

RESEARCH ARTICLE

A Rummage Into the Reformasi Dustbin of History: A Sociocultural-Legal Study of Indonesia's Constitutional Commission

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Abstract: To a certain extent, the enigmatic process of Indonesian constitutional amendment has been adequately raised, if not explained. Nonetheless, it is a no-brainer to suggest that the available accounts are far from presenting the whole picture of the process. Should we recognize the utmost gravity of the process of the emergence of the current model of democratization, it is imperative to consider the elusive contribution of the Constitutional Commission (“Komisi Konstitusi”) as a small cadre of Indonesia’s intellectual elites. Needless to say, this “other” process has been overlooked by the available scholarly accounts up to a point where it occupies the dustbin of history. Having said that, this article is the first to present a discussion on the overlooked work of the Commission as an elite-driven process of constitution-making in democratizing Indonesia. In addition to being situated within the tradition of archival-based biographical study, this study places the Commission as it pertains to the broader theoretical question with regard to the contemporary idea of constitutional tradition in Indonesian political thought. Moreover, another salient argument that this paper raises is that public displays of self-importance of the Commission provide a window not only for understanding the dynamics of the post-authoritarian Indonesian political thought but no less important to make a case for the importance of cultural analysis in understanding the constitutional practice.

Keywords: dispute, resolution, pentagonal relationships, cultural legal analysis, Indonesia

Despite the abundance of populist rhetorical statements that essentializes democracy as “the government of the people, by the people, for the people,” the plain fact of the democratization process is that it is the exclusive business of the few elites (Rustow, 1966). This statement is particularly true in a setting that has experienced a significant disruption so as to allow the integration of a number of newly minted political outsiders. As things unfold, these unprepared self-selected leaders, without any necessary training whatsoever, went on to become the most important architects in choosing the most appropriate

path for the future of their nations. This situation happened in Indonesia as the then newly emerged democracy abruptly brought down the autocrat Suharto (Aspinall, 2005). Lacking a clear agenda as its logical consequence, Indonesia’s constitutional reform has been widely regarded as no more than “muddling through” (Lindsey, 2002). In a sense, it might be sensible to heed a call that “it’s time [for Indonesia] to flesh out the reform agenda” (Iskandar, 2016c, par. 6). For whatever it is worth, it is clear that in the end, it was the elite that set the course of political reform (Liddle, 2007).

On the one hand, as Indonesia progressed to a more capitalistic market-based model of the societal arrangement, it has unleashed the ever-increasingly popular “raw politics” that is solely based on cold, rational calculations (Choi, 2007; Iskandar, 2016b, 2019b). This situation has been aggravated by the abrupt, and, hence, unrestrained ongoing democratization that inevitably produces exceptionally high-cost politics (Allard & Damiana, 2019; Lamb, 2017). In this respect, a commentator poignantly remarked that “the growing number of [corruption] cases being exposed is not a sign of societal accountability, but should rather be seen as a reflection of the competitiveness of local politics” (Tomsa, 2015, p. 196). On the other hand, the tenacity of the remnant feudal values is also persevering, making its way to the messy-cum-brutal postcolonial politics (Iskandar, 2016b). Admitting the cultural tension between these two worldviews, the Indonesian reform has taken a “distinctive path” that generates many confusing outcomes that defy any textbook prescription (Horowitz, 2013; Iskandar, 2016a).

Following the recent revivalism in approaching socio-legal issues through the lens of cultural insights as spearheaded by Iskandar (2019), this paper will analyze the institutional failure of the Constitutional Commission (hereinafter “Komisi Konstitusi” or simply as “Komisi”) in light of the predominating cultural codes. This paper specifically situates the conflict as a shorthand for the eternal struggle that pits the persistent feudalism against the ever-increasing pressure of the capitalism-origin egalitarianism as two diametrically opposed values that compete in the same continuum. Although it is obvious that the main goal of this paper is to identify and critically analyze any substantive contributions that the Komisi may have to the prevailing debate on the Indonesian notion of constitutionalism, the more important goal that it sets out to achieve is to make a theoretical contribution that explicates as to why cultural factors are indispensable in any scholarly search for “deep meaning” (Brunner, 2008; Keesing, 1987), especially among the social scientists who do their work in the non-Western context such as Indonesia. By taking culture seriously, first and foremost, this paper aims to clear up some unexplained behavioral matters in the constitutional politics of Indonesia.

Taking that claim as its main assumption, the second section will proceed with a discussion that provides a theoretical ground that positions this paper within

the global debate on the enterprise of constitutional political reform. In so doing, this paper is presenting the case with regard to the central role of culture in the scholarly analysis that takes developing society as its context. To be precise, it is an attempt to understand Indonesia as:

They were working against enormous obstacles: a constitution in need of drastic change but still enjoying significant support; a badly divided society; a country with a considerable history of violence confronted with the threat of serious conflagration; an array of accumulated problems, rather than just the constitutional problem; a civil society stunted by decades of authoritarian rule; and, at the outset, armed forces that might not have yielded peacefully to an overnight transformation. Under these circumstances, coherence of the resulting institutions was scarcely the only touchstone of success. (Horowitz, 2013, p. 31)

In a word, it is important to reconceptualize our interpretive tool in an effort to achieve a more comprehensive understanding of our subject. After all, as a prominent law and development specialist in Asia put it, “law is deeply contextual and that it cannot be detached from its social and political environment. This is just as true in countries such as the United States as it is in the developing world, but this truth is absent from the new rule of law orthodoxy” (Upham, 2002, p. 7). The third section focuses on the Komisi as an oxymoronic institution that simultaneously embodied both modern (egalitarian) and feudal (aristocracy) representations. In addition to situating the cultural posture of the Komisi, the third section also critically analyzes the context of the Komisi’s constitutional visions. That being said, completing two modes of analyses in a simultaneous manner will enable the discussion to make a fuller assessment with regard to its practical and discursive potentials. The last section concludes.

Justifying Sociocultural-Legal Turn: A Bird’s Eye View

One of the most important features in any regime transition that aims for democracy is a constitutional

amendment (The Office of the United Nations High Commissioner for Human Rights, 2018). Undoubtedly, its centrality has something to do with setting out the foundational rule of law that enables a peaceful domestic political contestation in a periodic manner (Vliet et al., 2012). It is only natural that the creation of a much fairer playing field is its overwhelming objective (Brandt et al., 2011). The admission of the critical need for constitutional reform has also occupied countries that have no written and unified constitution, such as the United Kingdom (Dakolias, 2006). It is not uncommon that, in general, “constitutions emphasize the principles of democracy and constitutionalism, and contain detailed bills of rights” (Ghai & Galli, 2006, p. 5). To a certain extent, this requirement has led to an extreme position where constitutional amendment is simply a process that involves nothing more than superficial technical knowledge in “putting the ideas of others ‘into legal language’” (Grad, 1967, p. 409). But at the same time, there is no denying that the overall process of constitutional amendment correlates with the legitimacy of the progress towards democratization (Ghai & Galli, 2006).

Admitting the centrality of the status of constitutional change, the United Nations has gone further with publishing a “Guidance Note,” complete with its self-imposed obligation in which “advis[ing] national actors of these requirements and assist them to begin the process in a timely fashion” (United Nations, 2009, p. 6-7). Taking the same stance, the Council of Europe introduced the European Commission for Democracy through Law (better known as “the Venice Commission”) with a membership that spans to “university professors of public and international law, supreme and constitutional court judges, members of national parliaments and a number of civil servants” as an advisory body that advises in virtually every constitutional matter (Council of Europe, 2014; Hoffmann-Riem, 2014). In any case, it is not that surprising that the concern for constitutional reform has also become a long-standing matter of national policy-making for some countries (Escribà-Folch & Wright, 2015; Robinson, 1992; Woods, 2005). For that matter, it has been commented that “a primer on the emergence of the constitutional committee as a central component of the broader Syrian peace process” (Norberg, 2018, par. 2). In addition, there are plenty of non-governmental organizations that work in the area of constitutional reform, including International IDEA

(2019), Interpeace (2019), and USIP (The United States Institute of Peace, n.d.).

It is against the above background that Indonesia’s constitutional amendment process has proceeded. For instance, an international conference that was co-organized by the Indonesian Agency for Science (Lembaga Ilmu Pengetahuan Indonesia or “LIPI”) and the U.S. based Ford Foundation featured some of the world’s eminent scholars on democracy building, including Donald Horowitz of Duke, Juan J. Linz of Yale, and Alfred Stefan of Oxford, as an ambitious effort to “not to develop a corrupt democracy by learning from others’ failure” (Liddle, 2001, p. 10). One of the invited scholars, Professor Donald Horowitz, an eminent scholar on ethnic conflict (2001) and comparative constitution-making studies (2008, 2006, 2002, 1994), went on to publish a detailed study on the process of Indonesian constitutional reform to wide acclaim (Horowitz, 2013). Arguably, the most notable presence of foreign actors in the process is the Stockholm based International IDEA with its prolific outputs, including in scholarly law journal (Ellis, 2002, 2005).

Interestingly enough, the presence of foreign observers has intimidated and, as we will see later, then raised suspicion among many prominent members of the Indonesian constitutional commission, including the University of Chicago graduate Tjipta Lesmana. Should that be any guide, it is worth noting an astute observation by Horowitz (2013):

There was flirtation with a good many new, often foreign, ideas. Some of those were adopted. Yet, on the whole, there was greater comfort with institutions that were familiar, or that advantaged those who held the power of adoption, or that assuaged their apprehensions of danger based on their understanding of Indonesian history and social cleavages. If the sources of constitutional decision making in general are reason, passion, and interest, in Indonesia they were reason, interest, familiarity, and fear. (p. 31)

Hence, it is no surprise that the Indonesian trajectory of constitutional reform has proved to be exceptionally distinctive (Horowitz, 2013). To specify further, “while there’s no doubt that the current democratization process is in itself a feat of achievement, the prevailing

publications mask a deeper and more problematic aspect, i.e. the interpretation of the big concepts such as human rights itself” (Iskandar, 2016a, p. 5). Again, as Horowitz (2013, p. 31) surmised:

These are not wellsprings of action necessarily conducive to a coherent product. Moreover, the gradual character of the Indonesian process meant that institutional designers did not end their deliberations where they had begun them. Some early products of their labors were abandoned and redesigned years later. Despite the willingness to rethink issues, the multiple sources of inspiration for the various changes at various times did not guarantee a particularly good fit of the parts with each other.

Hence, it is logically inevitable for a Western observer to dismiss the Indonesian constitutional amendment as no more than an act of “muddling through,” devoid of a clear agenda (Lindsey, 2002). In the same vein, another Western observer, who is no less resentful, made claim against another set of laws that governed the regional autonomy, as nothing but a jumble of “confusing laws” (Bell, 2001). For what is worth, simply pointing out that there is something wrong without offering any clear and well-articulated exposition that takes all possible account is not fair treatment. Mostly, the conventional scholarly treatments in an attempt to understand Indonesian legal questions are done in a very formalistic manner to an extent where it excludes any possibility of integrating cultural factors (Bedner, 2013; Butt & Lindsey, 2012; Lindsey & Butt, 2018). The failure of integrating “cultural analysis” (Ellis & Wildavsky, 1990) in an attempt to illuminate a “[social] phenomenon” (Merton, 1987), including the legal question, is undoubtedly ignoring the so-called “deep meaning” that provides the indispensable nuance to get to the understanding of foreign law (Alexander, 2003; Alexander et al., 2012; Swedlow, 2011). This should not be surprising given the fact that there has been a debate that so far none “has done substantial theoretical work addressed to what comparative law really is about” (Lasser, 2003, p. 198; Legrand, 2011). As an explanatory factor, taking culture seriously is an oblique indicator of an attempt to understand the question in a holistic manner (Geertz, 1973, 1983).

In other words, it suffices to say that to understand the Indonesian legal questions, it is important to take an opportunity that is already presented itself in other areas of inquiries, namely cultural sociology (Alexander et al., 2012). In the process, an attempt to bring culture back into the fold is arguably the latest addition to understanding legal questions (Iskandar, 2011). Admittedly, however, by merely bringing back culture will not rectify every loophole that one can find in studying social issues. Nonetheless, it should be seen as a welcoming addition to our common understanding of any social phenomenon (Reed, 2011). As Geertz (1973) put it, it is the goal of this kind of inquiry to “believ[e] . . . that man is an animal suspended in webs of significance he himself has spun . . . [and] I take culture to be those webs, and the analysis of it to be therefore not an experimental science in search of law but an interpretive one in search of meaning” (p. 5). In sum, this study is written in response to what one may describe as “an overwhelming tendency to frame the problem of social knowledge as the problem of how social science can be like natural science has eliminated essential questions from our minds” (Reed, 2011, p. 1).

The Rise and Fall of the Komisi as *Untul Bawang* (Sideshow)

Arguably, the idea to introduce a constitutional commission (“commission”) can be traced back to the early years of *reformasi* itself. As can be expected, the idea for such an institution was strongly voiced by the various prominent non-state actors (Hasibuan, n.d.; Widjojanto et al., 2002). In fact, the original proposal to support the establishment of a constitutional commission is much more ambitious as it was expected to be able to independently produce a new constitution starting from scratch (Indrayana, n.d.; Isra, 2001). Clearly, this proposal cannot be separated from the proposition that is highly popular among its proponents in which, as a law professor at Universitas Indonesia, the nation’s most prestigious law school, “when it comes to the process of articulating law, it is the exclusive domain of legal professionals and not for politicians” (Suryokusumo, n.d., par. 7). As we will see later, this naïve aspiration proves to be unrealistic as the politicians have the last say in this matter. However, the most important rationale for the commission is voiced by Professor Jimly Asshidiqie, the then Chief Justice of the recently established Constitutional Court as the

only authoritative interpreter of the 1945 Constitution (Amr, 2003). In a deliberately cautious manner, Professor Asshidiqie, the then Chief Justice of the Court, suggests balanced support where he explicitly confirms that the ultimate power is at the hands of the politicians (the People's Consultative Assembly or "MPR"), but, at the same time, acknowledges that the Komisi's "editorial roles," that is, covering only stylistic supports, also plays a critical part in the process of constitution-making (Amr, 2003).

From the viewpoint of a case study, the tension that arises as a result of the Komisi's aspiration for a much greater role on the one hand and the power politics that belittles the Komisi in the limelight can be illuminating in an attempt to understand the pivotal role of culture in Indonesia's modern politics. To begin with, it is important to reemphasize that the Komisi is an elite body that is expressive of the very definition of Indonesia's modern-day aristocrats. Needless to say, the idea of social elite itself has been radically reconceptualized as a result of Western colonialism (Gouda, 2008; van Niel, 1960). Meaning, the elite has been traditionally defined as a segment of Indonesian society that "is the articulate, mainly Dutch-educated, indigenous upper-class" (Mysbergh, 1957, p. 38). To specify further, in Indonesia's postcolonial setting, the keyword here is being "mainly Dutch-educated" or simply Western-educated. At the individual level, it may be true that earning an advanced degree liberates the individual who earns it. Upon closer observation, however, the very same individual that has been liberated by Western advanced degree tends to re-enforce the very feudalism that once barred them from social mobility. It is also worth noting that the colonial Dutch has "appalling record ... providing education at any level, and specifically their failure to establish a single university in this nation of 60 million people until the 1940s" (White, 2005, p. 113). It is fair to claim that instead of unleashing a liberating effect on society as a whole, modern education has only modestly managed to catapult a group of newly coronated elite who, in the end, with a view of maintaining their own newly-found self-interest, sustains the same feudal practice.

As a conceptual matter, present-day Indonesia as "a historical phenomenon" should be conceived with two important acknowledgments:

First, contemporary Indonesia cannot be understood in isolation, but only as an outgrowth of the

accommodation of an indigenous society to Western imperialism which has influenced, and continues deeply to affect it. The second consequence of viewing the present in historical perspective is the necessity of treating Indonesian social and economic structure, not as a given within which solutions of problems must be sought, but as a historically rooted phenomenon the transformation of which will provide the only solution to these problems. (Levine, 2009, p. 72)

Accepting the claim that the Komisi is an embodiment of the transformed cultural worldview of the postcolonial Indonesia is the main assumption that this paper adopts. For a start, the Komisi is populated by Indonesia's most educated minds. In any case, it is not uncommon to find that a significant number of its members have a terminal-level degree, mostly in legal studies. Indeed, some of them are decorated with fancy foreign degrees. Taking this credential alone into the equation is sufficient enough to establish the claim that the Komisi is unarguably an institution for a group of new Indonesian elites.

Coupled with the persistent fact in which the elite have sustained the vanguard of conservatism (Choi, 2007; Jaca, 2016), this paper suggests that the Komisi is a cultural representation of a new elite of Indonesian society that is based on meritocracy. Although it is true that the Komisi is representing the progress of democratization, behaviorally speaking, their social status represents the transformation, if not continuation, of the feudal aspiration. Most of its members are, broadly speaking, conveniently classified as civil servants that are no more than "a [modern day version of] feudal community, as elites who are respected by the people and have a prestigious standing in society" (Wargadiredja, 2017, par. 5). Hence, the open resistance that has been waged by the Komisi against the MPR that have reluctantly assigned it, the job should be interpreted as a humiliation to the social standing of the former. In other words, being assigned to be merely responsible for (non-substantive) editorial matters is a big blow to the Komisi's self-pride as the intellectual elite of modern Indonesia. That said, the failure of the Komisi confirms that there are "deep tensions between Indonesian leaders' tendency to position themselves in self-serving discourses of feudalism and family, and what young, western-educated Indonesian professionals now expect of leaders" (Oktaviani et al., 2016, p. 538).

As Professor Jawahir Thontowi (personal communication, June 21, 2019), a Komisi member with a Ph.D. in (legal) anthropology from the University of Western Australia, one of Australia's very own Ivy Leagues universities, has confided to me, it is revealed that it was prominently the resentment of the Komisi's chairman Professor Sri Soemantri, arguably the nation's most prominent constitutional scholar (Harijanti, 2016), that propelled the animosity between the Komisi and the MPR. It takes no time for the rest of the members to pick up Soemantri's resentment as an attack against their self-esteem as the supposedly most highly prized members of Indonesian society. Taking a broader view, this tension is perfectly captured by a Javanese origin social code known as *unthul bawang*, that is, no more than being a nonsignificant sideshow that was invited to simply mean as a mere distraction to appease its unruly supporters. Being assigned as an *unthul bawang* (hereinafter, "sideshow") that has no substantive role in the constitutional drafting process, the Komisi perceived themselves as no more than a pawn in the political chess that is currently being played by those with much lower educational pedigree and, hence, social status. Being treated as a mere sideshow by the MPR, the Komisi saw they had been demeaned and relegated into being a pariah or the nonsignificant player by the uncultured politicians. In the eyes of the Komisi, the elected politicians supposedly are respectful toward them as Indonesia's modern-day *pandita* or "the revered teacher" of the nations. As an ultimate attack against their self-pride, the only available response to this is the all-or-nothing counter approach. Meaning, the Komisi is fully aware that this is a zero-sum game in which, in the worst-case scenario, which is the likeliest outcome, they will be relegated to the dustbin of history. Bluntly put, the Komisi has no interest in negotiating a win-win solution (Thontowi, J. personal communication, June 21, 2019). In other words, their only proposed solution is for the politicians to let them do whatever they please and accept it unquestionably.

The Overlooked Substantive Contributions

Based on an extensive archival study of all available documents that record the works of the Komisi that I can access, it can be summarily confirmed that the Komisi has little to offer in terms of clarifying some of the most nagging conceptual issues that pervade the

Indonesian discourse on constitutionalism (Lindsey & Butt, 2013). By claiming to be an archival study, this study is primarily relying on my interpretation of a wide range of both official and unofficial documents that the Komisi has produced. These include officially produced meeting minutes, personal diary of some Komisi members, and an unofficially compiled meeting agenda of the Komisi. As a matter of complementarity, the interpretation process is also significantly helped by a series of interviews with some Komisi members and its supporting staff. However, although it is true that the Komisi itself has not produced an elaborate, let alone systematic, account on the very idea of the Indonesian notion of constitutionalism, there is still a possibility to develop a theoretical account that can provide some sort of clarifications regarding two big issues, that is, the Indonesia idea of democracy and the rule of law. Hence, the discussion in this section will revolve around those two ideas as they were discussed by the Komisi.

In a record for the Komisi's 26th session of the plenary meeting, there is a simple table that is meant to convey their theoretical exposition of their ideal model for translating democracy in Indonesian context. Looking at this table, one can find some fundamental questions that need to be highlighted here. As a starter, there is a conceptual question on the nature of human rights that the Komisi has clarified. The Komisi identifies that the Indonesian notion of human rights is wildly different from its international counterparts. In a sense, Indonesian human rights, as the Constitution conceives it, is not individualistic. This anti-individualism entails a further consequence that is hardly inconceivable when one compares it with the international human rights conception. For instance, Indonesia's translation of the notion of human rights to religion does not equate full-blown protection of the individual. Rather, the Indonesian idea of religious freedom is solely meant to advance the comprehensive protection of the government recognized orthodox religious doctrines (Iskandar, 2019a).

With regard to the philosophical foundation of the state, the Komisi rehearses the standard conservative point of view that is popular among the nationalists in which the pan-religiosity should be maintained as the basic organizing principle in public life (Iskandar, 2016b). This is particularly related to the belief that, as Professor Jawahir Thontowi put it during the 4th meeting, there is no need to change the preamble

of the 1945 Constitution. According to Professor Thontowi, this decision paid homage to the “Founding Fathers” of the country. Also, this is in line with the popular academic viewpoint that makes the preamble as inviolably sacred (Hosen, 2002; Sarwanto, 2017; Sihaloho, 2017). As a consequence, Professor Thontowi made a bolder proposal by suggesting that it is highly desirable to have a specific article that explicitly recognizes *Pancasila* (or the Five Principles) as a state ideology that consists of “(1) the belief in the One God, (2) humanism that is just and civilised, (3) the unity of Indonesia, (4) populism that is guided by the inner wisdom of deliberations amongst representatives, and (5) social justice for all of the people of Indonesia” (Iskandar, 2016b, p. 725). Although there is no clear reason that made Professor Thontowi propose the further articulation of *Pancasila*, it can be claimed that it has something to do with the fear that the Islamist will seize the ambiguity as an opportunity to turn Indonesia into an Islamic state. Supposedly, it is fair to claim that the Komisi’s support toward a stronger position is no more than another mimicry that signals a strong commitment to the nationalist project of Indonesia’s model of secularism with direct guidance from the orthodox religious values (Iskandar, 2019a).

Another minor suggestion that might also be worth noting is the Komisi’s suggestion to add the word “demokratis” to the nomenclature of *negara hukum* or *rechstaat* or “the rule of law-based State.” According to Professor John Pieris, a member of the Komisi and distinguished constitutional law scholar at a major Christian university, as the sole author of “the [Komisi’s] Comprehensive Study on the Amendment of the 1945 Constitution”, this slight change is “extremely important” as it stipulates that “any law-making and political processes must be based on the state fundamental norm of the Indonesian state as a rule of law based state” (Pieris, 2003, p. 78). Although it appears that Professor Pieris provided circular reasoning that confuses his readers, for those who are familiar with the Indonesian constitutional thinking, it is clear that Dr. Pieris wanted nothing more than a stronger constitutional grounding that enhances the protection of (the religious minorities right to) human rights as the post-authoritarian politics tends to side with the Islamists at the expense of the religious minorities. Thus, it is unsurprising that Professor Pieris (2003), in his closing argument in support of a more explicit recognition that Indonesia is a rule of

the law-based state, urged more public officials to take *Pancasila* more seriously.

Another highlight that is worth discussing from Professor Pieris’s work is that his agreement with the power concentration at the hand of MPR as the highest political organ in Indonesia’s political system. This is a surprising proposition from Professor Pieris, who claimed as an expert, is only interested in the grammatical aspect of the article so “the sentence can be structurally correct” (Pieris, 2003, p. 54). Curiously enough, Professor Pieris strongly endorsed the original power arrangement that reemphasized the centrality of MPR and, thus, exempted it from being accountable. It is worthy of speculation in regards to why Professor Pieris failed to recognize that this lack of power separation is the main culprit that enabled the New Order regime to take the authoritarian turn that lasted for more than three decades. Then again, Professor Pieris is not alone in ignoring the perils of the absence of a clear separation of power. As Iskandar (2016c, 2017) has indicated, there is an ongoing process of romanticization of the good old days of authoritarian years as a result of the failure of democracy in protecting the religious minorities.

Another interesting point has also been raised with regard to the reformulation of the contentious first principle of *Pancasila* that has provided a variety of legitimation, ranging from the secular nationalists to religious bigots (Iskandar, 2016b, 2018a). In defiance to the Islamist groups that advocate for an explicit wording that specifies the obligation of the Indonesian Muslim to observe the Islamic law (Elson, 2013), Professor Pieris sought to add an explicit statement that specifically obligates the state to recognize the “religious and belief life that is based on the One God” (Pieris, 2003, p. 48). Likewise, Professor Pieris’ argument should be understood in the context of growing religious bigotry as a logical consequence of the absence of law in the process of political liberalization (Iskandar, 2018b). More specifically, it is not uncommon for religious minorities to be attacked by the agitated mob in today’s Indonesia (Juliawanti, 2018). This situation can be easily surmised from another suggestion of Professor Pieris that asked for another slight modification of article 27 that provides constitutional recognition to the right to practice religious belief. All things considered, it can hardly be a surprise that Professor Pieris asked for the inclusion of an additional statement that explicitly obligates “the

state to protect the freedom of each of its populations to worship” – not only guaranteeing the freedom to worship (Pieris, 2003, p. 48).

Interestingly enough, against the prevailing sentiment of anti-foreign laws that permeate many reformist-minded activists of every stripe (Iskandar, 2018c, 2016a), the Komisi adopted a very favorable opinion about the status of international law in the national legal system. As Professor Jawahir Thontowi recalled (personal communication, June 21, 2019), this stance was shepherded by another distinguished member of the Komisi, Professor Hashim Djalal of the Universitas Indonesia. As an internationally well-regarded diplomat who has served as, among others, the Chairman of the United Nations Commission on Human Rights (Centre for International Law, n.d.; Pudjiarti, 2018), Professor Djalal believed that having an explicit constitutional recognition for international law will not only enhance the international standing of Indonesia among its peers but, more importantly, strengthen the legal status of the territorial integrity of the Unitary State of the Republic of Indonesia (“Negara Kesatuan Republik Indonesia” or “NKRI”). Taking stock of his extensive practical involvement in the development of the regime of the international law of the sea, Professor Djalal suggested that the constitutional recognition should also be seen as a way to support the very concept of the archipelagic state that Indonesia and many other like-minded states have successfully included in the 1982 United Nations Convention on the Law of the Sea.

The Aftermath: “And so Castles Made of Sand Fall in the Sea Eventually” (Hendrix, 1967)

As it has been explicitly stated, by taking an open defiance stance against the politicians, the Komisi fully knew that their work would ultimately vanish into oblivion. Meaning, the Komisi’s decision to take this path should not be seen as a foolish act with suicidal tendencies. In fact, this decision is a shorthand to a cultural act that has its own hidden meaning. In any case, this might also be reflective of its society’s value that is in perpetual transitions. On the other hand, the investigative section that analytically scrutinizes the substantive dimensions of the Komisi’s work is also revealing that taking a deliberate act is its indicia. From the above discussion, it is clear that the Komisi

is not only a historical footprint, but, more importantly, a cultural embodiment of Indonesia’s modern-day complexities that requires its own appreciation. In any case, should there be one certainty that one can glean from studying the Komisi is that it is no different from other sociocultural phenomena that reflect the process of a continuous self-reinvention (Keesing, 1974; Segal, 1988). It is in this light that the Komisi as a cultural institution should be broadly construed as a meaning producer “suspended in webs of significance [that it itself] has spun” that provides “a metasocial commentary upon the whole matter of assorting human beings into fixed hierarchical ranks and then organizing the major part of collective existence around that assortment” (Geertz, 1972, p. 26; Alexander et al., 2011).

Declaration of ownership:

This report is my original work.

Conflict of interest:

None.

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This study was approved by my institution.

References

- Alexander, J. C. (2003). *The meaning of social life*. Oxford University Press.
- Alexander, J. C., Smith, P., & Norton, M. (Eds.). (2011). *Interpreting Clifford Geertz: Cultural investigation in the social sciences*. Palgrave Macmillan.
- Alexander, J. C., Jacobs, R. N., & Smith, P. (2012). Introduction: Cultural sociology today. In J. C. Alexander, R. N. Jacobs, & P. Smith (Eds.), *The Oxford handbook of cultural sociology* (pp. 3–23). Oxford University Press.
- Allard, T., & Damiana, J. (2019, April 11). Pushing the envelope: Money politics mars Indonesian poll. *Reuters*. <https://www.reuters.com/article/us-indonesia-election-corruption/pushing-the-envelope-money-politics-mars-indonesian-poll-idUSKCN1RN06T>
- Amr. (2003, October 13). Hasil kerja Komisi Konstitusi penting bagi Mahkamah Konstitusi [The work of the Constitutional Commission is important for the Constitutional Court]. *Hukum Online*. <https://www>.

- hukumonline.com/berita/baca/hol8964/hasil-kerja-komisi-konstitusi-penting-bagi-mahkamah-konstitusi/
- Aspinall, E. (2005). *Opposing Suharto: Compromise, resistance, and regime change in Indonesia*. Stanford University Press.
- Bedner, A. (2013). Indonesian legal scholarship and jurisprudence as an obstacle for transplanting legal institutions. *Hague Journal on the Rule of Law*, 5(2), 253–273. <https://doi.org/10.1017/S1876404512001145>
- Bell, G. F. (2001). The new Indonesian laws relating to regional autonomy: Good intentions, confusing laws. *Asian Pacific Law & Policy Journal*, 5(2), 1–44.
- Brandt, M., Cottrell, J., Ghai, Y., & Regan, A. (2011). *Constitution-making and reform: Options for the process*. Interpeace.
- Brunner, J. (2008). Culture and mind: Their fruitful incommensurability. *Ethos*, 36(1), 29–45.
- Butt, S., & Lindsey, T. (2012). *The constitution of Indonesia: A contextual analysis*. Hart Publishing.
- Centre for International Law. (n.d.). Professor Hasjim Djalal. <https://cil.nus.edu.sg/profile/?user=hasjim.djalal>
- Choi, N. (2007). Elections, parties and elites in Indonesia's local politics. *Southeast Asia Research*, 15(3), 325–354. <https://doi.org/10.5367/000000007782717731>
- Council of Europe. (2014). Council of Europe. <https://www.venice.coe.int>
- Dakolias, M. (2006). Are we there yet?: Measuring success of constitutional reform. *Vanderbilt Journal of Transnational Law*, 39(4), 1117–1231.
- Ellis, A. (2002). The Indonesian constitutional transition: Conservatism or fundamental change? *Singapore Journal of International and Comparative Law*, 6, 1–38.
- Ellis, A. (2005). *Constitutional reform in Indonesia: A retrospective*. IDEA.
- Ellis, R., & Wildavsky, A. (1990). A cultural analysis of the role of abolitionists in the coming of the civil war. *Comparative Studies in Society and History*, 32(1), 89–116.
- Elson, R. E. (2013). Two failed attempts to Islamize the Indonesian constitution. *Sojourn: Journal of Social Issues in Southeast Asia*, 28(3), 379–437.
- Escribà-Folch, A., & Wright, J. (2015). Foreign aid and political reform. In *Foreign pressure and the politics of autocratic survival* (pp. 85–116). Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780198746997.001.0001>
- Geertz, C. (1972). Deep play: Notes on the Balinese cockfight. *Daedalus*, 101(1), 1–37.
- Geertz, C. (1973). *The interpretation of culture*. Basic Books, Inc.
- Geertz, C. (1983). *Local knowledge: Further essays in interpretive anthropology*. Basic Books, Inc.
- Ghai, Y., & Galli, G. (2006). *Constitution building processes and democratization*. IDEA.
- Gouda, F. (2008). *Dutch culture overseas: Colonial practice in the Netherlands Indies, 1900–1942*. Equinox Publishing.
- Grad, F. P. (1967). Problems of drafting a constitution. *Proceedings of the Academy of Political Science*, 28(3), 201–214. <https://doi.org/10.2307/1173163>
- Harijanti, S. D. (2016). Sri Soemantri. *Padjajaran Jurnal Ilmu Hukum*, 3(1), 199–217.
- Hasibuan, A. (n.d.). *Pandangan terhadap perubahan UUD NKRI 1945 [A commentary on the constitutional amendment in Indonesia]*. Komisi Konstitusi.
- Hendrix, J. (1967). Castles made of sand. On *Axis: Bold as love*. Track records.
- Hoffmann-Riem, W. (2014). The Venice Commission of the European Council: Standards and impact. *European Journal of International Law*, 25(2), 579–597.
- Horowitz, D. (1994). The Qur'an and the common law: Islamic law reform and the theory of legal change. *The American Journal of Comparative Law*, 42(2), 233–293. <https://doi.org/10.2307/840748>
- Horowitz, D. (2001). *Ethnic groups in conflict*. University of California Press.
- Horowitz, D. (2002). Constitutional design: Proposals versus processes. In A. Reynolds (Ed.), *The architecture of democracy: Constitutional design, conflict management, and democracy* (pp. 15–36). Oxford University Press.
- Horowitz, D. (2006). Constitution-making: A process filled with constraint. *Review of Constitutional Studies/Revue d'études Constitutionnelles*, 12(1), 1–17.
- Horowitz, D. (2008). Conciliatory institutions and constitutional process in post conflict states. *William & Mary Law Review*, 49(4), 1213–1248.
- Horowitz, D. (2013). *Constitutional change and democracy in Indonesia*. Cambridge University Press.
- Hosen, N. (2002, May 29). Harga mati pembukaan UUD 1945 [The preamble of the 1945 Constitution is non-negotiable]. *Media Indonesia*, p. 6.
- Indrayana, D. (n.d.). *Urgensi Komisi Konstitusi [The urgency of [having] the Constitutional Commission]*. [http://perpustakaan.bappenas.go.id/lontar/file?file=digital/blob/F11093/Urgensi Komisi Konstitusi.htm](http://perpustakaan.bappenas.go.id/lontar/file?file=digital/blob/F11093/Urgensi%20Komisi%20Konstitusi.htm)
- International IDEA. (2019). About us. <https://www.idea.int/about-us>
- Interpeace. (2019). About us. <https://www.interpeace.org/who-we-are/about-us/>
- Iskandar, P. (2011). *Memahami hukum di Indonesia [Understanding law in Indonesia]*. Institute for Migrant Rights Press.
- Iskandar, P. (2016a). Constitutionalizing human rights universality in nonconstitutional legal system: Decoding human rights brouhaha in Indonesia. *Indonesian Journal of International and Comparative Law*, 3(1), 1–42.

- Iskandar, P. (2016b). The Pancasila delusion. *Journal of Contemporary Asia*, 46(4), 723–735. <https://doi.org/10.1080/00472336.2016.1195430>
- Iskandar, P. (2016c, September 5). It's time to flesh out the reform agenda. *The Jakarta Post*, p. 7.
- Iskandar, P. (2017). The unbound postcolonial leviathan. *Asian Review*, 30(2), 103–123.
- Iskandar, P. (2018a, March 12). Resolving Indonesia's religious freedom quandary. *The Jakarta Post*, p. 7.
- Iskandar, P. (2018b, March 28). Dealing with antidemocratic voices. *The Jakarta Post*, p. 7.
- Iskandar, P. (2018c, December 17). A democracy needs international law [Blog post]. *Indonesian Journal of International and Comparative Law*. <https://www.ijil.org/blog/a-democracy-needs-international-law>
- Iskandar, P. (2019a). Religious constitutionalism: An interpretive reading. *Indonesian Journal of International and Comparative Law*, 6(1), 55–93.
- Iskandar, P. (2019b). Unmasking corrosive democracy: A view from the pit. *Indonesian Journal of International and Comparative Law*, 6(2), 327–332.
- Isra, S. (2001, November 6). Saatnya membentuk Komisi Konstitusi [It's time to establish the Constitutional Commission]. *Kompas*, p. 6.
- Jaca, G. B. (2016). "Consolidated" democracy?: Persistence of elite and money politics in the Philippines and Indonesia. In *Proceedings of the DLSU Research Congress*. De La Salle University.
- Juliawanti, L. (2018, February 11). Ini enam peristiwa intoleran yang pernah terjadi di Indonesia [Six cases of religious intolerance in Indonesia]. *IDN Times*. <https://www.idntimes.com/news/indonesia/linda/5-kejadian-penyerangan-rumah-ibadah-di-indonesia>
- Keesing, R.M. (1974). Theories of culture. *Annual Review of Anthropology*, 3(74), 73–97.
- Keesing, R. M. (1987). Anthropology as interpretive quest. *Current Anthropology*, 28(2), 161–176.
- Lamb, K. (2017, November 16). Top Indonesian politician embroiled in huge corruption case goes missing. *The Guardian*. <https://www.theguardian.com/world/2017/nov/16/top-indonesian-politician-corruption-case-missing>
- Lasser, M. (2003). The question of understanding. In P. Legrand & R. Munday (Eds.), *Comparative legal studies: Traditions and transitions* (pp. 197–239). Cambridge University Press.
- Legrand, P. (2011). Foreign law: Understanding understanding. *Journal of Comparative Law*, 6(2) 67–177.
- Levine, D. (2009). History and social structure in the study of contemporary Indonesia. In B. R. O. Anderson & A. Kahin (Eds.), *Interpreting Indonesian politics: Thirteen contributions to the debate* (pp. 57–72). Equinox Publishing.
- Liddle, W. R. (Ed.). (2001). *Menjauhi demokrasi kaum penjajah: Belajar dari kekeliruan negara-negara lain* [Avoiding corrupt democracy: Learning from others' failures]. Mizan Pustaka.
- Liddle, W. R. (2007). Review of opposing Suharto: Compromise, resistance, and regime change in Indonesia. *Indonesia*, 83, 175–180.
- Lindsey, T. (2002). Constitutional reform in Indonesia: Muddling towards democracy. *Singapore Journal of International and Comparative Law*, 7(3), 699–713.
- Lindsey, T., & Butt, S. (2013). Unfinished business: Law reform, governance, and the courts in Post- Suharto Indonesia. In M. Künkler & A. Stepan (Eds.), *Democracy & Islam in Indonesia* (pp. 168–186). Columbia University Press.
- Lindsey, T., & Butt, S. (2018). *Indonesian law*. Oxford University Press. <https://doi.org/10.1093/oso/9780199677740.001.0001>
- Merton, R. K. (1987). Three fragments from a sociologist's notebooks: Establishing the phenomenon, specified ignorance, and strategic research materials. *Annual Review of Sociology*, 13(1), 1–29. <https://doi.org/10.1146/annurev.so.13.080187.000245>
- Mysbergh, J. H. (1957). The Indonesian elite. *Far Eastern Survey*, 26(3), 38–42.
- Van Niel, R. (1960). *The emergence of the modern Indonesian elite*. W. Van Hoeve Ltd.
- Norberg, N. (2018, December 22). A primer on Syria's constitutional committee. *Lawfare*. <https://www.lawfareblog.com/primer-syrias-constitutional-committee>
- Oktaviani, F., Rooney, D., McKenna, B., & Zacher, H. (2016). Family, feudalism and selfishness: Looking at Indonesian leadership through a wisdom lens. *Leadership*, 12(5), 538–563. <https://doi.org/10.1177/1742715015574319>
- Pieris, J. (2003). *Pengkajian komprehensif tentang perubahan UUD 1945* [A comprehensive analysis of Indonesia's constitutional amendment]. Komisi Konstitusi.
- Pudjiarti, H. (2018, January 11). Hasjim Djalal dan jalan kaki [Hashim Djalal and pedestrianism]. *Tempo.Co*. <https://hukum.tempo.co/read/1049270/hasjim-djalal-dan-jalan-kaki>
- Reed, I. A. (2011). *Interpretation and social knowledge: On the use of theory in the human sciences*. The University of Chicago Press.
- Robinson, M. (1992). *Aid and political reform*. Overseas Development Institute. <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/6774.pdf>
- Rustow, D. A. (1966). The study of elites: Who's who, when, and how. *World Politics*, 18(4), 690–717.
- Sarwanto, A. (2017, July 28). Ketua MPR: Pancasila harga mati, tak bisa ditawar. *CNN*

- Indonesia. <https://www.cnnindonesia.com/nasional/20170816104720-32-235092/ketua-mpr-pancasila-harga-mati-tak-bisa-ditawar>
- Segal, R.A. (1988). Interpreting and explaining religion: Geertz and Durkheim. *Soundings: An Interdisciplinary Journal*, 71(1), 29–52.
- Sihaloho, M. J. (2017, August 16). MPR: Pancasila dan UUD 1945 adalah harga mati [MPR: Pancasila and UUD 1945 are nonnegotiable]. *Berita Satu*. <https://www.beritasatu.com/nasional/447526/mpr-pancasila-dan-uud-1945-adalah-harga-mati>
- Suryokusumo, S. (n.d.). *Bagaimana nasib “Komisi Konstitusi”?* [Whatever happened to the Constitutional Commission]. Perpustakaan Bappenas.
- Swedlow, B. (2011). A cultural theory of politics: Editor’s introduction: Cultural theory’s contributions to political science. *PS: Political Science & Politics*, 44(4), 703–710.
- The Office of the United Nations High Commissioner for Human Rights. (2018). *Human rights and constitution making* (HR/PUB/17/5). United Nations.
- The United States Institute of Peace. (n.d.). About USIP. <https://www.usip.org/about>
- Tomsa, D. (2015). Local politics and corruption in Indonesia’s outer islands. *Bijdragen Tot de Taal-, Land-En Volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia*, 171(2–3), 196–219. <https://doi.org/10.1163/22134379-17101005>
- United Nations. (2009). *Guidance note of the Secretary-General: United Nations assistance to constitution-making processes*. United Nations.
- Upham, F. (2002). *Mythmaking in the rule of law orthodoxy* (Carnegie Endowment Working Papers 30). Carnegie Endowment for International Peace. <https://carnegieendowment.org/2002/09/10/mythmaking-in-rule-of-law-orthodoxy-pub-1063>
- Vliet, M. van, Wahiu, W., & Magolowondo, A. (2012). *Constitutional reform processes and political parties: Principles for practice*. Netherlands Institute for Multiparty Democracy.
- Wargadiredja, A. T. (2017, April 4). Why are so many Indonesians obsessed with becoming civil servants? *Vice*. <https://tinyurl.com/y7vurvq8>
- White, B. (2005). Between apologia and critical discourse: Agrarian transitions and scholarly engagement in Indonesia. In V. R. Hadiz & D. Dhakidae (Eds.), *Social science and power in Indonesia* (pp. 107–141). Equinox Publishing.
- Widjojanto, B., Saldi, I., & Marwan, M. (Eds.). (2002). *Konstitusi baru melalui Komisi Konstitusi independen* [New constitution by an independent Constitutional Commission]. Pustaka Sinar Harapan.
- Woods, N. (2005). The shifting politics of foreign aid. *International Affairs*, 81(2), 393–409.