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THE OFFICE OF PRESIDENT IN INDONESIA AS DEFINED IN THE THREE CONSTITUTIONS IN THEORY AND PRACTICE

A. K. PRINGGODIGDO
(translated by Alexander Brotherton)

TRANSLATION SERIES

MODERN INDONESIA PROJECT

Southeast Asia Program
Department of Far Eastern Studies
Cornell University
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PREFACE

In few countries, Asian or Western, has the presidency become so important an institution as in Indonesia. Because Indonesia's first president has been at the same time the most prominent leader of its revolution and successful struggle for independence, it is understandable that in a functional sense the office has considerably transcended its none too precise legal bounds. Soekarno, regarding himself still as leader of the Indonesian revolution as well as constitutional president, has not been content to limit his political role to any narrow interpretation of the area of presidential authority described in the current Indonesian Constitution. While during the period of Indonesia's first constitution (1945-1949) his governmental role was in general considerably less substantial than the major part assigned the president by this document (with governmental practice in general diverging rather considerably from the pattern laid down in that constitution), under the present 1950 Constitution it has in practice considerably surpassed the much more modest assignment there given to the president. Certainly on many important occasions during the last seven years President Soekarno has played a much fuller and more decisive political role than the Constitution of 1950 would seem to countenance. (This has, of course, been particularly true during the last two years, the period subsequent to the writing of Mr. Pringgodigdo's book.)

It is to an analysis of these confusing but critically important developments in this situation from 1945 until early 1956 and the problems thereby created, that Mr. Pringgodigdo's monograph is devoted. With a long and distinguished career in a series of important governmental posts, for several years (up until early 1957) serving as chief of the President's secretariat (Cabinet of the President), Mr. Pringgodigdo is uniquely well qualified to write this study.

The Cornell Modern Indonesia Project is grateful to Mr. Pringgodigdo and to his Indonesian publisher, Pembangunan, for granting permission to have his study translated into English and re-published for the benefit of those interested readers unable to read Indonesian. Thanks are also due to Mr. Alexander Brotherton for his excellent translation of Mr. Pringgodigdo's study.

Ithaca, New York
November 15, 1957

George McT. Kahin
Director

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FOREWORD

It is appropriate at this moment, when a Constituent Assembly is shortly to be formed to draw up a new Constitution, that the constitutional status of the President and the rôle of the President in state affairs should be examined.

Certainly the conclusions reached from a study of developments that have taken place can provide a basis for the standpoint to be taken in the future.

Since the position of the President is closely related to the functions of other state institutions it has, of course, been found necessary to comment also on these institutions.

The author gratefully acknowledges the many valuable suggestions given by his brother, Professor Mr. A. G. Pringgodigdo, Rector of the Airlangga University.

Mr. A. K. Pringgodigdo

Djakarta, 22 March, 1956

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CHAPTER I

THE PROVISIONS OF THE 1945 CONSTITUTION AND THE APPLICATION OF THESE PROVISIONS

Division of State Powers As Provided For by the 1945 Constitution

By the terms of the 1945 Constitution the State institutions and holders of State appointments associated with the Office of President were the Consultative Assembly (Madjelis Permusjawaratan Rakjat), the Vice-President, the Ministers, the Chamber of Representatives (Dewan Perwakilan Rakjat), and the Supreme Advisory Council (Dewan Pertimbangan Agung).

The Consultative Assembly

In paragraph 2 Article 1 of the 1945 Constitution it was stipulated that the sovereignty of the people would be fully exercised by the Consultative Assembly.

In paragraph 1 Article 2 of the 1945 Constitution it was laid down that the membership of the Consultative Assembly would comprise the members of the Chamber of Representatives (of which the composition would be determined by law, as stipulated in paragraph 1 Article 19), and, in addition, representatives of the provinces and representatives of the ethnic minority groups on the basis provided for by law.

The Consultative Assembly, incarnating the will of the Indonesian people, was invested with authority to:

a. formulate the Constitution of the State (Article 3)

b. determine the general orientation of State policy (Article 3)

c. elect the President and the Vice-President (paragraph 2 Article 6)

d. amend the Constitution (Article 37)

It was stipulated in paragraph 2 Article 2 of the 1945 Constitution that the Consultative Assembly would meet at least once in five years.

The President

In Article 7 of the 1945 Constitution it was laid down

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that the President would be appointed for a period of five years by the Consultative Assembly, and in paragraph 1 Article 4 it was stipulated that the President was "vested with executive state powers," these powers being restricted only by those clauses in the Constitution requiring that certain matters were to be provided for by legislation.

It is to be noted that the President's powers were restricted since, by the terms of paragraph 1 Article 5 and paragraph 1 Article 20 of the 1945 Constitution, the President could enact legislation only with the concurrence of the Chamber of Representatives, whilst it is moreover specified in Article 11 of the 1945 Constitution that it is also with the concurrence of the Chamber of Representatives that the President declares war, terminates hostilities, and signs treaties with foreign powers.

By the terms of Article 22 of the 1945 Constitution the President was authorized, in circumstances of emergency, to replace the Constitution with a Government Decree for which, however, the subsequent approval of the Chamber of Representatives was required.

In paragraph 2 Article 5 of the 1945 Constitution it was laid down that the President enacted Government Ordinances for ensuring the effective application of legislation.

As stipulated in Article 10 of the 1945 Constitution, the President exercised supreme authority over the Army, the Navy, and the Air Force.

The Vice-President

As in the case of the President, the Vice-President was elected by the Consultative Assembly, as specified in paragraph 2 Article 6 of the 1945 Constitution, the appointment also being for a period of five years, this being laid down in Article 7 of the 1945 Constitution. Article 4 provided that the Vice-President would assist the President in the exercise of his duties. It was laid down in Article 9 of the 1945 Constitution that the Vice-President would be sworn in at a session of the Consultative Assembly or the Chamber or Representatives in the same manner as the President. In Article 8 of the 1945 Constitution it was stipulated that, in the event of the death of the President and in the event of the President's resigning or being unable to exercise his duties, the appointment of President would be assumed by the Vice-President for the remainder of the term of office of the President.

The Ministers

By the terms of Article 17 of the 1945 Constitution:

a. the President was assisted in the exercise of his functions

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by Ministers of State;

b. the said Ministers were appointed and could be discharged from office by the President;

c. the said Ministers were in charge of the various Government Departments.

The Chamber of Representatives

In Article 19 of the 1945 Constitution it was stipulated that the Chamber of Representatives, of which the composition was to be difined by law, would meet at least once per year.

As was mentioned above, the approval of the Chamber of Representatives was required for all legislation. Moreover, by virtue of the provisions of Article 20 of the 1945 Constitution, the rejection of a draft bill by the Chamber of Representatives precluded the re-introduction of the same draft during that current session of the Chamber. In Article 21 of the 1945 Constitution it was laid down that not only the President, but also the members of the Chamber of Representatives could put forward draft legislative proposals. It was also stipulated in the same article that draft legislation for which presidential approval was not forthcoming might not be re-introduced in the course of that current session of the Chamber of Representatives.

Under the provisions of Article 22 of the 1945 Constitution a Government Decree, issued by the President in circumstances of emergency and having the force of law, which did not receive the approval of the Chamber of Representatives, must, in that case, be revoked.

The members of the Chamber of Representatives were, by virtue of the provisions of paragraph 1 Article 2 of the 1945 Constitution, also members of the Consultative Assembly.

The Supreme Advisory Council

It was stipulated in Article 16 of the 1945 Constitution that the Supreme Advisory Council, of which the composition was to be defined by law, would provide information requested by the President. The same article authorized the Supreme Advisory Council to submit proposals to the Government.

Remarks on the Juridical Concepts of Presidential Powers as Expressed in the 1945 Constitution.

From a careful perusal of the observations made above, it can be seen that supreme state power was vested in the Consultative Assembly, the voice of the Indonesian people, the expression of Indonesian sovereignty. It was the Consultative Assembly which

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formulated and modified the Constitution of the State, which determined the general orientation of state policy, which elected the President and the Vice-President. At the same time, it was the President who gave effect to state policy as determined by the Consultative Assembly, but in exercising this function the President remained subordinate to the Assembly, to which he was also answerable for the fulfillment of the duties of his office.

Thus, in degree of state power, the Office of President, with the function of implementing state policy, was secondary only to the Consultative Assembly, and, given that the Assembly was merely required "to meet at least once in five years," the President was evidently able to exercise a very considerable authority.

The Vice-President was appointed to assist and to deputize for the President. The Ministers were merely assistants to the President and were appointed and could be discharged from office by the President. The Supreme Advisory Council was no more than a body charged with providing information to the President. Constitutional guarantees were operative only with regard to the Supreme Court, in accordance with the stipulations of Article 24 of the 1945 Constitution, and with regard to the Finance Control Commission, in accordance with the stipulations of Article 23 of the 1945 Constitution, but the President would obviously exert a large measure of influence on the appointments to both these bodies.

The President was not answerable to the Chamber of Representatives; the functions of presidential office were exercised independently of the Chamber of Representatives. The wide scope of the powers wielded by the President was limited only by the stipulation in the Constitution that the assent of the Chamber of Representatives was required for all legislation, and by the further stipulation that it was only with the prior approval of the Chamber of Representatives that the President could declare war, terminate hostilities, and conclude treaties with foreign states.

To a certain extent the powers accorded the President by the 1945 Constitution were similar to the powers held by the President of the United States, who is vested with executive powers by the terms of the United States Constitution. The Ministers of the United States Government are, in fact, no more than assistants to the President. The Ministers are appointed and may be dismissed by the President and are answerable only to the President. Moreover, the President is not answerable to the United States Congress.

As if to remove the impression that the President of Indonesia was accorded excessive powers, it was specifically emphasized in the Explanatory Notes to the 1945 Constitution that supreme state authority was vested in the Consultative Assembly.

> The Consultative Assembly exercises supreme state power, whereas the President has the function of giving effect to state policy determined, as regards general orientation, by the Consultative Assembly.

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> The President is appointed by the Consultative Assembly and is subordinate to and answerable to the Consultative Assembly. The President is in the position of being given a mandate by the Consultative Assembly, and is obliged to implement the decisions of the Consultative Assembly. The President does not in any sense occupy a status equal to that of the Consultative Assembly. The President is wholly subject to the authority of the Consultative Assembly.

As regards the position of the President in relation to the Chamber of Representatives it was stated that:

> Although not answerable to the Chamber of Representatives the President does not dispose of dictatorial powers.
>
> Besides being answerable to the Consultative Assembly, the President must also give full consideration to the views of the Chamber of Representatives.
>
> Moreover, the position of the Chamber of Representatives is firmly established. The Chamber cannot be dissolved by the President as is the case in those countries where the parliamentary system operates.
>
> In addition, the members of the Chamber of Representatives are also members of the Consultative Assembly, and consequently the Chamber of Representatives is able to exercise a constant supervision over the actions of the President; in the event that the Chamber of Representatives considers that the President has deviated from the orientation of policy as laid down in the Constitution or defined by the Consultative Assembly a request can be made for the convening of a special session of the Consultative Assembly in order to demand from the President an account of his actions.

Certainly, the 1945 Constitution, in specifying the authority of the Consultative Assembly and the Chamber of Representatives, provided that the President was not invested with dictatorial powers, but there is still the question of the powers accorded the President during the interval prior to the formation of these two bodies which could exercise restraint on action by the Head of State.

In Article IV of the Transitional Provisions of the 1945 Constitution it was laid down that, until the formation of the Consultative Assembly, the Chamber of Representatives, and the Supreme Advisory Council in accordance with the terms of the Constitution, <u>all state powers would be exercised by the President</u> assisted by a National Committee.

By virtue of this stipulation the President was legally empowered to act with dictatorial authority since there was

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absolutely no basis for interpreting what was described as the assistance of a National Committee as a factor of restraint. The President could thus determine the general orientation of state policy and could issue all legislation. The sovereignty of the people was thus vested entirely in the President.

The presidential dictatorship was to continue until the formation of the Consultative Assembly and the Chamber of Representatives, and in this connection it was stipulated in the Additional Provisions of the 1945 Constitution that:

> Within six months from the date of the termination of the war in Asia the President of Indonesia will give effect to all requirements specified in this Constitution.

The course of events, however, was to show that the pattern of state administration would evolve in a manner other than that envisaged in the Additional Provisions of the 1945 Constitution.

Operation of the 1945 Constitution in Practice

As has been mentioned above, it was laid down in the Transitional Provisions of the 1945 Constitution that, pending the formation of the Consultative Assembly, the Chamber of Representatives, and the Supreme Advisory Council in conformity with the provisions of the Constitution, all state powers would be exercised by the President "assisted by a National Committee."

The decision to set up a National Committee was taken by the Indonesian Independence Preparatory Committee (Panitya Persiapan Kemerdekaan Indonesia) on 22 August, 1945, and the duly established Indonesian Central National Committee (KNIP) was installed in office by the President on 29 August, 1945.(1)

The Working Committee of the Indonesian Central National Committee (KNIP) Invested with Legislative Powers and Authorized to Participate in the Formulation of the General Orientation of State Policy

Acting on the proposal decided by the KNIP at a meeting on 16 October, 1945, the Vice-President issued, the same day, Vice-Presidential Announcement No.X, of which the provisions were described by the chairman of the KNIP Working Committee in a statement on 20 October, as follows: (2)

(1) Kusnodiprodjo, Himpunan Undang2, peraturan2, penetapan2 Pemerintah Indonesia, (Laws, Decrees, and Directives of the Indonesian Government) 1945, p.117, 121, reprinted 1951.

(2) Ibid., pp. 58, 59.

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In Vice-Presidential Announcement No. X of 16 October, 1945, it is stipulated that, pending the formation of the Consultative Assembly and the Chamber of Representatives, the KNIP will be vested with legislative powers and will participate in the deciding of the general orientation of state policy, and, given the gravity of the situation at present, the general functions of the KNIP will be assumed by the Working Committee of the KNIP.

By virtue of this decision the Working Committee will:

a. participate in the deciding of the general orientation of state policy, this signifying that the general orientation of state policy will be defined jointly by the Working Committee and the President; at the same time, the Working Committee will not be concerned with the incidental aspects of government policy which remain entirely under the control of the President;

b. formulate, jointly with the President, all legislation relating to matters that are the concern of the Government, which term designates - the President assisted by the Ministers and the officials under the authority of the Ministers.

In view of the modification of the status and the functions of the KNIP, this body (and the Working Committee acting in the name of this body), will, as from 17 October, 1945, no longer be concerned with matters relating to the implementation of Government measures." (3)

The powers of the President, hitherto of a dictatorial character, were appreciably diminished by the provisions of the Vice-Presidential Announcement No. X. It was now required that the President share with the KNIP, or the Working Committee of the KNIP, those powers accorded him by virtue of the terms of Transitional Provision IV of the 1945 Constitution, notably, the authority, which would subsequently be assumed by the Consultative Assembly, to determine the general orientation of state policy, and the further authority, which would subsequently be vested in the Chamber of Representatives, to issue legislation.

This departure from the stipulations of the Constitution had, it was explained in the Vice-Presidential Announcement No. X, in

(3) The last phrase recalls the situation hitherto applying whereby the KNIP, as an organ assisting, and at the orders of, the President, participated in the implementation of administrative measures, for example, in visiting the various provinces to provide information to the population, and in issuing letters of identification to those wishing to proceed beyond the limits of Djakarta.

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a seemingly conciliatory tone, become necessary because:

> the present serious situation is such as to require that there exist in addition to the Government a representative body which will share responsibility for actions of vital concern to the Indonesian people,

and it was further specified that:

> the Working Committee will retain the authority with which it is now vested only until the formation of the Consultative Assembly and the Chamber of Representatives as provided for by the terms of the Constitution. (4)

The Ministers Made Answerable to the Working Committee

Another change was brought about a month later following the publication of a communiqué on 11 November, 1945 by the Working Committee stating:

> The Indonesian Constitution does not incorporate any clause by virtue of which the Ministers are made answerable to or exempted from the control of a representative body. On the other hand, it is to be recognized that a governmental structure whereby the Ministers are answerable to a representative body provides a means of giving expression to the sovereignty of the people. The Working Committee has accordingly proposed to the President that appropriate modifications to the existing pattern of Government be devised so as to establish a governmental structure on this basis. The President has accepted the proposal of the Working Committee. (5)

In the Government Announcement of 14 November, 1945, (6), giving the composition of the new Cabinet formed by Sjahrir, it was stated:

> The Indonesian Government, having successfully overcome initial difficulties in the course of consolidating its position, now deems it opportune to introduce various emergency measures which will ensure that the administra-

(4) The formation of these two bodies was never carried out, so that it was the KNIP which, at a plenary session in Djogja from 6 December to 15 December, 1950, approved the legislation ratifying the Round Table Conference Agreement and the Constitution of the Republic of the United States of Indonesia whereby the status of the Republic of Indonesia was that of a component in a federation of states. (Mr. Sartono, 10 Tahun Kemerdekaan Indonesia [Ten Years of Indonesian Independence], p. 12).

(5) Kusnodiprodjo, 1945, p. 139.

(6) Ibid., p. 78.

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tion of the state will be effected on a democratic basis.

> Of the changes relating to the formation of the new Cabinet the most important is that whereby the Ministers are now vested with executive authority and made answerable to a representative body for the exercise of that authority.

The change in the status of the Ministers meant the practical elimination of any grounds for the exercise of the presidential powers as defined in the Constitution.

Previously, the Ministers had acted solely as assistants to the President and were answerable only to the President. Now the Ministers became members of a Cabinet headed by a Premier, and each Minister was answerable to the Working Committee of the KNIP. Thus, the Ministers were no longer under the authority of the President, and, in consequence, the President became merely a symbolic figure. The texts of all legislation, decrees, and ordinances had now to be counter-signed by a Minister.

Hitherto, the President had been, in the fullest sense, the Government. Now, however, the function of the government of the State was exercised jointly by the President and the Cabinet. This radical change, which modified the entire significance of the Constitution, took place only three months after the promulgation of the Constitution, and came into effect without any amendment to the text of the Constitution. The new form of Government was announced merely as a measure of democratization of the state administration. There was no indication to suggest that it was intended as a provisional arrangement to apply for the time being only.

In an analysis of the nature of this far-reaching change the Minister of Information stated on 24 November, 1945:

> It is stipulated in Article 17 of the Constitution of the Republic of Indonesia that the President will be assisted in the carrying out of his duties by Ministers of State who are appointed by and may be dismissed by the President.
>
> The Ministers are thus answerable to the President, and it is furthermore obvious that, under the terms of the Constitution, the status of a Minister is, in effect, that of an executive official directing a Government Department, although a Minister is not to be classified in the normal category of high-ranking civil servants.
>
> By virtue of their being answerable only to the President the Ministers are then not directly answerable to the people who are represented by the Consultative Assembly.
>
> With this pattern of government all authority for the conduct of state affairs rests with the President. How-

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ever, since the Consultative Assembly, which appoints the President, is the supreme state body of the Republic of Indonesia, the President is, at the same time, answerable to the Consultative Assembly.

The Constitution also provides that the Chamber of Representatives will, jointly with the President, exercise legislative power and decide the State Budget; but the President is not answerable to the Chamber of Representatives although required to secure the prior approval of this body for the promulgation of legislation.

While it can be said that there is a separation of the Ministers from the Chamber of Representatives and the Consultative Assembly, it must be remembered that it would not be possible for the President to attend to all details of legislation jointly with the Chamber of Representatives unless assisted by the various Ministers. Thus the procedure as regards legislation is such that, in each case, the Minister concerned is in direct contact with the Chamber of Representatives.

The Ministers are, however, merely acting on behalf of and in the name of the President, and the situation is on that account unsatisfactory since, under this arrangement, the President is unduly exposed to adverse criticism. For example, if any Minister commits an error in the course of carrying out his duties it is not the Minister who is answerable to the people--that is, to the Consultative Assembly--but the President. Certainly the President is able to dismiss the Minister involved, but the dismissal of the Minister will hardly silence unfavorable comment directed against the President who will be held guilty of the fault committed by the Minister.

Consequently, the question then arises of whether it could be possible to evolve a more satisfactory formula for the organization of executive state functions so that the Ministers would be answerable to the people. In the present critical situation this question is of particular urgency.

In various western countries it is customary that the Ministers of State are invested with authority and made answerable for the exercise of this authority. Notably in countries where a system of parliamentary democracy applies, this principle operates coordinately with the existence of diverse political parties. It is usually the practice in democratic countries for the Ministers to be appointed by the Head of State from the leaders of the political parties commanding the greatest measure of popular support, the Ministers so appointed comprising a Cabinet.

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Generally the Head of State designates a leader of the most influential political party to carry out the formation of the Cabinet.

While the Head of State acts in conjunction with the Cabinet, each Minister of the Cabinet is vested with authority and is answerable for the exercise of this authority to an assembly representing the people. In this way the sovereignty of the people is given clear expression.

Where such a system operates the opportunity is provided for open and effective criticism of the Government with the right accorded the members of the representative assembly to call to account any Minister considered to have carried out his duties unsatisfactorily. In the event that the representative assembly finds that the policy followed by a Minister is at variance with the policy the assembly desires, the Minister concerned is obliged to resign from office.

The resignation of any one Minister under such circumstances may, of course, result in the resignation of the Cabinet as a whole, should it happen that the other Minister support the policy of the Minister who had been criticized. This denotes that all members of the Cabinet accept collective responsiblitly for the actions of any one member of the Cabinet.

With this system of government the Cabinet is headed by one of its members given the title of Premier. Usually this post is assumed by the political leader designated by the Head of State as Cabinet formateur.

The possibility of establishing this system of government in Indonesia is, however, excluded by the provisions of our present Constitution.

As was pointed out above the provisions of the present Constitution are such that a revision of the Constitution would be necessary before the Ministers of State could be invested with authority and held answerable for the exercise of his authority. At the moment it is the President who is charged with the direction of state affairs.

It is, of course, stipulated in Article 37 of the Constitution that amendments to the Constitution may be decided on by a meeting of the Consultative Assembly provided that two-thirds of the total membership of the Assembly is present and that the proposed amendment is supported by at least two-thirds of the members present at the session. But, viewing the question from a constitutional standpoint it can be seen that a revision

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> designed to provide for a pattern of government as referred to above is not possible.
>
> However, a pattern of government whereby Ministers of State are accorded authority and held answerable for the exercise of this authority may be brought into effect as a result of conventional usage, in which case, of course, the character of ministerial functions and repsonsibilities would be essentially provisional in the same way as various existing regulations--and even our present Constitution--are only provisional. It should also be recalled that the Working Committee of the KNIP is also only a provisional institution.
>
> In the Additional Provisions of the present Constitution it is stipulated that the Consultative Assembly will, within six months of its being formed, assemble to formulate a Constitution, and it is also required that the Consultative Assembly will be formed within six months from the termination of war in Asia. With the formation of the Chamber of Representatives and the Consultative Assembly by the holding of general elections participated in by the entire Indonesian people our state institutions will no longer be of a provisional character.
>
> Thus there need be no reason for concern at the changes now being brought into effect, for these changes, although seemingly at variance with the terms of the present Constitution, are designed to ensure a democratic structure of the Indonesian State. (7)

In this statement of the Minister of Information, which referred not only to the Government Announcement of 14 November, 1945, but also to Vice-Presidential Announcement No. X of 16 October, 1945, two contentions were put forward:

> firstly: that a revision of the structure of government, as discussed in the statement, could not be introduced on the basis of the then existing Constitution;

and

> secondly: that such a revision could be brought about on the basis of conventional usage.

Neither of these contentions is correct. It is obviously wrong to describe a deliberately introduced procedure as a conventional usage because this term is applicable only to those customary practices which arise as a natural consequence over a period of time.

Moreover, the new arrangement could be considered as being based on the provisions of the then existing Constitution, since

(7) Ibid., p. 78.

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it was specified in Article IV of the Transitional Provisions that the President would temporarily exercise the powers to be exercised subsequently by the Consultative Assembly on its being formed. These powers encompassed the authority to amend the Constitution referred to in Article 37.

Similarly the Government Announcement of 14 November, 1945, by virtue of which the President was required to share his powers with the Working Committee of the KNIP, was issued in conformity with the terms of the Constitution since the proposal for the introduction of this measure came from the Working Committee itself and the Announcement was of the same validity as the provisions of the Constitution.

Owing to the redistribution of state power, so that the Ministers became answerable to the KNIP and were no longer answerable to the President, the 1945 Constitution of the Republic of Indonesia was implemented, almost during the entire period of its being operative, in a manner that did not conform to its provisions. In theory the pattern of government corresponded to that of American democracy, in practice it was the pattern of western European democracy that was followed

Within the Working Committee also there was an awareness of this discrepancy and of the need to modify the terms of the Constitution to correspond to the procedure that had come into operation. This is evident from the statement issued by the Working Committee on 5 December, 1945 (Statement No. 10) (8) of which the concluding section read as follows:

> The means for effecting these modifications should, in the opinion of the Working Committee, be defined by a commission of which the members are appointed by the Government. This commission should make arrangements for the fullest possible expression of public opinion on this issue, and in this way the function of the commission will be carried out with the thoroughness desired and, at the same time, the people as a whole will have been able to participate in determining the scope of the changes that have now become necessary.

However, as far as the writer is aware, the suggested commission was never set up.

The Trend Toward Democratization

The existence of general support for democratic ideals and of efforts to establish a democratic state structure immediately after the Proclamation of Independence is confirmed by the suggestion given in the Government Announcement of 3 November, 1945, (9) urging the creation of political parties. The Government considered it desirable that there should be a diversity of political parties

(8) Ibid., p. 153.

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since with the setting up of different political parties all trends of opinion amongst the people can be given organized expression.

The same suggestion was repeated in the Government announcement of 14 November, 1945 (10) in which it was stated that:

> With the object of ensuring the development of means of expression of political opinions the Government of the Republic of Indonesia urges the people to set up political parties so that the various political trends in the country will be effectively represented. The initial steps toward the formation of various political parties had been taken prior to the Japanese occupation but all such activities were prohibited by the Japanese authorities. Whereas both the Japanese authorities and the Dutch authorities rigorously suppressed the communists and other political parties which put forward the demand for full national independence, the Government of the Republic of Indonesia will not forbid the existence of any political organization of which the aims and principles do not conflict with democratic ideals.

This suggestion is particularly significant since it is at variance with the previously announced intention of the Indonesian Independence Preparatory Committee which had, on 22 August, 1945, besides establishing the KNIP, decided on the formation of the Partai Nasional Indonesia, (11) this party being envisaged as the sole Indonesian political organization. (12) From the statement issued by the Working Committee on 30 October, 1945, which led to the promulgation of the already mentioned Government Announcement of 3 November, it is quite evident that this divergence was recognized. In this statement it was noted that:

> The Working Committee considers that the moment is now opportune for steps to be taken to develop the popular movement in accordance with the provisions of the Constitution relating to freedom of Assembly.

(9) Ibid., p. 76.

(10) Ibid., p. 79.

(11) Ibid., p. 118.

(12) Moves for the formation of this party were, however, postponed on the instructions given in Government Announcement of 31 August, 1945, "in connection with the importance of the role of the KNIP in coordinating all measures relating to the consolidation of the unity of the people."
Ibid., p. 46.

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> The question then arises of whether only one party should be organized or whether the formation of diverse political parties, reflecting various different trends of opinion should be authorized.
>
> If democratic principle are to be observed it is not permissible that only one party should be allowed to function. (13)

Full Powers Again Accorded the President on Three Occasions

The pattern of government similar to that applying in the western European democracies, as introduced by the changes described above, did not, however, operate uninterruptedly. On three occasions the President was again vested with full powers--on the first occasion from 29 June, 1946, to 2 October, 1946, (14) in connection with the kidnapping of the Premier, Sjahrir; on the second occasion from 27 June, 1947 to 3 July, 1947, (15) as a consequence of the critical situation due to the deadlock in the discussions with the Dutch; and on the third occasion from 15 September, 1948, to 15 December, 1948, (16) owing to the "Madiun Affair."

It is to be noted that in the first two instances full powers, were assumed by the President by virtue of a Presidential Decree in which it was announced that the President

> assumes full powers of government for the time being,

whilst in the third instance an Act was passed with the concurrence of the Working Committee, the text of the Act being counter-signed by the Minister of Defense, the Minister of Internal Affairs, and the Minister of Justice. In this Act it was stipulated that

> the President is accorded full authority to take all necessary measures and to institute whatever regulations may be required without regard to the provisions of existing legislation and regulations.

No definite reason can be given for the difference in procedure. It is possible that on the first two occasions legislative formalities were dispensed with because of the weak position

(13) Ibid., p. 137

(14) Kusnodiprodjo (second impression), p. 251, (Presidential Decrees 1 and 2, 1946).

(15) Kusnodiprodjo (first impression?), p. 395 and p. 396, (Presidential Decree 6, 1947).

(16) Kusnodiprodjo (second impression), p. 135, (Act No. 30, 1948).

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of the Cabinet, or perhaps because of a lack of time, whilst on the third occasion there was a stable Cabinet in office and there was adequate time to arrange the passage of legislation; or perhaps the explanation lies in the gradual strengthening of the position of the Working Committee so that the transfer of full powers to the President could not be effected without the assent of the Working Committee.

Significantly, during the third period in which full powers were again vested in the President, the customary procedure for the promulgation of legislation--with the approval of the Working Committee and the counter-signing of the texts by the Minister concerned--was maintained, but during this period also the full powers accorded the President by the Working Committee were exercised in the issuing of a considerable number of Government Decrees on matters which should have been dealt with by laws passed in accordance with the normal procedure. These Government Decrees were not counter-signed by Ministers although all decisions relating to such Decrees were taken at meetings of the Cabinet.

Relations Between the Government and the Working Committee

In general the relations between the Working Committee and the Government were entirely satisfactory, and there was never any instance of the resignation of a Minister or of a Cabinet because measures of policy did not meet with the approval of the Working Committee.

As far as the writer is able to recollect, there was only one instance of definite conflict between the President and the Working Committee, this being in connection with Presidential Decree No. 6 of 29 December, 1946, (17) which provided for an increase in the membership of the KNIP. This decree was submitted for consideration to a meeting of the Working Committee on 17 January, 1947 (18) and was rejected by the Working Committee. Nevertheless, the decree was not withdrawn by the Government but was submitted to a plenary meeting of the KNIP held in Malang from 25 February, 1947 to 6 March, 1947. After a heated debate the terms of the decree were approved.

Presidential Cabinets

In discussing the relationship between the President, the Cabinet, and the Working Committee mention should also be made of the three Presidential Cabinets, the first of which was in office from 2 September, 1945 to 14 November, 1945, the second from 29 January, 1948 to 4 August, 1949, and the third from 4 August,

(17) Kusnodiprodjo, 1946, p. 249

(18) Lembaran Sedjarah [Pages of History] issued by the Ministry of Information, Djogja, 1950, p.52, and 10 Tahun Kemerdekaan Indonesia [Ten Years of Indonesian Independence] by Mr. Sartono, p. 10

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1949 to 20 December, 1949.

The first of these three Presidential Cabinets differed from the other two in that it was functioning prior to the introduction of the modified application of the Constitution, the Ministers then being answerable solely to the President, whilst the iffice of Premier had not yet been instituted.

The second and third Presidential Cabinets were in office after the revision of the structure of government, and were not formally different from a Cabinet in which there is no presidential participation; in both these instances the post of Premier (19) was maintained, and the Ministers were answerable to the Working Committee, whilst the texts of all legislation had to be countersigned by the Minister concerned.

These two Presidential Cabinets are described as such merely by reason of the fact that the post of Premier in both instances was held by the Vice-President, who could, irrespective of his status as deputy Head of State, exercise a moral authority by virtue of his personal qualities and the prominent rôle he had played in the struggle for independence. Furthermore, the composition of these two Cabinets did not become a question of bargaining between the various political parties, and it was generally considered that a Cabinet so established could not be forced to resign by the Working Committee.

It was, in any case, apparent that both these Presidential Cabinets were formed because, firstly, considerable difficulty had been encountered in attempts to arrive at agreement between the political parties on the composition of a Cabinet, and secondly, there was an evident need for a Cabinet with unquestioned authority.

Conclusions Regarding the Exercise of Presidential Powers

In the preceding pages it has been pointed out that the structure of government as defined in the 1945 Constitution, whereby the President was accorded virtually unrestricted powers, was radically changed when provision was made for the Working Committee to function as a legislative body participating in the deciding of

(19) It was not specifically stated in Presidential Decree No. 3, 1948, announcing the formation of the second Presidential Cabinet, that the post of Premier was assumed by the Vice-President, it being merely indicated that "the routine direction /of the Cabinet/ will be effected by His Excellency Vice-President Mohammad Hatta." However, Vice-President Hatta signed the texts of all legislation as Premier. (Government Decree No. 22 of 1948 is an example.) In Presidential Decree No. 6, 1949, of 6 August, 1949, announcing the formation of the third Presidential Cabinet, the Vice-President was referred to as Premier.

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the general orientation of state policy and with the introduction of the system by which the Ministers became answerable to the Working Committee. As a result of these changes, authority for the conduct of state affairs was transferred to the Working Committee and the Cabinet, and the course of events showed that this system operated satisfactorily.

At the same time, however, it could be seen that a situation might arise requiring the installation of a Presidential Cabinet able to exert a greater measure of control than a Cabinet formed by the normal procedure; and similarly it could also be seen that, on occasions, it might be found necessary again to accord full powers to the President.

In the course of drawing up the new Constitution the Constituent Assembly will be able to weigh carefully the desirability of making provision for these two possibilities.

If it should be felt that such provision might possibly be misused for the imposition of a dictatorship, then appropriate clauses could be included in the Constitution excluding this eventuality, and ensuring the preservation of a democratic state structure.

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CHAPTER II

THE PROVISIONS OF THE 1949 CONSTITUTION AND THE 1950 CONSTITUTION AND THE APPLICATION OF THESE PROVISIONS

Whilst the 1949 Constitution and the 1950 Constitution were distinctly different in character--the 1949 Constitution providing for a federal state and a bicameral parliament, the office of Vice-President being dispensed with, the 1950 Constitution providing for a unitary state and a unicameral parliament and reintroducing the office of Vice-President--the clauses in both Constitutions relating to the functions and the powers of the President are more or less identical. Consequently, it has been decided to cover in one chapter the analysis of the status and the authority of the President as laid down in each of these Constitutions.

Implementation of the Sovereignty of the People

In the 1945 Constitution it was stipulated in Article 1 that the sovereignty of the people would be exercised entirely by the Consultative Assembly. In the 1949 Constitution and in the 1950 Constitution, however, it was stipulated that the sovereignty of the people would be exercised by two bodies, notably the Government and Parliament, jointly, that is, the Government together with the Chamber of Representatives and the Senate under the terms of the 1949 Constitution, and the Government together with the Chamber of Representatives under the terms of the 1950 Constitution. This provision is laid down in the first Article of both Constitutions.

Thus, the organs of the State, listed in the 1949 Constitution as the President, the Ministers, the Senate, the Chamber of Representatives, the Supreme Court, and the Finance Control Commission, and listed in the 1950 Constitution as the President and the Vice-President, the Ministers, the Chamber of Representatives, the Supreme Court, and the Finance Control Commission were not made jointly subordinate to a single superior authority.

Definition of the Term "Government"

In Article 68 of the 1949 Constitution it was stated that the Government comprises the President and the Ministers and it is further specified that:

> Any reference made to the Government in this Constitution is understood to mean the President with one,

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> several, or all the Ministers according to their respective specific or general responsibilities.

This definition was omitted from the 1950 Constitution, perhaps on the grounds that there would be some confusion if the term Government was taken to refer only to the Cabinet.

However, since it was stipulated in the first article of both the 1949 Constitution and the 1950 Constitution that the sovereignty of the people will be exercised by the Government and Parliament jointly, it is hardly possible to consider that the scope of the term Government did not comprise the office of President. Moreever, given the nature of the functions of the President in the conduct of state affairs, particularly in connection with the coordination between the Cabinet and Parliament and as regards the promulgation of important decisions of the Cabinet, it is patently clear that the President must be recognized as being an integral component of the Government. For example, it is obvious from the terms of Article 95 of the 1950 Constitution, in which it is stated:

> All legislation passed by the Chamber of Representatives acquires the force of law after being ratified by the Government,

that the office of President is necessarily included within the meaning of the term Government.

Thus, it is virtually certain that the definition given in Article 68 of the 1949 Constitution was omitted from the 1950 Constitution only because there seemed no purpose in clarifying further a point that was already clear. It is to be noted too that those clauses in the 1950 Constitution referring to the office of President were included in the section dealing with Government.

Nevertheless, it would be as well for the Constituent Assembly to include in the new Constitution the definition of Government given in the 1949 Constitution so that any possible source of confusion will be removed.

In both Constitutions, in Article 117 of the 1949 Constitution, and in Article 82 of the 1950 Constitution, it is laid down that the primary concern of the Government is to promote the well-being of the entire country and, in particular, to ensure observation of the provisions of the Constitution, the laws, and other regulations.

The Status and the Functions of the President

In the 1945 Constitution the position of the President was not defined, but in Article 69 of the 1949 Constitution and in Article 45 of the 1950 Constitution the President is specifically referred to as the Head of State.

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The Appointment of the President

In the 1945 Constitution it was stipulated that only "an Indonesian of purely Indonesian origin" could hold the office of President. In the 1949 Constitution, however, it was laid down in Article 69 that the position of President could be hold only by "an Indonesian." Despite the different formulation the actual significance of both terms is identical. It should also be noted that the stipulation was made in Article 82 and Article 101 that the members of the Senate and the Chamber of Representatives would be "Indonesian citizens," since membership of these two bodies was not restricted only to the "Indonesians of purely Indonesian origin." Probably the omission of the term "of purely Indonesian origin" was made with the object of discouraging the tendency to make distinction between Indonesian citizens of purely Indonesian origin and Indonesian citizens of other than purely Indonesian origin.

The element of race discrimination as regards the office of President was removed in the 1950 Constitution, it being stated in Article 45 that the post of President would be held by "an Indonesian citizen."

By the terms of Article 6 and Article 7 of the 1945 Constitution the President was to be elected by the Consultative Assembly for a period of five years--but it was laid down in Article III of the Transitional Provisions that, on the first occasion, the President would be named by the Indonesian Independence Preparatory Committee. The appointment of the President by the Independence Preparatory Committee took place on 18 August, 1945.

In the 1949 Constitution it was specified that the President would be elected by delegates of the component states of the Republic of the United States of Indonesia. No mention was made of the period for which the President would be appointed. Election of the President by 16 delegates of the component states, in accordance with the terms of the 1949 Constitution, took place on 16 December, 1949, the President being sworn in on 17 December, 1949.

In Article 45 of the 1950 Constitution it was stated that the President would be elected in accordance with the procedure fixed by law, but at the time of the drawing up of the 1950 Constitution the necessary legislation had not been enacted, so that no election could be held. On this account the stipulation was included in the Charter of Agreement of 19 May, 1950, negotiated between the Government of the Republic of the United States of Indonesia and the Government of the Republic of Indonesia, to the effect that the post of President of the unitary state then about to be established would be President Sukarno.

This stipulation was in conformity with the provision made in Article 141 of the 1950 Constitution that appointments being exercised at the time of the lapsing of the 1949 Constitution would be maintained until it was specified otherwise by the terms of a new Constitution. For this reason no election of a President was hold when the unitary state was re-established.

As in the 1949 Constitution, no mention was made in the 1950 Constitution of the period for which the President would be appointed. Both the Government of the Republic of the United States of Indonesia and the Government of the Republic of Indonesia accepted

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the understanding that the President and the Vice-President would not be replaced before another Constitution had been formulated by the Constituent Assembly. (see Tambahan Lembaran Negara /Supplementary Official Bulletin/ No. 37, 1950)

Thus it was left to the future Constituent Assembly to determine the procedure for the election of the President.

The Inviolability of the President

Some measure of restriction on the authority of the President was imposed by two similarly-worded clauses in the 1949 and 1950 Constitutions--notably Article 118 and Article 119 of the 1949 Constitution and Article 83 and Article 85 of the 1950 Constitution--in which it was stipulated that:

> The President (and the Vice-President) is inviolable.
>
> The Ministers are held jointly responsible for the policy of the Government, and each Minister individually for the exercise of his functions.
>
> All presidential decrees, including those issued by virtue of the authority of the President over the Armed Forces, will be countersigned by the Minister or Ministers concerned.

The requirement for the counter-signing of the text of the relevant documents was dispensed with only with regard to the appointment of the Vice-President--by the terms of the 1950 Constitution--and the formation of a new Cabinet--by the terms of both the 1949 and 1950 Constitutions. In connection with the formation of a new Cabinet it was stipulated that the Presidential Decree announcing the ministerial appointments would be counter-signed by the Cabinet-formateur.

Thus, the President was accorded a prerogative to act without reference to the Cabinet in respect of the appointment of the Vice-President (the appointment being made in accordance with the recommendation of the Chamber of Representatives), and in respect of the formation of a new Cabinet.

Furthermore, it became the procedure for the mandate for the Cabinet formateur or formateurs to be signed only by the President, as was the decree announcing the formation of a new Cabinet, neither of these documents being counter-signed by a Minister.

Function of the President in the Formation of a New Cabinet

In paragraph 1 Article 74 of the 1949 Constitution it is laid down that:

> The President will appoint a committee of three members for the purpose of forming a Cabinet, in agree-

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ment with the delegates of the participant territories (of the Republic of the United States of Indonesia).

Under the terms of the 1950 Constitution the President was free to designate the Cabinet formateurs and to determine the number of Cabinet formateurs to be designated, it being stipulated in paragraph 1 Article 51 that:

The President will appoint one or more Cabinet formateurs.

It should be noted that the above-mentioned clause of the 1949 Constitution was not observed in connection with the formation of the RUSI (1) Cabinet when four, and not three, cabinet formateurs were designated--two from the Republic of Indonesia, Drs. Moh. Hatta and Sultan Hamengkubuwono, and two from the Federal Consultative Assembly,(BFO) Sultan Hamid and Anak Agung Gde Agung. Given this precedent of non-observance of the stipulation in the Constitution it was obviously desirable that subsequently no such limitation should be laid down regarding the number of cabinet formateurs to be designated. Moreover, prior to the introduction of the 1949 Constitution the President had also been free to decide on the designation of cabinet formateurs and on the number of formateurs to be designated.

Identical clauses were included in both the 1949 and 1950 Constitutions--Article 74 of the 1949 Constitution and Article 51 of the 1950 Constitution--in which it was stipulated that:

In accordance with the recommendation of the formateur(s), the President appoints one as Premier and also appoints the other Ministers.

This clause was applied with the interpretation that the Premier was to be appointed not from the formateurs as is suggested by the text but from the nominees for ministerial posts proposed by the formateurs. Consequently it could, and did, happen that a cabinet formateur need not be included in the cabinet (Sidik was not included in Sukiman Cabinet), or need not be named Premier (as in the case of Wongsonegoro, formateur of the Ali Sastroamidjojo Cabinet).

In the opinion of the writer this interpretation is incorrect, for it can be seen from the phrasing of the above-mentioned article in the 1949 Constitution in the official Dutch language text of this Constitution:

Overeenkomstig de aanbeveling der drie formateurs benoemt de President één hunner tot Minister-Pres-

(1) Republic of the United States of Indonesia

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> ident en benoemt hij de overige Ministers. (2)

which, apart from the reference to the number of formateurs, would also be the rendering of the corresponding article in the 1950 Constitution--that the intention was to have the post of Premier allocated to one of the Cabinet formateurs. Where this procedure was not observed the terms of the Constitution were obviously disregarded. In order to remedy the anomaly so arising the Constituent Assembly must include a clause in the new Constitution whereby no obligation would be imposed for the inclusion of a formateur in the Cabinet or for the naming of a formateur as Premier.

Some confusion may arise also from the indefiniteness of the phrase "In accordance with the recommendations of the Cabinet formateur(s)" which could be interpreted to signify that

> the President is obligated to issue a decree of which the terms correspond to the suggestions put forward by the Cabinet formateurs,

or that

> a measure of restriction applies to action by the President in respect of the formation of the Cabinet.

Of these two possible interpretations it has been the second that has been adopted, it being accepted that whilst the President was not obliged to approve all proposals made by a Cabinet formateur any proposal that was approved would be confirmed by presidential decree.

Nevertheless the meaning of the phrase quoted remains uncertain so that some clarifying qualification is required. For example, a provision could be introduced that:

> If the President considers that the Cabinet as proposed by the formateurs would be able effectively to exercise its functions...

In paragraph 3 of both Article 74 of the 1950 Constitution and Article 51 of the 1949 Constitution it was stipulated that the President will allocate the portfolios, in accordance with the proposals of the formateurs, in a Cabinet assuming office, and may also appoint Ministers without portfolio who have the title of Ministers of State.

On several occasions it has happened that, following negotiations between the political parties concerned, the formation of a new Cabinet has been accompanied by changes in the number of Ministries. Obviously the establishment or dissolution of a Ministry has far-reaching consequences directly affecting the state finances

(2) In accordance with the recommendation of the three Cabinet formateurs the President names one of them Premier and also names the other Ministers.

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and state administration, and on that account particularly it is undesirable that such changes should be made solely for political reasons. Decisions relating to the establishment or dissolution of Ministries should be taken only after prior discussion by a Cabinet. This procedure would be more in accordance with the terms of Article 50 of the 1950 Constitution where it is laid down that:

> The Ministries are formed by the President,

it being evidently implicit that the President gives effect to the proposals in this connection put forward by the Cabinet. Considering the importance of the issue it is desirable that no decision relating to the creation or the dissolution of a Ministry should be taken without approval from the Chamber of Representatives. To this end the text of the relevant article in the Constitution should read:

> The formation of Ministries will be determined by law.

Presidential Decrees announcing the appointment of the Premier and the Ministers of a new Cabinet are, in accordance with the provisions of paragraph 4 Article 74 of the 1949 Constitution and paragraph 4 Article 51 of the 1950 Constitution, to be counter-signed by the Cabinet formateurs. This provision is only of any real purpose if the formateur becomes a member of the Cabinet, either as Premier or Minister, for then the formateur is, by reason of having counter-signed the Presidential Decree, answerable to Parliament for the measures taken by the President. If, on the other hand, the formateur does not become a member of the Cabinet, the counter-signing of the decree merely indicates that the composition of the Cabinet corresponds to the proposals submitted to the President by the formateur. As an alternative to the existing stipulation a clause could be introduced providing for either

a. the counter-signing of the Presidential Decree announcing the composition of the new Cabinet by the outgoing Premier;

or

b. the counter-signing of the Presidential Decree announcing the composition of the new Cabinet by the Premier of the newly-appointed Cabinet;

or

c. dispensing with the procedure of counter-signing.

With regard to the first possibility it may be noted that with the formation of the RUSI Cabinet there was no outgoing Premier to counter-sign the Presidential Decree, and, furthermore, it is highly improbable in most instances that an outgoing Premier would be inclined to give approval to the formation of a Cabinet to which he is to cede office.

It would be a more reasonable procedure to have the Presidential Decree counter-signed by the Premier of the newly-appointed

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Cabinet since this would confirm the Premier's being prepared to face the verdict of Parliament on the new Cabinet's program. To allow for the possibility of there being no Premier yet appointed at the time of the issuing of the Presidential Decree provision could be made for the decree to be counter-signed by the member of the Cabinet who would become Premier.

There remains the third possibility of dispensing with the procedure of counter-signing as in the case of the Presidential Decree designating the Cabinet formateur. Were the procedure of counter-signing to be dispensed with the authority of the President in connection with the formation of a new Cabinet would be more firmly established.

Apart from the formation of a Cabinet all changes in the composition of a Cabinet and the resignation of a Cabinet are given effect to by Presidential Decree as stipulated in paragraph 5 Article 74 of the 1949 Constitution and paragraph 5 Article 51 of the 1950 Constitution this signifying, of course, that the decree is counter-signed by the Premier.

President and Vice-President Informed on All Important Issues by the Cabinet.

In paragraph 2 of Article 76 of the 1949 Constitution and in paragraph 2 of Article 52 of the 1950 Constitution it is laid down that the Cabinet will at all times inform the President (and the Vice-President) of matters of importance, and that this obligation applies also to the Ministers individually in respect of issues coming within the scope of the authority of each. This provision is necessary in view of the clause requiring that those regulations and directives issued by the Cabinet or a member of the Cabinet for which the signature of a Minister alone is not sufficient authorization must be signed by the President and counter-signed by the Minister or Ministers concerned. The President thus acts, not independently, but as an adjunct of the Cabinet. (3)

Only One Presidential Prerogative

The formation of a new Cabinet is in fact to be regarded as the prerogative of the President, for in this instance the President exercises a personal authority.

At the same time all clauses in the Constitution referring to functions of the President exclude any authorization for independent action by the President. These clauses merely ensure that the decision in all cases is taken by the Cabinet or by the Minister concerned, any decree or regulation than issued being

(3) However, except in the case of correspondence addressed to the Head of a foreign state, no letters of the President --official or unofficial--are counter-signed by a Minister.

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signed by the President (and counter-signed by a Minister).

Whereas in the past certain state measures were defined in the Constitution as the prerogative of the Crown, the relevant terms of the present Constitution merely indicate that such measures are not exclusively within the scope of ministerial authority. For example, it is stipulated in the 1949 and 1950 Constitutions that:

> The President forms the Ministries. (Article 50, 1950 Constitution)
>
> The President has the right to dissolve the Chamber of Representatives. (Article 84, 1950 Constitution)
>
> The President awards decorations established by law. (Article 126, 1949 Constitution, Article 87, 1950 Constitution)
>
> The President has the right to grant pardon for punishments imposed by judicial sentence. (Article 160, 1949 Constitution, Article 107, 1950 Constitution)
>
> The President concludes and ratifies treaties and other agreements with foreign powers. (Article 175, 1949 Constitution, Article 120, 1950 Constitution)
>
> The President appoints representatives of Indonesia to other powers...(Article 178, 1949 Constitution, Article 123, 1950 Constitution)
>
> The President receives the representatives of other powers to the Republic of (..) (4) Indonesia. (Article 178, 1949 Constitution, Article 123, 1950 Constitution)
>
> The President declares war. (Article 128, 1950 Constitution)
>
> The President proclaims a state of emergency. (Article 129, 1950 Constitution)

In each instance the word President signifies Government and the sole purpose of these clauses is to ensure that the relevant documents bear the signature of the President as with all legislation, Government Decrees and Presidential Decrees.

The Position of the President as Supreme Commander

It was stipulated in Article 10 of the 1945 Constitution that:

(4) The 1949 Constitution refers to the Republic of the United States of Indonesia.

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> The President is vested with supreme authority over the Army, Navy, and Air Force.

At the time this provision was fully in accordance with the position of the President as laid down in the 1945 Constitution. Subsequently, however, with the recognition of the inviolability of the President and the assumption of full governmental responsibility by the Ministers, the rank of Supreme Commander accorded to the President became no more than an honorary title, although, given the extent of the President's influence over the Army the provisions of Article 10 of the 1945 Constitution were not without tangible significance. On various occasions the divergence between juridical concepts and the actual course of events became apparent, as, for example, in January, 1948, when a conflict of opinion between the President and the Premier (Amir Sjarifuddin) led to the fall of the Cabinet later the same month.

Whilst the President is referred to as the Supreme Commander the general commanding the Armed Forces has the rank of Commander-in-Chief.

In paragraph 1 Article 182 of the 1949 Constitution it was laid down that:

> The President is the Supreme Commander of the Armed Forces of the Republic of the United States of Indonesia,

but in paragraph 2 of the same article it was stated that:

> ....if required the Armed Forces will be placed under the command of a Commander-in-Chief.

The term Supreme Commander was not used in the 1950 Constitution of which Article 127 reads:

> The President is vested with supreme authority over the Armed Forces,

(this formulation corresponding to the wording of Article 10 of the 1945 Constitution). In paragraph 2 of the same article it is laid down that:

> In time of war the Government places the Armed Forces under the command of a Commander-in-Chief.

Probably the omission of the title Supreme Commander was intended as a means of confirming the purely nominal status of the President in relation to the Armed Forces. It is the writer's opinion, however, that the changed wording, with the use of the phrase vested with supreme authority instead of the title Supreme Commander, does not fulfill this intention.

The nominal character of the President's position in relation to the Armed Forces is adequately indicated in Article 85 of the

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1950 Constitution in which it is stipulated that:

> All Presidential Decrees, including those issued by virtue of the authority of the President over the Armed Forces of the Republic of Indonesia will be counter-signed by the Minister concerned.

Despite the modified wording, it remained the practice in the Army to refer to the President as the Supreme Commander. Moreover, it is stated in the 1954 Defense Act (Act No. 29, 1954) that "the President is the Supreme Commander of the Armed Forces" and, as such, is vested with supreme authority over the Armed Forces. At the same time it was stipulated in Article 12 that the Minister of Defense is held responsible for measures affecting the Armed Forces.

Obviously it would be only logical for the Constituent Assembly to include in the new Constitution a clause referring to the President as Supreme Commander of the Armed Forces.

The Vice-President

The office of Vice-President was not provided for in the 1949 Constitution but was re-established by the provisions of the 1950 Constitution. It is stated in Article 45 of the 1950 Constitution that:

> In the exercise of his duties the President is assisted by a Vice-President,

and it is further provided in Article 48 that:

> In the event of the death of the President, or the President's removal from office, or being unable to fulfill the duties of office, the presidential functions will be assumed by the Vice-President until the expiration of the period for which the President was appointed.

In the 1949 Constitution it had been stipulated in Article 72 that:

> Whenever the circumstances may require it, the President delegates the functions of his office to the Premier,

and:

> in the event of the death of the President, or in the event of the President's being permanently prevented from exercising the duties of office, a new President will be elected as provided for in the federal laws.

In the 1950 Constitution the same provisions--as set out in

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Article 45, Article 46, and Article 47--applied to the President and to the Vice-President as regards election to office, age qualifications, place of residence, etc. It was also sitpulated in Article 45 of the 1950 Constitution that the first appointment of a Vice-President in the restored unitary state would be made by the President, the appointment to be as recommended by the Chamber of Representatives. By the terms of Article 85 of the 1950 Constitution the counter-signing of the Presidential Decree by a Minister was not required.

While it was stipulated in paragraph 3 of Article 45 of the 1950 Constitution that:

> The President and the Vice-President are elected in accordance with the provisions laid down by law,

it was stated in the Explanatory Notes No. 7 to the 1950 Constitution (dealing with the replacement of the 1949 Constitution with the 1950 Constitution) that, since it was the view of both the RUSI Government and the Government of the Republic of Indonesia, that:

> no change would be made in the appointments of the President and the Vice-President prior to the final drafting of a new Constitution by a Constituent Assembly, the formulation of provisions relating to the election of the President and the Vice-President was left to the Constituent Assembly.

The establishment of the office of Vice-President is, of course, essentially related to the emergence of the dual unity of leadership of Sukarno and Hatta (Dwi Tunggal) in 1945. Thus the Vice-President was not allotted functions apart from the functions of the President, for the status of the Vice-President was no different from that of the President. Then, during the RUSI period no provision was made for the office of Vice-President since Mohammad Hatta had taken over the post of Premier. If it is recalled that a Presidential Cabinet had been installed during the Djogja period and a similar Cabinet was in office during the RUSI period, and further, that the Premier represented the President, while Parliament did not have the power to compel the Cabinet to resign, it can be seen that the establishment of the office of Vice-President provides an example of the extent to which the formulation of a Constitution may be influenced by an element of personal consideration.

Whereas the Vice-President had been named Premier in a Presidential Cabinet in the Djogja period, the 1950 Constitution excluded the possibility of the formation of a Presidential Cabinet, so that the Vice-President could not become Premier without first resigning from his appointment as Vice-President.

The question now arises as to whether, in view of the course of events during these last few years, it may not be advisable to make provision in the new Constitution for the formation of a Presidential Cabinet in exceptional circumstances. There is also the question of whether it may not also be advisable to make provision for the transfer of full state power to the President and the Vice-President in the event of an emergency.

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The Status and Functions of the Ministers

An analysis has already been given in the preceding pages of the meaning of the term Government, of the procedure followed in the formation of a new Cabinet, and of the position of the Ministers.

The Cabinet and the Premier

There was no provision in the 1945 Constitution for any specific institution comprising the Ministers as a distinct group, the reference in Article 17 being only to "the Ministers" without further qualification. In both the 1949 and 1950 Constitutions, however, the Ministers were referred to either as the Cabinet--in Article 74 of the 1949 Constitution and Article 51 of the 1950 Constitution--or as the Council of Ministers--in Article 76 of the 1949 Constitution and Article 52 of the 1950 Constitution. The term Council of Ministers was used in the sense of a meeting of the Cabinet, but was generally accepted as signifying the Cabinet.

While it is stipulated in both Article 74 of the 1949 Constitution and Article 51 of the 1950 Constitution that each Cabinet will include a Premier no indication is given of the functions of this post beyond the provision in Article 76 of the 1949 Constitution and Article 52 of the 1950 Constitution that the Premier will preside over the meetings of the Cabinet.

However, it is always recognized that the Premier is the leader of the Cabinet, and a Cabinet is identified with the name of the Premier. The replacement of individual Ministers is, of course, always possible, but, in the writer's opinion, the Premier could hardly be replaced without the formation of a new Cabinet.

As was pointed out above (see page 23) it did not necessarily follow that a Cabinet formateur would be allocated the post of Premier.

It is to be noted that in each Cabinet there is at least one Vice-Premier. A Vice-Premier participates in the leadership of the Cabinet and does not hold any portfolio. As no provision has ever been made for the post of Vice-Premier the terms of Article 51 of the 1950 Constitution should be revised so that this appointment is recognized.

The Inner Cabinet

At the time of the first Dutch military attack on the Republic of Indonesia there was set up an Inner Cabinet and this institution was preserved in the RUSI period. In Article 75 of the 1949 Constitution it was stipulated that the Ministers of Defense, Foreign Affairs, Internal Affairs, Finance, and Economic Affairs were accorded a special status within the Cabinet in that these

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Ministers were authorized, in circumstances of emergency or whenever immediate action was required, jointly to take decisions which had the same validity as decisions taken by a plenary session of the Cabinet. This provision, designed to ensure complete secrecy on decisions which may have been disclosed outside the Cabinet if all the Ministers were informed, was not included in the 1950 Constitution.

The Position of the Ministers

As already noted, it was stipulated in Article 118 and Article 119 of the 1949 Constitution and again laid down in Article 83 and Article 85 of the 1950 Constitution that:

1. the President is inviolable;

2. the Ministers are jointly responsible for the entire policy of the Government, and each Minister individually for his share in the Government;

3. all Presidential Decrees are counter-signed by the Minister or Ministers concerned.

Since the Ministers may be called to account for any action taken in the exercise of their office, the Chamber of Representatives consequently has the right to force the resignation of any Minister whose policy it disapproves of. In Article 122 of the 1949 Constitution, however, it was specifically stated that the Chamber of Representatives (then not yet an elected body)

> can neither compel the Cabinet nor the individual Ministers to resign.

This provision had been made for the purpose of guaranteeing the Cabinet the necessary freedom from interference in a difficult period of transition so that general elections could be arranged and a new Constitution formulated with a minimum of delay. With the exclusion of this stipulation from the 1950 Constitution the departure it made from the western European parliamentary system was eliminated.

Under the terms of Article 83 of the 1950 Constitution the President was accorded the right to dissolve the Chamber of Representatives, the same article including the proviso that, in the event of the exercise of this power, new elections would be held within 30 days. The right to dissolve the Chamber of Representatives was vested in the President as a counter-balance to the possibility of the Chamber's forcing a Cabinet to resign.

Obviously it is impossible to arrange a general election within the narrow time-limit of 30 days, so that it would be preferable, in the opinion of the writer, to stipulate that the holding of general elections will be commenced within thirty days. In this way the prompt formation of a new Chamber of Representatives would be ensured and the danger of a dictatorial régime

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would be avoided.

There was no provision in the 1949 Constitution for the dissolution of the Chamber of Representatives.

Parliament

The Senate and the Chamber of Representatives

In accordance with the federal state structure of the Republic of the United States of Indonesia (the RUSI comprising--1 the Republic of Indonesia, 2 West Kalimantan, 3 East Indonesia, 4 Madura, 5 Bandjar, 6 Bangka, 7 Billiton, 8 Greater Dajak, 9 Central Java, 10 East Java, 11 Southeast Kalimantan, 12 East Kalimantan, 13 Pasundan, 14 Riau, 15 South Sumatra, and 16 East Sumatra) the 1949 Constitution provided for a bicameral Parliament, a Senate and a Chamber of Representatives.

The membership of the Senate was made up from two representatives from each of the component states. The Senate represented the component states, and the members were appointed by the Governments of the component states, as laid down in Article 80 and Article 81 of the 1949 Constitution.

The RUSI Chamber of Representatives comprised 150 members, as stipulated in Article 98 of the 1949 Constitution, and, as stated in the same article, represented the entire Indonesian people. In Article 99 it was laid down that one-third of the total number of members of the RUSI Chamber of Representatives would be from the Republic of Indonesia and two-thirds from the other component states. It was also provided in Article 100 that the Chinese minority would be represented by nine members in the RUSI Chamber of Representatives, the European minority by six members, and the Arab minority by three members, and in the event that these numbers were not arrived at in the formation of the Chamber, the Government of the Republic of the United States of Indonesia would appoint additional members representing the said minorities to the extent required by the Constitution.

In Article 111 of the 1949 Constitution it was stipulated that elections would be held for a Chamber of Representatives within one year from the date on which the 1949 Constitution became operative. However, the Republic of the United States of Indonesia was abolished and replaced with the present unitary state before the expiration of this time-limit.

In the re-established unitary state the institution of a Senate was dispensed with, but, as was laid down in Article 77 of the 1950 Constitution, the Chamber of Representatives of the Republic of Indonesia had a membership comprising the chairmen, vice-chairmen, and the members of the RUSI Chamber of Representatives and the RUSI Senate, and the chairmen, vice-chairmen, and the members of the Working Committee of the Central National Committee (KNIP) and the Supreme Advisory Council.

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The following list shows the initial composition of the new Chamber of Representatives:

I Members from the RUSI Chamber of Representatives
  a. representing the territory of the Republic of Indonesia as defined by the Renville Agreement 50

  b. representing other territories 79

  c. not previously member of the RUSI Chamber of Representatives; additional members appointed by the Republic of Indonesia for the Pasundan State 19

II Members from the RUSI Senate 29

III Members from the Working Committee of the KNIP 46

IV Members from the Supreme Advisory Council 13

Total 236

From these figures it can be seen that, in comparison with the composition of the RUSI Chamber of Representatives, the membership of the Chamber of Representatives of the newly re-established Republic of Indonesia included a far greater proportion of representatives of the Republic of Indonesia in relation to the number of representatives of the former Federal Consultative Assembly territories.

The distribution of representation in the RUSI senate and Chamber of Representatives was as follows:

	Seats provided for	Seats taken up
Senate		
Representatives of the Republic of Indonesia	2	2
Representatives of the Federal Consultative Assembly	30	27
Chamber of Representatives		
Representatives of the Republic of Indonesia	50	50
Representatives of the Federal Consultative Assembly	100	79

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Senate and Chamber of Representatives

Representatives of the Republic of Indonesia	52	52
Representatives of the Federal Consultative Assembly	130	106

In the Chamber of Representatives of the newly re-established unitary state the representation of the two groups was:

Representatives of the Republic of Indonesia	130
Representatives of the former Federal Consultative Assembly	106

Subsequently, as was provided for in Article 56 and Article 57 of the 1950 Constitution the membership of the Chamber of Representatives returned by general election would be determined on the basis of one representative for every 300,000 resident Indonesian citizens.

As in the 1949 Constitution, it was stipulated in Article 58 of the 1950 Constitution that the Chinese, European, and Arab minorities would be represented in the Chamber of Representatives by nine, six, and three members respectively. In the same article it was specified that, should the required number of representatives of these minorities not be returned by election, the Government would appoint additional representatives of these groups to the full number prescribed.

The Exercise of Legislative Power

The stipulations of both Article 127 of the 1949 Constitution and Article 89 of the 1950 Constitution provided that legislative power would be exercised by the Government together with the Chamber of Representatives, it being further specified in the 1949 Constitution also in Article 127 that the Senate would participate in the exercise of legislative power in respect of matters concerning particularly one, several, or all the component states or parts of the territories of these states and in respect of matters relative to relations between the Republic of the United States of Indonesia and the said component states.

It was laid down in Article 128 of the 1949 Constitution and in Article 90 of the 1950 Constitution that draft legislation drawn up by the Government would be presented to the Chamber of Representatives by Presidential message, the 1949 Constitution providing also that such draft legislation would at the same time be brought to the notice of the Senate. The Chamber of Represen-

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tatives was also accorded the right by the terms of Article 129 of the 1949 Constitution and Article 91 of the 1950 Constitution to introduce amendments to any legislation submitted by the Government. Furthermore, the Ministers were, by virtue of the provisions of Article 105 of the 1949 Constitution and Article 64 of the 1950 Constitution, entitled to speak at any session of the Chamber of Representatives.

It was required by the terms of Article 134 of the 1949 Constitution and Article 92 of the 1950 Constitution that, in the event of the rejection by the Chamber of Representatives of draft legislation proposed by the Government, the President would be notified by the Chamber of Representatives of its decision.

Similarly, it was stipulated in Article 92 of the 1950 Constitution that the Chamber of Representatives, having accepted, with or without amendment, draft legislation proposed by the Government, would notify the President of this decision and submit the text of the said legislation to the President. In Article 133 of the 1949 Constitution it was laid down that, whilst the President would be notified of the decision of the Chamber of Representatives approving draft legislation, such approved draft legislation dealing with matters coming within the competence of the Senate would be submitted to the Senate.

In Article 136 of the 1949 Constitution it was further provided that the Senate, having approved draft legislation already accepted by the Chamber of Representatives, would notify the President of this decision, and, in the event of its rejecting draft legislation already approved by the Chamber of Representatives, the Senate would also notify the President of the decision taken.

A further provision in Article 136 of the 1949 Constitution authorized the Government to submit again to the Chamber of Representatives draft legislation rejected by the Senate, and, if approved again, and without amendment, by the Chamber of Representatives with a favorable vote of at least two-thirds of the members present (as required by the stipulations of Article 132), the text of such legislation would then be forwarded to the President for ratification. It was also required by the terms of Article 137 of the 1949 Constitution that the President would be notified by the Chamber of Representatives of the rejection by the Chamber of Representatives of draft legislation submitted to it by the Government for reconsideration.

In an identically-worded provision in Article 138 of the 1949 Constitution and in Article 94 of the 1950 Constitution it was stipulated that:

> The Government is bound to ratify duly passed legislation unless the Government gives notice, within one month from the date on which the legislation in question has been submitted for ratification, of having preponderant objections to the terms of the legislation in question.

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In the same articles it was further laid down that the Chamber of Representatives (and under the terms of the 1949 Constitution, also the Senate) would be notified by Presidential Message of the ratification of an Act by the Government or the objection of the Government to an Act.

The Government was authorized by the provision of Article 138 of the 1949 Constitution and Article 94 of the 1950 Constitution to withdraw any draft legislation not yet passed by the Chamber of Representatives.

In Article 130 of the 1949 Constitution and Article 95 of the 1950 Constitution it was specified that all legislation passed by the Chamber of Representatives--the 1949 Constitution referred also to legislation passed by the Senate on matters coming within the competence of the Senate--acquired the force of law on being ratified by the Government, further, that the laws of the state were inviolable. Thus, the duly ratified laws were wholly binding on every Court of Law.

It was also provided in Article 128 of the 1949 Constitution and Article 90 of the 1950 Constitution that the Chamber of Representatives could submit draft legislation to the Government, this provision similarly applying, under the terms of the 1949 Constitution, to the RUSI Senate in respect of matters coming within the competence of the Senate

With regard to draft legislation proposed by the Senate, it was provided in Article 129 that such draft legislation would be discussed by the Chamber of Representatives which was authorized to introduce amendments to the draft.

In Article 133 of the 1949 Constitution it was also laid down that if the Chamber of Representatives introduced amendments to draft legislation proposed by the Senate the amended draft would be then submitted to the Senate for further consideration, the subsequent procedure being as that provided for in respect of draft legislation proposed by the Government. In the same article it was provided that draft legislation proposed by the Senate that was accepted by the Chamber of Representatives without amendment would be forwarded to the President for ratification by the Government.

The proposing of legislation by the Chamber of Representatives was dealt with in Article 135 of the 1949 Constitution and Article 93 of the 1950 Constitution, the 1950 Constitution providing that such legislation would be submitted to the President for ratification by the Government, the 1949 Constitution providing that such legislation when relating to matters coming within the competence of the Senate would be submitted to the Senate for consideration, but in all other cases submitted to the President for ratification by the Government. Whilst no provision was made for prior discussion with the Government on draft legislation to be proposed by the Chamber of Representatives--the Government having the function in this connection of merely

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accepting or rejecting such draft legislation--it nevertheless became the procedure for members of the Government to discuss such drafts, and, where necessary, suggest modification of the text, before the proposed legislation was submitted to the President for ratification by the Government. Consequently the final text submitted by the Chamber of Representatives was in fact a version arrived at from consultation between the Chamber of Representatives and the Government.

There was only one draft bill which became law submitted by the RUSI Chamber of Representatives, whilst five draft bills which have become law have been put forward by the Chamber of Representatives since the re-establishment of the unitary state. In all cases these bills related to the Chamber of Representatives and the members of the Chamber, as can be seen from the following list:

1 Statute No. 4,1950 regarding reimbursement of members of the RUSI Chamber of Representatives (subsequently revoked)

2 Statute No. 6,1951 regarding salaries and allowances for the chairman of the Chamber of Representatives, and allowances for traveling and accommodation costs for members of the Chamber of Representatives (replacing Statute No. 4,1950 but also subsequently revoked)

3 Statute No. 37,1953 regarding reimbursement of members of the Chamber of Representatives

4 Statute No. 2,1954 regarding payments to the chairman, the vice-chairman, and the members of the Chamber of Representatives (replacing Statute No. 10,1953 which had replaced Statute No. 6,1951)

5 Statute No. 5,1954 regarding the right of the Chamber of Representatives to set up Commissions of Inquiry

6 Statute No. 75,1954 regarding penal provisions applying specifically to members of the Chamber of Representatives.

Special Committees of the Chamber of Representatives are still engaged in the drafting of four bills, to be proposed by the Chamber of Representatives, dealing with the status of an outgoing Cabinet, state of emergency, rules of procedure of the Chamber of Representatives, and the scope of authority of Ministers.

Emergency Laws

Both the 1950 and 1949 Constitutions, as well as the 1945

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Constitution, (5) authorized the Government independently to issue Emergency Laws to regulate matters on which immediate action was required by reason of exceptional circumstances. This provision was laid down in Article 139 of the 1949 Constitution and Article 96 of the 1950 Constitution, in both of which it was also stated that Emergency Laws had the same force and authority as laws enacted by normal procedure.

It was further stipulated in identical provisions in Article 140 of the 1949 Constitution and Article 97 of the 1950 Constitution that Emergency Laws would, within one month of being enacted, be submitted to the Chamber of Representatives (6) to be dealt with in accordance with the procedure prescribed for draft legislation submitted by the Government; in the event of the rejection of an Emergency Law by the Chamber of Representatives such an Emergency Law would automatically lapse, whilst all consequences arising from the implementation of such an Emergency Law, which lapsed on that account, would be provided for by law to the extent that necessary provisions therefore were not included in the terms of the Emergency Law in question. Similarly, it was required that, when an Emergency Law was adopted as a statute by normal procedure after having been amended, the consequences of such amendments would also be provided for by law.

Decrees and Ordinances

It was laid down in Article 141 of the 1949 Constitution and Article 98 of the 1950 Constitution that:

> Regulations for the execution of laws are enacted by the Government and called Government Ordinances,

and in Article 142 of the 1949 Constitution and Article 99 of the 1950 Constitution that:

> The laws and Government Ordinances may delegate to other organs (of the State) the task of further regulating definite subjects specified in the provisions of these laws and ordinances.

Usually further directives as to the application of laws and Government ordinances were given in Presidential Decrees (the term Keputusan Presiden--Presidential Decision--being invariably translated as Presidential Decree). The texts of all laws, Government Ordinances, and Presidential Decrees were signed

(5) In Article 22 of the 1945 Constitution the reference was to "...Ordinances which have the force of law."

(6) This provision was not always observed, with the result that a considerable number of Emergency Laws are still operative as such.

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by the President and counter-signed by the Minister or Ministers concerned, whilst official directives of lesser consequence were issued by the Minister concerned in each case.

The designation of Presidential Decree (referred to in Indonesian as Keputusan Presiden--Presidential Decision) has been applied both to those decrees issued by the President in which specific directives are given and to those decrees issued by the President announcing appointments or termination of appointments of high rank in the state administration (as indicated in Article 51 of the 1950 Constitution). (7)

As can be seen from the following table those Presidential Decrees announcing such appointments or terminations of appointment have been far more numerous than those Presidential Decrees in which specific directives have been given:

Year	Presidential Decrees giving specific directives	Presidential Decrees relating to appointments, pardons, etc.	Total
1950	54	727	781
1951	13	1051	1064
1952	27	1565	1592
1953	63	1663	1726
1954	103	1345	1448
1955	71	1605	1676

Evidently there is adequate justification for proposing that the present practice of designating all decrees issued by the President as Presidential Decisions (Keputusan Presiden) should be revised and only those Presidential Decrees in which specific directives are given should be referred to as Presidential Decisions, whilst those dealing with other matters should be referred to by the term Peraturan usually denoting decree.

Provision could be made so that:

Presidential Decrees in the nature of directives (Peraturan Presiden) would relate to:

Legislation
Government Ordinances
Presidential Decrees (Peraturan Presiden--this term not yet being applied)
Ministerial Ordinances, etc.
Regulations formulated by independent state institutions;

and that

(7) The same term Keputusan Presiden was also mentioned in Article 85 of the 1950 Constitution but in this case with a wider meaning.

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Presidential Decrees which could be referred to as Presidential Decisions (Keputusan Presiden) would relate to:

decisions by the President
decisions by Ministers, and such items
decisions by directors of independent state institutions.

Provision for this differentiation should certainly be made in the new Constitution in order to remove the existing anomaly.

The following table shows the number of laws and decrees issued from 1950 to 1955:

Year	Statutes	Emergency Laws*	Government Decrees	Presidential Decrees
1950	8	43	33	781
1951	24	25	73	1064
1952	24	15	51	1592
1953	37	9	42	1726
1954	76	12	64	1448
1955	12	19	27	1676

* A number of Emergency Laws have become statutes enacted by normal procedure.

Other Rights Accorded to the Chamber of Representatives

In Article 120 of the 1949 Constitution and Article 69 of the 1950 Constitution it was laid down that:

> The Chamber of Representatives has the right of interpellation and questioning; the members have the right of questioning.
>
> The Ministers will furnish all the information requested to the Chamber of Representatives, either orally or in writing....subject to the condition that the providing of the information requested is not considered contrary to the general interests of the state,

and, further, in Article 121 of the 1949 Constitution and Article 70 of the 1950 Constitution that:

> The Chamber of Representatives has the right to set up Commissions of Inquiry.

As has already been noted (see page 30) the provisions of the 1949 Constitution withheld from the Chamber of Representatives the right to force the Cabinet or individual Ministers to resign from office, and, at the same time, did not authorize

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the President (that is, the Government) to dissolve the Chamber of Representatives. The provisions of the 1950 Constitution, on the other hand, did invest the Chamber of Representatives with the right to compel the Cabinet or individual Ministers to resign from office, whilst also according the President (that is, the Government) the right to dissolve the Chamber of Representatives.

Conclusions Regarding the Status and Functions of the President

From a survey of the various provisions relating to the status and functions of the President in the 1945 Constitution, the 1949 Constitution, and the 1950 Constitution it can be seen that:

a. whilst the President was not accorded unlimited state power by the provisions of the 1945 Constitution, it being stipulated in Article 3 and Article 37 that the Consultative Assembly would formulate and introduce modifications to the Constitution and would define the general orientation of state policy, and in Article 5 that the legislative power vested in the President would be exercised in concurrence with the Chamber of Representatives, it was laid down in Article IV of the Transitional Provisions of the 1945 Constitution that, pending the formation of the Consultative Assembly and the Chamber of Representatives, the President, assisted by a National Committee, would exercise the competences of both these institutions; the President held these extensive powers during the period 18 August to 16 October, 1945 (see also page 4);

b. in Vice-Presidential Announcement No. X, dated 16 October, 1945, it was provided that, pending the formation of the Consultative Assembly and the Chamber of Representatives, the Working Committee of the Indonesian Central National Committee (KNIP), acting on behalf of the KNIP, was authorized to participate (with the President)

> in defining the general orientation of state policy, and in the exercise of legislative powers;

thus the powers of the President were diminished in respect of these two functions by reason of the participation of the KNIP Working Committee (see page 7);

c. on 11 November, 1945, the President decided that, as had been proposed by the KNIP Working Committee, the Ministers, who had hitherto been merely assistants of the President and responsible only to the President, would be made responsible to the Working Committee, the President as Head of State remaining in the position of not being answerable to any state organ;

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d. the status of the President as Head of State not responsible to any state organ was preserved in the provisions of both the 1949 and 1950 Constitutions (see page 19 and page 30).

As Head of State the President occupies a position of pre-eminence. In the name of the state the President receives the representatives of foreign powers, appoints representatives of the Republic of Indonesia to foreign powers, concludes treaties with foreign powers, awards decorations, grants pardons, declares war, holds the rank of Supreme Commander of the Armed Forces, signs the texts of all legislation, Emergency Laws, Government Decrees, Presidential Decrees; and virtually all correspondence between the Government and the Chamber of Representatives is effected through the intermediary of the President.

However, all decrees and other documents signed by the President must also be counter-signed by the Minister concerned in each case. The President is inviolable; it is the Minister who is answerable for measures taken.

Thus, whilst the President, as representative of the State, occupies a position of pre-eminence, the Constitution provides that, with the exception of the formation of a new Cabinet, the Minister concerned in each case is answerable for action taken by the President.

When it is recalled that the Republic of Indonesia had to wage a constant struggle for survival in the first years of its existence, and that the President has held the position of Head of State since the Republic of Indonesia came into being, it is easily understood that these juridical concepts could not always be fully implemented. During the Djogja period the President was again accorded full state powers on three occasions (see page 15) and during this period also a Presidential Cabinet was installed (see page 16). Moreover, it has happened subsequently that the President has refused to sign documents submitted by a Minister for signature. These and other actions of the President have been criticized as being at variance with the provisions of the Constitution.

The extracts from the reports of the various Committees of the Chamber of Representatives, which are attached as Appendix I, show the measure of dissatisfaction in these Committees regarding actions of the President. In Appendix 2 are given extracts from the reply of the Sukiman Government to issues raised by the Chamber of Representatives Committees.

The most important points of this reply are as follows:

The scope of the functions of the President and the Vice-President at the moment cannot, in the opinion of the Government, be defined solely on the narrow

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basis of purely constitutional considerations. Various other factors, notably those deriving from the actual conditions applying in this current period of transition, must also be taken into account. It is the Government's opinion that, by reason of the conditions existing at the moment in various fields, the President and the Vice-President are frequently obliged to play a more active and more extensive rôle than would be the case if the country had attained a satisfactory degree of stability.

Moreover, both the President and the Vice-President, who were acknowledged as trusted leaders of the national struggle during the period of colonial rule and during the Revolution, are still accorded the same respect and recognition by the entire people now that Indonesian independence has been achieved. Thus, the President and the Vice-President are not, as would be contended on the basis of a strictly constitutional viewpoint, merely personal symbols of the state, but are national leaders have the fullest confidence of the people.

It is for this reason that the people constantly call for statements by the two personalities who hold the highest positions in the state, and thus it is inevitable that the President and the Vice-President frequently address to the people declarations on the foundations of the state, on the development of the state and the factors hindering this development, and on continuing the national struggle. Such declarations are, of course, also issued by various government representatives and officials, but the fact remains that the people insist on personal visits by the President and the Vice-President who are more trusted and more respected than any other official spokesman.

It must be pointed out too, that requests for statements by the President and the Vice-President are made not only be the people, but also by government bodies desiring assistance in arriving at important decisions.

The existing conditions then evidently oblige the President and the Vice-President to be active beyond the limits of strictly formal duties.

The Government is convinced that the activities of the President and the Vice-President in this connection have been of inestimable benefit to the State and to the people. The Government furthermore maintains that there has been no violation of the fundamental principles of parliamentary government as expressed in the letter and the spirit of the Constitution since the Cabinet remains answerable to Parliament for all actions of the President and the Vice-President.

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> The question of whether the Cabinet agrees or disagrees with actions of the President and the Vice-President is an internal matter between the Cabinet and the President and the Vice-President themselves.
>
> It may well be that the circumstances under discussion, which arise from the course of historical evolution, impart to the parliamentary régime in Indonesia at the moment an individual character, but the basic condition of the Cabinet's being answerable to Parliament for all measures is definitely preserved.
>
> It is the hope of the Government that this clarification will remove all uncertainty and misunderstanding regarding the position of the President and the Vice-President.
>
> The affirmation that:
>
> firstly, the question of whether the Cabinet agrees or disagrees with actions of the President and the Vice-President is an internal matter between the Cabinet and the President and the Vice-President themselves; and
>
> secondly, the Cabinet is answerable to Parliament for all such actions

disposes of the issue from a juridical viewpoint. The Head of State is inviolable; it is the Cabinet that is answerable for all actions of the Head of State.

Actually, the reply quoted does indicate that the scope of action in respect of which the President is inviolable is extended. Whilst the provisions of Article 118 of the 1949 Constitution and Article 83 of the 1950 Constitution referred implicitly to governmental actions--since the Ministers were made answerable for government policy--the inviolability accorded the Head of State is now taken to apply to all activities of the President and the Vice-President having any bearing on state affairs.

Considered politically, the government statement quoted above affirms that the Head of State remains unconditionally in office, whilst the activities of the President and the Vice-President could possibly bring about the resignation of a Cabinet. There is the possibility that Parliament, disapproving of actions of the Head of State, may demand the resignation of the Cabinet, and it is also possible that a Cabinet, unwilling to accept responsibility for certain actions of the Head of State, may decide to resign.

Only if one of the pro-Government groups in Parliament withdrew its support for the Cabinet (for example, in the event of a grave difference of opinion between the President and the

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Cabinet) would there be any real likelihood of Parliament's forcing the Cabinet to resign.

On the other hand, there is far more likelihood of a Cabinet's deciding to resign by reason of being unwilling to accept responsibility for actions of the Head of State.

On the basis of the foregoing remarks it can be concluded that, although by the terms of the Constitution the office of President is an exclusively symbolic appointment, the President has come to acquire an unassailable status and has been able also to exercise no small measure of personal authority. Being in an unassailable position the President can publicly express his opinions without giving any regard to the policy of the Cabinet. This can, of course, lead to conflict between the President and the Cabinet, in which case the resignation of the Cabinet is the only solution.

It is possible that a Cabinet may remain in office even though Parliament and the Cabinet both do not approve of the actions of the President, but the stability of the Government is then jeopardized.

In the course of events there have developed, as a result of the particular position of the President and the Vice-President in the eyes of the people, certain procedures which are now established practices. However, there is no general awareness of this development and in consequence a degree of confusion arises which, in turn, creates widespread instability.

The matter should be given the fullest consideration by the Constituent Assembly with a view to having in the new Constitution appropriate provisions which will clarify the existing situation as regards the status of the Head of State. The Constituent Assembly is at liberty to decide for or against the maintenance of the current practices, but whatever the decision the question must be dealt with unequivocally for the provisions in the present Constitution relative to the status and functions of the Head of State are insufficiently precise.

Should the Constituent Assembly decide on the maintenance of the current practices and so make it officially permissible for the President to express publicly his views on state policy--the President then in effect participating in the definition of the general orientation of state policy--a clause should be included in the Constitution stipulating that the Cabinet is required to secure the prior approval of the President on all matters concerning the basic objectives of state policy. In this way it will be ensured that the President and the Cabinet follow a common policy, and there would thus be no conflicting public statements.

Providing that it is not decided to adopt the American system (where the President is vested with executive state authority and is not answerable to Parliament) but to retain the western European system (where the Ministers are answerable to Parliament), a clause of the nature suggested would be suf-

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ficient. The inclusion of such a provision in the Constitution would mean a departure to some extent from the western European system without leading to the adoption of the American system. With the introduction of this provision a new and distinct system would be established.

Should the Constituent Assembly disapprove of maintaining the current practices and decide to define the office of President as an appointment of exclusively symbolic character it will be necessary to have a clause in the Constitution requiring the President to secure prior approval from the Cabinet for any action he may wish to take that would relate to state policy.

Whichever alternative is adopted, there will still be needed some provision such that, in the event of there arrising any irreconcilable difference of opinion between the President and the Cabinet, the issue can be resolved by a prescribed means, for example, by decision of Parliament.

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APPENDIX I

EXTRACTS FROM REPORTS OF CHAMBER OF REPRESENTATIVES COMMITTEES ON EXPENDITURES ALLOCATED TO THE PRESIDENT AND THE VICE-PRESIDENT FOR 1951

From the Report of Committee I

It was asked by several members of the Committee whether, in view of the inviolable status of the President and the Vice-President, the Cabinet could be held answerable for speeches made in public by the President and the Vice-President. If the responsibility of the Cabinet in such instances was only nominal, it was observed, the question arose of which organ of state authority could be held answerable for the speeches made on such occasions recently as the reception for National Sports Week Committee, United Nations Day, the 17 August celebrations, and Heroes Day. In more than one instance, it was further stated, the nature of the speeches was not in keeping with the dignity of the position of a Head of State, and, moreover, certain ill-judged comments made in these speeches could adversely affect the development of negotiations with other governments as, for example, the discussions with Holland recently on West Irian.

Recalling the statement by the Director of the Presidential Secretariat at a meeting of the Assembly Committee for Internal Affairs to the effect that President Sukarno was frequently obliged to speak as a popular leader as well as President, a member of the Committee suggested that the President should, in making a public speech, indicate first whether he was speaking as a popular leader or in his capacity as President.

Because public statements by the President or the Vice-President were invariably made in the presence of members of the Diplomatic Corps and were consequently regarded as declarations of government policy, it was suggested that, in order to avoid any undesirable consequences, the President and Vice-President should not make frequent public speeches unless the Cabinet was in all cases to be held responsible for the statements delivered.

In a further question it was asked what limits were imposed on the President's participation in the formation of a new Cabinet and whether the President was to be regarded as having only the function of ratifying the decisions of the formateur of as having the function of a co-formateur.

In this connection also it was asked whether the President

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and the Vice-President were constitutionally authorized to exert influence in the appointment or transfer of diplomatic representatives. The member of the Committee submitting this question also asked whether there were any other matters coming within the scope of the authority of branches of the Government where the President and Vice-President were entitled to take action.

From the Report of Committee II

One member of the Committee expressed the opinion that no responsibility could be accepted for the public speeches made by the President since frequently there were statements in these speeches which were at variance with the views of the Cabinet, for example, as regards West Irian. In a parliamentary system of government, the member added, it was usually incumbent on a Cabinet which could not approve the actions or the standpoint of the Head of State to resign.

The same speaker requested that there should be a clear indication given as to whether or not the Government could be expected to follow the same pattern of parliamentary régime as operated in those countries regarded as examples. It was also asked what action was envisaged by the Government with regard to those matters for which no responsibility could be accepted.

Several members of the Committee asked whether, pending the formation of a Constituent Assembly, Parliament and the Government were jointly authorized to modify the terms of the Constitution and specify the number and nature of the Ministries. The hope was expressed that legislation would be enacted stipulating the number and the nature of the Ministries. Such action, it was pointed out, corresponded to the wishes of the Ministries, and would, furthermore, provide the occasion for defining unequivocally the functions of the President and the various other executive organs of the state.

One member asked for a precise clarification of the status of the Vice-President.

It was requested that an act be drawn up specifying the functions of the President, the Vice-President, the Supreme Court, the Attorney-General, the Finance Control Commission, and other executive state bodies.

With regard to actions taken by the President, the viewpoint was expressed by a member of the Committee that the Cabinet must either approve or disapprove all public statements by the President, and if approval could not be given to all such statements the Cabinet was consequently obliged to resign.

The point was also raised of the President's frequently appearing in public in army, navy, and air force uniforms and rarely in civilian clothing. An explanation for this was requested.

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There was also a request made for a Government statement defining the status and scope of authority of the President as laid down in the Constitution. Clarification on this point, it was added, would ensure than an effective measure of control, similarly based on the terms of the Constitution of which every leading state official pledged observance in taking the oath of office, could be exercised in respect of presidential actions not having the approval of Parliament.

The President, it was further stated, had constantly intervened in the affairs of one of the Ministries and this matter should be given the attention of Parliament and the Government.

Another member of the Committee observed that only the title of Head of State was mentioned in the text of the Constitution and no reference was made to a rank of Supreme Commander and other such designations.

From the Report of Committee III

Various members of the Committee expressed the opinion that the President intervened to an unjustified extent in the conduct of state affairs. Such action was objected to as obstructing the Cabinet in the exercise of its functions, and it was also noted that steps taken by the President may well be contrary to the policy of the Cabinet which was, however, answerable to Parliament for all such measures.

There were several members of the Committee who commented that it was apparently desired that the people should be in awe of the President so that no dissension would result from the introduction of modern methods and practices which the large majority of the population, still inclined to associate the President with traditional values, may not understand.

Suggestions were made by a number of members of the Committee that:

1. President Sukarno should not make a practice of intervening in the conduct of state affairs; it was to be remembered that the functions of the office of President were quite different from the activities of Bung Karno as a leader of a popular movement;

2. prior approval of the Cabinet should be required for public speeches by the President and the Vice-President given that--as in other countries where the President was considered to be the personal symbol of the state--the Cabinet was answerable to Parliament and for public statements by the President and the Vice-President;

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3. in view of the considerable expenditure involved and in consideration of the personal safety of the President, tours by the President should be less frequent, and whenever such tours are made fewer persons should accompany the President; moreover, presidential tours should be subject to the prior approval of the entire Cabinet.

It was further suggested by several members of the Committee that the President should exercise discretion in making public statements. This recommendation, it was explained, did not imply any restriction on the special rights of the President.

From the Report of Committee IV

There was unanimous agreement on the view that the very frequent public speeches by the President during the past two years had in virtually every instance touched on delicate political issues and often expressed an attitude at variance with Cabinet policy.

It was noted that, with the system of parliamentary government as laid down in the Constitution, the Minister concerned in each case was answerable to Parliament for the statements made by the President. In this connection it was asked whether--as would be in conformity with the terms of the Constitution--prior approval was given by the Cabinet or by whichever Minister might be concerned to public speeches by the President.

The present situation, it was stated, had particularly undesirable consequences, as was seen recently in the Assembly Defense Committee when the Minister of Defense was unable to give any information regarding statements on defense questions made in a speech by the President.

Prior authorization by the Defense Minister for public speeches by personnel of the army and other institutions having the character of instruments of state authority was similarly called for. Failing some sort of restraint, it was stated, the impression was given that the state was ending toward fascism with the instruments of state power having complete control of the government apparatus. In this connection mention was made of the President's speech at the Chandradimuka opening on 6 October in which a large measure of blame was placed on the political parties for the present situation. Such criticism, it was pointed out, lowered the prestige of the political parties, the existence of which was a fundamental element of democracy.

An equally unfavorable impression was given on the occasion of Armed Forces Day, it was stated, when an Order of the Day was issued by the Commander-in-Chief and by the Chief of Staff, but not be the Defense Minister.

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From the Report of Committee V

These members of the Committee were also opposed to the President's making frequent trips accompanied by a large entourage, since the expense involved was excessive and not justifiable even though the purpose of these tours was to consolidate popular support for the ideals of Pantjasila. Moreover, the speeches by the President, designed to foster national unity, frequently gave offense to the adherents of one or another viewpoint, it was noted, so that the likelihood of division rather than unity was increased. The hope was expressed that the Government would take positive measures regarding the President's speechmaking.

The view that no action could be taken because "the President is inviolable," it was considered, reflected a lack of affection for the President.

From the Report of Committee VI

All members of the Committee were agreed on suggesting to the Government that special legislation or a regulation should be drawn up defining the status and functions of the President and the Vice-President.

Certain members of the Committee proposed that provision should be made for a distribution of duties of office between the President and the Vice-President since, up to the present, the functions of the Vice-President had not been clearly specified and it seemed that the Vice-President acted merely as an official in the service of the President.

It was maintained by a number of members of the Committee that in Indonesia the President occupied a position quite distinct from that of the Head of State in other countries since, besides his official appointment, President Sukarno was also still a leader of the masses. Invariably, it was pointed out, the President was requested by the local population of places visited during his tours to address gatherings even though the official programme had not provided for public speeches.

Various members of the Committee voiced the opinion that either the Premier or another member of the Cabinet should be held answerable for statements made in public speeches by the President.

From the Report of Committee VII

Agreement was expressed by various members of the Committee with the statement made in a meeting of the Internal Affairs Committee to the effect that the President, acting in contradiction to the terms of the Constitution, intervened in the conduct of state affairs. This intervention, it was added, was notably evident in the speeches by the President, such as that delivered

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on the occasion of the 17 August celebrations in 1951. The reply received by the Internal Affairs Committee--that the President was, by virtue of his official position, inviolable, and, at the same time, must be recognized as acting in the capacity of leadership that dated from the development of the national movement--was described as unacceptable.

According to the provisions of the Constitution, it was contended, the Cabinet is answerable for all actions of the President, and if the Cabinet was unwilling to approve the actions of the President the Cabinet must then resign.

The situation, it was stressed, called for the urgent attention of Parliament.

From the Report of Committee VIII

Another member of the Committee stated that it was impermissible that the President, as the personification of the state, should deliver public speeches of which the texts had not been countersigned by the Premier. It was also suggested that prior approval of the Premier should be required for tours by the President and any member of the Cabinet.

It was understandable, one of the Committee members commented, that the President should address public gatherings with the object of countering the widespread indifference toward the Government, but this function would, nevertheless, be better carried out be the Information Ministry. In other countries, such as India, it was noted, the President did not assume such responsibilities.

The same member of the Committee further commented that whilst visits to outlying regions of the country by the President and members of the Cabinet were indeed necessary, given that the populations in these regions frequently requested visits of this nature, there should be first a definite program drawn up for official tours so as to ensure that positive results were achieved.

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APPENDIX II

EXTRACTS FROM THE GOVERNMENT STATEMENT IN REPLY TO REPORTS OF CHAMBER OF REPRESENTATIVES COMMITTEES ON EXPENDITURES ALLOCATED TO THE PRESIDENT AND THE VICE-PRESIDENT FOR 1951

Regarding Public Speeches by the President and the Vice-President and Other Matters Relating to the Status and Functions of the President and the Vice-President

Discussions by all Committees of the Chamber of Representatives on the status and functions of the President and Vice-President touched mainly on the matter of public speeches by the President and the Vice-President. The majority of members speaking on this question were of the opinion that the limits which should be observed in accordance with the terms of the Constitution had been exceeded.

Since a fundamental issue is involved the Government considers it necessary to give its views on the status of the President and the Vice-President before dealing specifically with the question of public speeches.

The scope of the functions of the President and the Vice-President at the moment cannot, in the opinion of the Government, be defined solely on the narrow basis of purely constitutional considerations. Various other factors, notably those deriving from the actual conditions applying in this current period of transition, must also be taken into account. It is the Government's opinion that, by reason of the conditions existing at the moment it various fields, the President and the Vice-President are frequently obliged to play a more active and more extensive rôle than would be the case if the country had attained a satisfactory degree of stability.

Moreover, both the President and the Vice-President, who were acknowledged as trusted leaders of the national struggle during the period of colonial rule and during the Revolution, are still accorded the same respect and recognition by the entire people now that Indonesian independence has been achieved. Thus, the President and the Vice-President are not, as would be contended on the basis of a strictly constitutional viewpoint, merely personal symbols of the state, but are national leaders having the fullest confidence of the people.

It is for this reason that the people constantly call for statements by the two personalities who hold the highest positions in the state, and thus it is inevitable that the President and

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the Vice-President frequently address to the people declarations on the foundations of the state, on the development of the state and the factors hindering this development, and on continuing the national struggle. Such declarations are, of course, also issued by various government representatives and officials, but the fact remains that the people insist on personal visits by the President and the Vice-President who are more trusted and more respected than any other official spokesman.

It must be pointed out too that requests for statements by the President and the Vice-President are made not only by the people but also by government bodies desiring assistance in arriving at important decisions.

The existing conditions then evidently oblige the President and the Vice-President to be active beyond the limits of strictly formal duties.

The Government is convinced that the activities of the President and the Vice-President in this connection have been of inestimable benefit to the State and to the people. The Government furthermore maintains that there has been no violation of the fundamental principles of parliamentary government as expressed in the letter and the spirit of the Constitution since the Cabinet remains answerable to Parliament for all actions of the President and the Vice-President.

The question of whether the Cabinet agrees or disagrees with actions of the President and the Vice-President is an internal matter between the Cabinet and the President and the Vice-President themselves.

It may well be that the circumstances under discussion, which arise from the course of historical evolution, impart to the parliamentary régime in Indonesia, at the moment, an individual character, but the basic condition of the Cabinet's being answerable to Parliament for all measures is definitely preserved.

It is the hope of the Government that this clarification will remove all uncertainty and misunderstanding regarding the position of the President and the Vice-President.

The various points raised, including the suggestion that the functions of the President and the Vice-President should be specifically defined (or, as proposed by Committee IV, that legislation should be drafted stipulating the status and functions of the President and the Vice-President), and the statements regarding public speeches by the President and the Vice-President are, it is felt, fully covered by the foregoing clarification.

The Government also wishes to state that the desire expressed by a number of members of Parliament for measures to be taken which would ensure a situation conforming to the provisions of the Constitution is fully understood and appreciated.

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The efforts of the Government are being directed toward this end, but it must be recognized that the conditions arising in the course of this present transitional period still make impossible the fulfillment of all requirements of the Constitution.

Again in connection with public speeches by the President and the Vice-President, the Government has found that the President and the Vice-President always endeavour to express views in public that correspond to the standpoint of the Cabinet. This is to be seen from the speeches read first to the Premier of to the Minister of Information and from unprepared speeches by the President and the Vice-President.

For this reason the Government does not consider it necessary to adopt the suggestion by Committee I and Committee IV that the President and the Vice-President be required in all cases to secure prior official approval from the Cabinet for statements to be made in public.

Intervention of the President in the Formation of a New Cabinet

The functions of the President with regard to the formation of a new Cabinet are dealt with in Article 51 of the Constitution. In accordance with the terms of this article of the Constitution, the President, who has held discussions with the various parties and groups represented in Parliament before designating a Cabinet formateur, is free to accept or to reject the list of Ministers proposed by the formateur. However, it is, of course, certain that the formateur will have discussed the nominations with the President before drawing up a final list. This procedure, which is warranted in view of the considerable experience of the President in state affairs and his knowledge of the personal qualities required for a ministerial post, is not in conflict with the terms of Article 51 of the Constitution and does not signify that the President acts as a co-formateur. Once the Cabinet is formed, the formateur (the Premier) is answerable in every respect for the composition of the Cabinet.

Entitlement to Intervene in Diplomatic Appointments and Transfers of Diplomatic Representatives (Article 123 of the Constitution) and Similar Matters

It is the Minister concerned in each instance who is entirely answerable for decisions on diplomatic appointments even though the relevant documents bear the signature of the President.

However, as with other important matters, the Minister would certainly first discuss the question with the President--particularly in view of the provisions of paragraph 2 Article 52 of the Constitution--before submitting the relevant documents for signature by the President.

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Status of the Vice-President

In Article 45 of the Constitution it is stipulated that the Vice-President assists the President in the carrying out of his duties, and in Article 48 it is stipulated that, in the event of the President's being prevented from carrying out his duties, the Vice-President will deputize for the President.

At no time since the Proclamation of Independence has any necessity been felt for an official division of duties between the President and the Vice-President, and the Government is also of the opinion that there is no need for any such provision. Similarly the Government cannot agree with the conclusion of Committee IV that, in the absence of such a provision, it appeared that the Vice-President was merely an official under the instructions of the President.

Rank of Supreme Commander of the Armed Forces Accorded to the President; Wearing of Military Uniform by the President; Flying of the Presidential Standard

Since it is stipulated in Article 127 of the Constitution that the President is vested with supreme authority over the Armed Forces it is customary for the President to be referred to as Supreme Commander of the Armed Forces. Similarly, on the basis of the provisions of this Article the President wears military uniform (of the Army) as official dress, whilst the presidential standard also incorporates the star-shaped emblem in the banner of the Armed Forces. It is, of course, desirable that, at naval and air force ceremonies, the Supreme Commander should wear the uniform of whichever service is concerned. This is essentially a question of military etiquette. The Presidential standard is flown to indicate the presence of the Head of State.

Owing to the pressure of more urgent issues the Government has not yet had an opportunity of establishing official regulations regarding presidential dress and insignia.

The Government is in complete agreement with the statement by several members of Committee III to the effect that the majority of the people favor the retention of marks of distinction for the Head of State.

Tours by the President and the Vice-President

It has already been pointed out how important it is that the President and Vice-President maintain contact with the various provincial territories and deliver addresses to the inhabitants of these regions. The Government is in full agreement with the view put by a member of Committee VIII that it is essential that the President and the Vice-President visit the outlying territories and

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it was, moreover, to be remembered that such visits were requested by the inhabitants in these areas.

The Government is of the opinion that, since Indonesia is a state which has only recently achieved independence, visits to provincial areas by the President and the Vice-President are particularly desirable, if only for the purpose of acquiring familiarity with these various regions, for Indonesia comprises a diversity of islands and peoples. During the last two years the President and the Vice-President have made a number of tours, which have taken up a considerable time and which have demanded no small degree of physical effort, and almost all regions have now been visited.

Because these tours can only be undertaken on occasions when it is possible for the President and the Vice-President to be absent from the seat of Government--and this possibility depends on the largely unforeseeable trend of domestic and international developments--the proposal put forward by a member of Committee VIII for a pre-arranged program is impracticable.

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