPR/2000 Tentang Sumber Hukum Dan Tata Urutan Peraturan Perundang-Undangan [The Statement of the People's Consultative Assembly No. III of 2000 on the Sources of Law and the Hierarchy of Laws]* 2000). In the absence of *Pancasila*, Indonesia would be devoid not only of its foundational ethos but also its guiding purpose (Notonagoro 1974, 11).

Demokrasi Pancasila

By adding the adjective *Pancasila*, this concept is meant to highlight the distinctiveness of the Indonesian model of democracy that derives from the governance model that

exists in *désa*, which is believed to be common throughout Southeast Asia (McCloud 2019, 43). One important feature distinguishing it from modern or Western democracy is that it requires *musyawarah mufakat*. That means every decision must be thoroughly deliberated and agreed unanimously with everyone being actively involved. This signifies that a certain degree of inclusive participation is indispensable, while at the same time paternalistic guidance is being imposed. In other words, "there may have been room for expressing differing views, but once these views had been heard-usually in private-and decisions had been made, consensus and conformity were automatic" (McCloud 2019). In this model, consensus-building is important to the point where it is the only option. The chair of the Constitutional Amendment Committee (1999-2002) acknowledged that it engendered a collective sense of ownership and responsibility among various factions. Significantly, he posited that the need for consensus was critical in successful implementation of constitutional reform (Tobing 2023, v).

Desa

Literally, *desa* is a village, the smallest unit of collective public governance which served as the basis for the design of the 1945 constitutional order (Rahardjo 1994, 495–96). The village comprised not only dwellings (including courtyards, gardens, and religious and community buildings) but also agricultural lands in production and fallow-grazing lands, and certain forest areas used for fuel cutting or hunting. The village was a closed community; most members were blood relatives to a greater or lesser degree, depending on the overall size of the village, and outsiders were seldom accepted permanently. The village was also defined by its adat, or unique customary law, "unwritten and derived from 'historical' memory, which serves to define not only the relations between segments of the village but the village itself." Foreigners did reside in some villages but retained low social status and were subject to discrimination, including having to pay certain taxes apparently not levied on native residents. This decision is based on *musyawarah* (consensus). According to Reid and Castles, "[t]he village community forms the basic unit of social organisation, of land management, and of conflict resolution. Whether we look at the Batak huta, or the Gaukang community of Bone . . . it is the little community with which we must begin an analysis of the historical rise of states." It is headed by a *lurah* (McCloud 2019, 41). The village model of governance is the template for the institutional design of the 1945

	Constitution. In this regard, *desa* is an ideal type in which the true manifestation of *Pancasila* is taking place (Raillon 2011, 93).
Hatta, Mohammad (1902-80)	The importance of Hatta was evident in his appointment as Indonesia's Vice President and co-proclaimer (with Sukarno) of Indonesia's declaration of independence. He was believed to represent "a kind of opposite pole to syncretic Java" (Dahm 1969, 194). Considering that he was a devout Muslim with a strong family background in commerce, Hatta was widely understood as the representation of Islamic Puritanism (Rose 1987, 5–6). Ultimately, he was perceived as embodying qualities that were distinct from those of Sukarno—namely rationality, modesty, and a strong commitment to Islam. On closer examination, he exhibited an eclectic blend of Islamic perspectives encompassing Modernist, Sufi, and Wahhabi influences. Despite his Dutch education, which philosophically aligned him more closely with the Western world than the Middle East, he also displayed a deep fascination with Karl Marx, particularly in response to the latter's advocacy of social justice and economic theories (Rose 1987, vi). Hatta's decision to remove the Islamist Puritans' "seven words" from the preamble of the 1945 Constitution which aimed to establish the state's authority to implement Islamic law among Indonesian Muslims, can be elucidated by this rationale (Anshari 1976, 43–45).
Indic	This relates to the cultural influence of India profoundly affecting the process of identification, as exemplified in the vernacularisation of India's two major epics, the *Mahabharata* and the *Ramayana*. The centrality of these texts is evident in their contribution to the moral fabric of Indonesian folklore. A compendium of recent scholarly essays reveals that the *Ramayana* and *Mahabharata* have served as pivotal cultural references for over a millennium, maintaining their relevance across a spectrum of contexts (Molen 2018, 1–2). Furthermore, the widespread use of Sanskrit language is deemed integral to the conceptualisation of Indic culture or civilisation (Supomo 2006, 311–16).
Indonesia	For the Pancasilaists, Indonesia signifies "the beauty" or aesthetic experience ("langgo"), a key signifier of the Javanese folk religious traditions which is also known as "the cult of beauty". The religious significance of beauty can be traced back to the Indic religious traditions in which god itself is understood as a manifestation of beauty (Suryohudoyo 1996, 24). This is evident, for instance, from

	Indonesia's epithet as "Ibu Pertiwi" which is the Indonesianised *Prthivi*, the first and earth goddess in Buddhism which means "a source of life, fertility, and abundance" (Shaw 2006, 18). Hadji Agus Salim, a prominent figure in Islamist Puritanism, was not surprised to perceive a tendency toward idolatry in Sukarno's enthusiastic portrayals of the beauties of *Ibu* (Mother) Indonesia (Dahm 1969, 174). For the Puritans, "[t]hings in themselves were worthless; only if they were regarded as gifts of Allah could their true meaning become manifest" (Dahm 1969, 174).
Islamic Puritanism	This refers to a variant of the Islamic movement that aims to eradicate syncretic Islam as Indonesia's prevailing interpretation of Islam. This movement in Indonesia can be traced to the Padri War which indicated the growing influence of the ideology of Wahhabiyya in Indonesia as a result of the increasing popularity of Mecca as the destination for pilgrimage. The impulse for the War was to implement a "pure" interpretation of Islam, uncorrupted by adat (Dobbin 1972, 9–10). Its key messages are rejecting the mystical notions of hierarchy, oneness with God, *rasa* (emotion) over *akal* (reason), and no tolerance for truth outside Islamic scriptural text (Mulder 1978, 105). Islamic Puritanism has therefore been described as Indonesia's important proponent for the Western ideal of the rule of law (Lev 1978, 45–46).
Gotong Royong	Sukarno used this concept as one of the adjectives that defines the Indonesian idea of state. The original meaning was communal work in which everyone actively contributed in a selfless manner. As Bowen puts it, "[i]t calls up images of social relations in a traditional, smoothly working, harmonious, self-enclosed village on Java, where labor is accomplished through reciprocal exchange, and villagers are motivated by a general ethos of selflessness and concern for the common good" (Bowen 1986, 546). Implicit in this concept is the Indonesian communal worldview which is antithetical to the capitalist commercial or transactional worldview. Furthermore, it hints at the importance of seeing the state and the people as a father and son relationship. Consequently, the Indonesian theory of state is unitary and does not recognise the duality between state and its people. Instead, they are united to achieve "total happiness that can only be attained when we [are] ready to sacrifice and to serve the interests of humanity, and of our society, nation and state" (Mulder 2004, 106).

Kakawin — This refers to Indonesia's ancient literary genre that serves to provide a magico-religious mantle to the political regime that sponsored its writing process. They were written by *kawi* (palace poets) who were believed to have access to the sublime or God. Hence, the importance of *kakawin* relates to its perceived magical quality. For that reason, it is also known as "verbal magic" (Berg 1965, 90).What makes *kakawin* illuminating in the context of this study is its magical quality which derives from its use of Sanskrit, the language of Gods. Thus, one can understand the Pancasilaists' rationale to heavily utilise Sanskrit words to present their concepts. Moreover, the symbolic use of Sanskrit words is not only pre- or non-Islamic, but also signifies its folk religious sensibility.

Kasar — This is best translated as coarse, and the opposite of *alus*; thus *kasar* is in essence an attribute that one must avoid. This trait is associated with those that are described as "not yet Javanese," i.e. the mad, the simple-minded, and children (Sutarto 2006, 41; Geertz 1976, 247). The significance of avoiding *kasar* is communicated in *Wayang* (shadow puppetry) through its symbolic connection with the impolite giant, a widely disliked character (Poedjosoedarmo 1968, 55). Ultimately, "bluntness is simply not a virtue . . . Often it is not necessary to come to the point at all—a great relief for everyone" (Geertz 1976, 245).

Kebatinan — This Indonesian word refers to the essence of Indonesia's folk religious traditions. While *kebatinan* is commonly translated as a form of mysticism, its prominent practitioners believe that it represents something much greater. It is *Kepercayaan*; that is, the "science of inner human," in juxtaposition with the "science of the soul" and "spirituality" (Mulder 2004, 24). The very notion of *kebatinan* implies that this is the "quest for communication with the ultimate reality" (Mulder 1978, 20), and hence it takes monism, the belief that God permeates everything, as its common denominator. For that reason, the second congress of the *kebatinan* movement proclaimed that their teaching was the "basic source and the principle of Oneness of God" (Mulder 1978, 21). Thus Suharto, Indonesia's second president, suggested that "the building block of *Pancasila* was the *ilmu kasunyatan* (highest [folk] wisdom) that comes from the practices of *kebatinan, or* Javanese mysticism" (Raillon 2011, 94).

Kepercayaan — The term "Kepercayaan" directly translates as "belief" and implies a religious belief system of lesser quality compared to "agama" or the true religion. The term was introduced as

	a response to pressure from folk religious activists seeking constitutional recognition for their folk religious traditions. This is a constitutional strategy aimed at granting equal legal status to Indonesia's folk religious traditions, akin to world or scriptural religions (Nalle 2021, 564; Butt 2020, 460–62). A significant milestone in this endeavor was the 2019 decision of the Constitutional Court to mandate that the government facilitate inclusion of *Kepercayaan* practitioners' faith on their ID cards, a privilege reserved for followers of Indonesia's six officially recognised religions (Nugroho 2019). While this decision falls short of ensuring substantive equality for *Kepercayaan* adherents, it has catalysed limited administrative reforms to address discrimination in various regions of Indonesia (Butt 2020, 470–71).
Manunggaling Kawulo Gusti	This is a, if not "the," central concept in Indonesia's folk religious traditions and refers to the ultimate religious condition, experience, or stage where one merges with the ultimate reality (mystica union). It is also known as "jumbuhing kawula lan gusti" (eternal unity of servant and master). In Indonesia's Indic religious traditions, this is known as Shiva-Buddha, the supposition that Shiva and Buddha are not different and hence one and the same, or *Bhinneka Tunggal Ika* or "unity in diversity." After the "Islamisation" of Indonesia, this becomes *Marifat*. In independent Indonesia, this was manifested in *Pancasila,* a synthesis of various political philosophies and an expression of the unification of the Indonesian people into Indonesia. Ultimately, this is the mythico-religious reason underpinning Indonesia's preference for a unitary state, implying the main folk religious assumption that the moral and spiritual conditions of a person and society are critical for the creation and maintenance of *rukun* in both worldly and cosmological settings.
Oneness of God	In Indonesian, this first principle of *Pancasila* is known as "Ketuhanan Yang Maha Esa." The Puritans believe that this is the most supreme of all Indonesia's principles or *sila*. For Islamist Puritans, this simply means monotheism. By implication, Indonesia must be aligned with the model embodied in monotheistic religious belief systems and Islam in particular. Nonetheless, this is a multivalent concept. In its first iteration, it is simply articulated as "Ketuhanan" (the Divine or God"), without the "Yang Maha Esa" (or "The Only One"). Thus, it is arguable that "Ketuhanan" refers to *rasa* or the folk notion of God, not the transcendent concept of God as the Puritans would understand it. As a reference

to *rasa*, this principle recognises the primacy of the communal way of life in which "the various sphere of human behavior . . . are all interconnected that no action in one area is possible without a decisive effect on the others" (van der Kroef 1954, 226). Despite the Puritans' insistence to add the adjective "the Only One," it is still difficult to interpret this principle as Islamic because Indonesia's folk religious traditions are rooted in the conviction that all things in existence are part of the same unified oneness, or monism. Hence, for the Pancasilaists, this principle refers to *Manunggaling Kawulo Gusti* (van der Kroef 1954, 235–36).

Pancasila

First introduced by Sukarno as Indonesia's "amulet," *Pancasila* is now widely consecrated as Indonesia's translation of Hans Kelsen's *grundnorm* (Latif, n.d., 8–9). Therefore, every statutory or legal norm must be consistent with *Pancasila*. However, it is not a concept that one can easily grasp as it is BPUPKI's strategy to give the state the means to engage in a "dialogic process" between the pressure of the Islamisation and the persistence of Indonesia's folk religious traditions. As a thorough survey on the field of "Pancasila studies" has indicated, *Pancasila* is presented as a mantra that integrates the Indonesian people and "has been with us since the [times of] Sriwijaya and Majapahit [Kingdoms]. It is our *Volkgeist*; . . . It is our soul, our personality, . . . It is a way of life; we must be guided this *Weltanschauung*. It is the source of our laws. It is our noble promise" (Mulder 2000, 70). This suggests *Pancasila*'s essence as a multifaceted and therefore syncretic concept. Etymologically derived from Pali, *Pancasila* translates to "the five columns or pillars," indicating its Buddhist origin. Nevertheless, it can also be interpreted as reflecting Islam's five pillars. Consequently, Sukarno envisions *Pancasila* as the culmination of his lifelong endeavors, aiming to harmonize his nation's significant political factions of cultural conservatism, communism, and Islamism. The objective that was discussed during a dinner gathering could now be actualized at a national scale (Reybrouck 2024, 277). Indonesia's *Pancasila* thus serves as the nation's civil religion, characterised by Javanese symbolism and tonality, yet strives for inclusivity across diverse demographic groups including Sumatrans, Christians, Papuans, Jakartans, Hindus, and the Chinese community (Geertz 1990, 79, 80).

Rasa

This word originates from the Sanskrit, *rasa*. As chapter 1 has argued, the Indonesian understanding of *rasa* is not a straightforward translation of the Indian word. It is a syncretism of the Austronesian concept of *sumanged* (spirit

	or soul) with the Indian *rasa*. What makes *rasa* important is its status as a symbol for Indonesia's mystical reasoning in which the moral and spiritual conditions of an individual are critical for the welfare of both the human and divine worlds. Moreover, *rasa* enables virtually every Indonesian "to develop a phenomenological analysis of subjective experience to which everything else can be tied" (Geertz 1976, 239). Thus, it is through *rasa* that one can really attune and know the *alus*, defined as the ultimate best path forward (Errington 1984, 281).
Religious Syncretism	Defined as the condition in which two or more religious traditions are fused and exist within one religious belief system. The reason is twofold. The first has something to do with *rasa* (Ninin 2020, 112), While the second relates to the proposition that every religion is in essence similar (Geertz 1976, 336–37). The Balinese, for instance, did not resist the new religious ideas. They simply extracted what they considered to be the most beautiful of the Hindu symbols and myths and incorporated them into the old Balinese religion. The resulting synthesis of beliefs created a complex theological system which remains unique (Jenkins 1978, 48).
Rukun	This study translates *rukun* as "harmony," and refers to a psycho-mythical condition in which quietness and peacefulness prevail, "like the ideal relationship among friends in which quarrel and strife are absent but united in purpose while mutually helping together" (Mulder 1978, 39). In Indonesia's folk religious traditions this is the overarching goal (Geertz 1976, 47–48; Magnis-Suseno 1993, 81). In a word, life in society should be characterised by *rukun*. In particular this finds its expression in the folk practice called *gotong royong* (mutual help), see above. It is believed that *rukun* is the spirit of communal life that animates the mythical *désa*. Hence, it is not surprising that key concepts such as *Pancasila* and *Bhinneka Tunggal Ika* have often been presented as the conscious national effort to achieve rukun and avoid conflict ("Nilai-Nilai Toleransi Dan Kerukunan Tertanam Dalam Pancasila [The Spirit of Tolerance and Harmony Are Entrenched in *Pancasila*]" 2022; "BPIP: Pancasila Kunci Hidup Rukun Dan Bahagia [BPIP: *Pancasila* Is the Key to Harmonious and Happy Life]" 2021).
Sakti	This refers to an Indic idea of power and emphasises the importance of unity for power to exist (Anderson 1990, 28). The condition of unity is also a reference to the sought after mystical state that one can only accomplish through *ngesti,*

	"an attempt to unify all the powers of the individual and direct them toward a single end" (Geertz 1976, 321). This suggests that it might be a derivative of *Kawulo Manunggaling Gusti* and/or religious syncretism which also implies the accumulation of power (Anderson 1990, 23). One case in point is *Pancasila*. Considering that it was designed as an ideological ground upon which all the about-to-be- created Indonesians might stand and upon which a parliamentary system could consequently be founded, *Pancasila* has been widely understood as a signifier of power (Geertz 1966, 87; Kelly 2010, 218–19). Hence, *Pancasila* is *sakti* (Makin, n.d.; "Monumen Pancasila Sakti [the Monument of Pancasila Sakti]" 2021). Furthermore, since it is embedded in the preamble of the 1945 Constitution, the preamble must therefore not be subjected to any amendment.
Semangat	In various regional languages in Indonesia, it is also known as *sumanged* and refers to the essence of things. It is believed that 1945 was the year that was filled with *semangat* and that it reflects "the *semangat* (spirit) of unity and mutual collaboration among the entire people of Indonesia in an effort to achieve the national independence" ("Kenapa Dan Apa Itu "Semangat 45" [Why and What Is 'Semangat 45']" 2023). Given that 1945 was the year it was written, the 1945 Constitution is therefore believed to be the embodiment of *semangat*.
Slametan	Best translated as "communal feast," *slametan* is the folk ritual at the core of Indonesia's folk religious system. The supposition behind this ritual is "to secure [the host, the host family, the attendances] that peculiarly negative state of bodily and mental equanimity the Javanese call *slamet*" (Geertz 1976, 13). To be clear, *slamet* is 'a state in which events will run their fixed course smoothly and nothing untoward will happen to anyone' (Koentjaraningrat 1960, 95). Thus, *slametan* can be interpreted as "well designed both to 'tune up the ultimate value attitudes' necessary to the effective integration of a territorially-based social structure, and to fulfill the psychological needs for intellectual coherence and emotional stability characteristic of a peasant population" (Geertz 1957, 36). Hence, *slametan* is a socio-religious mechanism to achieve the two overarching folk religious ideals; that is, communal unity (*persatuan*) and communal harmony (*rukun*).
Sufism	The significance of this Islamic form of mysticism lies in its role as a conduit for the enduring presence of Indic political thought. It can be contended that Sufism has facilitated the

	ongoing legitimacy of Indic political thought amid the growing Islamisation of the 1945 constitutional order, given the shared basis of religious relativism and pursuit of mystical unity between the Lord and the servant in both Sufism and Indic political thought.
Sukarno	Sukarno believed himself to be a syncretic manifestation of Indonesia and is probably the most important figure in Indonesia's independence movement. "For him the most important thing was that all nationalist movements first be brought closer together, and that they begin with the common discussion which had so long been shunned by the movement" (Dahm 1969, 81). More specifically, Sukarno "has consistently advocated 'Mother Indonesia,' superior 'Eastern' soul and the 'Indonesian personality' consistently since 1926 and to have felt that the future political structure should reflect these indigenous reality" (Reeve 1985, 31). It was Sukarno who articulated *Pancasila* which by implication is a symbolic rejection of Islam as Indonesia's *dasar negara* (Reeve 1985, 27). His reason was that: "I knew we couldn't found our nation on the Constitution of the United States of America. Nor on the Communist Manifesto. [They] couldn't borrow anybody's way of life, including Japan's Tenno Koodoo Seishim. . . [For that reason,] [i]n friendless Flores [island], [I was] spending incalculable hours under [his] private tree pondering, the actual of this God-sent inspiration which has since been termed *Pancasila* . . . came to me. I do not say I created *Pancasila*. What I did was to dig way down deep into the soil of our own traditions and I came up with five beautiful pearls" (Sukarno 1965, 197).
Supomo	Arguably, Supomo was one of the most influential members of BPUPKI. He played a prominent role in the formulation of various concepts underpinning the 1945 constitutional order. In fact, he single-handedly authored the Annotation to the 1945 Constitution. Most, if not all, of his conceptual contributions were based on his familiarity with adat law, a subject he studied under the supervision of the father of *adat* law, Cornelis Van Vollenhoven. In addition, Supomo's socio-cultural background as a Javanese aristocracy may have influenced his conceptual contribution.
Van Vollenhoven, Cornelis	Van Vollenhoven is the most important figure for the constitutional vision of the Pancasilaists. Virtually all Indonesian lawyers who graduated from Leiden University in The Netherlands wrote their dissertations under his supervision or that of his close colleagues (Fasseur 2007, 63). Through his concept of *adat* law, Van Vollenhoven held

	that there were essential common elements which united them and at the same time set them apart from European legal institutions (Burns 2007, 68). With this postulate, Indonesia's Leiden graduates went on to advocate the idea that Indonesia was one unit with a shared foundation and hence had its own notion of constitutionalism.
Wayang	*Wayang*, commonly interpreted as a shadow play, holds significance beyond art discourse. Most of its narratives are adaptations of the *Ramayana* and the Mahabharata (Meyer 2016, 1). The puppets are in many ways a representation of Javanese existence, depicting human life within that cultural milieu (Zoetmulder 1974, 202). Its imagery is pervasive in Java and serves as metaphors not only for daily affairs, but also for political and religious life (Keeler 1987, 15). Through the mythology of *Wayang*, one can comprehend the thought world of most of Indonesia's folk religious traditions (Anderson 1996, 17–18). Moreover, its enduring significance is evident in its appropriation by Indonesian Islam as the creation of Sunan Kali Jaga, a folk mythical figure credited with the Islamisation of Java (Geertz 1976, 123). By being attributed to Sunan Kali Jaga, *Wayang* becomes a legitimate source of ethical and moral guidance in Islamised Indonesia.
Wedyodiningrat, Radjiman	To articulate the conceptual foundation of independent Indonesia, Sukarno appointed Wedyodiningrat as the chairman of BPUPKI, in recognition of him being a devout practitioner of Javanese folk religious traditions, exemplified in his role as a founder of Budi Utomo. In the period of 1918-31, Wedyodiningrat was a member of the *Volksraad*, the colonial house of representatives. He also served as the physician of the Solo Palace, a cultural center of Javanese folk religious traditions.
Yamin, Muhammad	Yamin was one of the most influential figures as the earliest and most prolific author on Indonesian constitutionalism, and responsible for some of its most important concepts. Despite being a Minangkabau descent, Yamin wholeheartedly accepted the idea of Indonesia as a cultural unit transcending ethnic boundaries.

APPENDIX 2

The Text of the 1945 Constitution

Note: This version is a reproduction of the translated version of the document by Professors Helen Pausacker and Tim Lindsey. I gratefully acknowledge their permission to include it in my dissertation.

The 1945 Constitution, before amendment (18 August 1945)	**The 1945 Constitution, as amended at 17 August 2002**
Preamble	Preamble
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	No Change

humanity, the unity of Indonesia, democracy guided by the inner wisdom of deliberations amongst representatives and the realization of social justice for all of the people of Indonesia.	
Chapter I: Form of the State and Sovereignty Article 1	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.	1. The State of Indonesia is a unitary state which has the form of a republic. 2. Sovereignty is in the hands of the people and is exercised in accordance with the Constitution. 3. The Indonesian State is a state ruled by law (*negara hukum*).
Chapter II: The Majelis Permusyawaratan Rakyat ("People's Consultative Assembly")	Chapter II: The People's Consultative Assembly
1. The Majelis Permusyawaratan Rakyat or "MPR" shall consist of the members of the *Dewan Perwakilan Rakyat* or DPR ("People's Representative Council") augmented by the delegates from the regional territories and groups as provided for by statutory regulations. 2. The MPR shall meet at least once in every five years in the State capital. 3. All decisions of the MPR shall be taken by a majority vote.	1. The People's Consultative Assembly shall consist of the members of the *Dewan Perwakilan Rakyat* ("People's Representative Council") and the members of the *Dewan Perwakilan Daerah* or "DPD" ("Regional Representative Council"), who shall be chosen in general elections, and further regulated by law. 2. No change 3. No change
Article 3	Article 3 1. The MPR shall amend and determine the Constitution.

The MPR shall determine the constitution and the guidelines of the policy of State.	2. The MPR shall appoint the President and/or the Vice President. 3. The MPR may only remove from office the President and/or the Vice President during their terms of office in accordance with the Constitution.
Chapter III. The Executive Power Article 4	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.	1. No change 2. No change
Article 5 1. The President shall hold the power to make statutes in agreement with the DPR. 2. The President shall make government regulations to expedite the enforcement of laws.	Article 5 1. The President has the right to submit Bills to the Dewan Perwakilan Rakyat. 2. No change
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 6 1. Candidates for the President and the Vice President must have been Indonesian citizens since birth, must never have taken other citizenship of their own accord, must never have committed treason, and must be spiritually and physically able to carry out the duties and obligations of the President and Vice-President. 2. Further conditions for becoming President and Vice President shall be regulated by law. Article 6A 1. The President and the Vice President shall be elected as a pair directly by the people. 2. The pairs of Presidential and Vice-Presidential candidates shall be proposed by political parties or groups of political parties that participate in general elections, before the general elections are conducted. 3. The Presidential and Vice-Presidential candidate pair that receives more than fifty per cent of the number of votes in the general elections, and receives no less than twenty per cent of the votes in a province in a majority of provinces, shall be appointed President and Vice President.

	4. In the event that no Presidential and Vice-Presidential candidate pair is elected, the people shall directly choose between the two candidate pairs that received the most number of votes in the general elections, and the pair that receives the highest number of votes shall be appointed President and Vice President. 5. Further procedures for conducting the election of the President and the Vice President shall be regulated by law.
Article 7 The President and Vice-President shall hold office for a term of five years and shall be eligible for re-election.	Article 7 The President and Vice-President shall hold office for a term of five years, and shall be eligible for re-election to the same office for one further term. Article 7A The President and/or the Vice President may be removed from office during their term by the MPR on the advice of the DPR, if they are either proven to have violated the law by engaging in treason, corruption, bribery, another serious criminal offence, or disgraceful conduct, or proven to no longer fulfil the requirements of the office of President and/or Vice President. Article 7B 1. A advice to remove the President and/or Vice President from office may only be submitted by the DPR to the MPR if it has already requested the Mahkamah Konstitusi or "MK" ("Constitutional Court") to investigate, try, and decide on the opinion of the DPR that the President and/or the Vice President has violated the law by engaging in treason, corruption, bribery, another serious criminal offence, or disgraceful conduct, and/or the opinion that the President and/or the Vice President no longer fulfil the requirements of the office of President and/or Vice President. 2. The opinion of the DPR that the President and/or the Vice President have committed such violations of the law or no longer fulfil the requirements of the office of President and/or Vice President is in the course of carrying out the supervisory function of the DPR. 3. A request by the DPR to the MK may only be submitted with the support of at least two-thirds of the number of members of the DPR present at a

	plenary session that is attended by at least two-thirds of the total number of members of the DPR. 4. The MK is obliged to investigate, try and decide with the greatest possible justice and fairness on this opinion of the DPR no more than ninety days after the request of the DPR is received by the MK. 5. If the MK has decided that the President and/or the Vice-President has been proven to have violated the law by engaging in treason, corruption, bribery, another serious criminal act, or disgraceful conduct, and/or it is proven that the President and/or the Vice President no longer fulfil the requirements of the office of President and/or Vice-President, the DPR shall hold a plenary session to submit advice for the removal from office of the President and/or the Vice-President to the MPR. 6. The MPR is obliged to hold a session to decide on this advice of the DPR no later than thirty days after the MPR receives the advice. 7. The decision of the MPR on the advice for the removal from office of the President and/or Vice-President must be made in a plenary session of the MPR that is attended by at least three-quarters of the total number of members and with the approval of at least two-thirds of the number of members present, after the President and/or Vice-President has had an opportunity to provide an explanation in a plenary session of the MPR. Article 7C The President may not suspend and/or dissolve the DPR
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 8 1. If the President should die, resign, be removed from office, or become unable to perform his or her duties during his or her term of office, then he or she shall be replaced by the Vice-President for the remainder of the term. 2. If the office of Vice-President becomes vacant, the Majelis Permusyawaratan Rakyat shall hold a session within sixty days to elect a Vice President from two candidates proposed by the President. 3. If the President and the Vice-President should die, resign, be removed from office, or become unable to perform their duties during their term of office at the same time, the joint executors of presidential duties shall be

	the Minister for Foreign Affairs, the Minister for Internal Affairs, and the Minister of Defence. Within thirty days, the Majelis Permusyawaratan Rakyat must hold a session to elect a President and a Vice President from two pairs of Presidential and Vice-Presidential candidates proposed by the political parties or groups of political parties whose Presidential and Vice Presidential candidate pairs received the first and second highest number of votes in the previous general election, for the remainder of the current 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 MPR or the DPR 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 9 1. Before assuming office, the President and the Vice-President shall take the oath of office according to their religions, or solemnly promise before the MPR or the DPR 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." 2. If the MPR is unable to hold a session, the President and the Vice President shall swear according to their religion or solemnly promise before the leadership of the Majelis Permusyawaratan Rakyat, witnessed by the leadership of the Supreme Court.
Article 10 The President is the Supreme Commander of the Army, the Navy and the Air Force.	Article 10 No change
Article 11	Article 11

In agreement with the DPR, the President declares war, makes peace and concludes treaties with other states.	1.In agreement with the Dewan Perwakilan Rakyat, the President declares war, makes peace and concludes treaties with other states. 2. The President must have the agreement of the Dewan Perwakilan Rakyat in order to conclude other international treaties that have wide and profound effects on the life of the people relating to the financial burden of the State, and/or that necessitate the amendment or enactment of laws. 3. Further stipulations concerning international treaties shall be regulated by law.
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 12 No change
Article 13 1. The President appoints ambassadors and consuls. 2. The Presidents receives the credentials of foreign ambassadors.	Article 13 1. The President appoints ambassadors and consuls. 2. In appointing ambassadors, the President shall have regard to the advice of the DPR. 3. The President shall receive the appointment of ambassadors of other countries, having regard to the advice of the DPR.
Article 14 The President grants mercy, amnesty, pardon and restoration of rights.	Article 14 1. The President shall grant pardons and restoration of rights, having regard to the advice of the Supreme Court. 2. The President shall grant amnesties and abolitions, having regard to the advice of the Dewan Perwakilan Rakyat.
Article 15 The President grants titles, decorations and other distinctions of honour.	Article 15 The President shall grant titles, decorations and other distinctions of honour as provided for by law.
Chapter IV. The Supreme Advisory Council Article 16 1. The composition of the Supreme Advisory Council shall be regulated by law.	Article 16 The President shall form an advisory council, which has the task of providing advice and counsel to the President, to be further regulated 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 V. The Ministers of State Article 17 1. The President shall be assisted by Ministers of State. 2. These Ministers shall be appointed and dismissed by the President. 3. Each Minister shall hold a particular portfolio in government. 4. The formation, modification and dissolution of the State Ministries shall be regulated by law.
Chapter VI. The Regional Governments Article 18 The division of the territory of Indonesia into large and small regions shall be regulated by law in consideration of and with due regard to the principles of deliberation in the government system and the inherited rights of the Special Regions.	Chapter VI. The Regional Governments Article 18 1. The Unitary State of the Republic of Indonesia shall be divided into Provinces and these Provinces divided into Regencies (*kabupaten*) and Towns, and each of these Provinces, Regencies and Cities shall have Regional Governments, regulated by law. 2. The Regional Governments of Provinces, Regencies and Towns shall themselves regulate and administer matters of government on the basis of autonomy and the duty of assistance. 3. The Regional Governments of Provinces, Regencies and Towns shall have Regional People's Representative Councils (Dewan Perwakilan Rakyat Daerah) whose members are elected in general elections. 4. Governors, Regents and Mayors shall be the respective heads of the Regional Governments of the Provinces, Regencies and Towns and shall be democratically elected. 5. The Regional Governments shall implement autonomy to the fullest extent except in matters of government that are determined by law to be matters for the Central Government. 6. The Regional Governments have the right to enact regional regulations and other regulations in order to implement autonomy and the duty of assistance.

	7. The structures and procedures for the administration of regional government shall be regulated by law. Article 18A 1. The relationship between the authority of the Central Government and that of the Regional Governments of Provinces, Regencies and Towns, or between the authority of the Provinces and that of the Regencies and Towns, shall be regulated by law, having regard to the uniqueness and diversity of the regions. 2. The relationships of finance, public services, and the utilisation of natural resources and other resources between the Central Government and the Regional Governments shall be regulated and implemented justly and harmoniously in accordance with law. Article 18B 1. The State recognises and respects particular Provincial Governments which have a special or unique status that is regulated by law. 2. The State recognises and respects the individual communities of traditional law and their traditional rights as long as they survive, and in accordance with the development of the community and the principle of the Unitary State of the Republic of Indonesia, as regulated by law.
Chapter VII. The Dewan Perwakilan Rakyat or DPR ("People's Representative Council") Article 19 1. The composition of the DPR shall be regulated by law. 2. The DPR shall meet at least once a year.	Chapter VII. The Dewan Perwakilan Rakyat or DPR ("People's Representative Council") Article 19 1. The members of the DPR shall be elected in a general election. 2. The composition of the DPR shall be regulated by law. 3. The DPR shall meet at least once a year.
Article 20 1. Every law shall require the approval of the DPR. 2. Should a bill not obtain the approval of the DPR, the bill shall not be resubmitted during the same session of the DPR.	Article 20 1. The DPR shall have the power to make laws. 2. Every Bill shall be discussed by the DPR and the President in order to reach mutual assent.

	3. If a Bill does not obtain mutual assent, the Bill shall not be resubmitted during the same session of the DPR. 4. The President shall sign into law those Bills that have obtained mutual assent. 5. In the event that a Bill that has obtained mutual assent is not signed into law by the President within thirty days from the time it was mutually assented to, the Bill may legitimately become law and must be enacted as law. Article 20A 1. The DPR shall have legislative, budgetary, and supervisory functions. 2. In carrying out its functions, besides the rights provided for elsewhere in this Constitution, the DPR has the right of interpellation, the right of *angket* [that is, the right to carry out inquiries], and the right to express its opinion. 3. Besides the rights provided for elsewhere in this Constitution, each member of the DPR has the right to submit questions, the right to convey suggestions and opinions and a right of immunity. 4. Further stipulations concerning the rights of the Dewan Perwakilan Rakyat and the rights of the members of the Dewan Perwakilan Rakyat shall be regulated by law.
Article 21 1. The members of the DPR 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 21 No change
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 must obtain the assent of the Dewan Perwakilan Rakyat during its subsequent session.	Article 22 No change Article 22A

3. Where the approval of the Dewan is not obtained, the government regulations shall be revoked.	Further stipulations concerning the procedures for the enactment of laws shall be regulated by law. Article 22B The members of the Dewan Perwakilan Rakyat may be removed from office, in accordance with conditions and procedures provided by law.
	Chapter VIIA. The Dewan Perwakilan Daerah or "DPD" ("Regional Representative Council") Article 22C 1. The members of the DPD are elected from each Province through general elections. 2. The members of the DPD from each Province shall be of equal number, and the total number of members of the DPD shall be no more than one-third of the members of the DPR. 3. The DPR shall sit in session at least once a year. 4. The structure and position of the DPD shall be regulated by law. Article 22D 1. The DPD can submit Bills to the DPR that relate to regional autonomy; the relationship between the centre and the regions; the formation, development and inclusion of the regions; the management of natural resources and other economic resources; and the fiscal balance between the centre and the regions. 2. The DPD participates in the discussion of Bills that relate to regional autonomy; the relationship between the centre and the regions; the formation, development and inclusion of the regions; the management of natural resources and other economic resources; and the fiscal balance between the centre and the regions; and it also submits its advice to the DPR regarding Bills concerning the State Budget and Bills concerning taxes, education and religion. 3. The DPD may supervise the implementation of laws concerning: regional autonomy; the formation, development and inclusion of the

	regions; the relationship between the centre and the regions; the management of natural resources and other economic resources; the implementation of the State Budget; taxes; education; and religion; and to submit the results of its supervision to the Dewan Perwakilan Rakyat as material for consideration and further action. 4. The members of the DPD may be removed from office in a manner that complies with conditions and procedures regulated by law.
Chapter VIII. Finance Article 23 1. The annual state budget shall be determined by law. In the event that the DPR 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 DPR.	Chapter VIII. Finance Article 23 1. The State Budget, as the realisation of the management of the finances of the State, shall be determined each year by law and implemented openly and with accountability for the greatest prosperity of the people. 2. The State Budget Bill is submitted by the President to be discussed with the DPR and taking into consideration the advice of the DPR. 3. If the DPR does not agree to the State Budget Bill submitted by the President, the Government shall adopt the State Budget of the preceding year. Article 23A Taxes and other levies for the needs of the State that are compulsory in nature shall be regulated by law. Article 23B The forms and denominations of the currency shall be regulated by law. Article 23D The State possesses a central bank, the structure, position, authority, responsibilities, and independence of which are regulated by law.
	Chapter VIIIA. The Audit Board Article 23E

	1. In order to review the management of and responsibility over the finances of the State, a free and independent Audit Board shall be formed. 2. The results of an audit of the finances of the State shall be submitted to the DPR, the DPD, and the DPRD, in accordance with their respective authority. 3. The results of such an audit shall be acted on by a representative body and/or another board in accordance with the law. Article 23F 1. The members of the Audit Board are chosen by the Dewan Perwakilan Rakyat, taking into consideration the advice of the Dewan Perwakilan Daerah, and approved by the President. 2. The Chairperson of the Audit Board shall be elected from and by its members. Article 23G 1. The Audit Board shall be located in the capital city, and have representative offices in each province. 2. Further provisions regarding the Audit Board shall be determined by law.
Chapter IX. The Judicial Power Article 24 1. The judicial power is exercised by a Supreme Court and other such courts of law as are provided for by law. 2. The composition and powers of these legal bodies shall be regulated by law.	Chapter IX. The Judicial Power Article 24 1. The judicial power is the independent power to maintain a system of courts with the objective of upholding law and justice. 2. The judicial power is exercised by a *Mahkamah Agung* ("Supreme Court") and the courts below it in the respective environments of public courts, religious courts, military courts, administrative courts and by a MK (Constitutional Court). 3. Other bodies with functions that relate to judicial power are regulated by law. Article 24A

	1. The Supreme Court has the authority to hear matters at the level of cassation, to review regulations that are below legislation against the legislation, and it has other authority as determined by law. 2. Justices of the Supreme Court must possess integrity and irreproachable character and be just, professional, and have experience in the field of law. 3. Candidates for Justices of the Supreme Court shall be submitted by the Judicial Commission to the Dewan Perwakilan Rakyat for approval and then be confirmed by the President. 4. The Chief Justice and Deputy Chief Justice of the Supreme Court shall be elected from and by the Justices of the Supreme Court. 5. The structure, position, membership and procedures of the Supreme Court and the legal bodies below it shall be regulated by law. Article 24B 1. An independent Judicial Commission shall have the authority to suggest the appointment of Justices of the Supreme Court and shall have further authority to protect and uphold the honour, dignity and the good behaviour of judges. 2. The members of the Judicial Commission must possess knowledge and experience in the field of law, integrity, and irreproachable character. 3. The members of the Judicial Commission are appointed and removed by the President with the agreement of the DPR. 4. The structure, position and membership of the Judicial Commission shall be regulated by law. Article 24C 1. The Mahkamah Konstitusi or MK ("Constitutional Court") has the authority to hear matters at the lowest and highest levels and to make final decisions in the review of legislation against the Constitution, the settlement of disputes regarding the authority of State bodies whose authority is given by the Constitution, the dissolution of political parties, and the settlement of disputes concerning the results of general elections.

	2. The MK has the duty to adjudicate on the opinion of the Dewan Perwakilan Rakyat regarding allegations of misconduct by the President and/or the Vice President in accordance with the Constitution. 3. The MK is comprised of nine constitutional judges who are appointed by the President, of whom three are proposed by the Supreme Court, three by the Dewan Perwakilan Rakyat, and three by the President. 4. The Chairperson and Vice Chairperson of the MK are elected from and by the constitutional judges. 5. Constitutional judges must possess integrity and irreproachable character, be just, be statespersons who fully understand the Constitution and administrative law, and must not hold government office. 6. The appointment and removal of constitutional judges, the procedural rules of the MK and other provisions regarding the MK shall be regulated by law.
Article 25 The appointment and dismissal of judges shall be regulated by law.	Repealed
	Chapter IXA. The Territory of the State Article 25A The Unitary State of the Republic of Indonesia is an archipelagic State which possesses territory, the demarcations and the rights of which are determined by law.
Chapter X. The Citizens Article 26 1. Citizens are native Indonesian persons and 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.	Chapter X. Citizens and Inhabitants Article 26 1. Citizens are native Indonesian persons and persons of other nations who have acquired a legal status as citizens. 2. Inhabitants are Indonesian citizens and foreign persons who reside in Indonesia. 3. Matters relating to citizens and inhabitants are regulated by law.
Article 27	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.	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. 3. Every citizen has the right and duty to participate in the defence of the nation.
Article 28 Freedom of association and assembly, of verbal and written expression and the like, shall be regulated by law.	Article 28 No change
	Chapter XA. Human Rights Article 28A Each person has the right to live and has the right to defend their life and their living. Article 28B 1. Each person has the right to form a family and to continue their family line through legitimate marriage. 2. Each child has the right to viable life, growth and development, and to protection from violence and discrimination. Article 28C 1. Each person has the right to develop themselves through the fulfilment of their basic needs, the right to education and to obtain benefit from science and technology, art and culture, in order to improve the quality of their life and the welfare of the human race. 2. Each person has the right to advance themselves in struggling to obtain their collective rights to develop their community, their people, and their nation. Article 28D 1. Each person has the right to the recognition, the security, the protection and the certainty of just laws and equal treatment before the law.

	2. Each person has the right to work and to receive just and appropriate rewards and treatment in their working relationships. 3. Each citizen has the right to obtain the same opportunities in government. 4. Each person has the right to citizenship. Article 28E 1. Each person is free to profess their religion and to worship in accordance with their religion, to choose their education and training, their occupation, their citizenship, their place of residence within the territory of the State and to leave it and to return to it. 2. Each person has the freedom to possess convictions and beliefs, and to express their thoughts and attitudes in accordance with their conscience. 3. Each person has the freedom to associate, gather, and express their opinions. Article 28F Each person has the right to communicate and to obtain information in order to develop themselves and their social environment, and the right to seek out, obtain, possess, store, process, and transmit information using any means available. Article 28G 1. Each person has the right to the protection of themselves, their family, their honour, their dignity, the property that is in their control, and the right to feel safe and to be protected from the threats of fear from doing or not doing something that is a basic right. 2. Each person has the right to be free from torture or treatment that lowers human dignity and has the right to obtain political asylum from other countries. Article 28H

	1. Each person has the right to physical and spiritual welfare, to have a home, to have a good and healthy living environment and to obtain health services. 2. Each person has the right to assistance and special treatment in order to gain the same opportunities and benefits in the attainment of equality and justice. 3. Each person has the right to social security that allows their full personal development as a human being. 4. Each person has the right to private property and this right may not be arbitrarily interfered with by anyone at all. Article 28I 1. The right to live, the right not to be tortured, the right to freedom of thought and conscience, the right not to be enslaved, the right to be individually recognized by the law, and the right not to be prosecuted under retrospective laws are basic human rights that may not be interfered with under any circumstances at all. 2. Each person has the fright to be free from discriminatory treatment on any grounds and has the right to obtain protection from such discriminatory treatment. 3. Cultural identity and the rights of traditional communities are respected in accordance with the continuing development of civilization over time. 4. The protection, advancement, upholding and fulfilment of basic human rights is the responsibility of the State, especially the Government. 5. In order to uphold and protect basic human rights in accordance with the principle of a democratic State ruled by laws, the implementation of human rights shall be guaranteed, regulated and provided for in regulations and legislation. Article 28J 1. Each person is obliged to respect the basic human rights of others in orderly life as a community, as a people, and as a nation.

	2. In the enjoyment of their rights and freedoms, each person is obliged to submit to the limits determined by law, with the sole purpose of guaranteeing recognition and respect for the rights of others and to fulfil the requirements of justice and taking into consideration morality, religious values, security, and public order in a democratic community.
Chapter XI. Religion Article 29 1. The State shall be based upon the belief in the Oneness of God. 2. The State shall guarantee all persons freedom of religion and freedom to worship according to their religion and belief.	Chapter XI. Religion Article 29 No change
Chapter XII. National Defence Article 30 1. Every citizen has the right and duty to participate in the defence of the country. 2. The rules governing defence shall be regulated by law.	Chapter XII. National Defence and Security Article 30 1. Each citizen has the right and duty to participate in national defence and security. 2. National defence and security is carried out through a system of universal people's defence and security by the Indonesian National Military and the State Police of the Republic of Indonesia, as the primary force, and the people, as supporting forces. 3. The Indonesian National Military is comprised of the Army, the Navy, and the Air Force as instruments of the State with the task of defending, protecting and preserving the unity and sovereignty of the State. 4. The State Police of the Republic of Indonesia is an instrument of the State that safeguards the security and order of the community, with the task of protecting, sheltering, and serving the community, and upholding the law. 5. The structure and position of the Indonesian National Military and the State Police of the Republic of Indonesia, the relationship of authority between the Indonesian National Military and the State Police of the Republic of Indonesia in carrying out their tasks, the requirements for the

	participation of citizens in national defence and security, and matters relating to defence and security shall be regulated by law.
Chapter XIII. Education Article 31 1. Every citizen has the right to education. 2. The government shall establish and conduct a national education system which shall be regulated by law.	Chapter XIII. Education Article 31 1. Each citizen has the right to education. 2. Each citizen is obliged to attend primary education and the Government is obliged to bear the cost. 3. The Government shall develop and maintain a national system of education that increases faith, God-consciousness and noble conduct, in the course of educating the people, which is regulated by law. 4. The State shall prioritize expenditures on education, so that it shall comprise at least 20%of the State Budget and Regional Budgets in order to fulfil the needs of national education. 5. The Government shall advance science and technology by respecting religious values and national unity, for the progress of human civilization and the welfare of the human race.
Article 32 The Government shall advance the national culture.	Article 32 1. The State shall advance the national culture of Indonesia among human civilisation by guaranteeing the freedom of the people to cultivate and develop their cultural values. 2. The State shall respect and cultivate regional languages as a national cultural treasure.
Article 33 1. The economy shall be organized as a common endeavour based upon the principles of the family system. 2. Sectors of production that 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 33 1. The economy shall be organised as a common endeavour based upon the principles of the family system. 2. Sectors of production that are important for the country and affect the lives of many 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 utilised for the greatest prosperity of the people. 4. The national economy is organized based on economic democracy and the principles of togetherness, efficiency of justice, sustainability,

	environmental awareness, self-sufficiency and by safeguarding the equilibrium between progress and the unity of the national economy. 5. Further stipulations concerning the implementation of this Article shall be regulated by law.
Article 34 The poor and destitute children shall be cared for by the State.	Article 34 1. The poor and destitute children shall be cared for by the State. 2. The State shall develop a system of social security for all the people and shall empower the weak and impoverished in accordance with human dignity. 3. The State shall be responsible for the provision of suitable healthcare facilities and public service facilities. 4. Further stipulations concerning the implementation of this Article shall be regulated by law.
Chapter XV. The Flag and the Language Article 35 The national flag of Indonesia shall be the Honoured Red-and-White.	Chapter XV. The Flag, the Language, the State Emblem and the National Anthem Article 35 No change
Article 36 The national language of Indonesia shall be the Bahasa Indonesia or the Indonesian language.	Article 36 No change Article 36A The State emblem is the Garuda Pancasila, with the motto, *Bhinneka Tunggal Ika*. Article 36B The national anthem is Indonesia Raya. Article 36C Further stipulations regarding the national flag, the national language, the State emblem and the national anthem shall be regulated by law.
Chapter XVI. Amendments to the Constitution	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.	Article 37 1. A proposal to amend the Constitution may be placed on the agenda of a session of the MPR if it is proposed by not less than one-third of the total number of members of the MPR. 2. Each proposal to amend the Constitution shall be submitted in writing and shall clearly show the parts which are proposed to be amended, with reasons. 3. In order to amend the Constititution, not less than two-thirds of the total number of members of the MPR must be present at the session. 4. Decisions to amend the Constitution shall be made with the agreement of not less than fifty per cent plus one member of the entire membership of the MPR. 5. The form of the Unitary State of the Republic of Indonesia may not be amended.
INTERIM PROVISIONS Article I The Preparatory Committee for Indonesian Independence shall arrange and implement the transfer of government to the Government of Indonesia. Article II All State bodies and regulations that exist shall continue to function until new bodies are formed under this Constitution. Article III The first President and Vice President will be chosen by the Preparatory Committee for Indonesian Independence. Article IV Until the Majelis Permusyawaratan Rakyat , the Dewan Perwakilan Rakyat and the Supreme Advisory Council are formed in accordance with this Constitution, their powers	INTERIM PROVISIONS Article I All regulations and legislation that are in force shall continue to have effect until new regulations and legislation are enacted under this Constitution. Article II All State bodies that exist shall continue to function in so far as they implement the provisions of this Constitution and until new bodies are formed under this Constitution. Article III The Constitutional Court shall be formed at the latest by 17 August 2003 and before its formation its authority shall be exercised in full by the Supreme Court. Article IV Repealed

will be fully exercised by the President, assisted by a National Committee.	
ADDITIONAL PROVISIONS Article I Within six months following the end of the Greater East Asia war, the President will arrange and implement all matters stipulated by this Constitution. Article II Within six months following the formation of the Majelis Permusyawaratan Rakyat, the Majelis will meet to confirm the Constitution.	ADDITIONAL PROVISIONS Article I The MPR shall carry out a review of the material and legal status of Provisional Decrees of the MPR and the Decrees of the MPR, to be decided on at the 2003 Session of the MPR. Article II With the finalisation of this amendment of the Constitution, the 1945 Constitution of the Republic of Indonesia is comprised of the Preamble and the Articles.

APPENDIX 3

List of Constitutional Symbols and Images

Image 1: *Pancasila*

The sunbird Garuda, the celestial mount of the Hindu deity Vishnu, is portrayed bearing a shield on its chest and holding a scroll in its talons. The shield displays five emblems, symbolising key principles of *Pancasila*, the national ideology of Indonesia. Clutching a white ribbon scroll inscribed with the national motto "*Bhinneka Tunggal Ika*" in black script, Garuda embodies the idea of "different and yet similar." This symbolism corresponds with the Garuda's role as Vishnu's mount, emphasising the preservation of cosmic harmony.

Great plians, CC BY-SA 4.0 <https://creativecommons.org/licenses/by-sa/4.0>, via Wikimedia Commons

Image 2: The National Monument (“Monas”)

The structure of Monas symbolizes the concepts of lingga (representing masculinity) and yoni (representing femininity), embodying notions of prosperity. The original concept was conceived by Sukarno. Additionally, Monas has been likened to the forms of *halu* (pestle) and *lesung* (mortar) used for rice pounding. The dimensions of Monas hold symbolic significance related to Indonesia’s Independence Day of August 17, 1945. Specifically, the height from the base to the *cawan* (grail) is 17 meters, corresponding to the date, while the height from the History Museum to the base of the grail is 8 meters, representing the month of August. Furthermore, the square-shaped grail measures 45 by 45 meters, symbolizing the year 1945.

Unknown source, CC BY-SA 4.0 <https://creativecommons.org/licenses/by-sa/4.0>, via Wikimedia Commons

Image 3: Borobudur

When observed from an aerial viewpoint, Borobudur is depicted as a monumental mandala, embodying the spiritual principles of architectural science. It signifies both the Buddhist cosmological beliefs and the core of consciousness. Similar to the grand temples in Northern India, Borobudur was conceived and consecrated to manifest the divine essence. It serves as a representation of divine presence and a miniature version of the universe. The ritual of circumambulating the structure symbolises the action of circling the world. The towering structure above the innermost sanctum is referred to as a shikhara, resembling a mountain summit, symbolically alluding to sacred mountains like *Kailasa* or Meru (Eck 2012, 77).

Unknown source, CC BY-SA 4.0 <https://creativecommons.org/licenses/by-sa/4.0>, via Wikimedia Commons

Image 4: *Slametan*

The *slametan*, a communal feast, serves as the central ritual in Indonesia's folk religious practices, representing the social cohesion among its participants. It is commonly held to commemorate various events such as birth, marriage, death, housewarming, and other significant occasions. While the mood and emphasis may differ based on the purpose, the fundamental framework remains consistent.

Tropenmuseum, part of the National Museum of World Cultures, CC BY-SA 3.0 <https://creativecommons.org/licenses/by-sa/3.0>, via Wikimedia Commons

Image 5: The Goddess of Rice/*Dewi Sri*/*Ibu Pertiwi*/Mother Earth/Indonesia

The Rice Deity is often associated or equated with the Hindu deity Lakshmi, the shakti (spouse) of Vishnu. However, the veneration of the rice deity in the Indonesian Archipelago, linked to Dewi Sri, has spread widely even in areas untouched by Indian cultural influences historically. Numerous stories about Dewi Sri focus on the mythical origins of the rice crop, a crucial food source for most Indonesians.

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Image 5: Banyan Tree as the Symbol of Indonesian Justice, used as the official logo of the Ministry of Law and Human Rights

The Banyan Tree embodies Indonesia's continuous endeavor towards prosperity and serves as a guiding and protective entity for the Indonesian people and their nation. The five semi-circle shapes comprising the tree represent *Pancasila*, symbolizing both transcendental and worldly wisdom. The color blue conveys attributes of confidence, security, orderliness, respectfulness, and knowledge. Meanwhile, the color gold signifies glory, wisdom, and thoughtfulness.

Source: The Ministry of Law and Human Rights of the Republic of Indonesia, CC BY-SA 4.0 <https://creativecommons.org/licenses/by-sa/4.0>, via Wikimedia Commons

Image 6: The Monument of the "*Pancasila* Sakti," or the "Magical Potent of *Pancasila*"

A monument was constructed to honor the failed effort of the Indonesian Communist Party to take over Indonesia. Inside the monument is the "Museum of *Pancasila*'s Magical Power," opened by ex-President Suharto on October 1, 1981. This museum displays nine dioramas showing the events before and after the coup try, along with items such as a diving apparatus used to recover bodies from a well. Moreover, the museum includes a cinema and a photo display.

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Image 7: Postage Stamp Propaganda for the “Return to the 1945 Constitution”

The issuance of these postage stamps was a deliberate endeavor aimed at legitimising the reintroduction of the 1945 Constitution. Among the significant contributions is a collection of treaties authored by Mohammad Yamin, which form the foundation of Indonesia's constitutional discourse.

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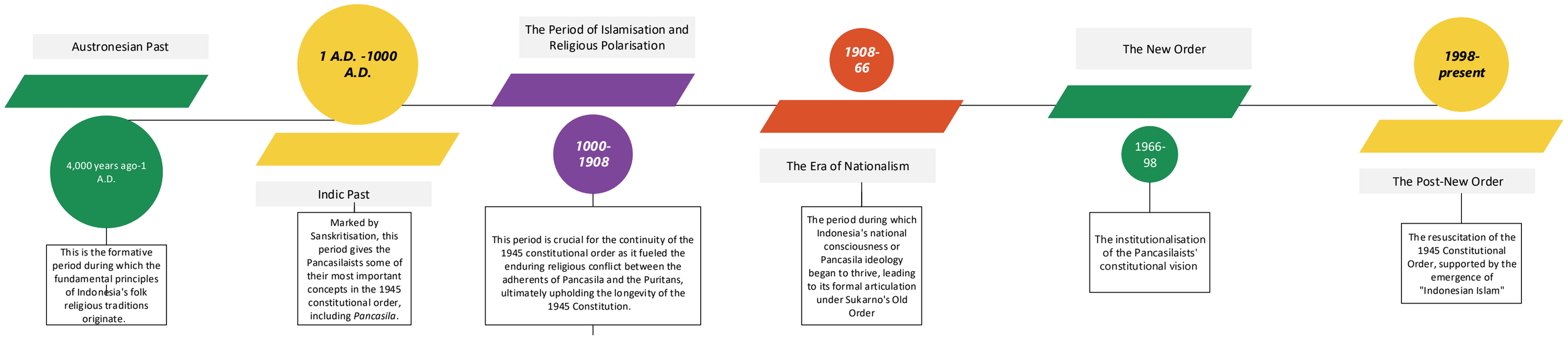
The Path to the 1945 Constitutional Order



The Transformation of Folk Religious Traditions into Indonesian Islam