



UNIVERSITAS INDONESIA

**PENGARUH HUBUNGAN RAJA-MILITER DI THAILAND
TERHADAP KONSTITUSI 2007**

SKRIPSI

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**FAKULTAS ILMU SOSIAL DAN ILMU POLITIK
ILMU POLITIK
DEPOK
JULI 2012**



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SKRIPSI

Diajukan sebagai salah satu syarat untuk memperoleh gelar sarjana

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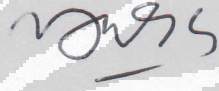
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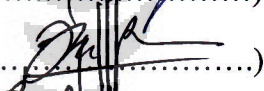
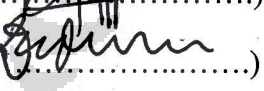
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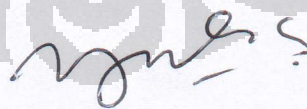
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ABSTRAK

Nama : Yulia Kusumawardani
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Judul Skripsi : Pengaruh Hubungan Raja-Militer di Thailand Terhadap
Konstitusi 2007

Skripsi ini mencoba membahas pengaruh hubungan Raja-militer di Thailand terhadap Konstitusi 2007. Untuk menjelaskan pengaruh Raja-militer, digunakan teori militer, elit, peran Raja dan konstitusi. Metode penelitian yang dipakai adalah kualitatif dengan teknik studi kepustakaan. Hasil penelitian menunjukkan bahwa hubungan Raja-militer di Thailand memiliki pengaruh terhadap Konstitusi 2007. Hubungan Raja-militer bisa dilihat dari pasal-pasal yang ada dan saat proses penyusunan draft Konstitusi 2007. Kesimpulannya, Konstitusi 2007 bukanlah konstitusi yang demokratis melainkan suatu konstitusi yang hanya menguntungkan beberapa pihak saja yaitu Raja dan militer.

Kata kunci:
Raja, militer, konstitusi

ABSTRACT

Name : Yulia Kusumawardani
Study Program : Comparative Politics
Title : The Influence of King-Military Relations in Thailand to
the Constitution of 2007

The thesis discussed the influence of King-Military relations in Thailand to the Constitution of 2007. The theory of military, elite as well as role of King and Constitution are applied in order to further explain the influence of the King-Military. The research methodology is qualitative through literature study. The research presented that the relations between King and Military in Thailand has given influence to the Constitution of 2007. The relations itself was reflected through the existing articles and the establishment process of the Draft Constitution 2007. As a conclusion, the constitution of 2007 is understood as a non democratic constitution which will only give advantage to several parties : King and the Military.

Key words:
King, military, constitution

KATA PENGANTAR

Bismillahirrah maanirrahiim

Assalamu' Alaikum Wr. Wb

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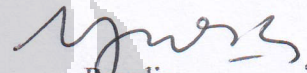
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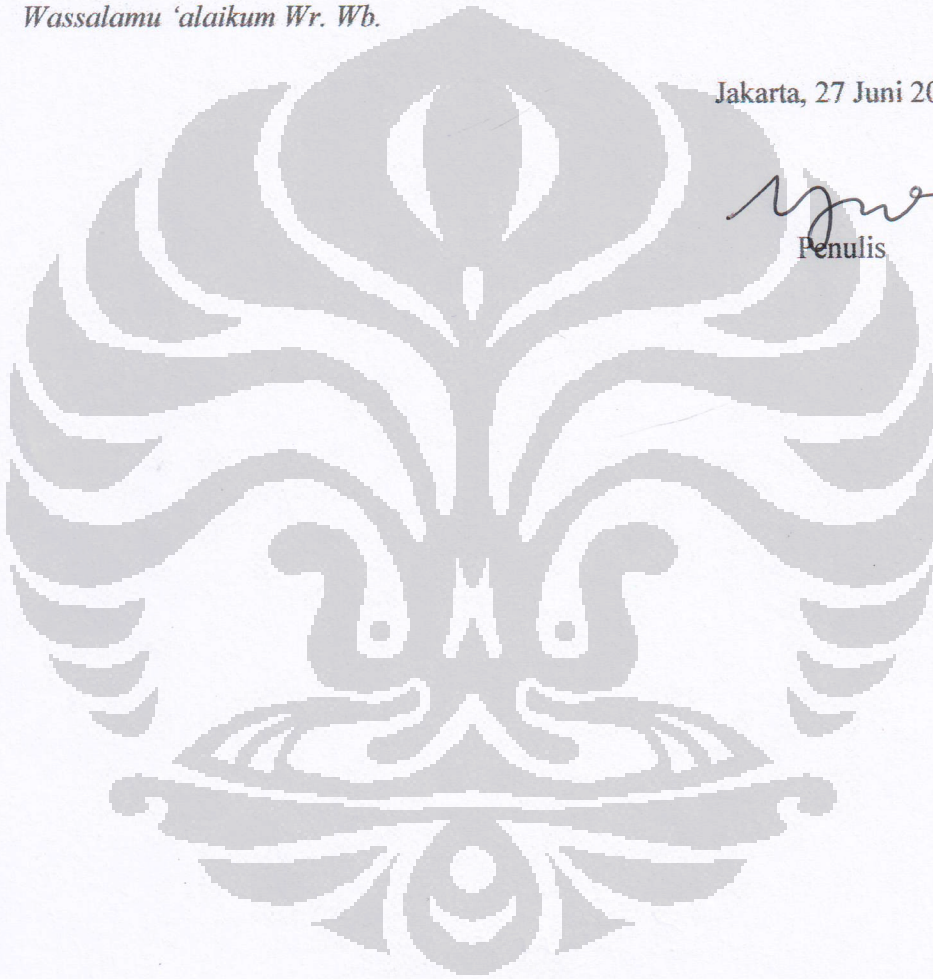
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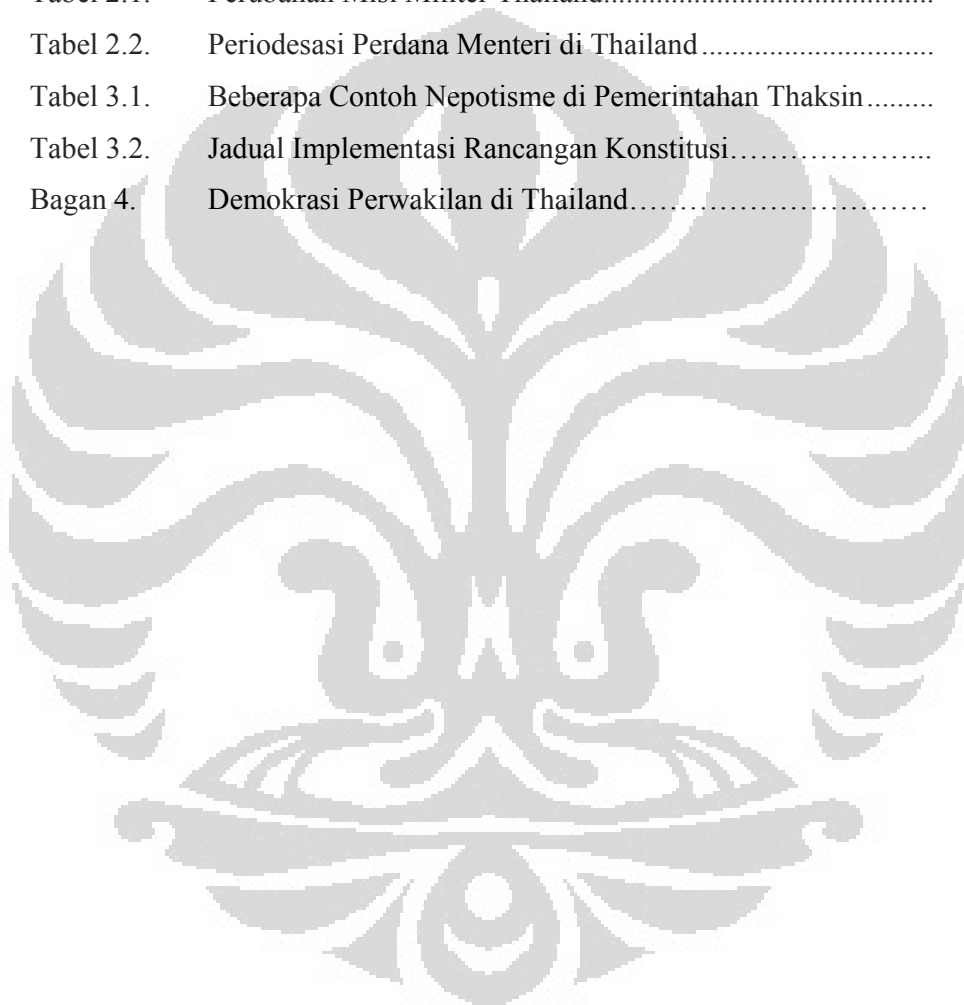
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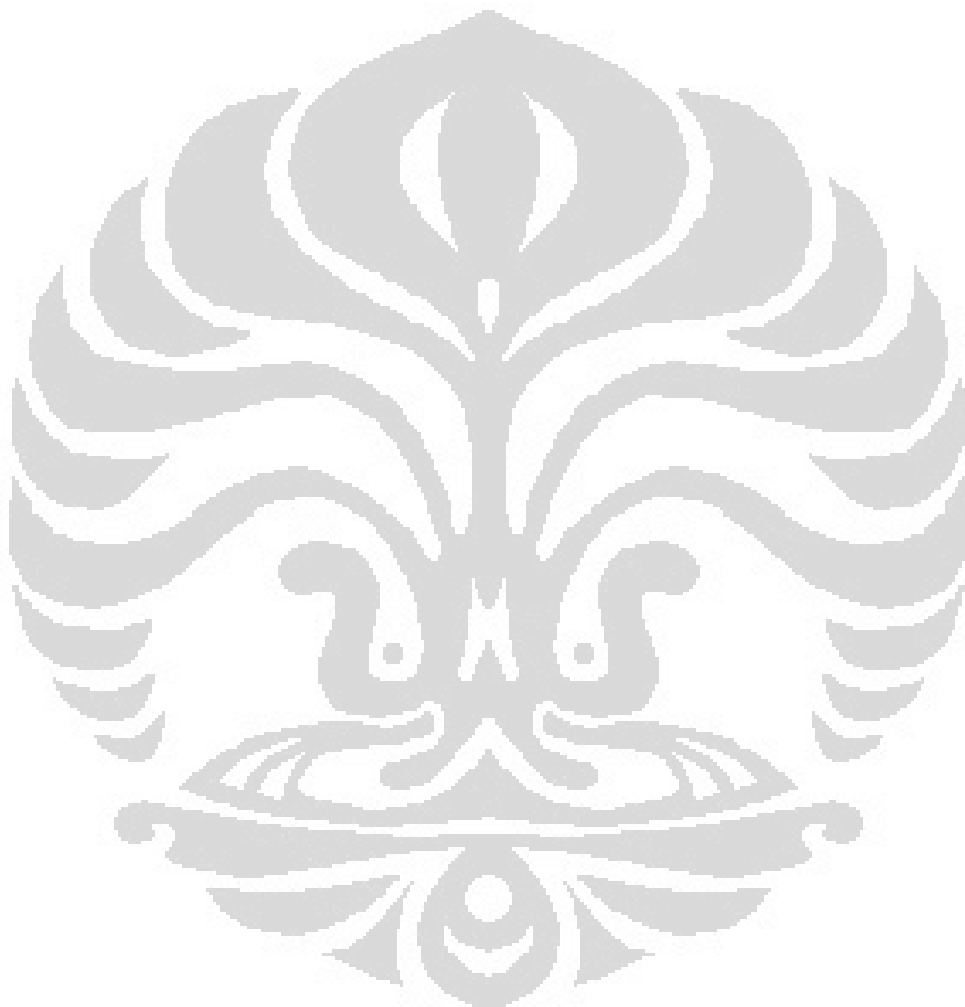
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BAB 1

PENDAHULUAN

1. 1 Latar Belakang

Pemilu (pemilihan umum) pada tahun 2001 merupakan peristiwa penting bagi rakyat dan negara Thailand. Peristiwa pemilu pada awal abad ke-21 ini, memulai kembali usaha demokratisasi yang sempat mengalami gangguan pada permulaan tahun '90-an. Dengan adanya pemilu yang demokratis, rakyat Thailand berharap bahwa stabilitas akan berjalan dan kudeta bisa berakhir.

Pemilu tahun 2001 diikuti oleh 37 parpol (partai politik) dengan 2.782 calon anggota legislatif yang memperebutkan kursi parlemen sebanyak 500 kursi. Tercatat ada 42.798.001 pemilih sah yang mengikuti proses politik tersebut. Pemilu yang diadakan dibawah Konstitusi 1997¹ ini dilakukan sebanyak dua putaran. Putaran pertama adalah untuk memilih anggota legislatif dan putaran kedua merupakan pemilu di parlemen untuk memilih perdana menteri.²

Di putaran pertama, sudah terlihat adanya pengurangan jumlah parpol. Pada putaran awal dengan sistem distrik, terdapat 37 parpol yang bersaing, namun setelah dilakukan penghitungan oleh KPU Thailand³, ternyata hanya ada sembilan parpol yang berhak mendapat kursi di parlemen. Parpol dengan perolehan suara terbanyak adalah Partai TRT (*Thai Rak Tai*) pimpinan Thaksin Shinawatra (selanjutnya disebut Thaksin) yang diikuti oleh Partai Demokrat pimpinan Chuan Leekpai. Sementara di pemilu parlemen, ada dua nama calon perdana menteri yang muncul yaitu Thaksin Shinawatra dan Chuan Leekpai. Kedua calon kuat perdana menteri ini berusaha untuk meraih dukungan dari partai-partai kecil melalui koalisi. Usaha-usaha untuk berkoalisi ini akhirnya berujung pada terciptanya dua koalisi di parlemen yaitu kubu pro pemerintah (TRT, Chart Thai, New Aspiration, Seritham) dan oposisi (Demokrat dan Chart Pattana).

Hasil dari pemilu parlemen membawa kubu pro pemerintah dengan calon perdana menterinya yaitu Thaksin Shinawatra sebagai pemenang. Kubu pro

¹ "Sekilas Pemerintahan dan Politik Thailand". Diperoleh dari <http://forum-politisi.org/special/article.php?id=555>, diakses pada 23 April 2010, pukul 18.06 WIB.

² <http://www.electionworld.org/election/thailand.htm>.

³ Alamat resmi website KPU Thailand: <http://www.electionworld.org/election/thailand.htm>.

pemerintah berhasil meraih suara di parlemen sebanyak 364 suara. Sedangkan lawannya yaitu kubu oposisi dengan calon perdana menteri Chuan Leekpai, hanya meraih 124 suara di parlemen. Suara abstain sendiri sebanyak 30 orang. Berdasarkan hasil Pemilu 2001, menunjukkan bahwa Thaksin beserta partai-partai yang berkoalisi memiliki hak dan wewenang sebagai penyelenggara pemerintahan yang sah. Pada tanggal 9 Februari 2001, Thaksin dilantik secara resmi sebagai Perdana Menteri.

Meskipun selama kepemimpinannya Thaksin diasumsikan berhasil oleh beberapa kelompok masyarakat yang mendukungnya⁴, tidak berarti pemerintahan Thaksin tidak mengalami masalah. Banyaknya isu-isu negatif terkait dirinya dan pemerintahannya, membuat kredibilitas Thaksin dan pemerintahannya goyah. Saat itu, pihak militer mengatakan bahwa pemerintahan Thaksin tidak memiliki kredibilitas politik, tidak cakap dalam mengelola negara, menyalahgunakan kekuasaan, dan terlibat kasus korupsi dan kolusi.⁵ Banyak kasus-kasus KKN (korupsi, kolusi dan nepotisme)-baik yang dilakukan secara pribadi maupun pemerintah yang dilakukan Thaksin selama kepemimpinannya. Salah satu yang terkenal adalah kasus penjualan saham milik keluarga Thaksin di perusahaan telekomunikasi yang didirikan Thaksin yaitu *ShinCorp* pada Januari 2006. Tindakan Thaksin dalam menjual perusahaan telekomunikasi *ShinCorp*, telah memicu kemarahan masyarakat perkotaan Thailand dan dianggap melanggar peraturan.⁶

Komisi Pemeriksa Kekayaan Pejabat juga menemukan bahwa Thaksin melalui istrinya, Pojaman, telah membeli empat bidang tanah di kawasan Ratchadaphisek melalui lelang yang diadakan oleh Dana Pembangunan Lembaga-lembaga Keuangan Bank Thailand pada tahun 2003. Pembelian yang dilakukan oleh Thaksin ini dianggap menyalahi aturan Undang-Undang Anti Korupsi. Selain

⁴Thaksin banyak mendapat dukungan dan simpati dari masyarakat yang berasal dari provinsi-provinsi di Thailand bagian Utara dan Timur Laut.

⁵"Akar Krisis Politik di Thailand". Diperoleh dari: <http://indonesian.tribe.ir/index.php/politik/perspektif/10747-akar-krisis-politik-di-thailand.html>, diakses pada 30 Mei 2010, pukul 21.11 WIB.

⁶"Profile: Thaksin Shinawatra". Diperoleh dari: <http://news.bbc.co.uk/2/hi/asia-pacific/1108114.stm>, diakses pada 21 April 2010, pukul 13.20 WIB.

itu, Thaksin beserta 22 orang lainnya, juga dituduh telah melakukan korupsi dalam proyek-proyek negara seperti dalam proyek Bandar Udara Suvarnabhumi.⁷

Dalam memimpin negara, Thaksin juga dianggap tidak cakap. Ketidakkakapan Thaksin dalam menjalankan negara bisa dilihat dari kebijakannya dalam menangani kasus narkoba dan Thailand Selatan. Awalnya, cara Thaksin untuk menyelesaikan permasalahan narkoba adalah dengan menggunakan cara-cara preventif seperti memblokir daerah perbatasan untuk menghalangi masuknya *menthamphetamin* ke wilayah Thailand dan melakukan kampanye anti-narkoba. Namun, keefektifan dari kebijakan ini dirasa kurang dan memaksa Thaksin untuk bertindak lebih keras. Kebijakan anti-narkoba yang dijalankan Thaksin ini sempat mendapat perhatian dari organisasi internasional yang khusus memperhatikan masalah HAM (hak asasi manusia) yaitu, *Amnesty International*.⁸

Selain dalam masalah anti-narkoba, ketidakkakapan juga terjadi pada kebijakan Thaksin dalam menghadapi konflik komunitas muslim di Thailand Selatan. Keputusan Thaksin untuk menghapuskan institusi CPM 43 (*Civil Police Military* 43) dan SBPAC (*Southern Border Province Administration Center*) dengan anggapan bahwa keadaan Thailand Selatan telah kondusif ternyata salah. Aksi separatisme ternyata masih marak terjadi. Namun kemudian, Thaksin membentuk SBP-BC (*Southern Border Peace Building Command*) dengan tugas yang kurang lebih sama dengan CPM 43 dan SBPAC.⁹ Perbedaannya, dalam menangani aksi separatisme dari masyarakat muslim di Thailand, SBP-BC cenderung menggunakan cara-cara kekerasan. Langkah operasi militer yang dilakukan Thaksin menuai banyak kritikan dari masyarakat Thailand Selatan, pihak militer dan kerajaan. Meskipun banyak mendapat kritikan, Thaksin kemudian memutuskan untuk menerapkan UU (Undang-Undang) Darurat Militer pada tahun 2004 yang membuat keadaan semakin memanas.

Perseteruan antara pihak pemerintah sipil dan militer terindikasi sebagai awal dari kudeta. Pemerintahan militer saat itu merasa bahwa Thaksin Shinawatra,

⁷“Dua Korupsi Menyeret Thaksin”. Diperoleh dari:

<http://www.korantempo.com/korantempo/koran/2006/12/27/Internasional/krn.20061227.90279.id.html>, diakses pada 30 Mei 2010, pukul 20.50 WIB.

⁸ Christian Schaffer, “Parliamentary Election in Thailand, 23 December 2007”, *Electoral Studies* (2008).

⁹ Aditya Ariono, “*Konflik Politik Di Thailand Selatan: Studi Kasus Peristiwa Krue See Dan Tak Bai Tahun 2004*”, Skripsi Sarjana, (Depok: FISIP UI, 2007), hlm

sebagai perdana menteri yang terpilih dinilai oleh berbagai kalangan telah gagal dalam menjalankan tugasnya. Sikap dan kebijakan yang dijalankan Thaksin telah dianggap menyebabkan perpecahan, menyebabkan korupsi dan nepotisme merajalela dan membunuh lembaga independen. Meskipun begitu, pihak militer pada awalnya meyakinkan rakyat Thailand bahwa tidak akan ada kudeta militer untuk mengatasi krisis politik yang terjadi. Pernyataan ini dikeluarkan oleh pihak militer untuk menjawab spekulasi yang beredar bahwa militer Thailand akan turun tangan untuk mengatasi krisis yang terjadi dan menyelamatkan negara. Kenyataannya, pihak militer akhirnya melakukan kudeta terhadap pemerintahan Thaksin.

Pada 19 Oktober 2006, menjelang tengah malam, anggota-anggota Angkatan Darat Kerajaan Thailand dan Kepolisian, beriringan memasuki kota Bangkok dari provinsi Lopburi. Saat mencapai kota Bangkok, pasukan militer dan kepolisian menduduki kantor perdana menteri dan Royal Plaza.¹⁰ Beberapa jam sebelum tengah malam, saluran televisi milik militer Thailand, *Channel 5*, berhenti menyiarkan acara reguler dan mengudarakan lagu-lagu yang diciptakan oleh Raja Bhumibol. Penghentian acara reguler ini dilakukan untuk mengudarakan pesan penting.

Thaksin, yang berada di New York untuk menghadiri Sidang Umum PBB (Perserikatan Bangsa-Bangsa), menerima laporan bahwa pihak militer telah menduduki tempat-tempat penting di kota Bangkok, bahkan kediaman Thaksin. Untuk mengendalikan krisis di Thailand, Thaksin mengumumkan keadaan darurat melalui saluran telepon internasional yang disiarkan secara langsung oleh stasiun televisi *Channel 9*.¹¹ Selain mengumumkan keadaan darurat, Thaksin juga mengumumkan pemecatan Panglima AD (Angkatan Darat), Jendral Sonthi Bonyaratglin dan menggantinya dengan Panglima Tertinggi Jendral Ruangroj Mahasaranon dan meminta militer untuk kembali ke barak. Namun, tidak lama kemudian, pemberitahuan ini terputus tanpa penyebab yang jelas.

¹⁰“Coup D’Etat”, diperoleh dari: <http://www.bangkokpost.com/news/thaksin-judgement-related/168546/coup-d-etat> diakses pada 8 April 2010, pukul 18.20 WIB.

¹¹“Coup D’Etat”, diperoleh dari: <http://www.bangkokpost.com/news/thaksin-judgement-related/168546/coup-d-etat>, diakses pada 8 April 2010, pukul 18.20 WIB.

Menjelang tengah malam, pihak junta militer yang menyebut diri mereka dengan Dewan Reformasi Demokrasi, mengumumkan tiga pernyataan tentang kudeta yang terjadi melalui siaran televisi. Pernyataan pertama berisi pemberitahuan bahwa militer dan kepolisian telah mengepung kota Bangkok dan daerah-daerah sekitarnya:

“Panglima Angkatan Bersenjata dan Panglima Kepolisian telah berhasil mengambil alih Bangkok dan daerah sekitarnya untuk mempertahankan keamanan dan ketertiban. Tidak ada pertempuran. Kami meminta kerja sama masyarakat dan meminta maaf kepada anda sekalian atas gangguan yang mungkin telah terjadi”.¹²

Pernyataan kedua berisi tentang alasan-alasan mengapa pihak junta militer melakukan kudeta terhadap Thaksin Shinawatra. Selain itu, pihak junta militer juga menjelaskan bahwa mereka tidak berniat untuk mengambil kekuasaan. Pihak militer berjanji bahwa mereka akan mempertahankan raja sebagai kepala negara dan sesegera mungkin mengembalikan kekuasaan kepada rakyat Thailand. Setelah dua pernyataan, pihak militer kemudian mengeluarkan pernyataan bahwa mereka telah membatalkan konstitusi¹³, membubarkan kabinet, parlemen dan Mahkamah Agung.

Setelah mengeluarkan pernyataan terkait kudeta, pihak junta militer kemudian mengeluarkan beberapa kebijakan represif. Sejumlah media elektronik baik televisi, radio maupun internet dilarang untuk menyiarkan acara-acara tetapi terdapat beberapa media yang masih diperbolehkan untuk melakukan siaran secara bebas dari ibukota. Semua stasiun diwajibkan untuk menyiarkan pidato-pidato junta militer yang menyatakan bahwa krisis yang terjadi akan segera berakhir. Terkait dengan isi berita, pihak junta militer memberlakukan kebijakan sensor. Apabila ada media elektronik yang menyiarkan berita negatif tentang militer, bisa dipastikan bahwa berita tersebut tidak akan ditayangkan. Pertemuan-pertemuan yang dihadiri lebih dari lima orang dilarang, jika dilanggar maka akan dikenakan sanksi berupa penjara selama enam bulan. Sementara itu, AD memberlakukan Undang-Undang Keadaan Darurat.

¹² “Kudeta Thailand 2006”, diunduh dari: http://id.wikipedia.org/wiki/Kudeta_Thailand_2006. Diakses pada 10 April 2010, pukul 02.40 WIB.

¹³ Konstitusi yang dimaksud adalah konstitusi 1997.

Jendral Sonthi Bonyaratglin yang diisukan menjadi pemimpin junta militer kemudian mendaulat dirinya menjadi perdana menteri menggantikan Thaksin yang telah direbut kekuasaannya. Sonthi berjanji bahwa dia akan turun menjadi perdana menteri setelah Dewan Pembaruan Administrasi¹⁴ memilih perdana menteri baru. Dirinya juga menjanjikan bahwa pihak militer akan menyusun suatu pemerintahan dan konstitusi baru yang demokratis. Lalu isi dari konstitusi tersebut memiliki beberapa poin yang menjelaskan kekuatan-kekuatan politik di Thailand.

Pembahasan mengenai konstitusi menarik perhatian penulis berdasarkan beberapa hal. Pertama, kesuksesan militer sebagai salah satu kekuatan politik yang dominan di Thailand, karena militer sejak tahun 1932 memiliki peran ke dalam dan ke luar. Peran ke dalam militer terlihat saat militer beserta sipil mengubah sistem pemerintahan dari monarki absolut menjadi monarki konstitusional. Peran ke luar, terlihat ketika militer berhasil menjadikan Thailand wilayah atau zona bebas perang.¹⁵ Kedua, konstitusi Thailand selama ini hanya menjadi alat justifikasi bagi kekuatan politik yang berkuasa, khususnya dalam hal hubungan antara legislatif dengan eksekutif. Secara garis besar, konstitusi di Thailand merupakan produk hukum yang hanya mengakomodasi kepentingan kekuatan politik yang sedang berkuasa, bukan sebagai produk hukum yang mengakomodir kepentingan rakyat.¹⁶

¹⁴ Dewan Pembaruan Administrasi merupakan suatu dewan baru yang dibentuk oleh Dewan Reformasi Demokrasi.

¹⁵ Kehebatan pemerintahan militer Thailand untuk menghindari negaranya dari pengaruh asing bisa dilihat saat PD II (Perang Dunia ke II) dan pasca PD II. Saat Jepang mejajah wilayah Asia Tenggara, pemerintahan Thailand yang saat itu dipimpin oleh orang militer yaitu Phibun Songkram menyatakan keberpihakannya terhadap Jepang. Dengan berpihak kepada Jepang, Thailand menyatakan perang terhadap negara-negara Barat dan mengambil alih wilayah-wilayah historikal Thailand yang berada di wilayah negara tetangga seperti Kamboja, Laos, Myanmar dan Malaysia. Setelah PD II usai, Thailand harus menghadapi kenyataan bahwa Jepang kalah dalam PD II. Dengan kondisi seperti ini, ada kemungkinan Thailand terkena hukuman. Namun, Thailand bisa meloloskan diri dari hukuman negara-negara pemenang PD II karena pasca PD II, komunisme mulai bangkit. Faham komunis amat tidak disukai, baik oleh negara-negara pemenang PD II (mayoritas negara-negara Barat) dan Thailand. Untuk menghindari berkembangnya faham komunisme di Asia Tenggara, negara-negara Barat terutama Amerika akhirnya menerima kembali Phibun Songkram yang merupakan penjahat perang sebagai perdana menteri Thailand. Baca John. L. S. Girling, *Thailand: Society and Politics* (London: Cornell University Press, 1981), hlm 106-111.

¹⁶ Larry Diamond, Juan J. Linz, Seymour Martin Lipset, *Politics in Developing Countries: Comparing Experiences With Democracies* (Colorado: Lynne Rienner, 1995), hlm 340.

Sejak perubahan dari monarki absolut ke monarki konstitusional pada tahun 1932 hingga tahun 2012, Thailand telah memiliki 18 konstitusi. Konstitusi ini mengacu pada sistem monarki konstitusional. Namun sejarah memperlihatkan bahwa pembentukan konstitusi di Thailand lebih ditujukan untuk memfasilitasi dan mengamankan kekuasaan elit yang berkuasa.¹⁷ Dari tahun 1947-1958, para penguasa yang mendapatkan kekuasaan menggunakan konstitusi sebagai alat penjaga kestabilan dan legitimasi kekuasaan. Sedangkan dari tahun 1958-1992, perubahan konstitusi mengikuti perubahan yang terjadi di pemerintahan. Jika terjadi perubahan di tingkat eksekutif, maka konstitusi juga akan mengalami perubahan. Tuntutan akan adanya suatu konstitusi yang murni baru terjadi pada tahun 1997. Dilatarbelakangi oleh peristiwa Mei 1992, pemerintah Thailand melalui lembaga independen CDA (*Constitution Drafting Assembly*) akhirnya mengesahkan Konstitusi 1997 sebagai konstitusi baru.

1. 2 Rumusan Masalah

Kudeta yang dilakukan oleh pihak militer pada tahun 2006 terhadap Thaksin pada dasarnya bertujuan untuk mengakhiri penyalahgunaan kekuasaan yang dilakukan oleh Thaksin selama dia menjadi perdana menteri. Walaupun dianggap sebagai cara yang ilegal dalam konteks pergantian kekuasaan, kudeta militer 2006 tetap dilakukan karena melalui proses politik, Thaksin sulit untuk dijatuhkan. Dan seperti banyak kudeta yang terjadi sebelumnya di Thailand, terdapat pola umum yang dilakukan militer setelah menguasai pemerintahan, salah satunya adalah menghapus konstitusi lama dengan yang baru.

Pembentukan konstitusi baru juga terjadi pasca-kudeta militer terhadap Thaksin. Pihak junta militer menghapus konstitusi 1997 yang menjadi landasan bagi Thaksin untuk menjalankan pemerintahan. Menurut pihak junta militer, Thaksin dan pemerintahannya mengambil keuntungan dari kelemahan konstitusi 1997 ini, sehingga konstitusi 1997 harus diganti dengan konstitusi baru. Dengan adanya konstitusi yang baru, diharapkan kehidupan yang demokratis bisa kembali

¹⁷ "Constitutional History of Thailand", diunduh dari:

<http://www.constitutionnet.org/en/country/constitutional-history-thailand>. Diakses pada tanggal 7 April 2011, pukul 21.44 WIB.

lagi. Junta militer-yang juga didukung oleh raja¹⁸-kemudian menunjuk beberapa orang untuk menyusun konstitusi baru lewat suatu dewan tersendiri yang dikenal dengan CDA (*Constitution Drafting Assembly*).

Pada tanggal 20 Agustus 2007, Ketua CDA, Norranit Setthabut menyatakan bahwa masyarakat Thailand menyetujui rancangan konstitusi yang disusun oleh CDA. Dengan demikian, rancangan konstitusi tersebut telah sah menjadi konstitusi yang dikenal dengan Konstitusi 2007. Konstitusi 2007 ini akan menjadi landasan bagi pemerintahan selanjutnya yang akan dipilih pada pemilu bulan Desember di tahun yang sama.

Meskipun Konstitusi 2007 telah menjadi konstitusi yang sah untuk menjadi landasan bagi kehidupan negara, Thailand tetap berada dalam situasi yang tidak demokratis. Tujuan dari dibuatnya konstitusi ini ternyata tidak tercapai. Banyak contoh peristiwa yang bisa memperlihatkan betapa Konstitusi 2007 yang menurut pihak pemerintah lebih demokratis atau lebih merakyat ini, ternyata tidak bisa menyelesaikan permasalahan. Justru, keadaan dalam negeri Thailand semakin parah.

Ini bisa terlihat salah satunya adalah lewat peristiwa pergantian Perdana Menteri setelah pemilu Desember 2007. Meskipun terpilih secara sah melalui pemilu, pemerintahan Samak tidak bertahan lama karena adanya dugaan bahwa pemerintahan Samak merupakan sekutu Thaksin Shinawatra dan dia telah menerima penghasilan sebagai juru masak dalam suatu acara televisi. Samak kemudian digantikan oleh Somchai Wongsawat. Somchai yang merupakan anggota PPP (*People's Power Party*) menduduki jabatannya melalui penunjukan parlemen. Sama halnya dengan Samak, pemerintahan Somchai juga tidak bertahan lama. Dugaan bahwa Somchai merupakan sekutu Thaksin dan kenyataan bahwa dia merupakan ipar dari Thaksin, membuat pemerintahannya hanya bertahan selama lebih kurang tiga bulan. Abhisit Vejjajiva yang berasal dari partai oposisi yaitu Partai Demokrat kemudian menggantikan kedudukan Somchai Wongsawat.

¹⁸ “Akar Krisis Politik di Thailand”, diunduh dari:

<http://indonesian.irib.ir/index.php/politik/perspektif/10747-akar-krisis-politik-di-thailand.html>.

Diakses pada tanggal 30 Mei 2010, pukul 21.11 WIB. Baca juga artikel

“Mencermati Kemelut Politik Thailand” dari situs: [http://www.pikiran-](http://www.pikiran-rakyat.com/prprint.php?mib=beritadetail&id=45817)

[rakyat.com/prprint.php?mib=beritadetail&id=45817](http://www.pikiran-rakyat.com/prprint.php?mib=beritadetail&id=45817); “Mengakhiri Kudeta ala Bhumibol” di situs <http://www.korantempo.com/korantempo/koran/2006/09/22/Internasional/krn.20060922.82836.id.html>

Oposisi sendiri mendapat dukungan dari elit militer dan kerajaan. Dengan diangkatnya Abhisit, berarti pengaruh Thaksin di pemerintahan semakin berkurang.

Walaupun pihak oposisi telah mengambil alih pemerintahan, ternyata permasalahan semakin rumit. Dari pengasingan, Thaksin berusaha menggerakkan massa yang mendukungnya untuk menjatuhkan kekuasaan Abhisit dan massa pendukung anti-Thaksin juga melakukan hal yang serupa. Aksi demo antara massa pro-Thaksin dan anti-Thaksin hingga Maret 2010 tetap berjalan dan sering menimbulkan masalah dan juga korban jiwa. Terjadi tiga demo yang menimbulkan kerusuhan yaitu pada Desember 2008, April 2009 dan yang terbaru pada Maret 2010. Yang paling parah adalah demo pada bulan Maret 2010 karena demonstrasi yang dilakukan oleh Kaus Merah, membawa efek yang lebih buruk dibandingkan demo-demo sebelumnya. Demo pada bulan Maret 2010 mengakibatkan terjadinya beberapa kerusuhan di beberapa wilayah penting di kota Bangkok, kegiatan ekonomi terhambat, banyak korban meninggal akibat dari kerusuhan dan adanya *travel warning* dari sejumlah negara terhadap Thailand.

Berdasarkan peristiwa di atas, maka yang jadi pertanyaan adalah bagaimana pengaruh hubungan raja-militer terhadap penyusunan konstitusi pada tahun 2007 ?

1. 3 Kerangka Teori

Untuk membahas tentang bagaimana pengaruh hubungan militer-raja dalam proses demokratisasi dengan studi kasus konstitusi 2007, penulis menggunakan empat teori yang relevan. Keempat teori tersebut adalah tentang teori elit, konsep-konsep tentang militer dan konsep-konsep tentang pengaruh raja dan teori mengenai demokratisasi.

1. 3. 1 Militer

Dalam bukunya yang berjudul "Militer dan Politik", Amos Perlmutter menjelaskan bahwa ada tiga jenis organisasi militer yang timbul di dalam negara-bangsa yang modern, masing-masing bertindak sebagai reaksi terhadap jenis kekuasaan sipil yang dilembagakan. Yang pertama adalah prajurit profesional

yang tumbuh subur di negara-negara dengan sistem politik yang stabil. Yang kedua adalah prajurit pretorian yang berkembang subur di negara-negara yang berada pada posisi tidak stabil. Yang terakhir adalah prajurit revolusioner yang sifatnya manunggal dengan suatu orde politik yang stabil walaupun asal-usulnya datang dari sistem politik yang tidak stabil, yang kebetulan sedang mengalami kemunduran atau memang baru. Berdasarkan deskripsi yang diberikan oleh Perlmutter tentang jenis-jenis organisasi militer, tampak bahwa militer Thailand merupakan tipe pretorian.

Kondisi pretorian terjadi jika tentara tampil sebagai aktor politik utama yang sangat dominan yang secara langsung menggunakan kekuasaan atau mengancam dengan menggunakan kekuasaan mereka.¹⁹ Menurut Perlmutter, pretorianisme militer timbul bersamaan dengan sistem-sistem pengendalian politik subyektif, yakni segera sesudah kegagalan revolusi sosial, politik atau revolusi modernisasi. Kaum pretorian memang lebih sering timbul di masyarakat-masyarakat yang bersifat agraris atau dalam keadaan transisi atau secara ideologis terpecah-pecah. Baik secara potensial maupun faktual, tentara selalu bersifat intervensionis; kecenderungannya untuk melakukan campur tangan bersifat permanen dan mereka memiliki kekuatan untuk mewujudkan perubahan konstitusi. Meskipun begitu, kondisi pretorianisme memiliki derajatnya sendiri-sendiri. Nordlinger menjelaskan bahwa ada tiga tipologi pretorianisme tentara yang didasarkan pada tingkat campur tangan dan keinginan mencapai tujuan mereka.

Tabel 1. Tipe-tipe Pretorianisme

	Moderator	Pengawal	Pemerintah
Tingkat Kekuasaan	Hak veto	Menguasai pemerintahan	Pengaruh rezim
Tujuan ekonomi dan politik	Mempertahankan status quo	Mempertahankan status quo dan atau memperbaiki penyalahgunaan dan kelemahan	Membuat perubahan politik dan kadang-kadang perubahan sosio-ekonomi

Sumber: Eric A. Nordlinger, *Militer Dalam Politik: Kudeta dan Pemerintahan* (Jakarta: Rineka Cipta, 1994).

¹⁹ Eric A. Nordlinger, *Militer Dalam Politik: Kudeta dan Pemerintahan* (Jakarta: Rineka Cipta, 1994), hlm. 5.

Berdasarkan penjelasan Nordlinger mengenai tipe-tipe prajurit pretorian, terlihat bahwa militer di Thailand merupakan tipe pengawal. Militer di Thailand akan meng kudeta pemerintahan yang berkuasa apabila pemerintahan tersebut menghina Kerajaan atau menyalahgunakan kekuasaan atau gabungan keduanya. Apabila militer meng kudeta pemerintahan, mereka tidak menjadi penguasa. Kekuasaan diserahkan kepada sipil yang ditunjuk oleh mereka.

Secara keseluruhan, kondisi-kondisi pretorian mempengaruhi lembaga militer secara negatif, dan menurunkan standar-standar profesionalisme dan mengakibatkan pecahnya perang Saudara, pembalasan dendam antar keluarga, kudeta yang silih berganti, serta pembunuhan para pejabat negara. Kekuatan dari rezim pretorian tentara bukan berasal dari kecakapan profesional-penggunaan kekerasan-melainkan juga kecenderungannya untuk menghubungkan rezim yang membiayai tentara tersebut dengan rezim yang melindungi integritasnya. Tentara pretorian adalah pembela utama otonomi korporasi. Militer yang pretorian menyamakan aspirasi korporasi dengan kepentingan nasional.

Penjelasan tentang militer ini dipakai penulis untuk menjelaskan pengaruh militer di Thailand terhadap proses demokratisasi di Thailand, terutama pada pembuatan konstitusi 2007.

1. 3. 2 Teori Elit

Istilah elit menunjuk kepada suatu minoritas pribadi-pribadi yang diangkat untuk melayani suatu kolektivitas dengan cara yang bernilai sosial.²⁰ Teori elit menyatakan bahwa setiap masyarakat, terbagi dalam dua kategori yang luas mencakup :²¹

1. Sekelompok kecil manusia yang berkemampuan dan karenanya menduduki posisi untuk memerintah.
2. Sejumlah besar massa yang ditakdirkan untuk diperintah.

Teori yang awalnya lahir di Eropa ini mengemukakan bahwa di dalam kelompok penguasa (*the rulling class*) selain ada elit yang berkuasa (*the rulling elite*), juga ada elit tandingan, yang mampu meraih kekuasaan melalui massa jika elit yang

²⁰ Suzanne Keller, *Penguasa dan Kelompok Elit: Peranan Elit Penentu Dalam Masyarakat Modern* (Jakarta: CV. Rajawali, 1984), hlm. 3.

²¹ S. P. Varma., *Teori Politik Modern* (Jakarta: Rajagrafindo Persada, 2001), hlm. 197.

berkuasa kehilangan kemampuannya untuk memerintah. Dalam hal ini, massa memegang sejenis kontrol jarak jauh atas elit yang berkuasa, tetapi karena mereka tidak begitu peduli dengan sepak terjang elit, maka tak bisa diharapkan mereka akan menggunakan pengaruhnya. Elit sendiri tidak selamanya selalu digambarkan hanya terdiri dari satu kelompok saja tapi bisa berupa gabungan dari berbagai macam kelompok sosial. Kekuasaan merupakan alasan bagi elit-elit atau kelompok elit untuk mengambil peranan aktif dalam politik.

Dalam perkembangannya, teori ini memiliki banyak penafsiran yang dikembangkan oleh para ahli politik. Namun, mereka semua pada dasarnya sepakat tentang pernyataan bahwa ada sekelompok kecil di masyarakat yang memerintah masyarakat lainnya. Menurut Pareto, masyarakat terdiri dari dua kelas, yaitu :

1. Lapisan atas: terdiri dari elit yang memerintah dan yang tidak memerintah.
2. Lapisan rendah atau sering disebut non-elit.

Pareto sendiri lebih memusatkan perhatiannya pada elit yang memerintah saja, yang menurut dia berkuasa karena bisa menggabungkan kekuasaan dan kelicikan.

1. 3. 3 Peran Raja

Raja di dalam kehidupan masyarakat Thailand amat dihormati sekali. Meskipun secara politik, raja tidak memiliki kekuasaan lagi tapi pengaruhnya masih terasa. Pengaruh ini bisa terlihat saat kudeta militer terhadap Thaksin pada tahun 2006. Untuk melihat bagaimana pengaruh raja dalam proses demokratisasi, penulis menggunakan konsep-konsep dan teori mengenai legitimasi. Legitimasi adalah penerimaan dan pengakuan masyarakat terhadap hak moral pemimpin untuk memerintah, membuat dan melaksanakan keputusan politik.

Ada lima tipe legitimasi menurut Ramlan Surbakti, yaitu:²²

1. Legitimasi tradisional. Masyarakat memberikan pengakuan dan dukungan karena pemimpin tersebut keturunan pemimpin juga (berdarah biru) yang dipercaya harus memimpin masyarakat.
2. Legitimasi ideologi. Masyarakat memberikan dukungan dan pengakuan karena pemimpin tersebut dianggap sebagai penafsir dan pelaksana ideologi.

²²Ramlan Surbakti, *Memahami Ilmu Politik* (Jakarta: PT. Gramedia Widiasarana Indonesia, 1992), hlm. 97-98.

3. Legitimasi kualitas pribadi. Masyarakat memberikan dukungan dan pengakuan karena pemimpin tersebut memiliki kualitas pribadi berupa karisma maupun penampilan pribadi dan penampilan cemerlang.
4. Legitimasi prosedural. Masyarakat memberikan dukungan dan pengakuan karena pemimpin tersebut mendapatkan kewenangan menurut prosedur dalam undang-undang.
5. Legitimasi instrumental. Masyarakat memberikan dukungan dan pengakuan karena pemimpin tersebut menjanjikan atau menjamin kesejahteraan materil (instrumental) kepada masyarakat.

Pengakuan dan dukungan yang diberikan masyarakat kepada seseorang kadang-kadang bisa memudar. Kondisi ini disebut dengan krisis legitimasi. Lucian W. Pye menjelaskan bahwa ada empat alasan mengapa legitimasi bisa memudar.²³ Pertama, prinsip kewenangan beralih pada prinsip kewenangan yang lain. Kedua, persaingan yang sangat tajam dan tidak sehat tetapi juga tidak disalurkan melalui prosedur yang seharusnya diantara para pemimpin pemerintahan sehingga terjadi perpecahan dalam tubuh pemerintahan. Ketiga, pemerintah tidak mampu memenuhi janjinya sehingga menimbulkan kekecewaan dan keresahan di kalangan masyarakat. Keempat, sosialisasi mengenai kewenangan mengalami perubahan. Dalam beberapa kasus, mungkin hanya ada satu faktor yang muncul, tapi tidak menutup kemungkinan ada dua atau kombinasi dari faktor-faktor, yang menyebabkan adanya krisis legitimasi.

Sumber legitimasi akan mempengaruhi posisi serta kedudukan seseorang dalam kekuasaan yang dipegangnya. Sumber kewenangan dan legitimasi yang dimiliki oleh Raja Thailand membuatnya memiliki pengaruh yang sangat besar dalam sistem politik maupun sosial Thailand. Dari lima sumber legitimasi, terlihat bahwa Raja Thailand memiliki legitimasi tradisional, kualitas pribadi dan prosedural.

²³Lucian W Pye, "The Legitimacy Crisis" dalam Leonard Binder, et al. *Crises and Sequences in Political Development* (Princeton: Princeton University Press, 1971).hlm 138-147, dalam ibid hlm. 99-100.

1. 3. 4 Konstitusi

Konstitusi disusun kembali agar sesuai dengan aturan demokrasi yaitu yang mengacu kepada prinsip pembagian kekuasaan. Robert Dahl mengatakan pentingnya merancang konstitusi yang demokratis karena akan menentukan kelangsungan hidup lembaga-lembaga demokrasi, sebaliknya sebuah konstitusi yang tidak dirancang dengan baik akan menyumbang pada kemandegan lembaga-lembaga demokrasi.²⁴ Menurut Dahl, lembaga-lembaga yang akan mengalami kemandegan adalah: para pejabat yang dipilih, pemilu yang bebas, adil dan berkala, kebebasan berpendapat, sumber informasi alternatif, otonomi asosiasional dan hak kewarganegaraan yang inklusif.²⁵

Untuk menghasilkan suatu konstitusi yang demokratis, menurut Dahl, harus mengandung beberapa unsur antara lain pernyataan hak-hak asasi manusia, pernyataan hak-hak sosial dan ekonomi, bentuk negara kesatuan atau federal, lembaga legislatif dengan satu atau dua kamar, pengaturan kekuasaan yudikatif, sistem pemerintahan presidensial atau parlementer, pengaturan mengenai amandemen konstitusi dan referendum, serta sistem pemilihan.²⁶ Mengenai penyusunan konstitusi, Dahl menekankan betapa pentingnya konstitusi yang berkualitas dan pentingnya konstitusi disusun oleh tenaga-tenaga terbaik yang dimiliki oleh suatu bangsa.²⁷ Tenaga-tenaga pilihan ini diharapkan memiliki pengetahuan dan kecerdasan yang cukup sehingga menurut Dahl mereka dapat bekerja dengan baik dalam merumuskan konstitusi yang sesuai dengan demokrasi.

Linz dan Stephan juga menekankan pentingnya perubahan konstitusi dalam rangka mencapai konsolidasi demokrasi. Linz menyebutkan pentingnya perubahan konstitusi dalam rangka mencapai konsolidasi demokrasi. Linz menyebut beberapa kemungkinan perubahan konstitusi kaitannya dengan konsolidasi demokrasi. Pertama, konstitusi lama dari rezim nondemokratis tetap dipertahankan karena wewenang dan prosedur amandemennya sangat sulit.

²⁴ Robert Dahl, *On Democracy*, edisi terjemahan Bahasa Indonesia, Perihal Demokrasi (Jakarta: Yayasan Obor Indonesia, 2001), hlm. 179.

²⁵ *Ibid*, hal. 118-119.

²⁶ *Ibid*, hal. 166-170.

²⁷ *Ibid*, hal. 189.

Kedua, memperbaharui konstitusi baru yang disusun secara bebas dan mufakat.²⁸ Linz dan Stephan menganjurkan satu konstitusi disusun secara bebas dan mufakat agar konsolidasi demokrasi berjalan mulus. Asas mufakat penting ditekankan dan hendaknya dihindari voting ketika akan memutuskan rumusan-rumusan yang potensial menimbulkan konflik dan perpecahan.²⁹

Menurut Linz dan Stephan, rancangan konstitusi baru itu perlu memperoleh keabsahan dari rakyat melalui referendum.³⁰ Linz dan Stephan menggunakan negara Spanyol sebagai contoh negara yang berhasil membuat konstitusi baru dengan cara demokratis, yaitu melalui proses duduk bersama antara elit rezim lama dengan elit rezim baru yang disebutnya sebagai proses konvergensi elit (proses pengerucutan elit). Berdasarkan pendapat Dahl, Linz dan Stephan, maka konstitusi yang demokratis adalah konstitusi yang mengacu pada prinsip pembagian kekuasaan, disusun oleh tenaga-tenaga terbaik yang dimiliki bangsa yang bersangkutan dan dilakukan secara bersama dengan mengedepankan asas kebebasan dan permufakatan.

Pendapat yang dikemukakan oleh Linz dan Stephan sesuai dengan yang dikemukakan oleh Larry Diamond bahwa jalur negosiasi antar elit akan mengurangi potensi pergolakan dan kekerasan dalam proses transisi suatu negara, sehingga membuka kemungkinan untuk duduk bersama menyusun aturan main baru maupun menyelesaikan masalah-masalah lain dalam masa transisi.³¹ Masalah-masalah yang sering timbul dalam masa transisi yaitu:³²

1. Tidak adanya akuntabilitas dan *rule of law* seperti adanya pelanggaran hak asasi manusia, personalisasi kekuasaan, kekuasaan dan korupsi.
2. Ketidakmampuan mengelola konflik etnis dan wilayah.
3. Krisis ekonomi dan stagnasi ekonomi.

Apabila ketiga persoalan itu tidak mampu diselesaikan oleh negara yang baru masuk dalam transisi, bukan tidak mungkin akan terjadi 'gelombang balik'. Sebaliknya, jika berhasil mengatasi, negara ini mempunyai potensi untuk menuju

²⁸ Juan J. Linz dkk, *Menjauhi Demokrasi Kaum Penjahat: Belajar dari Kekeliruan Negara-negara Lain* (Mizan: Bandung, 2001), hlm. 30-31.

²⁹ *Ibid*, hlm. 31.

³⁰ *Ibid*.

³¹ Larry Diamond, *Developing Democracy: Toward Consolidation*. Edisi terjemahan (IRE Press: Yogyakarta, 2003), hlm. xviii.

³² *Ibid*, hlm. viii.

konsolidasi demokrasi. Dalam masa konsolidasi inilah terjadi proses sosialisasi dan internalisasi mengenai sistem yang dipilih (lembaga-lembaga politik demokratis) dan aturan main baru yang sudah disepakati bersama, sehingga muncul komitmen seluruh elemen masyarakat pada aturan main demokrasi.³³ Maka tiga hal penting yang perlu diselesaikan dalam masa transisi demokrasi menuju konsolidasi yaitu: (1) pelebagaan politik (2) aturan main (konstitusi), dan (3) budaya demokrasi.

Menurut Carl Friederich, konstitusi yang demokratis disusun mengacu pada konstitusionalisme, yaitu gagasan bahwa pemerintahan merupakan kumpulan kegiatan yang diselenggarakan oleh dan atas nama rakyat, dengan beberapa pembatasan yang bertujuan agar kekuasaan yang diperoleh dari rakyat tidak disalahgunakan oleh yang memerintah.³⁴ Konstitusionalisme menghendaki prinsip pembatasan kekuasaan, akuntabilitas dari yang memerintah kepada yang diperintah, dan jaminan hak-hak asasi manusia. Ketiga hal tersebut harus menjadi dasar penyelenggaraan kekuasaan pemerintahan.

C. F Strong dalam buku *Modern Political Constitution* mengatakan konstitusi disusun dengan tujuan untuk membatasi kekuasaan yang memerintah, menjamin hak-hak dari yang diperintah dan untuk menjabarkan pelaksanaan kedaulatan rakyat.³⁵ Menurut Strong, negara yang memiliki konstitusi dengan prinsip demikian disebut sebagai negara konstitusional modern atau negara dengan sistem demokrasi konstitusional.³⁶ Carl Friederich juga mengatakan negara yang memiliki tataran konseptual yang jelas mengenai supremasi hukum (*legality*), pembagian kekuasaan (*division of powers*), dan hak-hak warga negara (*civic rights*) disebut sebagai negara demokrasi konstitusional.³⁷

³³ *Ibid*, hlm. xix.

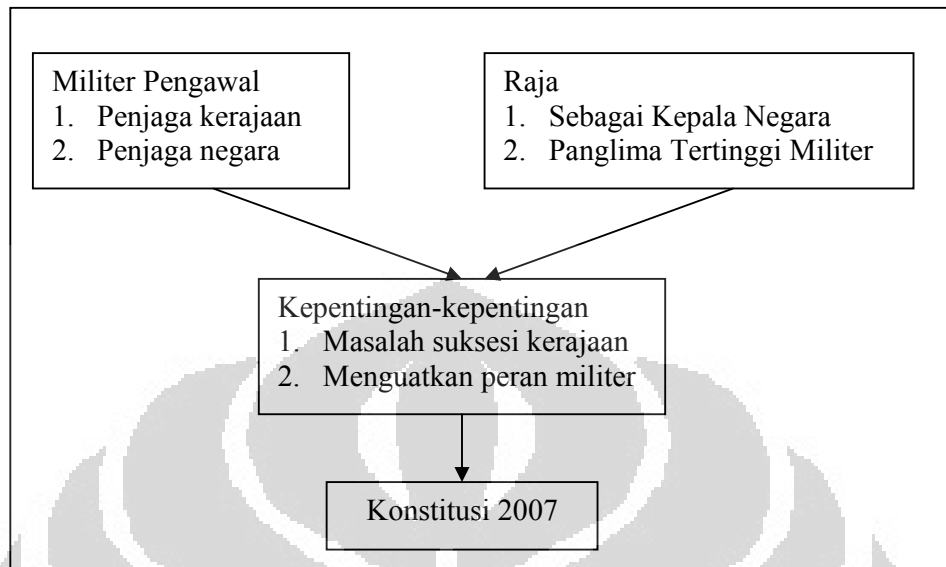
³⁴ Miriam Budiardjo, *Dasar-dasar Ilmu Politik* (Jakarta: Gramedia Pustaka Utama, 1991), hlm 96.

³⁵ C. F Strong, *Modern Political Constitution* (London: Sidgwick & Jackson, 1960), hlm. 10.

³⁶ *Ibid*.

³⁷ Jan-Erik Lane & Svante Ersson, *Comparative Politics: An Introduction and New Approach* (USA: Polity Press, 1994), hlm. 13.

I.4. Alur Berpikir



Dari skema alur berpikir di atas, hubungan Raja-militer berpengaruh terhadap penyusunan Konstitusi 2007. Raja sebagai salah satu kekuatan politik di Thailand berperan sebagai Kepala Negara dan Panglima Tertinggi militer. Sedangkan militer berperan sebagai penjaga kerajaan dan negara. Kedua kekuatan ini sama-sama memiliki kepentingan untuk mengamankan kekuasaan mereka. Raja memiliki kepentingan untuk mengamankan proses suksesi dan membutuhkan militer untuk menjaga proses tersebut. Sementara itu, militer membutuhkan Raja karena Raja memberikan perlindungan. Supaya kepentingan-kepentingan ini tidak terganggu, maka kedua kekuatan ini berusaha untuk menyusun konstitusi yang bisa melindungi kepentingan mereka. Dari sinilah terlihat bahwa hubungan Raja-militer berpengaruh dalam penyusunan Konstitusi 2007. Pengaruh ini bisa dilihat dari pasal-pasal yang dihasilkan seperti pasal-pasal mengenai eksekutif, sistem pemilu, demokratisasi dan *Privy Council*.

I.5. Metode Penelitian

Untuk menjawab pertanyaan yang diajukan dalam setiap penelitian ilmiah, maka diperlukan suatu metode penelitian. Metode penelitian merupakan teknik-teknik spesifik dalam sebuah penelitian. Dalam skripsi ini, penulis menggunakan

metode penelitian kualitatif dengan studi kasus sebagai strategi penelitiannya. Metode penelitian kualitatif adalah penelitian yang bermaksud untuk memahami fenomena tentang apa yang dialami oleh subjek penelitian misalnya perilaku, persepsi, motivasi, tindakan dan lain-lain secara holistik, dan dengan cara deskripsi dalam bentuk kata-kata dan bahasa, pada suatu konteks khusus yang alamiah dan dengan memanfaatkan berbagai metode ilmiah.³⁸ Pada ilmu sosial, metode penelitian kualitatif menekankan analisisnya pada proses pengumpulan induktif, serta pada analisis terhadap dinamika hubungan antar fenomena, yang diamati dengan menggunakan logika ilmiah, pendekatan kualitatif dikaitkan dengan metode interpretatif yang melakukan dan analisis data berlandaskan pada pemahaman, dengan penekanan pada makna-makna yang terkandung di dalamnya atau yang ada di balik kenyataan-kenyataan yang diamati.

Penulisan skripsi ini bersifat eksplanasi karena bertujuan untuk menjelaskan tentang pengaruh hubungan militer-raja terhadap proses demokratisasi terutama yang terkait dengan konstitusi 2007. Dalam penulisan karya ilmiah ini, penulis menggunakan teknik pengumpulan data dan analisis data berupa studi kepustakaan. Analisis yang dilakukan didukung oleh data sekunder seperti buku-buku, surat kabar, jurnal-jurnal ilmiah serta situs-situs internet dari luar dan dalam negeri yang terpercaya.

I. 6 Sistematika Penulisan

Untuk menjelaskan tentang pengaruh hubungan militer-raja terhadap proses demokratisasi dengan studi kasus Konstitusi 2007, penulis membagi skripsi ini dalam lima bab.

Bab 1 Pendahuluan. Bab ini membahas tentang latar belakang permasalahan, perumusan masalah, kerangka teori, alur berpikir, metode penelitian, serta sistematika penulisan.

Bab 2 Peran Militer dan Raja dalam Perpolitikan Thailand. Bab ini akan membahas tentang militer dan Raja Thailand. Penulis akan membahas tentang sejarah kelahiran militer di Thailand. Selanjutnya penulis akan menjelaskan hubungan militer-raja dari sejak pertama kali militer berdiri hingga kini.

³⁸Lexy J Moleong, *Metodologi Penelitian Kualitatif* (Bandung: PT. Remaja Rosdakarya, 2005), hlm. 6.

Bab 3 Proses Penyusunan Draft Konstitusi 2007. Bab ini akan membahas tentang konstitusi 2007. Pertama-tama, akan dibahas mengenai latar belakang penyusunan draft konstitusi 2007, kondisi-kondisi yang terjadi lembaga yang menyusun draft konstitusi 2007 beserta anggota dari CDA, proses dari draft konstitusi menjadi konstitusi 2007.

Bab 4 Analisa Pengaruh Hubungan Militer-Raja Terhadap Proses Demokratisasi Dengan Studi Kasus Penyusunan Konstitusi 2007. Bab ini akan membahas tentang bagaimana pengaruh hubungan militer-raja terhadap proses demokratisasi terutama dalam penyusunan Konstitusi 2007. Penulis akan menjelaskan pasal-pasal di dalam Konstitusi 2007 yang mendapat pengaruh dari hubungan militer-raja dan menjelaskan hubungan militer-raja selama proses pembuatan Konstitusi 2007.

Bab 5 Kesimpulan. Bab ini berisi tentang kesimpulan dari skripsi. Kesimpulan yang ditulis merupakan rangkaian dari pembahasan yang dijadikan hasil analisa penulis mengenai tema yang diangkat, kemudian didukung dengan data-data empiris guna menjelaskan isi dari penulisan skripsi ini.

BAB 2

PERAN RAJA DAN MILITER DALAM PERPOLITIKAN THAILAND

Permasalahan politik yang dihadapi negara Thailand saat ini telah berada pada kondisi yang tidak menentu.³⁹ Secara konstitusi, perubahan politik yang terjadi tidak melanggar, namun dari sudut pandang politik ternyata perubahan politik ini membuat keadaan dalam negeri Thailand menjadi tidak stabil. Walaupun sejak adanya perubahan dari monarki absolut ke konstitusional, Thailand sebenarnya telah mengalami banyak permasalahan politik.⁴⁰ Namun saat ini, permasalahan politik di Thailand menjadi tidak menentu bila dibandingkan dengan yang sebelumnya. Untuk memahami perubahan politik di Thailand, penulis merujuk salah satunya pada elit-elit yang ada.

Militer dan raja merupakan elit-elit di Thailand yang mempengaruhi keadaan politik di Thailand meskipun masih ada elit-elit lain yang berpengaruh. Dengan kekuasaan yang dimiliki, mereka bisa mengubah keadaan politik dari buruk menjadi baik atau sebaliknya. Untuk itu, di bab ini penulis akan membahas tentang militer dari segi sejarah berdirinya. Kemudian penulis akan membahas tentang hubungan militer-raja dari sejak militer berdiri hingga kini.

2. 1 Sejarah Lahirnya Militer Thailand dan Perkembangannya

Sejarah militer terbagi dalam dua momentum besar yang menjadikan militer sebagai salah satu kekuatan politik yang berpengaruh besar di Thailand. *Pertama*, bagaimana pemerintahan Thailand membentuk pola militer dari yang bersifat tradisional menjadi modern. *Kedua*, bentuk militer Thailand setelah perubahan bentuk pemerintahan, dari monark absolut ke monarki konstitusional di tahun 1932.

³⁹ Setelah kudeta militer pada tahun 2006, Thailand mengalami pergantian perdana menteri sebanyak empat kali. Selain itu, ada dua kerusuhan besar di Thailand yang menyebabkan Thailand mengalami kerugian tidak hanya ekonomi saja tapi juga nyawa. Bahkan beberapa negara sempat mengeluarkan *travel warning* bagi warganya yang mau ke Thailand.

⁴⁰ Di masa pemerintahan Thaksin, terdapat beberapa kasus yang memperlambat proses demokratisasi di Thailand seperti kegagalan dalam menangani pemberontakan di Thailand Selatan, penyalahgunaan kekuasaan, korupsi, sikap otoriter terhadap media dan pelanggaran HAM.

Sementara itu, James Ockey memberikan petunjuk dalam menganalisis periodisasi militer Thailand berdasarkan persepsi, peran dan lawan-lawan politik militer di Thailand. Lawan-lawan politik dari militer Thailand antara lain ancaman dari dalam dan luar. Kecenderungan periodisasi tersebut menyebabkan eksistensi kekuatan militer di Thailand semakin menunjukkan pengaruh yang kuat terhadap perpolitikan Thailand.⁴¹

2. 1 Tabel Perubahan Misi Militer Thailand

Periode	Musuh	Misi	Warisan
Monarki Absolut (1880-1932)	Ancaman domestik	Melindungi raja	Profesional dan bersifat politik
Promotor (1932-1941)	Para royalis dan kolonialis	Menggalakkan demokrasi dan kemerdekaan	Demokratis, nasionalis, keikutsertaan dunia bisnis
Perang Dunia ke-2 (1941-1945)	Non-Thai (terutama kolonialis)	Menyatukan rakyat Thailand	Nasionalisme ekstrim
Awal-awal perkembangan Perang Dingin (1948-1957)	Komunisme dari luar	Melawan komunisme di Asia Tenggara	Antikomunisme, peran bisnis yang semakin berkembang
(1957-1973)	Komunis dari luar negara Thailand	Pembangunan desa dan penindasan yang kejam untuk melawan komunisme	Mendorong pembangunan
Perlawanan terhadap pemberontakan melalui politik (1973-1991)	Komunis Thai yang sesat	Menghancurkan komunisme melalui pembangunan politik	Menggalakkan demokrasi
Pasca Perang Dingin (1991-....)	Tidak ada	Tidak ada	Tidak jelas

Sumber: James Ockey, *Thailand: The Struggle to Redefine Civil-Military Relations* in Muthiah Alagappa, *Coercion and Governance: The Declining Political Role of the Military in Asia* (California: Stanford University Press, 2001), hlm 189.

⁴¹ James Ockey, *Thailand: The Struggle to Redefine Civil-Military Relations* in Alagappa, Muthiah. *Coercion and Governance: The Declining Political Role of the Military in Asia* (California: Stanford University Press, 2001), hlm 189.

2. 1. 1 Sebelum Kudeta 1932

Sejarah terbentuknya militer di Thailand boleh dibilang telah dimulai sejak Thailand masih menganut monarki absolut. Adanya militer ini bisa dilihat dari diadakannya militer salah satu sebagai kementerian utama yang membawahi kementerian lainnya pada masa Raja Trailok (1448-1488). Trailok menjadikan militer sebagai kementerian pusat dengan tujuan untuk mengawasi jalannya pemerintahan provinsi-provinsi atau dengan kata lain Trailok bertujuan menciptakan sistem pemerintahan terpusat. Sedangkan dimasa kepemimpinan Raja Ramathibodi, wajib militer mulai diorganisir. Cara yang digunakan oleh Ramathibodi adalah dengan memecah kerajaannya menjadi divisi-divisi dan sub-sub divisi militer dan mewajibkan semua laki-laki berumur 18 tahun ke atas didaftar untuk menjalani panggilan militer.⁴²

Peran militer semakin menguat saat Thailand menghadapi serangan dari orang-orang Burma. Perang antara Thailand dan Burma menyebabkan perubahan pada sistem pemerintahan yang ada. Thailand (Ayuthaya) harus dipecah-pecah menjadi lima provinsi, yang setiap provinsi masing-masing dipimpin oleh pangeran atau pemimpin militer.⁴³ Namun, sistem ini membawa dampak buruk bagi Thailand sendiri. Phya Taksin, pemimpin yang paling menonjol saat itu, harus mengalami pemberontakan selama masa kepemimpinannya. Untuk mengakhiri pemberontakan yang berpotensi menjadi perang sipil ini, Jenderal Chakri yang merupakan orang kepercayaan Phya Taksin, memulihkan tatanan yang telah ada dan mengambil alih gelar kerajaan.⁴⁴ Naiknya Chakri sebagai pemimpin Thailand saat itu, menjadi penanda dimulainya dinasti Chakri di Thailand.

Pada masa dinasti Chakri, modernisasi di berbagai bidang dimulai. Modernisasi ini dimulai saat Raja Mongkut dari dinasti Chakri menduduki tampuk kerajaan dan dimasa pemerintahan Mongkut, Thailand mulai diinfiltrasi oleh modernisasi barat. Militer merupakan salah satu bidang yang mengalami

⁴² D. G. E. Hall, *A History of South-East Asia*, 4th edition (London: The Macmillan Press, 1981), hlm. 199.

⁴³ D. R. Sardesai, *Southeast Asia: Past & Present*, 4th edition (Colorado: Westview Press, 1997), hlm. 77.

⁴⁴ *Ibid.*

modernisasi.⁴⁵ Sebenarnya, modernisasi di bidang militer telah dimulai sejak awal abad ke-17 dengan cara mendatangkan penasihat-penasihat dari negara Barat. Namun proses modernisasinya baru dimulai pada tahun 1880-an.⁴⁶ Proses modernisasi dalam militer ketika pemerintahan Mongkut berkuasa dilatarbelakangi oleh kekalahan kerajaan China pada tahun 1842:

“It is during this period of monastic life that Mongkut perceived clearly that if a great country like China, after its defeat in 1842, was compelled to bow to Western pressures and end its isolation, a weak Thailand would not be able to keep the foreigners out for so long and thus important changes in the old ways of Thai society and government would have to be instituted to accommodate the West. At the same time Mongkut did not want his country’s glorious cultural tradition to be swept away by the tide of western civilization”⁴⁷

[Selama periode kehidupan di biaralah, Mongkut melihat dengan jelas bahwa jika negara sehebat China saja akhirnya harus tunduk kepada Barat dan mengakhiri kebijakan isolasinya setelah kekalahan mereka di tahun 1842, maka Thailand yang lemah tidak mungkin bisa menahan lebih lama lagi pengaruh orang-orang luar dan untuk itu dibutuhkan perubahan penting dalam cara hidup orang Thailand dan penginstitutionan pemerintah untuk mengakomodasi pengaruh Barat. Di saat yang bersamaan, Mongkut juga tidak ingin tradisi kebudayaan Thailand yang agung, hilang begitu saja oleh arus budaya Barat].

Dari pernyataan di atas, terlihat bahwa Raja Mongkut merupakan perintis, penentu arah dan seorang inovator modernisasi di Thailand. Meskipun begitu, modernisasi yang dicetuskan pertama kali oleh Mongkut ini, tidak sepenuhnya berjalan dengan baik. Adanya perlawanan terhadap modernisasi dari pihak istana dan latar belakang Mongkut sebagai biarawan, dianggap menghalangi proses modernisasi. Proses modernisasi di Thailand baru terasa pengaruhnya dibawah kepemimpinan Raja Chulalongkorn, anak dari Raja Mongkut.

Di bawah kepemimpinan Chulalongkorn, modernisasi yang telah dijalankan oleh ayahnya semakin mendapat perhatian lebih. Di bidang militer, ada

⁴⁵*Op.cit*, hlm 714.

⁴⁶ James Ockey, *Thailand: The Struggle to Redefine Civil-Military Relations in Alagappa, Muthiah. Coercion and Governance: The Declining Political Role of the Military in Asia* (California: Stanford University Press, 2001)

⁴⁷D. R. Sardesai, *Southeast Asia: Past & Present*, 4th edition (Colorado: Westview Press, 1997), hlm. 134.

berbagai macam modernisasi yang dilakukan oleh Chulalongkorn. Dalam proses perekrutan, setiap masyarakat Thailand berhak untuk mengajukan diri. Peraturan rekrutmen militer ini berbeda bila dibandingkan dengan peraturan lama dimana hanya orang-orang dari kelas *Prai* dan *Sui* saja yang terkena wajib militer.⁴⁸ Selain itu, Chulalongkorn juga menaikkan anggaran belanja militer Thailand menjadi 23 % dari total belanja negara saat itu. Sebagian dari anggaran belanja militer dihabiskan untuk mendirikan dua sekolah militer yang pengurusnya berasal dari orang-orang Thailand dan instruktur-instruktur dari Barat. Lulusan atau mereka yang pernah belajar di sekolah militer, biasanya ditempatkan sebagai birokrat. Sehingga tidaklah mengherankan jika di kemudian hari, militer dan birokrat memiliki hubungan yang erat.

Mereka yang lulus maupun pernah merasakan pendidikan militer di sekolah militer, telah dibekali dengan nilai-nilai dan etika-etika militer ala Barat seperti profesionalisme dan keinginan untuk tidak ikut campur dalam politik. Meskipun nilai-nilai militer ala Barat ini telah ditanamkan cukup lama, tidak berarti lulusannya atau yang pernah belajar di sekolah militer ini menjadi militer yang profesional. Menurut James Ockey, ketidakkonsistenan militer Thailand ini disebabkan oleh adanya aturan dimana promosi bahkan pengakuan terhadap perwira militer ditentukan oleh status yang dimiliki. Ockey menunjukkan dua peristiwa yang menggambarkan ketidakkonsistenan pihak kerajaan untuk memodernisasi militer mereka yaitu saat pengangkatan Pangti (Panglima Tinggi) militer dan mengenai kepangkatan di tubuh militer. Pada tahun 1887, Raja Chulalongkorn mengangkat putra mahkota yang baru berumur sepuluh tahun sebagai Pangti melalui UU (Undang-undang).⁴⁹ Namun karena umur Putra Mahkota masih terlalu muda, Raja menunjuk saudara lelakinya sebagai wali bagi Putra Mahkota dalam menjalankan tugasnya sebagai Pangti. Sementara itu, aturan bahwa hanya anak-anak dari keluarga bangsawan yang boleh memasuki sekolah militer, menyebabkan tumbuhnya ikatan antara kerajaan dengan pegawai pemerintahan. Adanya ikatan ini, menyebabkan naiknya pangkat

⁴⁸ *Ibid.* hlm 136. Kelas *Prai* adalah rakyat biasa dan budak-budak yang dijadikan tenaga kerja untuk melayani raja, pangeran-pangeran dan bangsawan.

⁴⁹ James Ockey, *Thailand: The Struggle to Redefine Civil-Military Relations in Alagappa, Muthiah. Coercion and Governance: The Declining Political Role of the Military in Asia* (California: Stanford University Press, 2001), hlm 190.

/dipromosikannya seorang perwira tidak berdasarkan pada prestasi dan kemampuan melainkan pada status yang dimiliki oleh perwira tersebut. Untuk menghilangkan praktek ini, pemerintah kemudian memperbolehkan masyarakat umum untuk memasuki sekolah militer dan melarang jabatan penting di militer dipegang oleh anggota kerajaan. Namun, peraturan baru ini justru menimbulkan konflik. Menurut Ockey, konflik promosi di tubuh militer ini di kemudian hari menjadi alasan adanya percobaan kudeta pada tahun 1912 dan 1932.⁵⁰

Kondisi militer Thailand seperti yang telah dijelaskan di atas, menurut Ockey dalam beberapa hal menyerupai kondisi militer penguasa kolonial negara-negara tetangga Thailand. Penguasa Thailand memodernisasi militer dengan tujuan untuk memperlihatkan kepada penguasa kolonial bahwa militer mereka "modern".⁵¹ Selain itu, modernisasi militer dimaksudkan sebagai alat untuk mencegah penguasa kolonial menguasai Thailand. Militer dibangun oleh penguasa sebagai alat untuk memperkuat kekuasaan mereka di provinsi-provinsi yang jauh dari ibukota dengan cara membangun garnisun-garnisun.⁵² Ben Anderson, sarjana pengamat politik Asia Tenggara, juga memiliki pendapat yang sama. Anderson menjelaskan bahwa militer Thailand secara jelas bersifat politis, modernisasi ditujukan hanya untuk memperkuat rezim dari musuh-musuh domestik dan melaksanakan kebijakan-kebijakan mereka. Tujuan utama militer yaitu sebagai pertahanan terhadap musuh dari luar, sama sekali tidak dijalankan oleh militer Thailand saat itu. Oleh Ockey, kondisi militer Thailand yang serba setengah-setengah atau tidak konsisten ini dan politisasi institusi militer telah membentuk sikap dan karakter militer Thailand sepanjang perjalanan sejarahnya.

Ketidakkonsistenan penguasa Thailand dalam memodernisasi militer Thailand mendorong adanya percobaan kudeta pertama kali dalam pemerintahan Raja Vajiravudh (Rama VI) pada tahun 1912 dan 1917. Percobaan kudeta ini disebabkan oleh didirikannya suatu kesatuan di luar institusi militer yang disebut *Wild Tiger Scout*.⁵³ Kesatuan ini muncul dengan membawa sejumlah

⁵⁰*Ibid.* hlm 191.

⁵¹Modern disini maksudnya militer Thailand memiliki kekuatan, administrasi dan nilai-nilai yang sama dengan militer di negara-negara Barat saat itu.

⁵²*Ibid.* hlm 191.

⁵³D. R. Sardesai., *Southeast Asia: Past & Present*, 4th edition (Colorado: Westview Press, 1997), hlm 182. *Wild Tiger Scout (Sua Pa)* adalah korps paramiliter yang bersifat nasional. Tujuan dari

permasalahan dalam bentuk penolakan oleh pihak militer itu sendiri. Penolakan ini muncul dengan alasan Raja Vajiravudh telah menghina institusi militer dengan memberikan kewenangan khusus dalam menjaga Raja yang seharusnya menjadi kewenangan militer.

2. 1. 2 Revolusi 1932

Depresi ekonomi global pada tahun 1930-an menjadi awal dari munculnya Revolusi 1932 di Thailand.⁵⁴ Thailand sebagai negara pengekspor beras, kayu dan timah harus merasakan akibat dari depresi ekonomi dalam bentuk turunnya harga-harga komoditas ekspor.⁵⁵ Turunnya harga komoditas ekspor ini menyebabkan masyarakat menderita dari segi ekonomi. Mereka harus mengalami kenyataan bahwa pendapatan mereka berkurang tetapi kewajiban untuk membayar pajak tetap ada. Anggaran pemerintah semakin berkurang karena tidak adanya pemasukan.⁵⁶ Untuk mengurangi beban pemerintah, Raja Prajadiphok akhirnya memutuskan untuk memberhentikan sebagian pegawai pemerintah-sipil maupun militer, memotong pos anggaran gaji dan promosi pegawai pemerintah dan militer. Selain itu, pemerintah mengeluarkan kebijakan pajak penghasilan bagi pegawai-pegawai pemerintah, baik sipil maupun militer.⁵⁷ Bagi pegawai pemerintah kelas menengah, kebijakan pemberlakuan pajak penghasilan sangat berpengaruh sekali karena mereka hanya mengandalkan gaji sebagai pendapatan utama mereka.⁵⁸

Kondisi ini berbeda halnya dengan pihak bangsawan dan anggota kerajaan. Meskipun para bangsawan dan anggota kerajaan terkena pajak, mereka

didirikannya korps ini ada empat. Yang pertama, korps ini dimaksudkan untuk membebaskan masyarakat Thai dari tugas-tugas militer reguler, terutama di tingkat menengah dan tinggi. Yang kedua, diharapkan korps ini bisa memperkenalkan kesatuan di antara masyarakat Thai yang memiliki latar belakang berbeda-beda. Ketiga, korps ini didirikan dengan maksud untuk memelihara ketertiban dan hukum di daerah pedalaman dan menyediakan prajurit pelayan di waktu perang. Yang terakhir, korps ini didirikan untuk menyediakan pengintai bagi militer reguler. Raja menjadi panglima tertinggi dari *Wild Tiger Scout* yang membawahi empat komite yang dipimpin oleh seorang supervisor. Keterangan lengkap mengenai *Wild Tiger Scout* bisa dilihat di <http://www.thaiscouting.com/history.html>.

⁵⁴John. L. S. Girling, *Thailand: Society and Politics* (London: Cornell University Press, 1981), hlm. 58.

⁵⁵ Komoditas ekspor yang terkenal saat itu adalah kayu, beras, timah dan karet.

⁵⁶John. L. S. Girling, *Thailand: Society and Politics* (London: Cornell University Press, 1981), hlm 58.

⁵⁷*Ibid*, hlm. 59.

⁵⁸*Ibid*

tidak terlalu kuatir karena mereka masih memiliki sumber pendapatan selain gaji. Sementara itu, kelas pedagang Cina tidak merasakan efek negatif dari adanya peristiwa depresi ekonomi global ini. Alasannya, lebih kurang sama seperti para bangsawan dan anggota kerajaan, kelas pedagang Cina ini memiliki sumber pendapatan lain yang bisa menyelamatkan mereka dari depresi ekonomi. Situasi timpang ini membuat kondisi rakyat miskin di Thailand saat itu semakin sengsara, tidak peduli apakah mereka tinggal di kota maupun pedesaan.

Kenyataan bahwa banyak masyarakat miskin maupun kelas menengah harus merasakan penderitaan akibat ketidakmampuan pemerintah dalam mengatasi efek negatif dari depresi ekonomi global, menyebabkan timbulnya suatu kudeta yang amat dikenal dalam sejarah Thailand yaitu Kudeta 1932. Kudeta pada tanggal 24 Juni 1932 ini dilancarkan oleh empat kelompok yang berbeda yaitu perwira militer senior, perwira militer junior, perwira angkatan laut dan pegawai pemerintah. Menurut Sardesai, kudeta ini dilancarkan oleh orang-orang dari kelompok perwira militer junior, pemuda pengangguran didikan luar negeri dan beberapa politikus moderat senior. Kelompok-kelompok pelaku kudeta ini menyebut diri mereka sebagai "*People's Party*".

Kudeta tidak berdarah yang dijalankan oleh "*People's Party*" ini mengakhiri kejayaan monarki absolut di Thailand yang saat itu dipegang oleh dinasti Chakri.⁵⁹ Raja yang berkuasa saat itu yaitu Raja Prajadiphok, akhirnya memberikan kekuasaannya.⁶⁰ Dengan berakhirnya kekuasaan absolut Raja Prajadiphok, maka Thailand tidak lagi menjadi negara monarki absolut melainkan monarki konstitusional. Namun peristiwa kudeta 1932 tidak hanya sekedar suatu peristiwa dimana bentuk negara berubah tapi juga menjadi titik bagi militer untuk masuk ke pemerintahan dan menguasainya.

Peristiwa kudeta 1932 menjadi titik awal masuknya militer ke dunia politik. Militer tidak lagi hanya berperan menjalankan fungsi utamanya yaitu pertahanan dan keamanan negara tapi juga ikut berperan serta dalam menjalankan roda pemerintahan bahkan mempengaruhi jalannya pemerintahan. Titik awal bagi masuknya militer Thailand dalam politik adalah Kudeta 1932. Militer menjadi

⁵⁹ Paul M. Handley, *The King Never Smiles: A Biography of Thailand's Bhumibol Adulyadej* (New Haven & London: Yale University Press, 2006), hlm. 42-44.

⁶⁰ Raja Prajadiphok turun tahta pada bulan Februari tahun 1935.

salah satu kekuatan politik, bersama dengan kekuatan politik sipil, dalam merebut kekuasaan Raja Prajadiphok. Mereka-mereka inilah pencetus dari Kudeta 1932. Pihak sipil diwakili oleh Pridi Phanomyong sedangkan militer diwakili oleh Kolonel Phahon dan Mayor Phibun Songkram. Meskipun kelompok militer dan sipil bisa bersatu dalam usahanya merebut kekuasaan pada tahun 1932, setelah tujuan itu tercapai, kedua kelompok ini saling berebut kekuasaan.

Persaingan antara militer dan sipil bisa dilihat dari seringnya pergantian perdana menteri.⁶¹ Selama satu dekade sejak runtuhnya monarki absolut, tercatat bahwa militer lebih menguasai posisi perdana menteri. Pemerintahan dibawah perdana menteri dari orang sipil hanya terjadi sebentar saja yaitu pada tahun 1945-1947. Pihak militer yang sempat menjadi pihak yang kalah, sukses meraih kembali kekuasaan mereka di pemerintahan setelah adanya peristiwa pembunuhan Raja Ananda Mahidol.⁶² Sejak tahun 1947, militer berhasil menguasai pemerintahan tanpa adanya lawan politik yang cukup kuat untuk menandingi kekuatannya. Salah satu indikator dari dominasi militer Thailand dalam pemerintahan dibandingkan pihak sipil terlihat dari perodesasi kekuasaan masing-masing perdana menteri, seperti yang terjabarkan oleh tabel di bawah ini.

2. 2 Tabel Perodesasi Perdana Menteri di Thailand

No	Nama Perdana Menteri	Periode	Penyebab Berakhirnya Pemerintahan
1	Phya Manopakorn Nitithada (Gon Hutasingha)	1932-1933	Kudeta yang dipimpin oleh Jendral Phya Phahon
2	Jendral Phya Phahon Phonpayuhasena (Phot Phahonyotin)	1933-1937	Pemilu
3	Field Marshal Plaek Phibun	1938-1944	Ketidaksetujuan

⁶¹Berdasarkan informasi dari website resmi pemerintah Thailand, sejak 1932, terdapat 31 perdana menteri di Thailand. Lihat <http://www.cabinet.thaigov.go.th>. Website resmi pemerintah Thailand ini telah mengalami pembajakan sehingga khalayak umum tidak bisa mendapat informasi yang sah terkait pemerintahan Thailand. Pembajakan terhadap situs ini masih berlangsung hingga kini.

⁶²John. L. S. Girling, *Thailand: Society and Politics* (London: Cornell University Press, 1981), hlm 108. Raja Ananda Mahidol dibunuh di istana pada tanggal 9 Juni 1946. Hingga kini, pelaku pembunuhan belum diketahui meskipun ada tiga teori yang muncul. Mengenai peristiwa lengkap pembunuhan Raja Ananda Mahidol, baca buku biografi karya: Paul M. Handley, *The King Never Smiles: A Biography of Thailand's Bhumibol Adulyadej* (New Haven & London: Yale University Press, 2006), hlm 75-76.

	Songkram		parlemen
4	Kuang Abhaiwongse	1944-1945	Pengunduran diri melalui pemilu setelah PD II (Perang Dunia ke-2)
5	Mr. Tawee Punyaketu	1945	Pengunduran diri
6	Mr. Seni Pramoj	1945	Pengunduran diri
7	Kuang Abhaiwongse	1946	Pengunduran diri
8	Mr. Pridi Banomyong	1946	Pengunduran diri
9	Rear Admiral Thawal Thamrongnavaswadhi	1946-1947	Kudeta yang dipimpin oleh Jendral Phin Choonhavan
10	Kuang Abhaiwongse	1947-1948	Pengunduran diri karena kudeta yang dipimpin oleh komite kudeta (8 November 1948)
11	Field Marshal Plaek Pibulsongkram	1948-1957	Kudeta yang dipimpin oleh Jendral Sarit Dhanarajata
12	Mr. Pote Sarasin	1957-1958	Pemilu
13	Field Marshal Thanom Kittikachorn	1958	Kudeta yang dipimpin oleh Jendral Sarit Dhanarajata
14	Jendral Sarit Dhanarajata	1959-1963	Meninggal
15	Field Marshal Thanom Kittikachorn	1963-1972	Pemberontakan
16	Mr. Sanya Dharmasakti	1973-1974	Pemilu
17	Mr. Seni Pramoj	1975	Ketidaksetujuan
18	Major General Mr. Kukrit Pramoj	1975	Pemilu
19	Mr. Seni Pramoj	1976	Kudeta yang dipimpin oleh Admiral Sangad Chalawyo
20	Mr. Thanin Kravixien	1976-1977	Kudeta yang dipimpin oleh Admiral Sangad Chalawyo
21	General Kriangsak Chomanan	1977-1979	Pengunduran diri yang disebabkan oleh permasalahan krisis minyak dan konflik pengungsi
22	General Prem Tinsulanonda	1980-1986	Pemilu
23	General Chatichai Choonhavan	1988-1991	Kudeta yang dipimpin oleh Jendral Sundara Kongsompong
24	Mr. Anand Panyarachun	1991-1992	Pemilu berdasarkan Konstitusi 1991
25	General Suchinda Kraprayoon	1992	Krisis pada bulan Mei

26	Mr. Anand Panyarachun	1992	Pemilu
27	Mr. Chuan Leekpai	1992-1995	Pemilu
28	Mr. Banharn Silapa-archa	1995-1996	Pemilu
29	General Chavalit Yongchaiyudh	1996	Pengunduran diri
30	Mr. Chuan Leekpai	1997-2001	Pemilu
31	Mr. Thaksin Shinawatra	2001-2005	Kudeta yang dipimpin oleh Jendral Sonthi Bonyaratglin

Sumber: "History of Thai Prime Minister". Diperoleh dari: <http://www.cabinet.thaigov.go.th>.
Yudith Prameswari Handini, "Hubungan Sipil Militer di Thailand Pada Tahun 2001-2006: Studi Kasus Kudeta Militer Terhadap Perdana Menteri Thaksin Shinawatra September 2006", Skripsi Sarjana (Depok: FISIP UI, 2008).

Dari tabel di atas, perbandingan yang dapat dijelaskan lewat periodisasi antara militer dengan sipil meliputi beberapa poin penting:

1. Perbandingan jumlah antara perdana menteri dari pihak sipil dengan militer tidak terlalu signifikan.
2. Namun, jangka waktu memerintah antara pihak militer dan sipil menunjukkan perbedaan. Perdana menteri dari pihak sipil cenderung singkat dalam masa pemerintahannya, sedangkan dari pihak militer sebaliknya. Militer cenderung lebih lama dalam masa pemerintahannya.

Memasuki tahun 1970-an, militer Thailand harus menghadapi kenyataan bahwa dominasinya dalam bidang politik harus berkurang. Menurut Girling, berkurangnya dominasi militer disebabkan oleh berbagai faktor.⁶³ Dari faktor eksternal, pemerintahan Thailand harus menghadapi kenyataan bahwa kerjasama militer antara Thailand dan Amerika harus berakhir. Sementara itu di dalam negeri, masyarakat sipil mulai mengambil sikap sebagai oposisi terhadap pemerintahan Thanom. Sikap oposisi ini diambil karena pemerintahan Thanom, menurut Girling telah bertindak semakin keras, korup, tidak kompeten dan hanya memuaskan diri sendiri saja. Dari segi ekonomi, pemerintahan Thanom mengalami defisit pada tahun 1969 dan 1970 yang akhirnya mengakibatkan harga beras di Thailand naik tajam. Kondisi ini membuat seluruh komponen masyarakat menuntut adanya suatu konstitusi baru yang demokratis. Sementara bagi militer,

⁶³John. L. S. Girling, *Thailand: Society and Politics* (London: Cornell University Press, 1981), hlm 114.

kondisi ini menimbulkan adanya faksionalisasi, disorganisasi dan hilangnya tujuan dari organisasi militer.

Faksionalisasi semakin bertambah parah saat para mahasiswa melakukan aksi protes "*Student Revolt*" di bulan Oktober, 1973. Suchit Bunbongkarn mengatakan bahwa pada tahun 1970, organisasi militer harus menghadapi adanya konflik dan perjuangan kekuasaan di antara berbagai macam kelompok dan faksi-faksi di dalam militer. Konflik ini, menurut Suchit, berakar dari adanya perbedaan pandangan antara faksi-faksi dalam organisasi militer dalam menyikapi peran militer. Suchit menjelaskan bahwa sejak peristiwa *Student Revolt*, muncul tiga faksi dalam tubuh organisasi militer yaitu⁶⁴:

1. *The Young Turks*.

Kelompok ini merupakan kelompok yang berpengaruh pada tahun 1970-an. Kelompok ini terdiri dari perwira-perwira kelas menengah yang penting dan merupakan komandan resimen-resimen utama. Mereka yang termasuk dalam kelompok ini merupakan perwira-perwira angkatan ke-7 Akademi Militer Chulachumklao⁶⁵. Pemikiran utama dari kelompok ini adalah meningkatkan profesionalisme AD (Angkatan Darat). Sedangkan tujuan utama kelompok ini adalah untuk mereformasi dan membangun kembali kehormatan dan reputasi militer pasca "*Student Revolt*"⁶⁶.

2. *Class 5*.

Kelompok ini beranggotakan para perwira angkatan ke-5 Akademi Militer Chulachumklao atau merupakan senior dari *The Young Turks*. Anggota kelompok yang berjumlah lebih kurang 140 orang ini diketuai oleh Jendral Suchinda. Tujuan didirikannya kelompok ini adalah untuk memastikan kesejahteraan para perwira

⁶⁴ Suchit Bunbongkarn, *State of The Nation: Thailand* (Singapore: ISEAS, 1996), hlm 46-49.

⁶⁵ Yudith Prameswari Handini, "*Hubungan Sipil Militer di Thailand Pada Tahun 2001-2006: Studi Kasus Kudeta Militer Terhadap Perdana Menteri Thaksin Shinawatra September 2006*", Skripsi Sarjana (Depok: FISIP UI, 2008).

⁶⁶ Istilah *Student Revolt* pertama kali muncul pada tahun 1973. Disebut *Student Revolt* karena awal dari munculnya peristiwa ini adalah adanya penangkapan mahasiswa oleh militer saat 12 orang mahasiswa menyebarkan pamflet yang isinya menuntut adanya konstitusi. Ke-12 orang ini ditangkap karena telah menyalahi aturan larangan berkumpul. Baca jurnal oleh David Morell, *Political Conflict in Thailand*, Asian Affairs, Vol 3, No 3 (Jan-Feb 1976), hal 151-184. Diunduh dari: www.jstor.org/stable/30171893. Diakses pada tanggal 7 Juli 2010 pukul 16.26 WIB.

angkatan ke-5, kelompok ini sama sekali tidak memiliki agenda politik atau reformasi seperti *The Young Turks*. Mereka hanya ingin menjadi kelompok penekan lainnya bagi kelompok *The Young Turks* yang mereka anggap telah bersikap tidak hormat kepada senior.

3. *Democratic Soldiers*.

Kelompok ini berisikan perwira-perwira yang berhubungan dengan ISOC (*Internal Security Operation Command*). Mereka ini adalah dosen-dosen di Akademi Militer Chulachumklo dan Sekolah Angkatan Darat. Kelompok ini mendapat dukungan dari CPT (*Community Party of Thailand*).⁶⁷ Kelompok ini percaya bahwa pemerintah membutuhkan strategi baru untuk membasmi komunisme, mereka percaya bahwa dengan demokrasi, komunis bisa dihilangkan.⁶⁸ Sayangnya, konsep demokrasi yang diajukan oleh kelompok ini tidak jelas. Menurut Suchit, konsep demokrasi yang mereka tawarkan sebenarnya tidak lebih dari sekedar upaya untuk mencari alasan supaya militer bisa berpolitik kembali. Para pendukung kelompok ini antara lain Jendral Chauvalit Yongchaiyudh, Jendral Prem Tinsulanonda dan Jendral Harn.⁶⁹

Adanya perpecahan di dalam tubuh militer Thailand, tidak kemudian menyebabkan dominasi militer dalam pemerintahan menjadi surut atau hilang.⁷⁰ Mereka kembali lagi berkuasa dalam pemerintahan setelah pihak sipil gagal dalam menerapkan demokrasi konstitusional pasca Revolusi Mahasiswa pada tahun 1973. Lewat kudeta militer, Jendral Kriangsak Chomanan berhasil meraih posisi perdana menteri pada tahun 1977.⁷¹ Namun, adanya ancaman dari luar dan dalam, Jendral Kriangsak akhirnya memilih mengundurkan diri. Pengunduran diri ini dipilih karena Jendral Kriangsak tidak bisa lagi mengandalkan dukungan dari militer. Sebagai penggantinya, dipilihlah Jendral Prem Tinsulanonda sebagai

⁶⁷Yudith Prameswari Handini, "Hubungan Sipil Militer di Thailand Pada Tahun 2001-2006: Studi Kasus Kudeta Militer Terhadap Perdana Menteri Thaksin Shinawatra September 2006" (Depok: FISIP UI, 2008).

⁶⁸Suchit Bunbongkarn, *State of The Nation: Thailand* (Singapore: ISEAS, 1996), hlm 48.

⁶⁹Op. cit.

⁷⁰John. L. S. Girling, *Thailand: Society and Politics* (London: Cornell University Press, 1981), hlm 117.

⁷¹*Ibid*

perdana menteri. Selama masa kepemimpinannya, Prem berusaha untuk mendamaikan dan menengahi berbagai macam kepentingan dari berbagai macam kelompok, baik dari internal militer maupun parpol-parpol (partai politik) yang ada di Thailand. Meskipun begitu, usaha yang dilakukan oleh Prem tetap tidak membawa Thailand ke arah yang lebih demokratis. Setelah pemilu tahun 1988, Prem tidak lagi menjabat sebagai perdana menteri.⁷²

Sebagai gantinya, pemimpin partai dengan perolehan suara terbanyak yaitu Chatichai Choonhavan dari Partai Chart Thai menjadi perdana menteri. Berbeda jauh dengan pemerintahan Prem, pemerintahan Chatichai dianggap telah merusak posisi militer di dalam pemerintahan dan berbuat korup. Pemerintahan Chatichai akhirnya harus berakhir lewat kudeta militer yang dilakukan oleh NPKC (*National Peace Keeping Council*) pada tahun 1991.⁷³ NPKC kemudian menjadi pihak yang berkuasa dalam pemerintahan Thailand dengan ketuanya Jendral Sunthorn Kongsompong dan wakil ketua Jendral Suchinda Kraprayoon. Menurut Suchit, meskipun kudeta militer 1991 dikatakan sukses, tidak berarti menggambarkan kekuatan militer saat itu. Sebaliknya, bagi Suchit, kudeta militer 1991 menunjukkan bahwa kekuatan militer tidak lagi sekuat pada tahun 1950-an dan 1960-an.

Dominasi atau kekuatan militer semakin memudar karena liberalisasi telah berkembang di masyarakat. Junta militer harus mengizinkan berkembangnya liberalisasi sampai tahap tertentu dan menjanjikan adanya konstitusi baru dan pemilu dalam waktu satu tahun dalam rangka menenangkan elemen-elemen liberal yang saat itu sedang berkembang. Langkah-langkah kompromi yang diambil pihak junta atau NPKC, tetap mendapat kritikan. Dan gelombang demokrasi di masyarakat semakin menguat saat pihak junta berusaha untuk meneruskan kekuasaannya pasca pemilu pada tahun 1992.⁷⁴ Banyak protes-protes

⁷²D. R. Sardesai, *Southeast Asia: Past & Present*, 4th edition (Colorado: Westview Press, 1997), hlm 261.

⁷³National Peace Keeping Council (NPKC) merupakan junta militer yang menjatuhkan pemerintahan Chatichai Choonhavan pada tahun 1991. Junta ini dipimpin oleh Jendral Sunthorn Kongsompong dan Jendral Suchinda Kraprayoon.

⁷⁴NPKC (junta militer) membentuk partai politik yaitu Sammakitham. Dalam pemilu pada tahun 1992, Sammakitham meraih suara terbanyak, di parlemen Sammakitham meraih 74 kursi. Partai Sammakitham didukung oleh Partai Chart Thai dan SAP, yang kemudian sering dikenal sebagai partai promiliter. Partai promiliter ini kemudian mengeluarkan pernyataan untuk mendukung pemimpin junta, Jendral Suchinda Kraprayoon sebagai perdana menteri. Permasalahan muncul

massal yang terjadi setelah Pemilu 1992 dan berakhir dengan revolusi di bulan Mei.

Sejak peristiwa Revolusi Mei inilah, militer dipaksa untuk kembali ke barak atau menjadi tentara profesional. Mau tidak mau, militer Thailand harus mengakui dan mendukung proses demokrasi yang sedang berkembang di masyarakat. Oleh sebagian orang, sejak 1992⁷⁵, demokrasi di Thailand dianggap telah stabil dan peran militer dalam politik telah berakhir. Namun, menurut Sardesai, masih terlalu dini untuk menyatakan bahwa demokrasi di Thailand telah stabil dan militer telah menjadi profesional. Pernyataan Sardesai ini bisa dibilang menjadi kenyataan saat militer, lagi-lagi melakukan kudeta pada tahun 2006 terhadap pemerintahan terpilih Thaksin Shinawatra.⁷⁶

2. 2 Hubungan Raja - Militer

Sejak tahun 1932 hingga saat ini, politik di Thailand dipengaruhi oleh empat aktor utama yaitu raja, militer, masyarakat sipil dan pebisnis swasta.⁷⁷ Sejarah memperlihatkan bahwa pemegang kekuasaan di Thailand selalu berganti-ganti di antara ke empat aktor utama ini. Di antara empat kekuatan yang telah disebut, ada dua kekuatan yang sudah berdiri sejak lama dan memiliki hubungan yaitu militer dan raja.

Hubungan yang terjadi antara raja dan militer boleh dibilang merupakan suatu sejarah yang panjang. Militer bisa memiliki hubungan dengan raja karena militer merupakan suatu institusi atau organisasi bentukan raja. Tugas militer adalah sebagai penjaga ketertiban dan keamanan negara dan salah satunya menjaga raja beserta keluarganya. Sepanjang sejarahnya, raja atau monarki berulang kali bergabung dengan militer dalam usahanya untuk meraih dominasi.⁷⁸

karena menurut peraturan, perdana menteri harus berasal dari anggota parlemen terpilih sementara Suchinda bukan anggota parlemen terpilih.

⁷⁵D. R. Sardesai, *Southeast Asia: Past & Present*, 4th edition (Colorado: Westview Press, 1997), hlm 265.

⁷⁶“Militer Thailand Kudeta Thaksin”, diunduh dari:

<http://www.tempointeraktif.com/hg/luar neger i/2006/09/20/brk.20060920-84397.id.html>. Diakses pada 10 Oktober 2010, pukul 14. 29 WIB.

⁷⁷Amy L. Freedman, *Political Change and Consolidation: Democracy's Rocky Road in Thailand, Indonesia, South Korea and Malaysia* (New York: Palgrave and Macmillan, 2006), hlm. 33.

⁷⁸Johan Kharabi, “The Thai Military: A Political Role”, *Asian Journals of Public Affairs* Vol. 3 No. 1, diunduh dari: <http://www.spp.nus.edu.sg/ajpa/issue5/6%20Kharabi.pdf>. Diakses pada 13 Oktober 2010, pukul 13. 15 WIB.

Usaha monarki untuk menggabungkan diri dengan militer ini tidak selamanya sukses. Bentuk hubungan Raja dan militer bersifat ketergantungan dalam mempertahankan eksistensi kekuasaan masing-masing dalam politik Thailand. Dilihat dari kekuatan kekuasaannya, kekuasaan militer sifatnya temporer sedangkan kekuasaan Raja bersifat permanen ditinjau dari situasi politik Thailand.

Pasca Revolusi 1932, hubungan militer dan raja mengalami masa surut. Setelah Revolusi 1932, Raja sama sekali tidak mendapat kekuasaannya. Raja atau monarki benar-benar hanya berfungsi untuk urusan seremonial saja. Namun kondisi ini tidak berlangsung lama karena di masa pemerintahan Perdana Menteri Pridi Phanomyong, Raja kembali mendapatkan dominasinya. Raja mendapatkan dominasinya dengan bekerja sama dengan pihak faksi elit militer yang pada tahun 1947 mengkuadeta Perdana Menteri Pridi.⁷⁹ Setelah tahun 1947, hubungan militer-raja kembali mengalami masa pasang-surut. Raja tidak memiliki kontrol atas militer sehingga militer menjadi penguasa pemerintahan. Namun, saat kepemimpinan Perdana Menteri Sarit, hubungan militer-raja kembali baik.

Perdana Menteri Sarit yang berkuasa sejak tahun 1959, dikenal sebagai pemimpin yang otoriter. Tapi di sisi lain, justru di masa kepemimpinan Saritlah, Raja bisa tampil di muka umum. Sarit mendorong Raja Bhumibol untuk lebih banyak tampil di muka umum dengan cara melakukan tur ke provinsi-provinsi-suatu hal yang justru sangat dilarang di rezim sebelum Sarit.⁸⁰ Usaha yang dilakukan oleh Sarit dan Raja, membuahkan hasil dalam bentuk rasa hormat dari orang-orang yang berada di pedalaman. Bahkan, munculnya komunis pada masa kepemimpinan Sarit, menurut Kharabi, justru memaksa Raja untuk menjadi sekutu kuat bagi militer.⁸¹ Raja, yang tadinya tidak begitu populer di kalangan masyarakat umum, secara bertahap menjadi populer. Meskipun Raja akhirnya dikenal oleh masyarakat umum, McCargo yang merupakan profesor politik Asia Tenggara, berargumen bahwa semua usaha yang dilakukan oleh Sarit, sebenarnya hanya untuk semakin melegitimasi kekuasaan dan program-program pemerintahan

⁷⁹ *Ibid*

⁸⁰ John. L. S. Girling, *Thailand: Society and Politics* (London: Cornell University Press, 1981), hlm 112.

⁸¹ Op.cit.

Sarit.⁸² Pada akhir tahun 1960-an, Raja memberikan pernyataan publik secara berkala terkait keadaan politik Thailand yang semakin tidak menentu. Bahkan saat demonstrasi anti produk Jepang yang dilancarkan mahasiswa di tahun 1972, Raja memberikan dukungannya. Di masa Sarit, Raja dan militer sama-sama berbagi kekuasaan dalam pemerintahan. Kondisi ini bisa terjadi karena munculnya ancaman dari luar yaitu paham komunis. Munculnya paham komunisme menjadi alasan bagi bersatunya Raja-militer.

Kondisi perpolitikan Thailand pada awal tahun 1970-an berada pada kondisi yang tidak menentu.⁸³ Pemerintahan Perdana Menteri Thanom yang berasal dari militer, semakin tidak terkendali. Kekerasan, korupsi, ketidakkompetenan dan perilaku yang hanya menyenangkan diri sendiri merupakan kondisi dari pemerintahan Thanom. Kondisi pemerintahan Thanom yang buruk ini semakin menumbuhkan gelombang oposisi. Berbagai kalangan di masyarakat termasuk Raja, menuntut akan adanya suatu konstitusi yang sejati di Thailand. Mahasiswa di Thailand bahkan membentuk perkumpulan yang disebut NSCT (*National Student Center of Thailand*). Setiap kelompok di masyarakat berdemonstrasi, menuntut adanya suatu konstitusi yang lebih demokratis.⁸⁴ Keinginan masyarakat luas di Thailand akan adanya konstitusi yang demokratis, direspon oleh militer dengan kekerasan berupa penangkapan terhadap mahasiswa. Tindakan penangkapan oleh militer ini kemudian memicu peristiwa berdarah "Student Revolt" di tahun 1973. Raja Bhumibol yang tadinya tidak pernah mengintervensi politik Thailand, akhirnya mengintervensi dengan cara mengasingkan Perdana Menteri Thanom dan Praphat Charusathien sebagai Wakil Perdana Menteri keluar dari Thailand pada tahun 1973. Alasan dibalik intervensi Raja Bhumibol menurut McCargo adalah:⁸⁵

⁸²Duncan McCargo, "Network Monarchy and Legitimacy Crises in Thailand", *The Pacific Review*, 18:4, 499-519.

⁸³John. L. S. Girling, *Thailand: Society and Politics* (London: Cornell University Press, 1981), hlm 114.

⁸⁴David Morell, "Political Conflict in Thailand", *Asian Affairs*, Vol 3, No 3 (Jan-Feb 1976), hal 151-184. Diunduh dari: www.jstor.org/stable/30171893, diakses pada tanggal 7 Juli 2010 pukul 16.26 WIB.

⁸⁵Duncan McCargo, "Network Monarchy and Legitimacy Crises in Thailand", *The Pacific Review*, 18:4, 499-519.

"Frustrated with the shortcomings of the military, bureaucratic and political leadership, he played an important role in supporting the ouster of strongmen Thanom Kittikachorn and Praphas Charusathien in 1973"

[“Frustrasi dengan kelemahan dari militer, birokrasi dan kepemimpinan politik, dia (Raja Bhumibol) memainkan peranan penting dalam mendukung pengasingan Thanom Kittikachorn dan Praphas Charusathien di tahun 1973”]

Dari intervensi yang dilakukan oleh Raja Bhumibol, terlihat bahwa raja mulai memiliki pengaruh dalam politik Thailand walaupun secara konstitusi, raja hanya bersifat seremonial saja. Di saat itu, dia telah dianggap sebagai simbol pemersatu bagi aspirasi masyarakat. Sejak tahun 1973, ketimbang melantik suatu rezim pluralis yang kompetitif, raja justru mengajukan kembali dirinya dalam orde politik sebagai pemain utama. Peristiwa demonstrasi di tahun 1973 ini menyebabkan Raja menjadi penguasa atas militer. Berkuasanya Raja atas militer ditunjukkan dengan perintah Raja untuk mengusir keluar Perdana Menteri Thanom. Kekuasaan militer atas pemerintahan sipil setelah peristiwa demonstrasi 1973 berkurang. Sipil menjadi penguasa pemerintahan namun kekuasaan sipil atas pemerintahan Thailand tidak berjalan lama.

Walaupun di tahun 1973, raja mengusir Thanom Kittikachorn yang merupakan orang militer, di tahun 1976, Raja mengizinkan Thanom kembali ke Thailand. Sebagai bentuk dukungan, Raja Bhumibol beserta Ratu Sirikit kemudian mengunjungi Thanom. Bahkan setelah insiden berdarah di Thammasat University pada Oktober tahun 1976, melalui siaran radio, Raja dan Ratu mendukung kudeta militer pada tanggal 6 Oktober. Sejak tahun 1977, Raja dan keluarganya terus memperlihatkan keberpihakannya terhadap militer daripada memperkenalkan rekonsiliasi dan kesatuan.⁸⁶ Kudeta di tahun 1976 menunjukkan adanya kerjasama antara Raja dan militer. Kedua kekuatan ini saling bekerja sama dalam mempertahankan kekuasaannya. Dan kondisi kerjasama antara Raja dan militer berlanjut hingga masa pemerintahan perdana menteri sesudahnya yaitu Prem Tinsulanonda.

⁸⁶*Ibid.*

Selama tahun 1980-an, Raja memiliki sekutu yang bisa diandalkan yaitu Perdana Menteri Prem Tinsulanonda.⁸⁷ Prem merupakan orang militer yang ditunjuk oleh Raja sebagai perdana menteri di tahun 1980. Dengan adanya Prem, raja akhirnya memiliki seorang pemimpin yang kuat yang akan menghormati dia sebagai raja dan akan memerintah dengan nilai-nilai kebajikan yang didukung raja. Selama memimpin sebagai perdana menteri, Kharabi menilai bahwa kepemimpinan Prem sangat akomodatif sekali terhadap raja.⁸⁸ Di dalam buku biografi Raja Bhumibol *"The King Never Smiles"*, penulisnya menggambarkan Prem sebagai individu yang sangat loyal terhadap hirarki dinasti Chakri dan tidak pernah ragu menghormati Raja Bhumibol.⁸⁹ Pihak raja juga memberikan timbal baliknya yaitu dukungan terhadap Prem. Dukungan ini bisa dilihat saat pemerintahan Prem mengalami percobaan kudeta di tahun 1981. Raja dan Ratu menemani Prem saat berkunjung ke Korat sebagai bentuk dukungan mereka terhadap Prem. Sejak saat itu, raja mulai bersikap sebagai *"proactive participant"* dan Prem sebagai *"surrogate strongman"*.⁹⁰

Periode 1991-1992 merupakan periode yang rumit bagi raja dan monarki. Chatichai-ketua Partai Chart Thai-yang terpilih sebagai perdana menteri lewat pemilu pada tahun 1988, ternyata menjalankan suatu pemerintahan yang korup, lemah dan penuh dengan konflik internal. Terkait dengan militer, pemerintahan Chatichai menurut Sardesai telah merusak posisi militer di dalam perpolitikan Thailand.⁹¹ Selain itu, pemikiran Chatichai yang independen, menurut McCargo, dianggap sebagai suatu usaha untuk mengubah mesin politik yang telah dibangun oleh Raja dan Prem.⁹² Karena dianggap tidak mampu dalam mengontrol jalannya pemerintahan, Raja akhirnya mendukung kudeta militer yang dilakukan oleh NPKC bahkan memberikan persetujuannya di kemudian hari. Raja dan militer kembali bekerja sama untuk menjatuhkan pemerintahan sipil yang berkuasa.

⁸⁷Johan Kharabi, *"The Thai Military: A Political Role"*, Asian Journals of Public Affairs Vol. 3 No. 1. Diunduh dari: <http://www.spp.nus.edu.sg/ajpa/issue5/6%20Kharabi.pdf>. Diakses pada 13 Oktober 2010, pukul 13. 15 WIB

⁸⁸*Ibid.*

⁸⁹Paul M. Handley, *The King Never Smiles: A Biography of Thailand's Bhumibol Adulyadej* (New Haven & London: Yale University Press, 2006), hlm 277.

⁹⁰Duncan McCargo, *"Network Monarchy and Legitimacy Crises in Thailand"*, The Pacific Review, 18:4, 499-519.

⁹¹D. R. Sardesai, *Southeast Asia: Past & Present*, 4th edition (Colorado: Westview Press, 1997), hlm 261.

⁹²Op. cit

NPKC sebagai pelaku utama kudeta militer terhadap Chatichai kemudian menduduki pemerintahan. Supaya diterima oleh masyarakat luas, NPKC kemudian menunjuk Anand Panyarachun, seorang diplomat handal sebagai perdana menteri sementara. Setahun setelah kudeta, pemerintahan Anand mengadakan pemilu dan menyetujui konstitusi baru. Pemilu tahun 1992 memenangkan partai buatan junta yaitu Samakkitham dengan 79 kursi di parlemen. Partai Chart Thai yang selama tahun 1991 mengalami penderitaan, setelah pemilu tahun 1992, justru mendukung NPKC. Dukungan CT (Chart Thai) juga termasuk saat NPKC mengajukan Wakil Ketua NPKC yaitu Jendral Suchinda Kraprayoon sebagai perdana menteri.

Jendral Suchinda yang kemudian naik menjadi perdana menteri, juga tidak lepas dari permasalahan. Permasalahan yang dihadapi oleh Suchinda terkait dengan status Suchinda saat diangkat sebagai perdana menteri. Menurut partai-partai prodemokrasi yang dipimpin oleh Mayor Jendral Chamlong Srimuang, seharusnya calon perdana menteri berasal dari parlemen, bukan dari luar parlemen seperti Suchinda. Di masyarakat, tuntutan yang sama juga muncul. Sebanyak 500.000 orang melakukan protes terhadap pemerintahan Perdana Menteri Suchinda. Protes ini berakhir dengan kekerasan di bulan Mei 1992. Di saat genting inilah, Raja kemudian mengintervensi kembali politik Thailand dengan cara memanggil Suchinda dan Chamlong untuk menghadap. Hasil dari pertemuan ini, Suchinda akhirnya mengundurkan diri dari jabatannya sebagai perdana menteri dan Chamlong kemudian ditunjuk sebagai perdana menteri sementara oleh Raja.⁹³ Setelah peristiwa pengunduran diri Suchinda ini, kekuasaan militer atas pemerintahan sipil berkurang.

Setelah tahun 1992, Thailand bisa dibilang memasuki masa-masa dimana demokrasi mulai terkonsolidasi. Militer tidak melakukan intervensi dalam bentuk kudeta. Sayangnya kondisi ini tidak bertahan lama. Pada tahun 2006, untuk pertama kalinya setelah 15 tahun, militer kembali mengkudeta pemerintahan sipil

⁹³,"Mengakhiri Kudeta ala Bhumibol", diunduh dari:
<http://www.korantempo.com/korantempo/koran/2006/09/22/Internasional/krn.20060922.82836.id.html>. Diakses pada 22 September 2010, pukul 17.39 WIB.

Thaksin Shinawatra.⁹⁴ Ada dua faktor penyebab militer meng kudeta pemerintahan Thaksin yang telah menang dua kali pemilu ini. Yang pertama terkait dengan setiap kebijakan yang dikeluarkan pemerintah Thaksin selama menjabat dan yang kedua terkait dengan sikap Raja Bhumibol.

Thaksin yang memimpin pada tahun 2001, telah mengeluarkan serangkaian kebijakan selama masa kepemimpinannya. Beberapa dari kebijakan tersebut berdampak positif bagi masyarakat Thailand seperti kebijakan skema perawatan kesehatan dan penyaluran kredit sebesar 1 juta Baht per tahun per desa untuk membangun industri kecil di desa. Meskipun Thaksin mengeluarkan sejumlah kebijakan yang berdampak positif bagi masyarakat Thailand, Thaksin juga mengeluarkan kebijakan yang berdampak negatif. Dua kebijakan berdampak negatif yang amat disorot adalah kebijakannya di daerah selatan Thailand dan kebijakan anti narkoba. Kebijakan ini amat disorot karena dianggap telah melanggar HAM (Hak Asasi Manusia). Terkait kebijakan di daerah selatan Thailand, selain karena masalah HAM, Thaksin dianggap telah gagal dalam membangun daerah selatan Thailand yang sebagian penduduknya adalah orang Melayu muslim.

Selain dari segi kebijakan, selama kepemimpinannya, Thaksin dianggap telah menghina Raja dengan cara mengabaikan segala perintahnya. Bagi masyarakat dan militer yang amat mencintai Raja, perilaku buruk Thaksin ini dianggap sebagai sikap yang arogan. Thaksin bisa bertindak arogan terhadap raja karena selama lima tahun, partai TRT yang dipimpinnya telah sukses dalam merebut simpati masyarakat pedesaan yang juga menjadi basis pendukung raja. Namun, korupsi yang dilakukan Thaksin saat menjual perusahaan telekomunikasi miliknya yaitu *ShinCorp*, dianggap sebagai puncak dari dilakukannya kudeta terhadap dirinya.

Dengan alasan telah memecah belah negara dan menyebabkan korupsi merajalela, pihak militer akhirnya melakukan kudeta terhadap Thaksin pada tanggal 19 September 2006. Kudeta ini dipimpin oleh Jendral Sonthi Bonyaratglin. Sonthi menyatakan bahwa kudeta dilakukan atas nama Dewan

⁹⁴ Johan Kharabi, "The Thai Military: A Political Role", Asian Journals of Public Affairs Vol. 3 No. 1. Diunduh dari: <http://www.spp.nus.edu.sg/ajpa/issue5/6%20Kharabi.pdf>. Diakses pada 13 Oktober 2010, pukul 13. 15 WIB

Reformasi Demokrasi. Tentara kemudian menduduki kantor-kantor pemerintahan. Di kudeta yang terakhir ini, raja menunjukkan intervensinya dalam bentuk dukungan terhadap militer. Raja beserta rakyat Thailand bahkan bersyukur bahwa kudeta akhirnya dilaksanakan oleh pihak militer. Militer sendiri dalam aksi kudetanya menggunakan pita berwarna kuning di seragam mereka, warna yang selalu diasosiasikan dengan raja. Menurut Kharabi, pemakaian pita kuning oleh militer bisa berarti dua hal yaitu militer sedang melakukan propaganda dengan memanfaatkan penghormatan rakyat Thailand terhadap Raja atau menunjukkan adanya ketergantungan antara militer dan Kerajaan⁹⁵.

⁹⁵ Johan Kharabi, *"The Thai Military: A Political Role"*, Asian Journals of Public Affairs Vol. 3 No. 1, diunduh dari: <http://www.spp.nus.edu.sg/ajpa/issue5/6%20Kharabi.pdf>. Diakses pada 13 Oktober 2010, pukul 13.15 WIB

BAB 3

PROSES PENYUSUNAN DRAFT KONSTITUSI 2007

Konstitusi merupakan suatu hal yang penting bagi sebuah negara, apapun bentuk dan sistem pemerintahan negara tersebut. Seorang pakar hukum tata negara dari Indonesia, Prof. Dr. Sri Soemantri M, SH menyatakan bahwa tidak ada satu pun negara di dunia ini yang tidak memiliki konstitusi atau UUD (undang-undang dasar).⁹⁶ Dengan demikian, negara dan konstitusi bukanlah suatu hal yang bisa dipisahkan begitu saja.

Hal yang serupa juga terjadi di Thailand yang merupakan negara monarki konstitusional. Thailand yang sejak 1932 mengalami perubahan bentuk pemerintahan, telah memiliki 18 konstitusi. Dari sekian banyak konstitusi yang dimiliki Thailand, sebagian besar merupakan konstitusi yang tersusun tanpa adanya badan tersendiri yang ditugaskan untuk menyusun konstitusi. Padahal, konstitusi amat penting sekali karena konstitusi merupakan keseluruhan dari peraturan-peraturan-baik tertulis maupun tidak tertulis-yang mengatur secara mengikat cara-cara bagaimana suatu pemerintah diselenggarakan dalam suatu masyarakat.⁹⁷ Sehingga apabila tidak dirancang dengan sungguh-sungguh akan menyebabkan pemerintahan tidak bisa berjalan dengan baik.

Untuk itu, di bab 3, penulis akan membahas empat hal terkait proses politik yang terjadi pada perubahan konstitusi 2007. Pembahasan tentang konstitusi 2007 di Thailand menyangkut, pertama yaitu latar belakang dari disusunnya Konstitusi 2007 beserta tuntutan-tuntutan dari rakyat yang menyebabkan Konstitusi 2007 disusun, kedua proses penyusunan draft Konstitusi 2007 hingga disahkannya Konstitusi 2007, dan yang terakhir yaitu seputar respon dari masyarakat terhadap perubahan konstitusi 2007.

⁹⁶ Slamet Effendy Yusuf, Umar Basalim. Reformasi Konstitusi Indonesia: Perubahan Pertama UUD 1945 (Jakarta: Pustaka Indonesia Satu (PIS), 2000), hlm 1.

⁹⁷ Miriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Jakarta: Gramedia Pustaka Utama, 2007), hlm 95.

3. 1. Latar Belakang Disusunnya Konstitusi 2007: Situasi Politik di Masa Pemerintahan Thaksin dan Konstitusi 1997

3. 1. 1 Situasi Politik di Masa Pemerintahan Thaksin

Sejak kemenangannya pada Pemilu 2001, Thaksin mulai menjalankan kewenangannya sebagai perdana menteri yang terpilih secara demokratis berdasarkan Konstitusi 1997. Namun, seiring dengan berjalannya waktu, ditemukan banyak kasus korupsi, penyelewengan kekuasaan, nepotisme dan pelanggaran HAM dalam pemerintahan Thaksin. Bahkan sebelum dilantik sebagai perdana menteri Thailand, Thaksin telah mengalami masalah.

Sebelum menjabat sebagai perdana menteri Thailand pada tahun 2001, NCCC⁹⁸ (*National Counter-Corruption Commission*) menemukan bahwa Thaksin telah mengalihkan kepemilikan saham miliknya ke tangan sanak famili dan pelayannya untuk menghindari adanya pengungkapan aset saat dia menjabat sebagai deputi perdana menteri pada tahun 1997.⁹⁹ Berdasarkan temuan dari NCCC inilah, Thaksin kemudian didakwa dan kasusnya diajukan ke pengadilan. Berdasarkan peraturan yang berlaku, proses pengungkapan kasus akan memakan waktu empat sampai enam bulan. Bagi Thaksin, keputusan dari pengadilan Thailand ini bisa menghambat usahanya untuk menjadi perdana menteri. Alasannya karena apabila terbukti bersalah sementara Thaksin telah memenangkan pemilu 2001, Thaksin bisa diberhentikan dari jabatannya dan dilarang berpolitik selama lima tahun mendatang.

Berdasarkan kondisi ini, media-media di Bangkok menyarankan kepada Thaksin untuk mundur dari pencalonannya sebagai perdana menteri. Media-media ini berpendapat bahwa apabila Thaksin nanti sukses terpilih sebagai perdana menteri, perekonomian Thailand akan semakin tidak menentu. Thaksin kemudian menjawab saran dari media Bangkok ini dengan pernyataan-pernyataan yang

⁹⁸ NCCC adalah organisasi nasional yang bertanggung jawab dalam mencegah dan memberantas korupsi di Thailand, baik di sektor pemerintahan maupun sektor swasta. Keterangan lebih lanjut mengenai NCCC bisa dilihat di situs berikut:

<http://www.unodc.org/documents/corruption/Best%20Practices/Thailand.pdf>.

<http://www.icac.org.hk/news/issue22eng/button2.htm>.

⁹⁹ William F. Case, "Thai Democracy, 2001: Out of Equilibrium", Asian Survey, Vol. 41, No. 3, 2001.

menantang dan menunjukkan bahwa dia memang pantas berkompetisi dalam pemilihan perdana menteri Thailand pada pemilu 2001.¹⁰⁰

Meskipun pencalonan Thaksin sebagai perdana menteri mengalami masalah, partai Thai Rak Thai pimpinan Thaksin justru berhasil memenangkan Pemilu 2001. Partai pimpinan Thaksin ini sukses menjadi partai dengan perolehan suara terbanyak. Koalisi dengan partai lainnya semakin menjadikan Thaksin berkuasa di parlemen, suatu hal yang jarang terjadi dalam sejarah politik Thailand. Kemenangan Thai Rak Thai juga berarti naiknya Thaksin sebagai perdana menteri Thailand. Kasus-kasus yang sempat menghambat Thaksin sebelum pemilihan menjadi terlupakan begitu saja.

Di awal pemerintahannya, Thaksin menunjukkan kinerja yang baik. Namun kinerja yang baik ini hanya bertahan sementara karena kemudian, pemerintahan Thaksin menurut Pongsudhirak bersifat kontroversi dan membuat beberapa kesalahan. Secara umum, Pongsudhirak menjelaskan kesalahan-kesalahan dan kontroversi yang dilakukan oleh pemerintah Thaksin yaitu menggunakan uang negara sebagai upaya menjadikan rakyat biasa sebagai kaki tangannya, konflik kepentingan, kekerasan yang dilakukan negara, penindasan terhadap oposisi dan pemerintahan otoriter.¹⁰¹ Kesalahan-kesalahan dan kontroversi ini bisa dilihat dari laporan-laporan yang dikemukakan oleh lembaga-lembaga independen maupun dari media-media.

Di masa pemerintahan Thaksin, terdapat beberapa kasus korupsi-baik yang dilakukan secara individual maupun kelompok. Juru bicara Komisi Pemeriksa Kekayaan Pejabat yang merupakan komisi antikorupsi bentukan junta militer, Sak Korsangruang menyatakan bahwa berdasarkan temuan komisinya, Thaksin selama memerintah terlibat korupsi dalam kasus pembelian tanah dan alat pemindai bom.¹⁰² Mengenai kasus korupsi pembelian tanah, Pojaman yang merupakan istri Thaksin ikut terlibat. Istri Thaksin ini ikut terlibat karena melalui dirinya, tanah di kawasan Ratchadapisek Road bisa terbeli di acara lelang yang

¹⁰⁰ William F. Case, "Thai Democracy, 2001: Out of Equilibrium", Asian Survey, Vol. 41, No. 3, 2001.

¹⁰¹ Thitinan Pongsudhirak, *Thaksin Political Zenith and Nadir* dalam Daljit Singh, Lorraine C. Salazar, *Southeast Asian Affairs 2006* (Singapore: ISEAS Publication, 2006), hlm 287-288.

¹⁰² "Dua Korupsi Menyeret Thaksin", diunduh dari:

<http://www.korantempo.com/korantempo/koran/2006/12/27/Internasional/krn.20061227.90279.id.html>. Diakses pada 30 Mei 2010, pukul 20.50 WIB.

diadakan oleh Dana Pembangunan Lembaga-lembaga Keuangan Bank Thailand. Bahkan saat mengetahui adanya nama Pojaman di daftar penawar lelang, nama penawar lainnya disingkirkan.¹⁰³ Pembelian tanah milik Bank Sentral Thailand di tahun 2003 ini menjadi permasalahan karena menurut peraturan UU (Undang-Undang) Antikorupsi, pejabat pemerintah beserta pasangannya dilarang untuk memiliki saham dalam kontrak-kontrak dengan lembaga pemerintah dibawah otoritasnya. Berdasarkan UU Antikorupsi, Thaksin dinyatakan bersalah karena dia telah memiliki saham di lembaga pemerintah yang berada di bawah otoritas dia. Sementara istrinya, Pojaman, tidak terbukti bersalah dikarenakan dia bukan pejabat pemerintah. Menurut Sak, Pojaman hanya mendukung Thaksin dalam melakukan pelanggaran.

Dari kasus pembelian tanah ini, terlihat bahwa selama memerintah, Thaksin telah menyalahgunakan kekuasaan yang telah diberikan oleh rakyat Thailand. Penyalahgunaan kekuasaan ini tidak hanya dilakukan oleh Thaksin saja tapi juga oleh kroni-kroni Thaksin. Penyalahgunaan kekuasaan oleh kroni-kroni Thaksin terlihat pada kasus proyek pembangunan negara. Salah satu kasusnya adalah proyek pembangunan bandar udara Suvarnabhumi. Dari kasus ini terungkap bahwa Thaksin beserta kroni-kroninya telah menggelapkan dana sebesar 902 juta Baht atau Rp. 227 miliar dalam kontrak sistem pengangkut bagasi baru dan pembelian 26 alat pemindai bom.¹⁰⁴

Selain penyalahgunaan kekuasaan, pemerintahan Thaksin juga identik dengan ketidakcakapan dalam memerintah. Bentuk ketidakcakapan ini bisa dilihat dari pertama, program pemerintahan Thaksin dalam memberantas narkoba dan penanganan terhadap provinsi-provinsi di Thailand Selatan. Pada kasus narkoba, poin yang dipermasalahkan oleh publik Thailand adalah mengenai cara-cara yang digunakan oleh pemerintahan Thaksin untuk memberantas narkoba. Selama ini, kasus narkoba identik dengan Thailand karena Thailand menjadi salah satu negara yang berada di kawasan penghasil narkoba terbesar di dunia atau yang biasa

¹⁰³“Thaksin Makin Terjepit”, diunduh dari:

<http://www.beritaindonesia.co.id/mananegara/thaksin-makin-terjepit/>. Diakses pada tanggal 22 Februari 2010, pukul 13.51 WIB.

¹⁰⁴ “Dua Korupsi Menyeret Thaksin”, diunduh dari:

<http://www.korantempo.com/korantempo/koran/2006/12/27/Internasional/krn.20061227.90279.id.html>. Diakses pada tanggal 30 Mei 2010, pukul 20.50 WIB.

dikenal dengan kawasan "Segitiga Emas".¹⁰⁵ Akibatnya, banyak kasus kejahatan karena narkoba muncul di Thailand dan yang meresahkan adalah kenyataan bahwa narkoba telah memengaruhi generasi muda Thailand. Untuk itu, pemerintahan Thailand sejak 1982 mulai menjalankan program pemberantasan narkoba namun upaya ini tidak terlalu berhasil.

Thaksin yang merasa *concern* terhadap masalah narkoba kemudian meluncurkan program pemberantasan narkoba atau yang dikenal secara luas sebagai "*The Wars on Drugs*". Untuk mewujudkan kampanye anti narkoba, pada tanggal 28 Januari 2003, Thaksin mengeluarkan peraturan *Prime Ministerial Order* No. 29/2546 yang berisi petunjuk-petunjuk atau arahan-arahan dalam memberantas narkoba.¹⁰⁶ Petunjuk-petunjuk atau arahan-arahan inilah yang menyebabkan permasalahan di kemudian hari. Menurut Mutebi, peraturan yang dibuat oleh pemerintahan Thaksin ini sebenarnya menekankan pada cara-cara persuasif seperti pendidikan dan peningkatan kesadaran di masyarakat dan perlakuan layaknya "pasien" bukan "penjahat" kepada pasien pengguna narkoba. Namun, dalam praktek di lapangan, ternyata sangat berbeda dari isi *Prime Ministerial Order* No. 29/2546.¹⁰⁷ Pemerintahan Thaksin memberikan insentif berupa bonus kepada para polisi untuk menangkap para pedagang narkoba yang dicurigai. Besarnya bonus tergantung dari banyaknya orang yang ditangkap. Dengan adanya metode insentif ini, tidaklah mengherankan jika di kemudian hari program ini menunjukkan betapa tidak cakupannya Thaksin dalam memerintah. Bahkan, *Amnesty International*, sebuah lembaga pemerhati HAM telah menganggap program ini tidak sesuai dengan hak asasi manusia karena praktek-praktek di lapangan meniadakan adanya proses hukum sebelum eksekusi.

Menurut laporan media di Thailand, program tiga bulan ini telah menyebabkan 58.000 penangkapan, 2.274 korban meninggal dan 42.000 bandar narkoba yang menyerahkan diri ke pihak yang berwajib. Jumlah yang besar ini merupakan gambaran dari adanya perbedaan penerapan petunjuk di peraturan dengan praktik di lapangan. Meskipun dianggap tidak cakap dan melanggar HAM

¹⁰⁵ Syahbuddin Mangandaralam, *Mengenal Dari Dekat Thailand: Lumbung Padi Asia Tenggara* (Bandung: CV. Remadja Karya, 1987), hlm 65-72.

¹⁰⁶ Alex M. Mutebi, *Thailand in 2003: Riding High Again*, Asian Survey, Vol. 44, No. 1, 2004.

¹⁰⁷ *Ibid.*

oleh masyarakat Thailand dan internasional, Thaksin menanggapinya sebagai berikut:

”.....the government’s strategy is to smoke out pushers, who will be eliminated by their own kind. I don’t understand why some people are so concerned about them while neglecting to care for the future of one million children who are being lured into becoming a drug user”.

[“.....strategi pemerintah adalah untuk mengusir penjual obat bius, yang akan tereliminasi oleh kaumnya sendiri. Saya tidak mengerti kenapa beberapa orang sangat peduli dengan mereka sementara melupakan untuk memperhatikan masa depan satu juta anak yang sedang dipengaruhi untuk menjadi pemakai narkoba”.]¹⁰⁸

Dari pernyataan Thaksin di atas, terlihat bahwa Thaksin menggunakan segala cara dalam memberantas narkoba walaupun harus melanggar hak asasi manusia. Namun di sisi lain, terdapat kebenaran dalam pernyataannya mengingat narkoba telah memengaruhi generasi muda Thailand dan banyaknya kasus-kasus kejahatan yang muncul karena narkoba. Selain itu tampak bahwa permasalahan narkoba bukanlah isu yang dianggap penting oleh sebagian masyarakat Thailand.

Ketidakkakapan Thaksin dalam menjalankan pemerintahan juga terlihat dari kasus konflik tiga provinsi di Thailand Selatan. Ketiga provinsi yang berkonflik ini adalah Yala, Pattani dan Narathiwat yang merupakan basis dari komunitas Muslim Melayu di Thailand. Muslim Melayu di Thailand merupakan kelompok minoritas dan sejak lama dimarginalisasi oleh pemerintahan pusat Thailand. Marginalisasi yang dilakukan oleh pemerintah pusat Thailand terhadap ketiga provinsi ini kemudian membuat usaha untuk memisahkan diri dari Thailand semakin besar. Untuk memberantas konflik Thailand Selatan yang hingga kini masih terjadi, berbagai macam cara telah dilakukan oleh pemerintah pusat Thailand.

Sebelum Thaksin berkuasa, penanganan konflik Thailand Selatan dilaksanakan oleh dua lembaga bentukan mantan perdana menteri Prem Tinsulanonda yaitu SBPAC dan CPM 43. Kedua lembaga ini oleh Prem dibentuk sebagai lembaga yang bersifat persuasif dan populis dalam menyelesaikan konflik Thailand Selatan. Alasannya, Prem menganggap bahwa penyelesaian dengan cara kekerasan yang dijalankan oleh pemerintah sebelumnya, dianggap tidak berhasil.

¹⁰⁸ *Ibid.*

Langkah yang ditempuh Prem, akhirnya memberikan hasil. Banyak anggota separatis Thailand Selatan yang akhirnya menyerahkan diri ke pemerintah dan penduduk Thailand Selatan merasa tenang karena kedua lembaga pemerintah ini mau mendengarkan setiap aspirasi mereka. Meskipun tidak bisa mengatasi konflik secara keseluruhan, kedua lembaga ini setidaknya bisa mengurangi peristiwa kekerasan yang sering terjadi di Thailand Selatan.

Kondisi berkurangnya peristiwa kekerasan di Thailand Selatan berubah saat Thaksin menjabat sebagai perdana menteri. Tidak lama setelah dirinya menjabat sebagai perdana menteri Thailand, pada tanggal 1 Mei 2002, Thaksin mengeluarkan kebijakan untuk menghapus institusi SBPAC dan CPM 43.¹⁰⁹ Kebijakan ini dikeluarkan karena Thaksin beranggapan bahwa situasi di Thailand Selatan dinilai telah kondusif. Selain itu, Thaksin menilai jika kedua institusi ini tetap berdiri, justru akan memberatkan keuangan negara. Bagi penduduk Thailand Selatan, keputusan penghapusan SBPAC dan CPM 43 justru membuat mereka kecewa karena selama ini, kedua lembaga ini bisa menjamin keamanan dan lancarnya komunikasi antara penduduk Thailand Selatan dan pemerintah pusat.

Alasan yang dikemukakan oleh Thaksin terkait situasi di Thailand Selatan justru berlawanan dengan fakta di lapangan. Peristiwa-peristiwa kekerasan seperti penyerbuan markas militer, pembunuhan, perusakan fasilitas pemerintah, penculikan bahkan pengeboman justru semakin banyak jumlahnya setelah SBPAC dan CPM 43 dihapuskan. Situasi penuh kekerasan di Thailand Selatan semakin bertambah rumit karena Thaksin menggunakan cara kekerasan dalam mengatasi konflik di Thailand Selatan. Dan konflik di Thailand Selatan ini merupakan salah satu faktor yang menyebabkan Thaksin dikudeta.

Untuk menguatkan posisi Thaksin di pemerintahan, Thaksin menempatkan sejumlah orang-orang kepercayaan. Penempatan ini terlihat saat Thaksin melakukan *reshuffle* kabinet di tahun 2002 dan 2005. *Reshuffle* ini dilakukan Thaksin dengan alasan reformasi birokrasi dan menyeimbangkan kekuatan-kekuatan antar faksi di dalam koalisi.¹¹⁰ Tetapi kenyataannya, Thaksin justru

¹⁰⁹ Aditya Ariono, "*Konflik Politik Di Thailand Selatan: Studi Kasus Peristiwa Krue See Dan Tak Bai Tahun 2004*", Skripsi Sarjana, (Depok: FISIP UI, 2007).

¹¹⁰ Alex M. Mutebi, "*Thailand in 2002: Political Consolidation amid Economic Uncertainties*", Asian Survey Vol. XLIII, No. 1

menempatkan beberapa anggota keluarga dan koleganya di kabinet. Apabila dilihat dari orang-orang yang terpilih, terlihat bahwa Thaksin menempatkan mereka bukan karena kemampuannya tapi cenderung karena orang itu dekat dengan Thaksin atau memiliki posisi tawar yang kuat. Bahkan, mereka yang pernah terkena kasus korupsi pun masuk dalam kabinet pemerintahan Thaksin. Berikut ini penulis jabarkan beberapa contoh yang mengindikasikan adanya nepotisme di pemerintahan Thaksin dalam bentuk tabel.

Tabel 3. 1 Beberapa Contoh Nepotisme di Pemerintahan Thaksin

No	Nama	Jabatan di pemerintahan	Hubungan dengan Thaksin	Keterangan
1	Purachai Piumsombun	Menteri Kehakiman		Sebelum menjadi Menteri Kehakiman, menjabat sebagai Menteri Dalam Negeri
2	Wan Muhammad Noor Matha	Menteri Dalam Negeri		Penunjukannya oleh Thaksin cenderung untuk menarik simpati masyarakat di Thailand Selatan
3	Somkid Jatusripitak	Menteri Keuangan		
4	Jendral Chavalit Yongchaiyudh	Deputi Perdana Menteri		
5	Pongpol Adireksarn	Menteri Pendidikan		
6	Uraivan Thienthong	Menteri Kebudayaan	Kolega	Suaminya, Snoh Thienthong merupakan salah satu orang kuat di Partai TRT
7	Suwit Khunkitti	Deputi Perdana Menteri		
8	Pichate Satirachaval	Deputi Menteri		Didakwa oleh NCCC atas

		Perindustrian		kasus penyembunyian aset
9	Praphat Panyatchatraksa	Deputi Menteri Pertanian		Terlibat dalam skandal penimbunan karet
10	Jendral Chaisit Shinawatra	Panglima Militer	Sepupu	
11	Jendral Uthai Shinawatra	Sekretaris Pertahanan	Sepupu	
12	Letjen. Polisi Priewphan Damapong	Asisten Panglima Polisi	Saudara ipar	Mengalahkan 14 pejabat senior. Beberapa pejabat senior ini bahkan mengundurkan diri untuk mempermudah Panitia Kepolisian mempromosikan Priewphan
13	Suriya Juengrungruangkit	Menteri Transportasi	Kolega di Partai TRT	Skandal korupsi pembangunan bandar udara baru
14	Suriya Lapwisuthisin	Deputi Menteri Perdagangan		Penggelapan saham dan usaha keluarga
15	Somkid Jatusripitak	Menteri Perdagangan	Kolega	
16	Thanong Bidaya	Menteri Keuangan	Kolega	Pernah bekerja di salah satu perusahaan milik Thaksin
17	Air Chief Marshall Kongsak Wantana	Menteri Dalam Negeri	Kolega	Istri Wantana sangat dekat dengan Thaksin

Sumber: Daljit Singh, Lorraine C. Salazar, *Southeast Asian Affairs 2006* (Singapore: ISEAS Publication, 2006). Alex M. Mutebi, "Thailand in 2002: Political Consolidation amid Economic Uncertainties", *Asian Survey* Vol. XLIII, No. 1

Dari 17 fakta yang mengindikasikan nepotisme Thaksin, seluruhnya melibatkan elemen pemerintahan yang terdiri dari sipil dan militer. Relasi antara Thaksin dan para birokrat tersebut dapat disimpulkan bahwa Thaksin menganggap penting

hubungan tersebut untuk mempertahankan kekuasaan serta legitimasi¹¹¹ dirinya di pemerintahan Thailand. Keduanya, baik sipil maupun militer menjadi rekan yang strategis untuk mendukung Thaksin.

Tindakan politik yang diambil Thaksin selama berkuasa mendapat kritikan dari media massa, baik di tingkat lokal maupun internasional. Untuk menghadapi kritikan dan membungkam media massa, pemerintah-termasuk Thaksin-memutuskan untuk menggunakan cara-cara yang keras. Cara-cara keras yang digunakan oleh Thaksin untuk menghadapi media massa bermacam-macam. Sebagai contoh, Thaksin pernah mencabut visa Kepala Biro *Far Eastern Economics Review's*, Shawn Crispin dan staf wartawan majalah, Rodney Tasker karena telah menolak untuk mengoreksi tulisan yang menyangkut dirinya dan pihak kerajaan.¹¹² Cara lain yang digunakan Thaksin adalah memata-matai. Contoh yang terkenal di masyarakat adalah skandal "*Thaksingate*". Skandal ini menjadi terkenal karena Thaksin menggunakan institusi pemerintah, AMLO¹¹³ (Anti Money Laundering Office), untuk menyelidiki aset-aset beberapa jurnalis beserta keluarga masing-masing yang sering mengkritik pemerintahan Thaksin seperti pemred (pemimpin redaksi) dan *group editor* surat kabar *The Nation*, Suthichai Yoon dan Thepchai Yong; editor senior *The Nation*, Sopon Onkgara; kolumnis surat kabar *Post*, Roj Ngamman dan Amporn Pimpipat. Pelanggaran terhadap kebebasan pers yang dilakukan Thaksin semakin terlihat jelas saat perusahaan Thaksin, *Shin Corp*, mengajukan tuntutan hukum terhadap Supinya Klangnarong¹¹⁴, karena telah menulis berita terkait keuntungan yang diraih Shin

¹¹¹ Lihat teori legitimasi di Bab 1.

¹¹² Alex M. Mutebi, "*Thailand in 2002: Political Consolidation amid Economic Uncertainties*", Asian Survey Vol. XLIII, No. 1

¹¹³ AMLO adalah sebuah lembaga di Thailand yang khusus menangani permasalahan yang berkaitan dengan pencucian uang dan pembiayaan untuk kegiatan teroris. Institusi penegak hukum ini diresmikan pada tahun 1999. Keterangan lebih lanjut mengenai lembaga ini bisa dilihat di situs resmi mereka yaitu http://www.amlo.go.th/amlofarm/farm/web/index.php?option=com_content&view=article&id=945&Itemid=976&lang=en.

¹¹⁴ Supinya Klangnarong adalah seorang aktivis reformasi media di Thailand. Pada tahun 2005, Supinya menjabat sebagai Sekretaris Jendral program "Campaign for Popular Media Reform". Informasi mengenai tuntutan Shin Corp terhadap dirinya bisa dilihat di website: <http://www.prachatai.com/english/node/2667>, <http://www.acpp.org/uappeals/cprofile/Thai%20Country%20Profile%20Mar06.pdf>

Corp berkat adanya keistimewaan dari pemerintah Thaksin.¹¹⁵ Tuntutan sebesar 400 juta Baht yang diajukan oleh *Shin Corp* terhadap Supinya akhirnya tidak dikabulkan oleh pengadilan Thailand dengan alasan tidak ada yang salah dengan artikel tersebut.

Puncak dari ketidaksukaan sebagian masyarakat Thailand terhadap Thaksin adalah saat Thaksin menjual saham di perusahaan telekomunikasi milik keluarga yaitu *Shin Corp* pada bulan Januari tahun 2006. Pada tanggal 23 Januari 2006 saham *Shin Corp* sebesar 49,6 % dijual ke pihak asing yaitu *Temasek Holding*-perusahaan milik pemerintah.¹¹⁶ Penjualan saham ini dimaksudkan Thaksin untuk menghindari pemerintahannya dari konflik kepentingan. Dari penjualan saham perusahaan telekomunikasi ini, keluarga Shinawatra dan Damapong telah menambah kekayaan keluarga mereka sebesar 73,3 miliar Baht. Bahkan putri tertua Thaksin yang masih berumur 23 tahun, Pithongtha, dilaporkan bertambah kaya hampir Rp. 5 triliun. Penjualan saham perusahaan telekomunikasi ini amat menimbulkan kemarahan publik Thailand. Menurut Direktur TDRI (*Thailand Development Research Institute*), Somkiat Tankitvanij, penjualan saham *Shin Corp* ke *Temasek Holdings*, sukses menjadikan *Temasek* sebagai pemegang saham terbesar dengan nilai kepemilikan sebesar 85%.¹¹⁷

Amarah yang dirasakan oleh masyarakat Thailand terhadap penjualan saham perusahaan oleh keluarga Thaksin disebabkan oleh dua hal. *Pertama*, hasil dari aksi penjualan saham oleh keluarga Thaksin ini tidak dipungut biaya pajak. Keluarga Thaksin berhasil tidak membayar pajak dengan mencari celah dari kelemahan *security-exchange law*. Padahal, *Shin Corp* mendapatkan bantuan finansial dari *Board of Investment* yang didanai oleh wajib pajak.¹¹⁸ Akibat dari penjualan saham yang kontroversial ini timbul situasi kerusakan permanen yang

¹¹⁵ Bertil Lintner, "Thailand in Tatters, Democracy Delayed", *Far Eastern Economic Review*, Vol. 171, No. 10.

¹¹⁶ "Dua Korupsi Menyeret Thaksin", diunduh dari: <http://www.korantempo.com/korantempo/koran/2006/12/27/Internasional/krm.20061227.90279.id.html>. Diakses pada tanggal 30 Mei 2010, pukul 20.50 WIB

¹¹⁷ "Takeover Sets Bad Precedents, Forum Told", diunduh dari: <http://www.nationmultimedia.com/specials/shincorp/shin40.html>. Diakses pada tanggal 12 April 2011, pukul 19.55 WIB.

¹¹⁸ "Takeover Sets Bad Precedents, Forum Told", diunduh dari: <http://www.nationmultimedia.com/specials/shincorp/shin40.html>. Diakses pada tanggal 12 April 2011, pukul 19.55 WIB.

parah di Thailand. *Kedua*, penjualan saham ini menimbulkan rasa amarah masyarakat Thailand karena bisnis perusahaan *Shin Corp* menyangkut jaringan telekomunikasi di Thailand. Salah satu anak perusahaan *Shin Corp* yaitu *AIS Plc* (*Advanced Info Service*) merupakan perusahaan provider telepon selular terbesar di Thailand.¹¹⁹ Dengan menjual induk perusahaannya, kelompok anti-Thaksin menganggap bahwa tindakan Thaksin untuk menjual *Shin Corp* telah mengancam kedaulatan negara.

3. 1. 2 Konstitusi 1997

Konstitusi 1997 menjadi landasan bagi keberhasilan Thaksin dalam memimpin Thailand selama dua dekade. Dilihat dari sejarahnya, Konstitusi 1997 merupakan suatu dokumen yang disusun untuk mereformasi konstitusi yang ada sebelumnya. Sebenarnya, perubahan konstitusi ini bukanlah sesuatu yang baru dalam politik Thailand namun menurut laporan *Asia Foundation*, perubahan ini tetap harus diperhatikan karena Konstitusi 1997 berbeda dibandingkan konstitusi sebelumnya. Konstitusi 1997 memuat peraturan-peraturan dasar yang bisa mengubah perpolitikan Thailand dari yang bersifat birokratis, penyalahgunaan hak dan koruptif menjadi demokrasi parsitipasif. Untuk itu disusunlah 33 pasal yang bisa merestrukturisasi banyak hal dari sektor publik dan non-publik seperti badan legislatif, sistem pemilu, badan yudisial, kabinet, birokrasi dan masih banyak lagi.

Penyusunan Konstitusi 1997 dilatarbelakangi oleh peristiwa demonstrasi 1992. Salah seorang intelektual royalis terkemuka, Dr. Prawase Wasi, kemudian menggagas perlunya adanya reformasi politik di Thailand. Ketua DPR (Dewan Perwakilan Rakyat) Thailand, Marut Bunnag, menyetujui pendapat Dr. Prawase dengan membentuk DDC (*Democracy Development Committee*) yang diketuai oleh Dr. Prawase Wasi. DDC kemudian memberikan rekomendasi penyusunan ulang konstitusi sebagai bentuk nyata dari reformasi politik. Penyusunan konstitusi ini sendiri baru terlaksana di pemerintahan Banharn Silapa-archa yang ditandai dengan amandemen terhadap pasal 112 dari konstitusi yang berlaku. Amandemen ini menjadi dasar bagi terbentuknya CDA (*Constitution Drafting Assembly*). Setelah melalui perdebatan, disetujui bahwa anggota parlemen tidak

¹¹⁹ Thitinan Pongsudhirak, *Thaksin's Political Zenith and Nadir*, dalam Daljit Singh, Lorraine C. Salazar, *Southeast Asian Affairs 2006* (Singapore: ISEAS Publication, 2006), hlm 296.

diizinkan menjadi anggota CDA namun mereka diizinkan untuk memilih 76 orang sebagai perwakilan provinsi di CDA. CDA juga berisi orang-orang dari berbagai bidang seperti akademisi dan pengacara yang ditunjuk oleh universitas-universitas.¹²⁰

Menurut Kitti Prasirtsuk, dari sekian banyak pasal-pasal Konstitusi 1997, ada dua pasal yang bisa memfasilitasi kekuasaan Thaksin. Ironisnya, kedua pasal inilah yang diawal penyusunannya dimaksudkan untuk memperbaiki politik Thailand. Yang pertama, adalah pasal-pasal yang berhubungan dengan penguatan eksekutif. Pasal ini disusun untuk memberikan jaminan kestabilan dan waktu yang panjang bagi pemerintah untuk menjalankan kebijakan-kebijakan yang telah dibuat. Ada tiga aturan yang terkait dengan pasal-pasal penguatan eksekutif ini. *Pertama*, peraturan 90 hari. Peraturan ini mengharuskan para kandidat *House of Representative* menjadi anggota tetap dari partai selama 90 hari sebelum tanggal pendaftaran pemilu. Adanya peraturan ini menguntungkan Thaksin karena apabila ada anggota partai dari partai lain tiba-tiba mengundurkan diri dan perdana menteri membubarkan parlemen dan mengadakan *snap election* dalam 45 hari, maka anggota tersebut dilarang untuk mengikuti pemilu berikutnya. Yang berarti, lawan partai Thaksin akan kehilangan banyak suara pada pemilu berikutnya dan ini menjadi keuntungan bagi Thaksin.

Yang *kedua* adalah perubahan sistem pemilu dari sistem *multi-seat district* ke kombinasi antara *single-seat district* dan *proportional pick cabinet*. Sistem *single-seat district* dan *proportional pick cabinet* ini memungkinkan konsentrasi kekuatan dan konsolidasi berada di tangan perdana menteri sehingga pemerintahan bisa berjalan stabil. Namun, sistem ini juga berarti perdana menteri memiliki kekuasaan yang lebih besar dan kekuasaan untuk mengontrol menteri-menterinya.

Peraturan yang *ketiga* terkait dengan peraturan mosi tidak percaya. Peraturan terbaru menyebutkan bahwa untuk mengajukan mosi tidak percaya terhadap perdana menteri, dibutuhkan 200 suara anggota parlemen atau 2/5 dari jumlah anggota parlemen. Sedangkan untuk menteri kabinet, dibutuhkan 100 suara anggota parlemen atau 1/5 dari jumlah anggota parlemen. Selama

¹²⁰ Erik Martinez Kuhonta, *The Paradox of Thailand's 1997 "People's Constitution": Be Careful What You Wish For*, Asian Survey, Vol. 48, No.3.

kepemimpinannya, Thaksin jarang sekali mendapatkan mosi tidak percaya dari pihak oposisi karena kecilnya jumlah oposisi di parlemen.

Selain tiga peraturan yang telah disebut, ada satu lagi kelebihan Konstitusi 1997 yang dianggap bisa memuluskan pemerintahan Thaksin yaitu dibentuknya lembaga pengawas. Lembaga pengawas ini dibentuk dengan tujuan untuk menciptakan *check and balances* dalam sistem politik Thailand. Peraturan baru ini dianggap memuluskan pemerintahan Thaksin dalam hal pengajuan nama-nama untuk dijadikan pejabat. Konstitusi 1997 menyebutkan bahwa partai politik diperbolehkan ikut terlibat dalam pengajuan anggota-anggota untuk dijadikan pejabat lembaga-lembaga independen ini. Thaksin jelas diuntungkan dengan adanya peraturan ini karena dia bisa memiliki kekuasaan lebih besar dalam menentukan orang-orang yang akan dijadikan pejabat lembaga independen tersebut.

3. 2 Tuntutan Rakyat

Banyaknya temuan yang mengindikasikan adanya tindakan korupsi, penyalahgunaan kekuasaan, nepotisme bahkan penghinaan terhadap kerajaan di masa pemerintahan Thaksin, membuat sebagian besar masyarakat Thailand menuntut mundurnya Thaksin sebagai perdana menteri. Tuntutan ini ditunjukkan lewat aksi-aksi demonstrasi yang diadakan secara berkala oleh sebagian masyarakat Thailand, terutama masyarakat yang tinggal di ibukota atau masyarakat kelas menengah. Dan aksi demonstrasi semakin banyak sejak September 2005, saat Sondhi Limthongkul-pemilik perusahaan media-memimpin aksi demonstrasi.¹²¹

Sondhi merupakan tokoh terkenal yang aksi demonstrasinya amat dikenal. Sebelumnya, Sondhi adalah rekan bisnis Thaksin yang telah menjalin hubungan jauh sebelum Thaksin menjadi perdana menteri. Karena adanya pertemanan ini, Sondhi meraih banyak keuntungan terutama sejak Thaksin menjabat sebagai perdana menteri. Perusahaan media milik Sondhi yang tadinya terpuruk, berubah menjadi lebih baik sejak Thaksin menjadi perdana menteri. Sehingga, tidaklah mengherankan jika banyak orang bertanya-tanya alasan dibalik perubahan sikap

¹²¹ Kitti Prasirtsuk, "From Political Reform and Economic Crisis to Coup d'Etat in Thailand: The Twist and Turns of the Political Economy, 1997-2006", Asian Survey, Vol. XLVII, No. 6.

Sondhi terhadap Thaksin. Meskipun Sondhi dan masyarakat anti-Thaksin sama-sama tidak menyukai Thaksin, menurut Thitinan Pongsudhirak, seorang analis politik dari Universitas Chulalongkorn, aksi demonstrasi yang dilakukan Sondhi tidak memiliki motif dan waktu yang jelas.¹²² Ketidakjelasan ini terlihat dari adanya ketidaksamaan kritikan antara Sondhi dengan publik Thailand pada umumnya. Walaupun aksi demonstrasi yang dilakukan oleh Sondhi tidak jelas, namun Pongsudhirak berpendapat :

"Yet Sondhi succeeded in providing a voice for an electorate whose dissent had been suppressed by Thaksin's virtual authoritarian rule and apparent usurpation of independent institutions and check and balance mechanisms under the constitution".

[“Sondhi sukses menguatkan suara penolakan masyarakat yang selama ini mengalami penekanan dari rezim otoriter Thaksin yang dianggap telah melanggar kemandirian institusi serta mekanisme *check and balance* secara sewenang-wenang”].¹²³

Dari pernyataan di atas, terlihat bahwa dengan adanya dukungan dari tokoh masyarakat, sebagian rakyat Thailand yang tidak suka dengan kinerja Thaksin dan tidak bisa menyuarakannya, mendapat cara supaya suara mereka didengar oleh pemerintahan Thaksin. Munculnya Sondhi sebagai tokoh masyarakat yang sangat giat menyuarakan ketidaksukaannya terhadap Thaksin, tampaknya membuat Sondhi dianggap sebagai perwakilan dari masyarakat anti-Thaksin. Selain itu, adanya dukungan dari tokoh masyarakat ini, semakin memperkuat posisi kelompok anti-Thaksin.

Puncak pertikaian antara Sondhi dan Thaksin mencapai titik kritis saat kelompok anti-Thaksin dari segala golongan berkumpul di *Lumpini Park* pada bulan Desember 2005. Peristiwa ini terbukti berhasil mengumpulkan massa anti-Thaksin dari berbagai macam golongan. Namun menurut Pongsudhirak, peristiwa di *Lumpini Park* belum cukup dijadikan alasan untuk menjatuhkan Thaksin dari jabatan perdana menteri.

¹²² Thitinan Pongsudhirak, *Thaksin's Political Zenith and Nadir*, dalam Daljit Singh, Lorraine C. Salazar, *Southeast Asian Affairs 2006* (Singapore: ISEAS Publication, 2006), hlm 294.

¹²³ *Ibid.*

Kesempatan untuk menjatuhkan Thaksin muncul setelah Thaksin menjual saham perusahaan telekomunikasi milik keluarganya yaitu *Shin Corp* ke perusahaan negara milik Singapura, *Temasek Holdings*. Aksi penjualan saham *Shin Corp* yang dilakukan oleh keluarga Thaksin, dianggap oleh Koalisi Anti-Thaksin sebagai tindakan nekat terakhir dari setiap aksi korupsi dan konflik kepentingan. Pernyataan Koalisi Anti-Thaksin ini disampaikan saat mereka mengadakan pertemuan umum di ibukota pada bulan Februari 2006. Menanggapi tuntutan-tuntutan dari koalisi-koalisi yang berseberangan dengan dirinya, Thaksin kemudian mencari dukungan dengan cara mengumpulkan pendukungnya yang berada di Chiang Mai. Sejak saat itu, demonstrasi tidak hanya berasal dari pihak anti-Thaksin saja tapi juga dari pihak pro-Thaksin.

Berbagai demonstrasi yang dilakukan oleh pihak anti dan pro-Thaksin menunjukkan adanya perpecahan di kalangan masyarakat Thailand. Pihak pro-Thaksin kebanyakan adalah orang-orang miskin, seperti penduduk pedesaan dan kaum miskin perkotaan. Sementara, pihak anti-Thaksin yang dipimpin oleh Sondhi kebanyakan berasal dari kelas menengah perkotaan, NGO (*Non-Governmental Organization*) dan masyarakat sipil di perkotaan.¹²⁴ Kedua kelompok ini saling menunjukkan kekuatannya namun setiap aksi yang mereka lakukan cenderung mengalami kebuntuan dan semakin meningkatkan ketidakjelasan politik.

Di pihak anti-Thaksin, kebuntuan yang terjadi diatasi dengan menggabungkan setiap kekuatan yang ada dalam satu kelompok. Pada akhir Februari 2006, kelompok-kelompok anti-Thaksin ini membentuk kelompok PAD (*People's Alliance for Democracy*). PAD kemudian menjadi suatu kelompok atau gerakan yang lebih besar dan kuat dibandingkan dengan gerakan/kelompok yang dibentuk oleh Sondhi. Selain itu, akademisi-akademisi yang anti-Thaksin semakin sering mengadakan acara debat dan kampanye untuk menjatuhkan Thaksin.

Sementara itu, pihak Thaksin juga tidak tinggal diam dalam menghadapi kekuatan kelompok-kelompok anti-Thaksin. Untuk mengurangi kekuatan kelompok-kelompok yang anti terhadap dirinya, Thaksin menjanjikan referendum yang membahas amandemen konstitusi yang bersamaan dengan pemilu senat.

¹²⁴ *Ibid*, hlm 297.

Namun cara ini ditolak dan sebagai gantinya, pemerintah menerima masukan masyarakat terkait amandemen konstitusi di website resmi pemerintah. Para kolega Thaksin di Partai TRT juga ikut membantu dengan cara merencanakan pertemuan-pertemuan di seluruh wilayah. Selain itu, pemerintahan Thaksin juga berusaha menggagalkan usaha PAD untuk menggunakan Lapangan Sanam Luang sebagai tempat demonstrasi dengan cara mengadakan suatu acara publik. Di parlemen, Thaksin membubarkan parlemen untuk menjaga kekuasaannya.¹²⁵

Perlawanan yang dilakukan oleh pihak anti-Thaksin dan pro-Thaksin membuat krisis politik di Thailand menuju ke kebuntuan. Tindakan Thaksin membubarkan parlemen diikuti oleh *snap elections* pada bulan April¹²⁶, membuat suasana perpolitikan Thailand mudah berubah-ubah dan terpolarisasi. Sedikitnya waktu yang tersedia bagi anggota parlemen dari pihak oposisi untuk menyiapkan kampanye, menyebabkan pihak oposisi memboikot pemilu April. Agar kredibilitas oposisi terjaga terkait keputusan boikot, pihak oposisi membatasi posisi mereka dengan memberikan ultimatum kepada Thaksin untuk menyetujui agenda reformasi konstitusi. Thaksin menyetujui tuntutan reformasi konstitusi tapi dengan caranya sendiri. Pihak oposisi kemudian menjawab tindakan Thaksin ini dengan melanjutkan boikot.

Kondisi politik yang buntu, bagi Thaksin semakin mendelegitimasi dirinya di hadapan raja, dan sebagian rakyat Thailand, hal ini disebabkan oleh:

1. Adanya indikasi dari tindakan-tindakan Thaksin yang mengarah pada upaya untuk mengubah bentuk pemerintahan. Hal ini semakin diperjelas, dengan tuduhan pihak militer terhadap dirinya terkait penjualan *Shin Corp* ke *Temasek*, dimana militer menduga adanya akses bagi penyebaran informasi yang beredar lewat sistem komunikasi.
2. Tindakan-tindakan Thaksin yang tidak sekedar inkonstitusional, namun juga membuat nilai-nilai yang diyakini oleh masyarakat Thailand bergeser. Hal ini ditandai dengan kebijakan yang cenderung mengarah pada kepentingan pribadi dan golongan, serta mengabaikan nilai-nilai

¹²⁵ *Ibid*, hlm 298.

¹²⁶ Colum Murphy, "A Tug of War for Thailand's Soul", *Far Eastern Economic Review*, Vol. 169, No. 7.

kemanusiaan, yang bertentangan dengan nilai dan ajaran Budha, sebagai acuan masyarakat Thailand.

3. Upaya Thaksin untuk meyakinkan kalangan menengah ke bawah, dan masyarakat miskin kota tidak memberikan hasil yang signifikan, karena tindakan tersebut menjadi kontraproduktif ketika Thaksin justru melakukan penjualan saham kepada Temasek.

Tiga hal diatas membuat Thaksin tidak memiliki pilihan lain selain mundur dari jabatannya selaku Perdana Menteri Thailand. Adapun fakta-fakta atau bukti semakin mengarah pada pemakzulan diri Thaksin.

3. 3. Proses Penyusunan Draft Konstitusi 2007

Ketika situasi politik di Thailand tidak stabil, maka militer mengambil alih pelaksanaan pemerintahan dari kalangan sipil. Salah satu bentuk nyata dari sikap militer tersebut adalah dengan melakukan perubahan landasan Konstitusi 1997. Tahapan dari pelaksanaan ad interim junta militer di tahun 2006 tersebut mendelegasikan seluruh pelaksanaan teknis pemerintahan kepada sipil lewat CNS (*Council for National Security*). Sedangkan pelaksanaan penyusunan Konstitusi 2007 melibatkan seluruh golongan masyarakat di Thailand dalam suatu badan yang disebut CDA.

Prosedur awal untuk menyusun draft konstitusi 2007 adalah dengan menunjuk 2000 orang untuk menjadi anggota NPA (*National People's Assembly*)¹²⁷. Penunjukkan ke-2000 anggota NPA ini dilakukan oleh Raja dan ditandatangani oleh pimpinan CNS. Ketua NPA kemudian dipilih oleh pihak CNS dan secara formal disetujui oleh raja. NPA hanya memiliki satu tugas yaitu mengajukan 200 nama calon anggota CDA, dimana setengah dari nama yang diajukan oleh NPA merupakan hasil penunjukan junta militer.¹²⁸ Langkah NPA selanjutnya adalah mengadakan voting untuk memilih seratus anggota CDA. Keputusan hasil voting oleh NPA ini kemudian ditandatangani oleh Raja dan

¹²⁷ "The Narrow Road to a New Constitution", diunduh dari:
http://www.nationmultimedia.com/2006/10/16/opinion/opinion_30016230.php. Diakses pada tanggal 8 April 2011, pukul 12.27 WIB.

¹²⁸ "Thailand: 2007 Pre-Election Technical Assessment Report", diunduh dari
<http://www.ifes.org/Content/Publications/Electoral-Assessment/2007/Thailand-2007-Pre-Election-Technical-Assessment-Report.aspx>. Diakses pada tanggal 10 Januari 2011, pukul 10. 45 WIB.

Jenderal Sonthi Bonyaratglin sebagai ketua CNS.¹²⁹ Selanjutnya CDA menunjuk sebanyak 35 orang untuk menjadi anggota CDC (*Constitution's Drafting Committee*) yang tugasnya adalah mengembangkan konstitusi. CDA diketuai oleh Noranit Setrabutra dengan wakilnya Seri Suwanpanont dan Decho Sawanononwas.¹³⁰

Setelah CDA dan CDC terbentuk, kedua komite ini kemudian mengeluarkan susunan jadwal dan proses untuk menyiapkan dan mengadopsi Konstitusi lewat situs pemerintahan. Susunan jadwal dan prosesnya bisa dilihat di tabel berikut:

Tabel 3. 2 Jadwal Implementasi Rancangan Konstitusi

Tanggal	Aktivitas
8 February 2007	Diskusi prinsip-prinsip umum dan isu-isu oleh CDC
28 February	Diskusi pada tingkat subkomite
10 Maret	CDC melakukan tinjauan ulang terhadap proposal-proposal dari subkomite
20 Maret	Pengajuan rancangan konstitusi sementara oleh Sekretaris
19 April	Rancangan pertama dengan daftar unit oleh CDC
26 April	Dokumentasi perbedaan-perbedaan vs Konstitusi 1997
26 Mei	Dialog publik (public hearing)
10 Juni	Tinjauan ulang rancangan final konstitusi oleh CDA
5 Juli	Persetujuan oleh CDA
6 Juli	Proses penyusunan konstitusi
4 Agustus	Publikasi rancangan konstitusi untuk disebarluaskan
18 Agustus	Penyusunan akta-akta dasarDrafting organics bills (mulai pada tanggal 5 Agustus)
3 September	Referendum

Sumber: <http://www.ifes.org/Content/Publications/Electoral-Assessment/2007/Thailand-2007-Pre-Election-Technical-Assessment-Report.aspx>.

Dari tabel di atas, bisa disimpulkan bagaimana proses draft Konstitusi 2007 berjalan. *Pertama*, proses penyusunan draft Konstitusi 2007 oleh CDA dan CDC. Di tahap proses penyusunan draft, draft yang telah disusun oleh CDC akan

¹²⁹ "Full List of CDA", diunduh dari:

http://www.nationmultimedia.com/2007/01/02/headlines/headlines_30023102.php. Diakses pada tanggal 20 April 2011, pukul 19. 37 WIB.

¹³⁰ "Noranit Elected CDA Chairman", diunduh dari:

http://www.nationmultimedia.com/2007/01/08/headlines/headlines_30023551.php. Diakses pada tanggal 20 April 2011, pukul 19.55 WIB

dipublikasikan ke sidang CDA untuk mendapat persetujuan. Jika CDA merasa bahwa draft yang ada belum sesuai, maka CDC harus mengajukan draft konstitusi baru ke CDA. *Kedua*, publikasi draft Konstitusi 2007 ke publik Thailand. *Ketiga*, referendum untuk meloloskan atau tidaknya draft Konstitusi 2007.

Segera setelah CDA dan CDC terbentuk, setiap anggota dan pengurusnya mulai bersidang dan menyusun draft Konstitusi 2007. CDA dan CDC hanya diberi waktu selama 180 hari untuk menyelesaikan seluruh proses draft Konstitusi 2007.¹³¹ Apabila pihak CDA/CDC gagal, maka keputusan untuk memilih konstitusi baru akan diserahkan ke pihak CNS dan Kabinet. Dalam penyusunan draft Konstitusi 2007, Konstitusi 1997 dijadikan sebagai dasar atau acuan.¹³² Artinya, kemungkinan isi draft Konstitusi 2007 akan sama dengan Konstitusi 1997, perbedaan hanya ada di beberapa pasal yang dianggap penting.

Draft konstitusi 2007 selesai disusun pada bulan Juli dan seperti yang tertera pada tabel 3. 4, draft ini segera dikampanyekan ke masyarakat sampai hari referendum. Segera setelah draft konstitusi disetujui oleh CDA, pemerintah menyebarkan kopian draft Konstitusi 2007 ke masyarakat. Pemerintah juga mengerahkan 700.000 petugas keamanannya di seluruh wilayah untuk mengajak masyarakat Thai menggunakan hak suaranya dalam referendum pada bulan Agustus nanti.¹³³ Selain itu, pemerintah juga menginstruksikan kepada para personil militer untuk memilih setuju terhadap draft Konstitusi 2007. Pemerintah tidak segan-segan mengeluarkan sejumlah uang untuk mendorong masyarakat Thailand menyetujui draft Konstitusi 2007.¹³⁴ Kampanye yang dilakukan oleh pemerintah ini mendapat perlawanan dari pihak pro-Thaksin. Sama seperti pemerintah, kelompok pro-Thaksin juga berkampanye di masyarakat untuk menolak draft Konstitusi 2007.

¹³¹ “Noranit Elected CDA Chairman”, diunduh dari: http://www.nationmultimedia.com/2007/01/08/headlines/headlines_30023551.php. Diakses pada tanggal 20 April 2011, pukul 19.55 WIB.

¹³² “Thailand: 2007 Pre-Election Technical Assesment Report”, diunduh dari: <http://www.ifes.org/Content/Publications/Electoral-Assessment/2007/Thailand-2007-Pre-Election-Technical-Assessment-Report.aspx>. Diakses pada tanggal 10 Januari 2011, pukul 10. 45 WIB.

¹³³ “Junta Thailand Perintahkan Pasukan Kampanyekan Referendum”, diunduh dari <http://www.pelita.or.id/baca.php?id=34427> . Diakses pada tanggal 23 April 2011, pukul 12.24 WIB.

¹³⁴ Pasuk Phongpaichit, Chris Baker, *Voting for Change in Thailand and Japan: Reversing the Tanks in Thailand*, Far Eastern Economic Review, Vol. 170, No. 7.

Sebelum referendum dimulai, banyak lembaga-lembaga polling mengeluarkan hasil penelitian mereka mengenai jumlah masyarakat yang menyetujui atau tidaknya draft Konstitusi 2007. Polling yang dilakukan oleh *Suan Dusit Institute* menunjukkan bahwa 68% pemilih akan memilih menyetujui draft Konstitusi 2007 pada referendum tanggal 19 Agustus.¹³⁵ Sementara, polling yang dilakukan oleh ABAC¹³⁶ menunjukkan bahwa lebih dari 70% pemilih akan memilih menyetujui draft Konstitusi 2007.¹³⁷ Mengenai referendum, terdapat beberapa peraturan dalam pelaksanaannya. 15 atau 30 hari setelah CDA menyetujui draft konstitusi, referendum harus diadakan dan hanya berlangsung selama satu hari.¹³⁸ Masyarakat hanya diberikan dua pilihan yaitu “ya” atau “tidak”. Referendum menggunakan sistem *simple majority* dalam penghitungan suara. Yang menarik dari aturan mengenai referendum ini adalah apabila rakyat Thailand menolak draft konstitusi baru, maka pihak junta berhak untuk memilih konstitusi terdahulu sebagai konstitusi yang berlaku.¹³⁹

Pada tanggal 19 Agustus 2007, referendum untuk menentukan disetujuinya draft Konstitusi 2007 dilaksanakan.¹⁴⁰ Pilihan yang ditawarkan oleh pemerintah kepada rakyat Thailand terkait dengan penetapan Konstitusi 2007 sebagai landasan hukum bernegara adalah menyetujui atau menolak. Hasil dari

¹³⁵ “Thai Voters Endorse New Constitution, Polls Show”, diunduh dari: http://www.nytimes.com/2007/08/19/world/asia/19iht-thai.4.7171728.html?_r=1. Diakses pada tanggal 7 Februari 2011, pukul 20.25 WIB.

¹³⁶ ABAC (Assumption Business Administration College) merupakan pelopor dari Assumption University. ABAC Poll Research Center didirikan oleh Rev.Dr.Prathip M. Komolmas di tahun 1997. Keterangan lengkap mengenai ABAC Poll Research Center bisa dilihat di situs <http://www.abacpoll.au.edu/websurvey/aboutus.html>.

¹³⁷ “Thai Voters Endorse New Constitution, Polls Show”, diunduh dari: http://www.nytimes.com/2007/08/19/world/asia/19iht-thai.4.7171728.html?_r=1. Diakses pada tanggal 7 Februari 2011, pukul 20.25 WIB.

¹³⁸ “The Narrow Road to a New Constitution”, diunduh dari: http://www.nationmultimedia.com/2006/10/16/opinion/opinion_30016230.php. Diakses pada tanggal 8 April 2011, pukul 12.27 WIB.

¹³⁹ “Thailand unveils post-coup draft constitution”, diunduh dari: http://www.channelnewsasia.com/stories/afp_asiapacific/view/271184/1/.html. Diakses pada tanggal 17 April 2011, pukul 19.42. Colum Murphy, *Thailand’s Cracked path to Democracy*”, Far Eastern Economic Review, Vol. 170, No. 2

¹⁴⁰ “Thai Draft Constitution Approved”, diunduh dari: <http://news.bbc.co.uk/2/hi/asia-pacific/6276154.stm>. Diakses pada tanggal 17 Maret 2011, pukul 19.43 WIB.

referendum ini adalah sebagian besar masyarakat Thailand menyetujui draft Konstitusi 2007. Adapun hasil lebih lengkapnya adalah:¹⁴¹

1. 58 % pemilih memilih “menyetujui”.
2. 42 % pemilih memilih “menolak”.

Menurut Pasuk Phongpaichit dan Chris Baker, hasil referendum pada tanggal 19 Agustus 2007 menunjukkan suatu pola yang menarik. Mereka mengemukakan bahwa 24 provinsi yang berada di bagian utara dan timur laut Thailand merupakan basis wilayah pendukung Thaksin-memilih untuk menolak draft Konstitusi 2007.¹⁴² Tampaknya, rakyat yang berada di utara dan timur laut Thailand masih mendukung Thaksin Shinawatra dengan menyatakan ketidaksetujuan mereka terhadap draft Konstitusi 2007.

Bagi pemerintah sendiri, hasil referendum ini, jauh dari harapan atau keyakinan mereka. Militer sangat meyakini bahwa sebagian besar rakyat Thailand atau 90% rakyat Thailand akan menyetujui draft konstitusi 2007. Kenyataannya memang sebagian masyarakat Thailand menyetujui draft baru namun jumlah yang tidak menyetujui draft Konstitusi 2007 hampir setengah dari Thailand. Menurut Phongpaichit dan Baker, hasil dari referendum ini hanya semakin menunjukan bahwa perpecahan yang terjadi di masyarakat Thailand sejak Thaksin dikudeta semakin nyata.

3. 4 Reformasi Konstitusi dan Demokrasi di Thailand

Menurut laporan penelitian *Asia Foundation* dengan judul “*Constitutional Reform and Democracy in Thailand: A National Survey of the Thai People*” pada tahun 2009, terjadi perpecahan di masyarakat Thailand terkait Konstitusi 2007. Survey dengan pertanyaan apakah Konstitusi 2007 bisa mengurangi permasalahan politik yang ada, 45% responden menjawab Konstitusi 2007 bisa mengurangi konflik yang ada, 45% responden lainnya menjawab bahwa Konstitusi 2007 bisa

¹⁴¹ “Hasil Akhir Referendum Thailand: 58 Persen Dukung Rancangan Konstitusi Baru”, diunduh dari: <http://www.voanews.com/indonesian/news/a-32-2007-08-20-voa9-85274167.html>. Diakses pada tanggal 13 Maret 2011, pukul 21.22 WIB.

¹⁴² Pasuk Phongpaichit, Chris Baker, *Voting for Change in Thailand and Japan: Reversing the Tanks in Thailand*, Far Eastern Economic Review, Vol. 170, No. 7.

menyebabkan lebih banyak konflik yang muncul. Sementara hanya 10% dari peserta survey yang tidak menjawab.¹⁴³

Saat ditanya mengenai bentuk perubahan apabila ada kemungkinan untuk merubah Konstitusi 2007, terdapat berbagai jawaban. 28% responden menjawab tidak perlu adanya perubahan konstitusi karena mereka menilai Konstitusi 2007 telah memenuhi kriteria demokratisasi di Thailand. Mereka yang menjawab tidak perlu ada perubahan konstitusi, secara faktual merupakan kelompok mayoritas. Sementara suara yang menyetujui adanya perubahan Konstitusi 2007, terpecah menjadi tiga yaitu :

1. Sebanyak 14% responden menyetujui adanya perubahan Konstitusi 2007 dalam bentuk amandemen.
2. Sebanyak 21% responden menginginkan kembali ke Konstitusi 1997.
3. Sebanyak 18% responden menginginkan adanya konstitusi baru.

Jika dianalisa lebih lanjut, ketiga suara yang terpecah tersebut, sebenarnya merupakan suara mayoritas ketika segmentasi dari aspirasi mereka berada pada satu kategori yaitu kontra terhadap Konstitusi 2007. Namun karena adanya perbedaan dalam menyikapi ketidaksetujuan mereka terhadap Konstitusi 2007, suara mereka tidak menjadi mayoritas. Sedangkan suara yang pro terhadap Konstitusi 2007, apabila dibandingkan dengan suara yang kontra, sebenarnya bukanlah suara mayoritas

¹⁴³ “Constitutional Reform and Democracy in Thailand: A National Survey of the Thai People”, diunduh dari: <http://www.asiafoundation.org/resources/pdfs/ThaiConstitutionReportenglish.pdf>. Diakses pada tanggal 17 Februari 2011, pukul 13. 23 WIB.

BAB 4

ANALISIS PENGARUH HUBUNGAN MILITER-RAJA TERHADAP KONSTITUSI 2007

Sejak berubahnya bentuk pemerintahan Thailand dari monarki absolut ke monarki konstitusional di tahun 1932, Thailand telah mengalami kudeta sebanyak 23 kali.¹⁴⁴ Dari sekian banyak kudeta yang terjadi di Thailand, sebagian besar dilakukan oleh pihak militer. Pola yang kemudian terjadi setelah kudeta adalah militer akan membubarkan pemerintah yang dikudeta kemudian mengganti konstitusi dan mengadakan pemilu ulang. Kudeta militer terhadap Thaksin Shinawatra di tahun 2006 pun harus mengalami pola ini. Pihak militer yang anti terhadap Thaksin, dengan dukungan raja, meng kudeta Thaksin kemudian membubarkan pemerintahannya dan partai pendukung Thaksin yaitu TRT. Militer kemudian membatalkan konstitusi yang berlaku dan menjanjikan terbentuknya konsitusi baru yang lebih demokratis dari konstitusi sebelumnya. Terakhir, militer menjanjikan akan mengadakan pemilu.

Di bab analisis ini, penulis akan membahas mengenai pengaruh hubungan militer-raja terhadap proses demokratisasi terutama dalam hal penyusunan Konstitusi 2007. Militer-dengan dukungan raja-menjanjikan suatu kehidupan yang lebih demokratis setelah pemerintahan Thaksin dikudeta termasuk konstitusinya. Untuk melihat pengaruh militer-raja dalam penyusunan konstitusi baru, penulis akan menganalisis dari sisi pasal-pasal Konstitusi 2007. Kemudian membahas tentang hubungan militer-raja selama proses pembuatan Konstitusi 2007 berlangsung.

4. 1 Kondisi Hubungan Raja-Militer Selama Penyusunan Konstitusi 2007

4. 1. 1. *Network Monarchy*

Raja dan militer merupakan dua kekuatan politik yang kuat di Thailand. Hubungan di antara kedua kekuatan ini telah terbangun sejak lama meskipun ada suatu masa dimana hubungan keduanya mengalami kerenggangan. Pada kudeta terhadap Thaksin pada tahun 2006, hubungan keduanya diperlihatkan lewat

¹⁴⁴ “Membaca Peta Politik Thailand”, diunduh dari:
<http://suaramerdeka.com/v1/index.php/read/cetak/2008/02/13/851/Membaca.Peta.Politik.Thailand>
 . Diakses pada tanggal 20 Oktober 2010 pukul 20.55 WIB.

adanya pernyataan dari junta militer bahwa Raja mendukung kudeta beserta agenda junta militer pasca kudeta militer terhadap Thaksin.

Raja Bhumibol memang mendukung junta militer yang dipimpin oleh Jenderal Sonthi Bonyaratglin, namun selama penyusunan Konstitusi 2007, Raja tidak secara eksplisit memperlihatkan campur tangannya. Di permukaan, hanya pihak junta militer yang tampaknya memiliki kepentingan politik. Kondisi ini terjadi karena seperti yang diungkapkan oleh Ramlan Surbakti mengenai legitimasi, Raja Bhumibol hanya memiliki legitimasi prosedural, tradisional dan kualitas pribadi.

Thailand merupakan negara dengan sistem pemerintahan monarki konstitusional dimana Raja berperan hanya sebagai seremonial saja. Raja tidak memiliki kekuasaan politik seluas kepala pemerintahan. Dalam kasus Thailand, Raja Bhumibol memang tidak memiliki kekuasaan politik penuh seperti halnya kepala pemerintahan. Namun dengan adanya legitimasi tradisional yaitu keturunan bangsawan dan legitimasi kualitas pribadi yang ditunjukkan lewat aksi-aksi sosial yang beliau lakukan terhadap rakyat Thailand, Raja Bhumibol dipercaya oleh seluruh rakyat Thailand untuk menyelesaikan setiap permasalahan politik.

Secara politik, Raja Bhumibol hanya memiliki legitimasi prosedural yaitu hanya untuk kepentingan seremonial atau sebagai kepala negara saja. Dengan statusnya yang hanya sebagai kepala negara, Raja tentu tidak bisa menjalankan peran politik di tingkat pemerintahan. Namun dengan adanya *network monarchy*, Raja bisa turut campur dalam urusan politik atau pemerintahan. Menurut Duncan McCargo, *network monarchy* adalah bentuk kepemimpinan semi-monarki dimana Raja dan sekutunya membentuk hubungan monarki modern ini sebagai suatu institusi yang berdiri di luar institusi politik (*para-political institution*).¹⁴⁵ Tujuan utama dari adanya *network monarchy* adalah untuk mempromosikan kekuatan dan wibawa dari kerajaan. Menurut Paul Chambers, secara politis, budaya dan

¹⁴⁵ Duncan McCargo, "Network Monarchy and Legitimacy Crises in Thailand", *The Pacific Review*, 18:4, 499-519.

ekonomi, *network monarchy* telah meresap dalam kehidupan masyarakat Thailand.¹⁴⁶

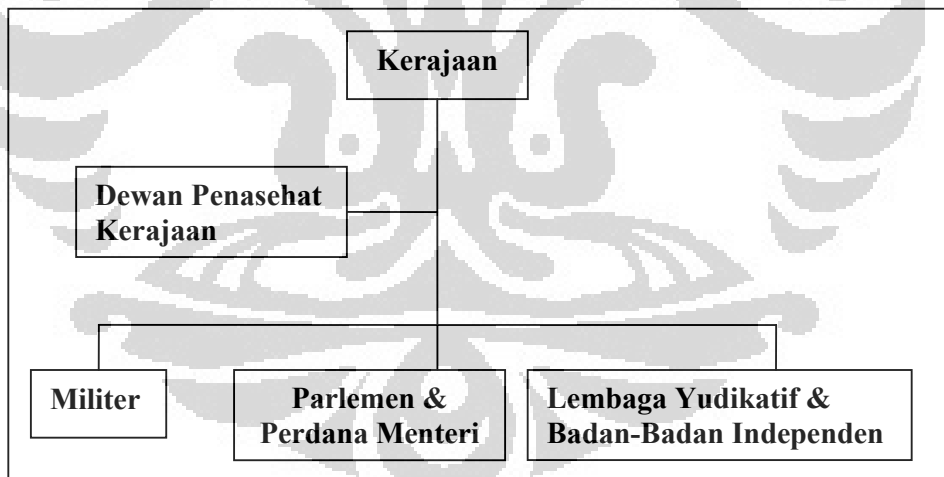
Sejarah terbentuknya *network monarchy* bisa dirunut sejak tahun 1958 atau sejak Sarit Thanarat menjadi perdana menteri. Sarit memutuskan untuk melibatkan Raja dalam politik atau pemerintahan supaya kepemimpinan, kekuasaan dan perjuangan anti-komunis yang dijalankan oleh Sarit mendapatkan legitimasi. Sejak masa pemerintahan Saritlah, mulai terlihat keterlibatan Raja dalam politik Thailand. Raja secara berkala memberikan pernyataan atau dukungannya terhadap isu-isu politik yang terjadi, bahkan bisa mempengaruhi keputusan politik yang akan diambil oleh pemerintah. Keterlibatan Raja dalam bidang politik semakin meningkat sejak peristiwa demonstrasi di tahun 1973 dan peristiwa kudeta terhadap mantan perdana menteri Prem Tinsulanonda di tahun 1981. McCargo menyatakan bahwa sejak tahun 1980 sampai 2001, peran raja adalah sebagai pengambil keputusan politik paling utama dalam situasi krisis, raja adalah sumber utama legitimasi nasional, Raja berperan sebagai komentator yang mendidik dalam kasus-kasus nasional, membantu menyusun agenda nasional dan secara aktif mengintervensi pembangunan politik melalui kerjasama dengan wakil-wakilnya yaitu Dewan Penasihat Kerajaan dan tokoh militer terpercaya. Namun, Raja tidak bisa menjalankan peran yang telah disebut oleh McCargo karena secara konstitusional Raja hanya bersifat seremonial saja dalam pemerintahan. Supaya Raja bisa berperan dalam politik atau pemerintahan Thailand yang menganut faham demokratis, Raja menggunakan organisasi lain yang kelegalannya diakui oleh konstitusi sebagai perwakilannya.

Organisasi legal tersebut adalah *Privy Council* atau Dewan Penasihat Kerajaan dan militer. Dewan Penasihat Kerajaan terdiri dari 18 orang. Setiap dua minggu sekali mereka mengadakan pertemuan untuk meninjau ulang semua undang-undang, memberi rekomendasi umum terhadap isu-isu yang berkaitan dengan kerajaan dan mengatur keuangan kerajaan. Oleh McCargo, Dewan Penasihat Kerajaan menjadi pusat dari *network monarchy* sehingga menjadikan ketuanya-Prem Tinsulanonda menjadi orang yang memiliki kekuasaan yang lebih besar dalam Dewan Penasihat Kerajaan. Prem yang merupakan mantan perdana

¹⁴⁶ Paul Chambers, *Thailand on The Brink: Resurgent Military, Eroded Democracy*, Asian Survey, Vol. 50, No. 5

menteri dan juga mantan komandan militer kepercayaan Raja, telah menduduki jabatan sebagai Ketua Dewan Penasihat Kerajaan sejak tahun 1998. Sebagai ketua dari Dewan Penasihat Kerajaan, Prem ikut membantu dalam menentukan sifat dasar pemerintahan koalisi dan mengawasi militer dan promosi-promosi lainnya. Sementara itu, militer menjadi salah satu elit yang berada di *network monarchy* karena pada dasarnya, salah satu tugas militer adalah melindungi Kerajaan Thailand dan memiliki kekuasaan untuk memaksa dalam bentuk penguasaan senjata. Paul Chambers menyebutkan bahwa sejak dipimpin oleh Prem, secara bertahap, Dewan Penasihat Kerajaan mempengaruhi militer. Hal ini bisa dilakukan oleh karena Prem memiliki jaringan di militer dan menjadi pelindung bagi banyak tentara senior. Raja, Dewan Penasihat Kerajaan dan militer sering juga disebut dengan "*The Establishment*" atau Kelompok Penguasa. Oleh Paul Chambers, tiga kekuatan dalam *network monarchy* ini bisa digambarkan melalui tabel berikut:

Bagan 4. Demokrasi Perwakilan di Thailand



Sumber: Paul Chambers, "*Thailand On The Brink: Resurgent Military, Eroded Democracy*", Asian Survey, Vol. 50, No. 9.

Dari bagan 4. 1 terlihat bahwa posisi Dewan Penasihat Kerajaan berada di tengah-tengah antara Raja dan militer. Dengan adanya Dewan Penasihat Kerajaan, pihak Kerajaan tidak perlu secara terang-terangan mempengaruhi perpolitikan Thailand

sehingga apabila terjadi kesalahan atau ada kritik terhadap pihak Kerajaan, yang disalahkan adalah pihak Dewan Penasihat Kerajaan. Namun, posisi Dewan Penasihat Kerajaan menunjukkan bahwa mereka memiliki kekuasaan yang besar dalam mengatur hubungan Raja dengan institusi lainnya termasuk militer.

4. 1. 2 Hubungan Raja-Militer Selama Proses Penyusunan Konstitusi 2007

Dalam sejarah politik Thailand, kudeta yang dilancarkan oleh lawan politik dari yang berkuasa biasanya akan dilanjutkan dengan pembatalan konstitusi sebelumnya. Junta militer melakukan hal yang sama terhadap kudeta Thaksin di tahun 2006. Konstitusi 1997 yang menjadi landasan bagi pemerintahan Thaksin, dihapuskan dan diganti dengan konstitusi yang disusun oleh militer yaitu Konstitusi 2007.

Selama masa penyusunan Konstitusi 2007, bentuk hubungan Raja dan militer tidak seperti di waktu kudeta tahun 2006. Pada kudeta 2006, Raja memberikan dukungan kepada militer yang ditandai dengan menghadapnya ketua junta militer yaitu Jenderal Sonthi ke Raja di istana.¹⁴⁷ Sedangkan, selama penyusunan Konstitusi 2007 atau pasca kudeta, Raja tidak terlihat secara eksplisit memberikan dukungannya kepada militer. Walaupun selama penyusunan Konstitusi 2007 Raja tidak mengeluarkan pendapat atau dukungannya, namun proses Konstitusi 2007 itu sendiri memperlihatkan hubungan Raja dan militer. Hubungan Raja dan militer bisa terbentuk karena adanya Dewan Penasihat Kerajaan

Sejak memerintah sebagai perdana menteri Thailand di tahun 2001, Thaksin telah menjadi politikus yang terkenal di Thailand. Keterkenalannya ini bahkan menyamai Raja Bhumibol yang telah memerintah Thailand selama 60 tahun. Selain dikenal rakyat karena program populisnya, Thaksin juga dikenal dengan gaya kepemimpinan yang otoriter, menyebabkan banyak isu-isu negatif ditujukan kepadanya. Beberapa isu negatif yang ditujukan kepada Thaksin berkaitan dengan Raja dan Dewan Penasihat Kerajaan yang mana merupakan bagian dari *network monarchy*. Elit-elit di dalam *network monarchy*-termasuk

¹⁴⁷ “Thaksin Terjungkal Jua”, diunduh dari <http://majalah.tempointeraktif.com/id/arsip/2006/09/25/LN/mbm.20060925.LN121776.id.html>. Diakses tanggal 20 Oktober 2010 pukul 18.55 WIB.

militer-menilai bahwa pamor Thaksin merupakan ancaman bagi Raja dan *network monarchy* itu sendiri. Isu ini muncul karena selama memerintah, kelompok anti-Thaksin tidak melihat bahwa Thaksin menunjukkan kelayalannya kepada Raja, bahkan ada anggapan bahwa Thaksin berusaha untuk mengganti sistem monarki konstitusional menjadi republik. Namun, kedua isu ini tidak terbukti.

Selain dua isu yang telah disebut sebelumnya, ada isu bahwa Thaksin berusaha untuk mengganti *network monarchy* secara sistematis. Menurut jurnalis Paul Handley, isu utama dibalik usaha junta militer untuk menjatuhkan Thaksin pada tahun 2006 adalah isu suksesi kerajaan.¹⁴⁸ Isu suksesi kerajaan menjadi isu yang makin sensitif karena tidak adanya pewaris kerajaan yang dianggap bisa menyamai peran Raja Bhumibol padahal dari segi kesehatan, bisa dibilang kesehatan Raja Bhumibol menurun. Meskipun telah menjadi negara monarki konstitusional, rakyat Thailand masih menghormati Raja Bhumibol. Rakyat Thailand menghormati Raja yang diberi gelar Rama XI ini tidak hanya karena alasan keagamaan saja tapi juga karena pengabdianya terhadap masyarakat Thailand terutama yang tinggal di daerah pedesaan miskin.

Sesuai dengan peraturan kerajaan, anak lelaki Raja menjadi pewaris utama setelah Raja tidak lagi memegang kekuasaan. Secara otomatis, Pangeran Vajiralongkorn yang merupakan anak lelaki satu-satunya dari Raja Bhumibol dinobatkan sebagai putra mahkota. Faktanya, meskipun memegang jabatan sebagai putra mahkota, Pangeran Vajiralongkorn dianggap tidak populer bila dibandingkan dengan adiknya yaitu Putri Sirindhorn. Pangeran Vajiralongkorn tidak bisa menunjukkan suatu kepribadian dan sikap seperti ayahnya, Raja Bhumibol. Kehidupan pribadi dan sosial Pangeran Vajiralongkorn, cenderung dipenuhi dengan perilaku yang buruk. Dengan perilakunya yang kurang baik dan kurangnya perhatian terhadap permasalahan negara, sedikit sekali orang yang mendukung Pangeran Vajiralongkorn sebagai raja Thailand berikutnya.

Tidak jelasnya masalah suksesi kerajaan, membuat elit-elit yang berhubungan dengan Raja seperti militer dan birokrasi menjadi khawatir. Jika

¹⁴⁸ "Bridging Thailand's Deep Divide", diunduh dari: http://www.crisisgroup.org/~media/Files/asia/south-east-asia/thailand/192_Bridging%20Thailands%20Deep%20Divide.pdf. Diakses pada tanggal 3 Maret 2012, pukul 23.12 WIB

Pangeran Vajiralongkorn menjadi raja Thailand berikutnya, maka menurut McCargo, elit-elit yang selama ini dekat dengan Raja akan kehilangan perlindungan atas kekuasaan dan harus menyerahkan kekuasaannya ke politisi yang dipilih melalui pemilu.¹⁴⁹ Tanpa adanya perlindungan terhadap kekuasaan mereka, maka elit-elit ini akan mengalami kesulitan dalam mempertahankan kekuasaannya. Sementara bagi kerajaan, apabila masalah suksesi ini tidak ditangani dengan baik, maka Kerajaan Thailand akan kehilangan pengaruhnya di mata rakyat Thailand. Kerajaan tidak lagi menjadi pusat dari politik Thailand.

Ketidakjelasan pihak kerajaan dalam menangani masalah suksesi, menyebabkan beberapa pemikiran terkait masa depan negara Thailand. Salah satu pemikiran tersebut adalah perlunya transformasi besar-besaran terhadap masyarakat Thailand setelah Raja meninggal. Selain itu, diperlukan adanya reformasi terhadap institusi monarki termasuk perlu adanya proses pemilihan anggota Dewan Penasihat Kerajaan yang lebih demokratis dan transparansi terhadap *Crown Property Bureau*.

Dengan kondisi suksesi yang seperti ini, muncul ketakutan di kalangan kelompok pendukung kerajaan bahwa apabila Thaksin masih berkuasa, mungkin akan mempersulit proses suksesi. Proses suksesi bisa jadi berubah menjadi krisis nasional. Untuk itu, elit-elit pendukung kerajaan kemudian berusaha menyusun suatu konstitusi yang bisa mempersiapkan Thailand selama proses suksesi berlangsung dan memperkuat kerajaan. Konstitusi yang dimaksud adalah Konstitusi 2007.

Junta militer memasukkan pasal-pasal yang bisa menguatkan kedudukan Kerajaan. Pasal yang diperkuat adalah mengenai Dewan Penasihat Kerajaan. Dalam konstitusi yang baru, Dewan Penasihat Kerajaan diberi kekuasaan untuk memilih raja selanjutnya. Namun, peraturan ini berlaku apabila sampai meninggalnya Raja, belum ada calon pengganti Raja. Hingga tahun 2012, Raja belum memberikan pernyataan apapun terkait penggantinya. Dewan Penasihat Kerajaan sendiri juga belum memberikan pernyataan terkait calon Raja pilihan

¹⁴⁹ "Countries At The Crossroads", diunduh dari:
<http://www.freedomhouse.org/images/File/CaC/2011/THAILANDfinal.pdf>. Diakses pada tanggal 28 November 2011, pukul 13.13 WIB

mereka apabila sampai meninggalnya Raja, Raja belum menentukan calon pengganti dirinya.

Bagi militer, Konstitusi 2007 memberikan militer peran secara legal. Selama pemerintahan Thaksin, militer selalu mendapat campur tangan dari Thaksin. Contoh jelas dari campur tangan Thaksin adalah mengenai promosi atau pengangkatan. Thaksin memasukkan orang-orang terdekatnya-keluarga atau kolega-untuk dipromosikan ke jabatan yang lebih tinggi. Tindakan ini membuat beberapa petinggi militer menjadi marah. Alasannya, penunjukkan ini merupakan masalah internal militer. Dengan adanya campur tangan Thaksin, militer menganggap Thaksin telah mendahului militer dan tidak menghormati militer sebagai institusi yang lebih mengetahui masalah pengangkatan atau promosi dalam tubuh militer.

Campur tangan Thaksin terhadap militer benar-benar membuat militer semakin membenci Thaksin. Untuk itu, pihak junta melalui CDA berusaha untuk menyusun pasal-pasal yang bisa menguatkan militer. Pasal-pasal mengenai kekuasaan eksekutif jelas sekali memperlihatkan usaha militer untuk mengurangi kekuasaan eksekutif dan menguatkan kekuasaan militer walaupun tidak secara langsung. Selain itu, junta juga berusaha memasukkan pasal yang bisa memperkuat militer di mata sipil yaitu pasal 77 yang isinya memerintahkan pemerintahan sipil untuk tidak hanya memelihara tapi juga mengatur pemeliharaan dan memberikan fasilitas untuk menunjang tugas-tugas militer. Kekuasaan militer semakin menguat dengan adanya pasal pengampunan terhadap tindakan kudeta pada tahun 2006 oleh pihak junta militer.

Pasal-pasal ini ditetapkan dengan adanya dukungan dari pihak Kerajaan. Pihak junta militer membutuhkan dukungan dari Kerajaan karena posisi Kerajaan dalam masyarakat Thailand sangat dihormati. Apabila Kerajaan mendukung draft Konstitusi 2007, kemungkinan besar rakyat untuk melakukan hal yang sama juga besar. Dukungan Kerajaan terhadap militer dimulai dari awal kudeta. Dukungan dari Kerajaan tidak hanya berlaku saat pelaksanaan kudeta saja tapi juga terhadap agenda-agenda militer setelah kudeta termasuk penyusunan Konstitusi 2007. Awal persetujuan Kerajaan adalah saat pembentukan Dewan Perwakilan Rakyat yang berjumlah 2000 orang. Dewan inilah yang kemudian menyusun keanggotaan

CDA. Selain itu, selama masa kampanye draft Konstitusi 2007, militer melakukan berbagai macam cara untuk meyakinkan masyarakat bahwa draft Konstitusi 2007 merupakan draft konstitusi yang lebih demokratis dibandingkan konstitusi sebelumnya. Cara-cara yang dilakukan oleh pihak junta militer untuk meyakinkan masyarakat sebenarnya bisa dibilang sama seperti kampanye partai, namun yang menarik, pihak junta militer memasukkan simbol-simbol kerajaan dalam setiap kampanye draft Konstitusi 2007. Ini dilakukan pihak junta militer supaya tercipta suatu pemikiran di masyarakat bahwa draft konstitusi yang disusun pihak junta militer mendapat persetujuan dari Kerajaan.

4. 2. Pasal-Pasal Kontroversial Konstitusi 2007

Junta militer, sebagai penguasa Thailand pasca-kudeta militer terhadap Thaksin pada tahun 2006 menjanjikan kepada masyarakat Thailand suatu konstitusi yang lebih demokratis dibandingkan konstitusi 1997. Menurut pihak junta militer yang dipimpin oleh Jendral Sonthi Bonyaratglin, Konstitusi 1997 merupakan salah satu alasan dibalik korupsi pemerintahan Thaksin. Untuk itu, militer kemudian membatalkan Konstitusi 1997. Tindakan pembatalan konstitusi yang diambil oleh junta militer terhadap Thaksin sesuai dengan gambaran tentara pretorian yang dikemukakan oleh Amos Perlmutter. Junta militer menurut Perlmutter berusaha untuk mengintervensi jalannya pemerintahan dan berusaha untuk mewujudkan perubahan konstitusi. Tindakan pembatalan konstitusi dan mengganti konstitusi lama dengan yang baru oleh militer, menjadi suatu kelaziman di Thailand.¹⁵⁰ Sehingga, tidak mengherankan jika di tahun 2006, junta militer melakukan hal yang sama. Apalagi, junta militer sejak awal memiliki dukungan dari Raja dan juga sebagian rakyat Thailand. Ini sesuai dengan pernyataan Perlmutter yang menyebutkan bahwa kekuatan dari rezim pretorian tentara bukan berasal dari kecakapan profesional-penggunaan kekerasan-melainkan juga kecenderungannya untuk menghubungkan rezim yang membiayai tentara tersebut dengan rezim yang melindungi integritasnya.

¹⁵⁰ Biasanya akan diikuti dengan pembubaran parlemen dan pencabutan kegiatan politik partisipan. Samudavanija, Chai-anan, *Thailand: A Stable Semidemocracy* dalam Diamond, Larry, Juan. J Linz, Seymour Martin Lipset, *Politics in Developing Countries, Second edition* (Colorado:Lynne Rienner Publisher, 1995). Hlm 340.

Setelah sukses meng kudeta pemerintahan Thaksin di tahun 2006, junta militer membatalkan Konstitusi 1997 dan berjanji kepada masyarakat Thailand untuk segera menyusun suatu konstitusi yang lebih demokratis. Untuk mewujudkan janji tersebut, junta militer melalui pemerintahan sementara, membentuk lembaga khusus yang bertugas untuk menyusun konstitusi baru yaitu CDA (*Constitutional Drafting Assembly*) dan CDC (*Constitutional Drafting Committee*). Anggota CDA dan CDC diisi setengahnya oleh orang-orang yang ditunjuk oleh militer.

Selama proses pembuatan konstitusi oleh CDA dan CDC, pihak junta berusaha untuk menyangkal adanya pengaruh mereka dalam pembuatan konstitusi 2007. Meskipun demikian, Allen Hicken mengatakan bahwa jelas sekali militer telah mempengaruhi proses penyusunan Konstitusi 2007 lewat penunjukan anggota dan tukar pikiran mengenai beberapa petunjuk dalam penyusunan konstitusi dengan CDA.¹⁵¹ Salah satu contoh yang dikemukakan oleh Hicken adalah saat pemimpin junta militer, Jenderal Sonthi, mengeluarkan pernyataan terkait garis pedoman penyusunan konstitusi baru yang ditujukan ke CDC.

Penulis melihat bahwa dari segi prosedural, penyusunan Konstitusi 2007 bisa dibilang demokratis. Segi-segi demokratis ini bisa penulis lihat dari dibentuknya lembaga tersendiri untuk menyusun konstitusi baru dimana hal ini masih merupakan hal baru di Thailand. Selain itu, referendum dalam menentukan diterima atau tidaknya Konstitusi 2007 menjadi salah satu ciri demokratisnya Konstitusi 2007. Ini sesuai dengan pernyataan Linz dan Stephan bahwa konstitusi harus mendapat persetujuan atau legitimasi dari rakyat melalui referendum. Dengan kata lain, secara prosedural, Konstitusi 2007 adalah konstitusi yang demokratis. Namun secara substansi, Konstitusi 2007 belum bisa dikatakan demokratis.

Menurut Linz dan Stepan, konstitusi yang baik adalah konstitusi yang disusun melalui proses duduk bersama antara elit rezim lama dengan elit rezim baru atau disebut dengan proses konvergensi elit. Konstitusi 2007 bisa dikatakan bukan konstitusi yang demokratis karena dalam proses penyusunannya, rezim sebelumnya tidak diikutsertakan. Setelah sukses meng kudeta rezim Thaksin, junta

¹⁵¹ Allen Hicken, *The 2007 Thai Constitution: A Return to Politics Past*, Crossroads: An Interdisciplinary Journal of Southeast Asia Studies, Vol. 19, No. 1

militer menjadi elit penguasa. Pihak junta kemudian membubarkan dewan perwakilan rakyat yang lama dan menggantinya dengan yang baru. Penggantian anggota dewan perwakilan rakyat yang baru dilakukan dengan cara penunjukan langsung oleh pihak junta militer yang didukung oleh pihak monarki. Oleh pihak junta, dewan perwakilan rakyat yang baru ini diberi tugas untuk menyusun konstitusi baru. Jika dikaitkan dengan teori yang dikatakan oleh Linz dan Stepan mengenai proses konvergensi elit, maka bisa dikatakan bahwa Konstitusi 2007 bukanlah suatu konstitusi yang demokratis. Bahkan proses untuk mengisi dewan perwakilan rakyat, terjadi kesalahan. Menurut Linz dan Stepan, dewan perwakilan yang ditunjuk untuk menyusun konstitusi baru haruslah dipilih lewat pemilu terlebih dahulu baru kemudian dewan rakyat yang terpilih menyusun konstitusi baru.

Secara umum, ada beberapa isu-isu politik yang akan dibahas dalam penyusunan konstitusi baru. Menurut IFES (*International Foundation for Election System*), isu-isu politik yang akan didiskusikan di rapat penyusunan konstitusi baru antara lain isu-isu mengenai perdana menteri, senat, parlemen, badan-badan independen, ukuran-ukuran anti-korupsi; kelalaian dan partisipasi publik, keputusan pengadilan mengenai sengketa pemilu, uang; politik dan pengaruh, hak sosial dan politik serta kebebasan individu, desentralisasi dan pemerintahan lokal.¹⁵² Selain yang telah disebut, ada beberapa isu-isu lainnya seperti pembentukan komite khusus untuk menangani krisis nasional, kekebalan untuk para pemimpin kudeta, penetapan Budha sebagai agama negara, dan akses terhadap media massa dan independensi media. Isu-isu inilah yang nantinya akan menjadi bahan pertimbangan bagi CDA dan CDC dalam menyusun pasal-pasal. Dari pasal-pasal ini, akan terlihat apakah Konstitusi 2007 adalah konstitusi yang demokratis atau hanya sebagai agenda bagi elit-elit tertentu di Thailand.

4. 2. 1 Pasal-pasal yang Berkaitan dengan Jabatan Perdana Menteri

Sudah menjadi anggapan yang umum bahwa anti-Thaksin menginginkan Thaksin Shinawatra turun dari jabatan perdana menteri dengan alasan

¹⁵² “Thailand: 2007 Pre-Election Technical Assessment Report”, diunduh dari: <http://www.ifes.org/Content/Publications/Electoral-Assessment/2007/Thailand-2007-Pre-Election-Technical-Assessment-Report.aspx>. Diakses pada tanggal 10 Januari 2011, pukul 10. 45 WIB.

penyalahgunaan kekuasaan. Untuk menghindari adanya penyalahgunaan kekuasaan di pemerintahan terpilih selanjutnya, CDA membatasi kekuasaan perdana menteri dengan mengubah beberapa pasal terkait di Konstitusi 1997 dan memasukkannya pasal yang diubah tersebut ke rancangan Konstitusi 2007. Dengan adanya pasal-pasal pembatasan kekuasaan perdana menteri di Konstitusi 2007, berarti kekuasaan tidak lagi berpusat pada perdana menteri atau pada lembaga eksekutif. Menurut Allen Hicken, Konstitusi 2007 menggambarkan suatu kemunduran dalam hal kekuasaan eksekutif atau perdana menteri. Ada beberapa pasal yang menurut Hicken menggambarkan kemunduran eksekutif di Konstitusi 2007. Pasal-pasal tersebut adalah pasal-pasal yang terkait dengan senat, pasal pemberian mosi tidak percaya, anggota parlemen dan pasal pembatasan masa jabatan.

Pasal pertama yang akan dibahas adalah pasal yang berkaitan dengan Senat. Di konstitusi 2007, kekuasaan perdana menteri terhadap senat semakin berkurang ditunjukkan lewat pernyataan di Bab 6 Pasal 3 ayat 111 yang bunyinya:

“The Senate consists of one hundred and fifty members acquired upon the basis of election in each Changwat, one elected senator for each Changwat, and upon the selection basis in an amount equal to the total number of senators deducted by the number of senators from the election basis.”

[“Senat terdiri dari 150 anggota yang dipilih melalui sistem pemilu tingkat provinsi, satu senator untuk satu provinsi atas dasar jumlah yang sama dengan total jumlah senator dikurangi oleh jumlah senator lewat pemilu”].

Melalui pasal ini, pemilihan anggota senat tidak lagi melalui pemilihan umum tapi sebagian melalui pemilu di tingkat provinsi dan sebagian lagi melalui penunjukan. Anggota senat yang mendapat jabatannya karena penunjukan, telah melalui seleksi yang dilakukan oleh Komite Seleksi Senat (ayat 113).¹⁵³ Sistem pemilihan ini dimasukan dengan tujuan untuk mengurangi kekuasaan perdana menteri di Senat. Di masa Thaksin, walaupun Konstitusi 1997 melarang anggota senat

¹⁵³ Anggota Komite Seleksi Senat terdiri dari pimpinan Mahkamah Konstitusi, pimpinan Komisi Pemilihan Umum, pimpinan Kantor Audit, pimpinan NCCC (National Counter Corruption Commission), parlemen Ombudsman, hakim dari Mahkamah Agung dan hakim dari Pengadilan Administratif.

memiliki afiliasi dengan partai politik, pemerintahannya sukses mendapatkan dukungan dari anggota senat. Dukungan ini bisa didapat oleh Thaksin karena sebagian besar dari anggota senat memiliki ikatan dengan Thaksin, bahkan ada kecurigaan bahwa anggota senat telah dikooptasi. Sehingga tidaklah mengherankan jika Thaksin bisa dengan mudahnya mendapat dukungan dari senat. Dengan peraturan baru, perdana menteri akan mengalami kesulitan dalam mendapatkan dukungan dari senat mengingat sebagian anggota senat adalah hasil penunjukan. Bagi militer, peraturan ini lebih memihak ke militer karena militer yang saat penyusunan Konstitusi 2007 menjadi penguasa, bisa memberikan pengaruhnya ke pimpinan Komite Seleksi Senat untuk memilih nama-nama yang akan dijadikan anggota senat.

Selain dari sistem pemilu senat, cara lain untuk mengurangi kekuasaan perdana menteri adalah dengan meniadakan peran perdana menteri untuk menandatangani persetujuan anggota senat. Persetujuan anggota senat hanya akan ditandatangani oleh Raja saja. Ini sedikit berbeda dengan ketentuan dibawah Konstitusi 1978 dan 1991 dimana penunjukan anggota senat yang dilakukan oleh Raja kemudian ditandatangani oleh perdana menteri. Peraturan seperti ini memungkinkan perdana menteri untuk mengajukan nama ke raja. Namun, di Konstitusi 2007, perdana menteri tidak lagi menandatangani persetujuan anggota senat sehingga perdana menteri tidak bisa lagi mengajukan nama untuk anggota senat ke Raja, yang berarti juga tidak ada lagi anggota senat yang akan mendukung di parlemen.

Satu peraturan Konstitusi 1997 yang masih diberlakukan di Konstitusi 2007 adalah peraturan yang menyatakan bahwa anggota senat tidak boleh berafiliasi dengan partai manapun. Peraturan ini ada dalam Bab 6 Pasal 3 ayat 116 yang berbunyi:

“A senator shall not be a Minister or a person holding any political position or a person holding position in the independent constitutional organisation.

The person having held office of senator with membership having terminated for not more than two years shall not be a Minister or a person holding any political position”.

[Senator tidak boleh menjabat sebagai menteri atau seseorang yang memiliki jabatan politik atau orang yang menjabat di organisasi pemerintah independen

[Seseorang yang menjabat sebagai senator dengan keanggotaan yang berakhir dalam waktu tidak lebih dari dua tahun, tidak diperbolehkan menjadi menteri atau memegang posisi politik.]

Peraturan ini berlaku bagi anggota senat yang dipilih melalui pemilu maupun lewat penunjukan. Penulis melihat bahwa pasal ini cenderung bersifat demokratis karena senat yang terpilih tidak akan bertindak menurut keinginan partai politik atau organisasi politik tempat dia bernaung. Senat akan bertindak sesuai dengan kepentingan rakyat yang telah memilih dirinya.

Pasal berikutnya yang mengurangi kekuasaan perdana menteri adalah pasal terkait pemberian mosi tidak percaya. Konstitusi 2007, memudahkan pihak oposisi untuk memberikan mosi tidak percaya dengan cara menurunkan jumlah suara untuk mengajukan mosi tidak percaya. Kemudahan ini bisa dilihat di Bab VI pasal 9 ayat 158 yang berbunyi:

“Members of the House of Representatives of not less than one-fifth of the total number of the existing members of the House have the right to submit a motion for a general debate for the purpose of passing a vote of no-confidence in the Prime Minister. Such motion must nominate the suitable next Prime Minister who is also a person under section 171 paragraph two and, when the motion has been submitted, the dissolution of the House of Representatives shall not be permitted, except that the motion is withdrawn or the resolution is passed without being supported by the vote in accordance with paragraph three”.

[“Anggota dewan perwakilan rakyat dengan jumlah tidak kurang dari 1/5 dari total jumlah anggota yang ada berhak untuk mengajukan mosi untuk debat umum dengan tujuan untuk meloloskan mosi tidak percaya terhadap Perdana Menteri. Mosi yang akan diajukan harus mencantumkan calon perdana menteri yang sesuai dengan persyaratan di pasal 171 paragraf dua dan sewaktu mosi diajukan, pembubaran Dewan Perwakilan Rakyat tidak diizinkan kecuali mosi ditarik atau resolusi disetujui tanpa didukung oleh pemungutan suara yang sesuai dengan paragraf tiga].

Di Konstitusi 1997, dibutuhkan 40 % atau 2/5 kursi anggota parlemen untuk memberikan mosi tidak percaya. Pemerintahan Thaksin, yang pada pemilu 2001 dan 2005 berhasil menjadi pemenang pemilu, jarang sekali mendapat mosi tidak

percaya karena sebagian besar kursi parlemen atau 75 % dari total kursi parlemen dikuasai oleh partai pendukung Thaksin yaitu TRT. Oposisi sulit memberikan mosi tidak percaya karena jumlah mereka yang hanya 25 % di parlemen, tidak bisa memenuhi persyaratan kecukupan kursi untuk memberikan mosi tidak percaya. Untuk itu, penyusun Konstitusi 2007 kemudian mempermudah pemberian mosi tidak percaya dengan menurunkan jumlah kursi yang dibutuhkan untuk memberikan mosi tidak percaya menjadi 20 % atau 1/5 dari jumlah total anggota yang berhak memberikan mosi tidak percaya. Proses pemberian mosi tidak percaya makin dipermudah oleh Konstitusi 2007 dengan adanya Bab VI Pasal 9 ayat 160 yang berbunyi:

“In the case where the number of members of the House of Representatives whose their political parties having members holding no ministerial positions is less than the number of members of the House required for the making of submission of a motion for a general debate under section 158 or section 159, more than one-half of the existing number of such members of the House of Representatives have the right to submit a motion for a general debate for the purpose of passing a vote of no-confidence in the Prime Minister or in an individual Minister under section 158 or section 159 if the Council of Ministers conducts the administration of State affairs for more than two years”.

[Dalam kasus dimana jumlah anggota parlemen yang anggota partai politiknya tidak menjabat di posisi kementerian lebih sedikit daripada jumlah anggota parlemen yang dibutuhkan untuk meloloskan mosi untuk debat umum yang tersebut di pasal 158 atau 159, lebih dari setengah anggota parlemen yang ada berhak mengajukan mosi untuk debat umum dengan tujuan untuk meloloskan pengambilan suara mosi tidak percaya terhadap perdana menteri atau menteri di bawah pasal 158 atau pasal 159 kalau Dewan Menteri sudah berjalan selama lebih dari dua tahun] .

Menurut penulis, peraturan ini memudahkan oposisi apabila jumlah totalnya di parlemen tidak memenuhi syarat jumlah kursi untuk memberikan mosi tidak percaya kepada pemerintah. Sehingga pemerintahan yang berkuasa bisa dengan mudah diberi mosi tidak percaya, suatu keadaan yang susah sekali diraih oleh pihak oposisi di masa pemerintahan Thaksin. Namun peraturan ini baru bisa dijalankan apabila pemerintahan yang akan diberi mosi tidak percaya telah berjalan selama dua tahun.

Kekuasaan eksekutif atau perdana menteri semakin diperkecil dengan peraturan mengenai anggota partai. Konstitusi 2007 tetap mengadopsi peraturan 90 hari milik Konstitusi 1997 yang tertera dalam Bab VI Pasal 2 ayat 101:

"being a member of any and only one political party for a consecutive period of not less than ninety days up to the date of applying for candidacy in an election, or being a member of any and only one political party for a consecutive period of not less than thirty days up to the date of applying for candidacy in an election in the case where the general election is conducted on account of the dissolution of the House of Representatives".

["Menjadi anggota dari setiap dan hanya satu partai politik untuk periode berturut-turut tidak kurang dari sembilan puluh hari sampai dengan tanggal penerapan untuk pencalonan dalam pemilu, atau menjadi anggota dari setiap dan hanya satu partai politik untuk periode berturut-turut tidak kurang dari tiga puluh hari sampai dengan tanggal penerapan untuk pencalonan dalam pemilihan umum pada kasus di mana pemilihan umum dilakukan pada karena pembubaran parlemen"].

Peraturan ini diciptakan untuk mengurangi fenomena pindah partai bagi anggota-anggota partai selama proses pemilu yang sebelum Konstitusi 1997 sangat sering terjadi. Dengan adanya peraturan ini, diharapkan faksionalisasi di dalam partai bisa dikurangi sehingga partai politik yang kuat bisa tercipta. Namun seperti yang tertera di Konstitusi 2007, ada pengecualian terhadap peraturan ini. Apabila terjadi pembubaran parlemen secara mendadak, syarat periode keanggotaan bagi calon anggota parlemen diperpendek menjadi 30 hari bagi para calon anggota dewan. Perdana menteri tidak lagi memiliki kekuasaan terhadap anggota partai atau faksi-faksi di dalam partainya apabila mereka mengalami ketidakpuasan dengan pimpinan partai. Dan kekuasaan perdana menteri di parlemen semakin berkurang melalui peraturan yang menyebutkan bahwa para politisi, baik yang bergabung karena kepartaian maupun karena koalisi, tidak lagi diwajibkan untuk menyerahkan kursi mereka di parlemen apabila mereka ingin menjadi bagian dari kabinet.

Terakhir, Konstitusi 2007 memberlakukan peraturan mengenai pembatasan masa kerja. Di Konstitusi 2007, jabatan perdana menteri dibatasi menjadi dua kali. Pembatasan ini seperti yang diungkapkan oleh salah satu anggota CDC, Tongthong Chandransu, bertujuan untuk menghindari adanya

penyalahgunaan kekuasaan karena terlalu lama berkuasa.¹⁵⁴ Perdana menteri yang baru, hanya bisa menjalani jabatannya selama delapan tahun saja namun menurut Hicken, jarang sekali ada perdana menteri yang bisa menjabat selama dua kali berturut-turut di Thailand. Sejarah memperlihatkan bahwa sebagian besar dari perdana menteri ini, mengalami kudeta yang kebanyakan dilakukan oleh militer.

4. 2. 2 Pasal-pasal yang Berkaitan dengan Sistem Pemilu

Sistem pemilu menjadi isu selanjutnya yang akan dibahas dalam pembuatan Konstitusi 2007. Sebelum Konstitusi 1997 ditetapkan, perpolitikan di Thailand cenderung terfragmentasi. Akibatnya, tidak ada satu partai yang meraih suara mayoritas dalam setiap pemilu. Untuk meraih suara mayoritas, partai pemenang pemilu harus berkoalisi dengan partai lain. Koalisi ini tidak bisa menjamin kelangsungan dari pemerintahan yang dibentuk karena selama ini partai-partai politik di Thailand sangat terfaksionalisasi. Solusi yang kemudian ditawarkan oleh pembuat Konstitusi 1997 adalah perubahan sistem pemilu dari sistem proporsional atau *multi member-constituencies* ke campuran antara sistem distrik dan *party list* atau *single member-constituencies*. Perubahan sistem pemilu dari proporsional ke *single member-constituencies*, menunjukkan hasil di Pemilu tahun 2001. Pada Pemilu 2001, partai TRT berhasil menjadi partai dengan suara mayoritas dan fragmentasi cenderung berkurang. Namun, menurut pihak anti-Thaksin, sistem pemilu inilah yang justru menjadi salah satu cara bagi Thaksin untuk menyalahgunakan kekuasaan.

Kemudian, para penyusun Konstitusi 2007 mengubah sistem pemilu dari *single member-constituencies* ke sistem pemilu sebelum Konstitusi 1997 ditetapkan yaitu *multi member-constituencies* dengan jumlah maksimal kursi tiap pemilih adalah tiga. Sistem pembagian kursi dilakukan melalui *block-vote system* dimana pemilih akan memberikan suaranya sebanyak kursi yang ada di konstituen dan diizinkan memilih calon yang mereka pilih. Bagi calon anggota parlemen yang meraih suara terbanyak akan mendapatkan kursi di parlemen. Dengan sistem

¹⁵⁴ “Thailand Unveils Post-coup Draft Constitution”, diunduh dari: http://www.channelnewsasia.com/stories/afp_asiapacific/view/271184/1/.html. Diakses pada tanggal 17 April 2011, pukul 19.42

pemilu seperti ini, partai-partai yang meraih suara akan semakin banyak bila dibandingkan dengan *single member-constituencies*.

Berubahnya sistem pemilu di Konstitusi 2007 bukanlah satu-satunya cara yang menyebabkan fragmentasi. Cara lain yang digunakan oleh penyusun Konstitusi 2007 adalah dengan mengubah beberapa peraturan terkait *party list*. Pertama perubahan pada jumlah anggota parlemen yang dipilih melalui *party list*. Di Konstitusi 1997, jumlah anggota parlemen yang dipilih melalui *party list* berjumlah 100 orang. Awalnya, *party list* akan dihapuskan oleh CDC supaya tidak ada lagi partai yang bisa menang secara nasional. Namun, keputusan akhir, CDC hanya mengurangi jumlah kandidat yang bisa dipilih menjadi 80 orang. Perubahan selanjutnya adalah pada cara pembagian kursi lewat sistem *party list*. Konstitusi 2007 membagi wilayah Thailand menjadi delapan region dengan jumlah sepuluh kursi tiap region. Ini berbeda dengan Konstitusi 1997 dimana tidak ada pembagian region. Adanya pembagian region untuk *party list* di Konstitusi 2007 sepertinya merupakan suatu usaha untuk menciptakan regionalisasi di Thailand. Di Konstitusi 2007, perubahan mengenai *party list* bisa dilihat pada Bab VI Pasal 2 Ayat 96.

Keinginan untuk membentuk suatu partai yang sifatnya nasional juga terhambat dengan adanya larangan bagi partai untuk melakukan koalisi. Larangan ini tertera dalam Bab VI, Pasal 2, Ayat 104 yang berbunyi:

“The term of the House of Representatives is four years from the election day.

During the term of the House of Representatives, the amalgamation of the political parties having their members as members of the House of Representatives shall not be made.”

[Masa jabatan DPR (Dewan Perwakilan Rakyat) adalah empat tahun sejak pemilu.

Selama menjabat sebagai anggota dewan, pembentukan koalisi parpol yang anggotanya berada di dalam DPR tidak diperbolehkan].

Thaksin sukses menjadi partai mayoritas di Thailand dibawah Konstitusi 1997, dengan cara mengajak partai lain untuk berkoalisi di parlemen. Sadar bahwa melalui koalisi parlemenlah Thaksin kekuasaan Thaksin semakin besar, oleh penyusun Konstitusi 2007, dibuatlah peraturan ini. Partai-partai yang memiliki

anggota di parlemen, dilarang berkoalisi selama di parlemen. Namun Konstitusi 2007 tidak melarang partai-partai berkoalisi selama proses pemilu berjalan.

4. 2. 3 Pasal-pasal yang Berkaitan dengan Demokratisasi

Sejak tahun 1932 hingga 1997, Thailand boleh dibilang menjalankan demokrasi yang sifatnya prosedural. Demokrasi yang bersifat prosedural ini telah mengakibatkan perpolitikan Thailand menjadi semakin buruk. Untuk mengatasinya, Thailand kemudian membuat suatu konstitusi yang bisa menjamin adanya demokrasi di Thailand. Konstitusi demokratis inilah yang dikemudian hari dikenal dengan Konstitusi 1997.

Konstitusi 1997 dikenal sebagai "Konstitusi Rakyat" salah satunya karena sifatnya yang pro-rakyat. Banyak pasal-pasal yang bisa memajukan demokrasi di Thailand seperti transparansi dan *check and balances* melalui dibentuknya lembaga-lembaga pengawas, penyampaian persoalan oleh rakyat melalui petisi ke parlemen dan pemilu di tingkat lokal dan nasional. Pasal-pasal yang mendukung demokratisasi di Konstitusi 1997 masih diadopsi oleh penyusun Konstitusi 2007. Beberapa pasal bahkan mengalami penguatan seperti pasal yang menyangkut penyampaian petisi oleh rakyat terkait masalah tertentu. Meskipun di satu sisi, Konstitusi 2007 mendukung demokratisasi namun di sisi lain konstitusi ini juga mengurangi usaha-usaha demokratisasi.

Konstitusi 2007 menjadi tidak demokratis dalam hal konsolidasi demokrasi. Pertentangan antara pemerintah sipil terpilih dengan militer menjadi suatu kondisi yang telah ada sejak tahun 1932. Militer yang dalam negara demokrasi seharusnya berperan sebagai tentara profesional, justru ikut dalam perpolitikan Thailand. Ini menyebabkan kekuasaan sipil yang terpilih berada di bawah kekuasaan militer dan membuat kedua institusi ini tidak bisa berjalan dengan benar dan maksimal. Konstitusi 2007 yang menurut pihak penyusunnya akan menjadi konstitusi yang lebih demokratis dibandingkan konstitusi sebelumnya, justru memuat pasal yang cenderung melemahkan pemerintahan sipil terpilih. Pasal 77 menjadi salah satu pasal yang dianggap melemahkan pemerintahan sipil:

“The State shall protect and uphold the institution of kingship and the independence and integrity of its jurisdictions and shall arrange for the maintenance of necessary and adequate armed forces and ordnances as well as up-to-date technology for the protection and upholding of its independence, sovereignty, security of State, institution of kingship, national interests and the democratic regime of government with the King as Head of State, and for national development”.

[Negara harus melindungi dan menjunjung tinggi institusi kerajaan dan keindependenan dan keutuhan hak-haknya dan harus mengatur pemeliharaan angkatan bersenjata dan perlengkapan yang diperlukan dan memadai serta teknologi terkini untuk perlindungan dan penegakan kemerdekaan, kedaulatan, keamanan negara, institusi kerajaan, kepentingan nasional dan rezim pemerintahan demokratis dengan Raja sebagai Kepala Negara dan untuk pembangunan nasional].

Pada Konstitusi 1997, negara hanya diwajibkan untuk memelihara militer saja tapi sejak Konstitusi 2007 diberlakukan, maka tugas negara atau pemerintahan sipil terpilih menjadi lebih luas dan spesifik. Ini berarti, militer akan mendapatkan kekuasaan dan porsi anggaran belanja lebih besar bila dibandingkan dengan saat militer berada dalam kekuasaan Thaksin. Di masa Thaksin, urusan internal militer seperti kenaikan pangkat dan pengangkatan mendapat campur tangan dari Thaksin seperti misalnya pengangkatan saudara Thaksin, Jendral Chaisit Shinawatra sebagai Panglima Angkatan Bersenjata dan Jendral Uthai Shinawatra sebagai Sekretaris Pertahanan. Pasal ini memperlihatkan bahwa pihak junta militer berusaha membuat Konstitusi 2007 sebagai konstitusi yang memberi militer, peran yang lebih besar dibandingkan pemerintah sipil.¹⁵⁵

Kekuasaan militer semakin besar dengan dikabulkannya pasal kontroversial mengenai pengampunan bagi pelaku anggota kudeta terhadap Thaksin. Pasal yang memuat mengenai pengampunan bagi junta militer adalah pasal 309 yang berbunyi:

“Any act that its legality and constitutionality has been recognised by the Constitution of the Kingdom of Thailand (Interim), B.E. 2549, including all acts related therewith committed whether before or after the date of promulgation of this Constitution shall be deemed constitutionally under this Constitution.”

¹⁵⁵ “Krisis Politik di Thailand: Pertarungan Kelompok Pro dan Antidemokrasi”, diunduh dari: http://www.unisosdem.org/ekopol_detail.php?aid=10646&coid=3&caid=31. Diakses pada tanggal 23 Maret 2011, pukul 19.15 WIB

[Setiap tindakan yang kelegalan dan konstitusionalitasnya telah diakui oleh Konstitusi Kerajaan Thailand (Interim), BE 2549, termasuk semua tindakan yang terkait dengannya, baik yang dilakukan sebelum atau sesudah tanggal berlakunya Konstitusi ini, akan dianggap konstitusional menurut Konstitusi ini].

Melalui pasal ini, pelaku kudeta terhadap Thaksin mendapatkan pengampunan dan juga pengesahan secara legal terhadap aksi dan pemerintahan interim junta militer di tahun 2006. Namun, selain pengampunan terhadap pelaku kudeta, pasal ini seolah-olah membenarkan aksi kudeta sebagai cara untuk menurunkan pemerintahan terpilih yang bermasalah di kalangan rakyat Thailand. Secara khusus, pasal ini menurut Pravit, melemahkan *rule of law* dan membangun budaya kebal hukum.

Pasal-pasal yang berkaitan dengan militer menunjukkan bahwa militer anti-Thaksin sebagai elit telah berhasil mendapatkan kedudukan sebagai elit penguasa. Seperti yang dikatakan oleh Pareto, elit militer anti-Thaksin mendapatkan kekuasaannya dengan cara menggabungkan kekuasaan dan kelicikan. Dalam hal penyusunan konstitusi, kekuasaan ini diraih setelah mereka berhasil mengkudeta Thaksin. Kekuasaan ini kemudian semakin diperbesar dengan adanya pasal-pasal yang melindungi militer seperti yang telah disebut sebelumnya. Elit militer anti-Thaksin kini mendapatkan kekuasaan yang lebih besar dibandingkan saat Thaksin masih berkuasa.

BAB 5

KESIMPULAN

Hubungan Raja dengan militer di Thailand telah terbentuk sejak lama, jauh sebelum Thailand berubah menjadi negara monarki konstitusional. Sebelum berubah menjadi monarki konstitusional, hubungan Raja dan militer tidak mengalami masalah. Namun, memasuki abad ke 20, hubungan ini semakin rapuh dikarenakan adanya modernisasi di negara Thailand. Pada tahun 1932, militer bersama sipil meng kudeta kerajaan dan mengubah negara Thailand dari monarki absolut ke monarki konstitusional. Hubungan Raja dan militer tidak lagi sama seperti sebelum 1932. Militer kemudian bersama sipil, menjadi penguasa dari perpolitikan Thailand. Namun, hubungan Raja dan militer kembali terbentuk sejak pemerintahan perdana menteri Sarit Thanarat di tahun 1958. Oleh Sarit yang merupakan orang militer-Raja diperkenalkan kepada masyarakat Thailand. Raja menjadi terkenal, sedangkan pemerintahan Sarit mendapatkan dukungan dari Raja. Dan sejak masa Sarit, peran Raja dalam perpolitikan Thailand semakin berkembang. Raja kini berperan aktif dalam politik Thailand melalui perwakilannya yaitu militer dan Dewan Penasehat Kerajaan.

Kuatnya hubungan antara Raja dan militer mendapat gangguan dengan berkuasanya Thaksin sebagai perdana menteri. Thaksin yang menjabat sebagai perdana menteri di tahun 2001, banyak mendapatkan dukungan dari rakyat Thailand karena program-programnya yang populis. Namun, setelah memerintah, pemerintahan Thaksin juga melakukan penyalahgunaan kekuasaan. Oleh kelompok anti-Thaksin, tindakan penyalahgunaan yang dilakukan oleh Thaksin dianggap telah memecah belah rakyat Thailand. Bahkan ada isu bahwa Thaksin berusaha untuk mengganti Thailand ke bentuk republik. Untuk itu, militer kemudian meng kudeta Thaksin di tahun 2006. Kudeta yang dipimpin oleh Jenderal Sonthi Bonyaratglin ini mendapat dukungan dari Raja. Segera setelah junta militer meng kudeta Thaksin, pihak junta membubarkan parlemen, dan membatalkan konstitusi. Pihak junta kemudian menjanjikan rakyat Thailand akan mengembalikan pemerintahan Thailand menjadi demokratis. Salah satunya adalah

menyusun konstitusi baru untuk menggantikan konstitusi lama yaitu Konstitusi 1997.

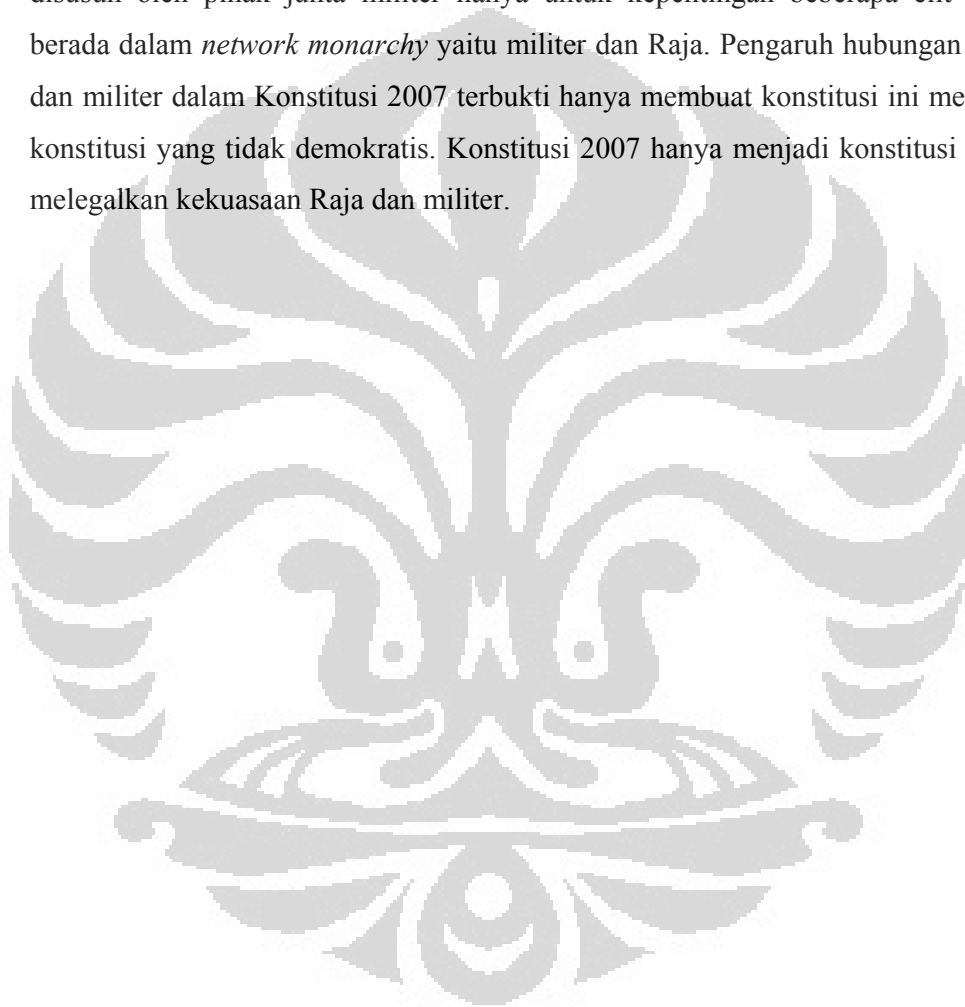
Junta militer menyatakan bahwa penyalahgunaan kekuasaan yang terjadi selama pemerintahan Thaksin disebabkan adanya kelemahan dalam Konstitusi 1997. Untuk memastikan bahwa tidak akan ada lagi penyalahgunaan kekuasaan oleh pihak eksekutif, junta militer kemudian menyusun konstitusi baru. Junta militer meyakinkan kepada masyarakat bahwa konstitusi yang mereka susun akan menjadi konstitusi yang lebih demokratis dari konstitusi sebelumnya. Melalui referendum di bulan Agustus, konstitusi yang baru disahkan yaitu Konstitusi 2007.

Junta militer menjanjikan kepada seluruh masyarakat Thailand bahwa Konstitusi 2007 akan menjadi konstitusi yang demokratis. Namun, fakta yang ada menunjukkan bahwa Konstitusi 2007 merupakan konstitusi yang tidak demokratis. Ini terlihat dari pasal-pasal yang ada dalam Konstitusi 2007. Pasal-pasal yang dianggap tidak demokratis adalah pasal-pasal yang berkaitan dengan kekuasaan eksekutif, pemilu dan demokratisasi. Dari pasal-pasal ini terlihat bahwa, junta militer berusaha untuk menyusun suatu konstitusi yang berupaya untuk melarang Thaksin kembali berkuasa di Thailand dan memberikan porsi kekuasaan yang besar bagi militer.

Pihak junta militer menyusun pasal-pasal yang bisa mengurangi kekuasaan Thaksin. Pasal yang dimaksud adalah pasal mengenai Dewan Penasehat Kerajaan. Di Konstitusi 2007, Dewan Penasehat Kerajaan diberikan kekuasaan untuk memilih pengganti Raja apabila sampai meninggalnya Raja, Raja belum menunjuk penggantinya. Pasal ini dimasukkan karena pihak junta militer menganggap kekuasaan Thaksin bisa mengganggu proses suksesi kerajaan yang hingga tahun 2012 masih belum jelas. Suksesi merupakan hal yang penting bagi militer karena selama ini militer mendapat perlindungan dari Raja. Namun, hingga tahun 2012, Raja Bhumibol belum memberikan sinyal mengenai penggantinya walaupun menurut hukum, anak lelakinya yaitu Pangeran Vajiralongkorn merupakan pewaris sah apabila Raja Bhumibol meninggal dunia. Pangeran Vajiralongkorn sendiri tidak diunggulkan sebagai penerus Raja selanjutnya karena kurangnya kharisma dan perhatian terhadap Thailand. Menurut militer, apabila

Pangeran Vajiralongkorn naik menjadi Raja, militer tidak akan lagi mendapat perlindungan. Sementara itu, bagi Raja atau Kerajaan, naiknya Pangeran Vajiralongkorn bisa diartikan sebagai hilangnya pengaruh Kerajaan di masyarakat Thailand.

Dari fakta yang ada, bisa dilihat bahwa tujuan dari penyusunan Konstitusi 2007 bukanlah untuk mengembalikan demokrasi di Thailand. Konstitusi 2007 disusun oleh pihak junta militer hanya untuk kepentingan beberapa elit yang berada dalam *network monarchy* yaitu militer dan Raja. Pengaruh hubungan Raja dan militer dalam Konstitusi 2007 terbukti hanya membuat konstitusi ini menjadi konstitusi yang tidak demokratis. Konstitusi 2007 hanya menjadi konstitusi yang melegalkan kekuasaan Raja dan militer.



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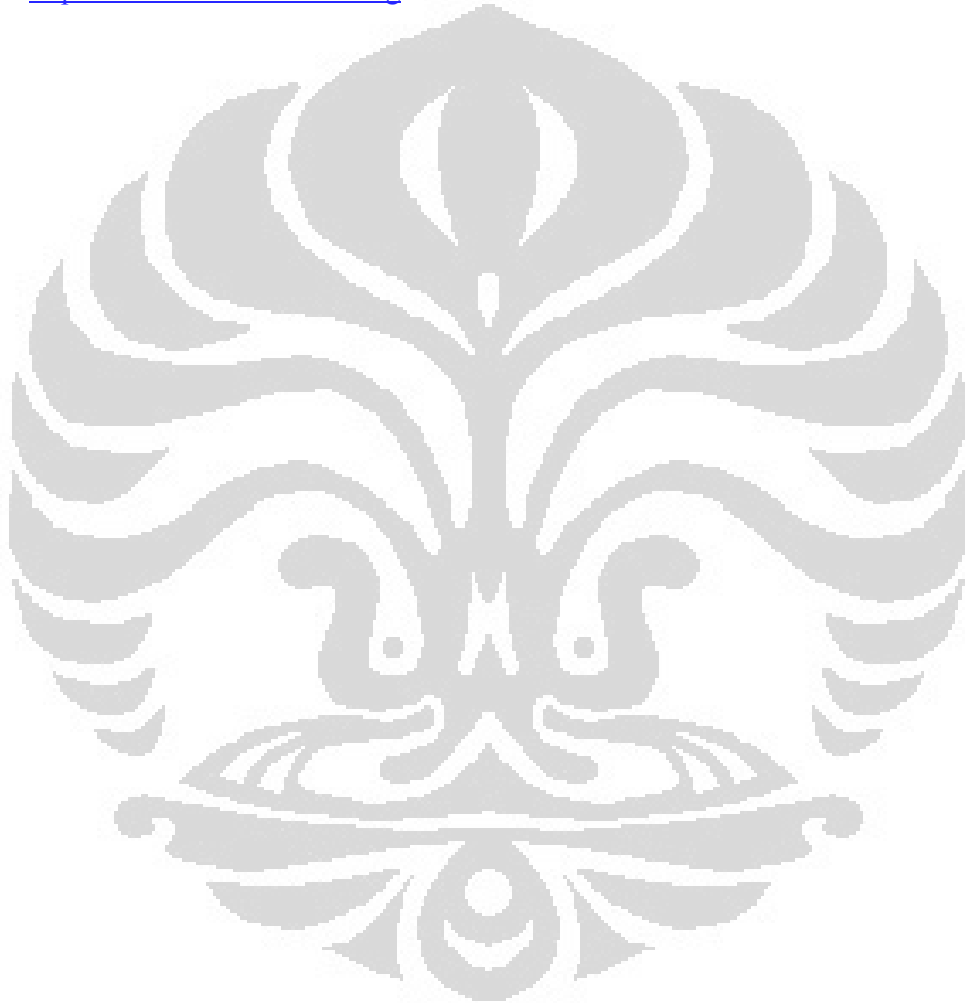
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LAMPIRAN

Unofficial translation

CONSTITUTION OF THE KINGDOM OF THAILAND, B.E. 2550 (2007)

FOREIGN LAW BUREAU
OFFICE OF THE COUNCIL OF STATE

CONSTITUTION OF THE KINGDOM OF THAILAND

SOMDET PHRA PARAMINTHARAMAHA
BHUMIBOL ADULYADEJ
SAYAMMINTHARATHIRAT BOROMMANATTHABOPHIT

Enacted on the 24th Day of August B.E. 2550;
Being the 62 Year of the Present Reign.

May there be virtue. Today is the eleventh day of the waxing moon in the ninth month of the year of the Pig under the lunar calendar, being Friday, the twenty-fourth day of August under the solar calendar, in the 2550th year of the Buddhist Era.

Phrabat Somdet Phra Paramintharamaha Bhumibol Adulyadej Mahitalathibet Ramathibodi Chakkri Narubodin Sayammintharathirat Borommanatthabophit is graciously pleased to proclaim that the President of the National Legislative Assembly addresses royalty that the democratic regime of government with the King as Head of State has been evolved in Thailand for more than seventy five years and, through this period of time, the Constitutions had been promulgated, repealed and amended for the compliance with the situation of the nation and the changing circumstances and that the Constituent Assembly and the Constitution Drafting Commission have been established by the provisions of the Constitution of the Kingdom of Thailand (Interim), B.E. 2549 so as to prepare the new Constitution for the compatibility of the administration of State affairs in the forthcoming period with due regard to opinions of the public at all steps through the extensive public consultation and all invaluable opinions have been introduced incessantly into drafting process and to the consideration of motions thereon.

This prepared draft Constitution contains the significant principles in maintaining mutual interest of the Thai people in securing of independence and security of the

nation, upholding all religions, revering the King as the Head of State and mental representation of the nation, upholding the democratic regime of government with the King as Head of State for the administration of State affairs, rendering the crystallised promotion and protection of rights and liberties of the people, strengthening role and participation of the public in the administration of State affairs and in the examination of the exercise of State power, determining the mechanism for efficiently balancing of powers of political institutions both the legislative and the executive in accordance with the parliamentary regime and strengthening the Court and other independent organisations to perform their duties honestly and fairly.

At the completion of drafting process, the Constituent Assembly had published and disseminated the draft Constitution to the public extensively for acknowledgement and then organised the referendum for public approval thereto. The referendum result has shown that the majority of the people having the right to vote resolved approval to the draft Constitution. The President of the National Legislative Assembly then presents the draft Constitution to the King for His Royal signature to promulgate it as the Constitution of the Kingdom of Thailand and the King is graciously pleased in so doing for the compliance with public opinion.

Be it, therefore, commanded by the King that the Constitution of the Kingdom of Thailand be promulgated to replace, as from the date of its promulgation, the Constitution of the Kingdom of Thailand (Interim), B.E. 2549 promulgated on 1st Day of October B.E. 2549.

May the Thai people unite in observing, protecting and upholding the Constitution of the Kingdom of Thailand in order to maintain the democratic regime of government and the sovereign power derived from the Thai people, and to bring about happiness, prosperity and dignity to His Majesty's subjects throughout the Kingdom according to the will of His Majesty in every respect.

CHAPTER I

General Provisions

Section 1. Thailand is one and indivisible Kingdom.

Section 2. Thailand adopts a democratic regime of government with the King as Head of State.

Section 3. The sovereign power belongs to the Thai people. The King as Head of State shall exercise such power through the National Assembly, the Council of Ministers and the Courts in accordance with the provisions of this Constitution.

The performance of duties of the National Assembly, the Council of Ministers, the Courts, the Constitutional organisations and State agencies shall be in accordance with the rule of laws.

Section 4. The human dignity, right, liberty and equality of the people shall be protected.

Section 5. The Thai people, irrespective of their origins, sexes or religions, shall enjoy equal protection under this Constitution.

Section 6. The Constitution is the supreme law of State. The provisions of any law, rule or regulation, which are contrary to or inconsistent with this Constitution, shall be unenforceable.

Section 7. Whenever no provision under this Constitution is applicable to any case, it shall be decided in accordance with the constitutional convention in the democratic regime of government with the King as Head of State.

CHAPTER II

The King

Section 8. The King shall be enthroned in a position of revered worship and shall not be violated.

No person shall expose the King to any sort of accusation or action.

Section 9. The King is a Buddhist and Upholder of religions.

Section 10. The King holds the position of Head of the Thai Armed Forces.

Section 11. The King has the prerogative to create titles and confer decorations.

Section 12. The King selects and appoints qualified persons to be the President of the Privy Council and not more than eighteen Privy Councilors to constitute the Privy Council.

The Privy Council has the duty to render such advice to the King on all matters pertaining to His functions as He may consult, and has other duties as prescribed in this Constitution.

Section 13. The selection, appointment or removal of Privy Councilors shall be at the King's pleasure.

The President of the National Assembly shall countersign the Royal Command appointing or removing the President of the Privy Council.

The President of the Privy Council shall countersign the Royal Command appointing or removing other Privy Councilors.

Section 14. A Privy Councilor shall not be a member of the House of Representatives, senator, Election Commissioner, Ombudsman, a member of the National Human Rights Commission,

Constitutional Court judge, Administrative Court judge, a member of the National Counter Corruption Commission, a member of the State Audit Commission, government official holding permanent position or receiving a salary, official of State enterprise, other State official or member or official of political party, and must not manifest loyalty to any political party.

Section 15. Before taking office, a Privy Councilor shall make a solemn declaration before the King in the following words:

“I, (name of the declarer), do solemnly declare that I will be loyal to His Majesty the King and will faithfully perform my duties in the interests of the State and the people. I will also uphold and observe the Constitution of the Kingdom of Thailand in every respect.”

Section 16. A Privy Councilor vacates office upon death, resignation or removal by Royal Command.

Section 17. The appointment and removal of officials of the Royal Household and of the Royal Chief Aide-de-Camp shall be at the King's pleasure.

Section 18. Whenever the King is absent from the Kingdom or unable to perform His functions for any reason whatsoever, the King may appoint a person as Regent. In this regard, the President of the National Assembly shall countersign the Royal Command therefor.

Section 19. In the case where the King does not appoint the Regent under section 18, or the King is unable to appoint the Regent owing to He is not being sui juris or any other reason whatsoever, the Privy Council shall submit the name of a person suitable to hold the office of the Regent to the National Assembly for approval. Upon approval of the National Assembly, the President of the National Assembly shall make an announcement, in the name of the King, to appoint such person as Regent.

During the expiration of the term of the House of Representatives or the dissolution thereof, the Senate shall act as the National Assembly in giving an approval under paragraph one.

Section 20. While there is no Regent under section 18 or section 19, the President of the Privy Council shall be Regent pro tempore.

In the case where the Regent appointed under section 18 or section 19 is unable to perform his duties, the President of the Privy Council shall act as Regent pro tempore.

While being the Regent under paragraph one or acting as the Regent under paragraph two, the President of the Privy Council shall not perform his duties as President of the Privy Council. In such case, the Privy Council shall select a Privy Councilor to act as President of the Privy Council pro tempore.

Section 21. Before taking office, the Regent appointed under section 18 or section 19 shall make a solemn declaration before the National Assembly in the following words:

“I, (name of the declarer), do solemnly declare that I will be loyal to His Majesty the King (name of the King) and will faithfully perform my duties in the interests of the State and the people. I will also uphold and observe the Constitution of the Kingdom of Thailand in every respect.”

During the expiration of the term of the House of Representatives or the dissolution thereof, the Senate shall act as the National Assembly under this section.

Section 22. Subject to section 23, the succession to the Throne shall be in accordance with the Palace Law on Succession, B.E. 2467.

The Amendment of the Palace Law on Succession, B.E. 2467 shall be the prerogative of the King. At the initiative of the King, the Privy Council shall draft the Palace Law Amendment and shall present it to the King for His consideration. When the King has already approved the draft Palace Law amendment and put His signature thereto, the President of the Privy Council shall notify the President of the National Assembly for informing the National Assembly. The President of the National Assembly shall countersign the Royal Command. The Palace Law Amendment shall come into force upon its publication in the Government Gazette.

During the expiration of the term of the House of Representatives or the dissolution thereof, the Senate shall act as the National Assembly in acknowledging the matter under paragraph two.

Section 23. In the case where the Throne becomes vacant and the King has already appointed His Heir to the Throne under the Palace Law on Succession, B.E. 2467, the Council of Ministers shall notify the President of the National Assembly. The President of the National Assembly shall then convoke the National Assembly for the acknowledgement thereof and shall invite such Heir to ascend the Throne and proclaim such Heir King.

In the case where the Throne becomes vacant and the King has not appointed His Heir under paragraph one, the Privy Council shall submit the name of the Successor to the Throne under section 22 to the Council of Ministers for further submission to the National Assembly for approval. For this purpose, the name of a Princess may be submitted. Upon the approval of the National Assembly, the President of the National Assembly shall invite such Successor to ascend the Throne and proclaim such Successor King.

During the expiration of the term of the House of Representatives or the dissolution thereof, the Senate shall act as the National Assembly in acknowledging the matter under paragraph one or in giving an approval under paragraph two.

Section 24. Pending the proclamation of the name of the Heir or the Successor to the Throne under section 23, the President of the Privy Council shall be Regent pro tempore. In the case where the Throne becomes vacant while the Regent has been appointed under section 18 or section 19 or while the President of the Privy Council is acting as the Regent under section 20 paragraph one, such Regent, as the case may be, shall continue to be the Regent until the proclamation of the name of the Heir or the Successor to ascend the Throne as King.

In the case where the Regent who has been appointed and continues to be the Regent under paragraph one is unable to perform his duties, the President of the Privy Council shall act as Regent pro tempore.

In the case where the President of the Privy Council is the Regent under paragraph one or acts as Regent pro tempore under paragraph two, the provisions of section 20 paragraph three shall apply.

Section 25. In the case where the Privy Council has to perform its duties under section 19 or section 23 paragraph two, or the President of the Privy Council has to perform his duties under section 20 paragraph one or paragraph two or section 24 paragraph two, and there is, during that period, no President of the Privy Council or the President of the Privy Council is unable to perform his duties, the remaining Privy Councilors shall elect one among themselves to act as President of the Privy Council or to perform the duties under section 20 paragraph one or paragraph two or section 24 paragraph three, as the case may be.

CHAPTER III

Rights and Liberties of Thai People

Part 1

General Provisions

Section 26. In exercising powers of all State authorities, regard shall be had to human dignity, rights and liberties in accordance with the provisions of this Constitution.

Section 27. Rights and liberties recognised by this Constitution explicitly, by implication or by decisions of the Constitutional Court shall be protected and directly binding on the National Assembly, the Council of Ministers, the Courts, the Constitutional organisations and all State organs in enacting, applying and interpreting laws.

Section 28. A person can invoke human dignity or exercise his rights and liberties in so far as it is not in violation of rights and liberties of other persons or contrary to this Constitution or good morals

A person whose rights and liberties recognised by this Constitution are violated can invoke the provisions of this Constitution to bring a lawsuit or to defend himself in the Courts.

A person may bring a lawsuit against the State directly so as to act in compliance with the provisions in this Chapter. If there is a law enforcing the exercise of any right and liberty as recognised by this Constitution, the exercising of that right and liberty shall be in accordance with such law.

A person shall have the right to be enhanced, supported and assisted by the State in exercising of right under this Chapter.

Section 29. The restriction of such rights and liberties as recognised by the Constitution shall not be imposed on a person except by virtue of the law specifically enacted for the purpose determined by this Constitution and only to the extent of necessity and provided that it shall not affect the essential substances of such rights and liberties.

The law under paragraph one shall be of general application and shall not be intended to apply to any particular case or person; provided that the provision of the Constitution authorising its enactment shall also be mentioned therein.

The provisions of paragraph one and paragraph two shall apply mutatis mutandis to rules or regulations issued by virtue of the law.

Part 2 Equality

Section 30. All persons are equal before the law and shall enjoy equal protection under the law.

Men and women shall enjoy equal rights.

Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view, shall not be permitted.

Measures determined by the State in order to eliminate obstacle to or to promote persons' ability to exercise their rights and liberties as other persons shall not be deemed as unjust discrimination under paragraph three.

Section 31. Members of the armed forces or the police force, Government officials, other officials of the State and officers or employees of State agencies shall enjoy the same rights and liberties under the Constitution as those enjoyed by other persons, unless such enjoyment is restricted by law or rule issued by virtue of the law specifically enacted in regard to politics, efficiency, disciplines or ethics.

Part 3 Rights and Liberties of an Individual

Section 32. A person shall enjoy the right and liberty in his life and person.

A torture, brutal act or punishment by a cruel or inhumane means shall not be made; provided that punishment under judgments of the Courts or by virtue of the law shall not be deemed the punishment by a cruel or inhumane means under this paragraph.

Arrest and detention of person shall not be made except by order or warrant issued by the Courts or there is a ground as provided by the law.

Search of person or act affecting the right and liberty under paragraph one shall not be made except by virtue of the law.

In the case where there is an act affecting right and liberty under paragraph one, the injured person, public prosecutor or any person acting for the benefit of the injured person shall have the right to bring lawsuit to the Courts so as to stop or nullify such act and to impose appropriate measure to alleviate damage occurred therefrom.

Section 33. A person shall enjoy the liberty of dwelling.

A person is protected for his peaceful habitation in and for possession of his dwelling.

The entry into a dwelling without consent of its possessor or the search of a dwelling or private place shall not be made except by order or warrant issued by the Courts or there is a ground as provided virtue of the law.

Section 34. A person shall enjoy the liberty of travelling and the liberty of making the choice of his residence within the Kingdom.

The restriction on such liberties under paragraph one shall not be imposed except by virtue of the law specifically enacted for maintaining the security of the State, public order, public welfare, town and country planning or welfare of youth.

No person of Thai nationality shall be deported or prohibited from entering the Kingdom.

Section 35. A person's family rights, dignity, reputation and the right of privacy shall be protected.

The assertion or circulation of a statement or picture in any manner whatsoever to the public, which violates or affects a person's family rights, dignity, reputation or the right of privacy, shall not be made except for the case which is beneficial to the public.

Personal data of a person shall be protected from the seeking of unlawful benefit as provided by the law.

Section 36. A person shall enjoy the liberty of communication by lawful means.

The censorship, detention or disclosure of communication between persons including any other act of disclosing a statement in the communication between persons shall not be made except by virtue of the law specifically enacted for security of the State or maintaining public order or good morals.

Section 37. A person shall enjoy full liberty to profess a religion, a religious denomination or creed, and observe religious precepts or commandments or exercise

a form of worship in accordance with his belief; provided that it is not contrary to his civic duties, public order or good morals.

In exercising the liberty referred to in paragraph one, a person shall be protected from any act of the State, which is derogatory to his rights or detrimental to his due benefits on the grounds of professing a religion, a religious denomination or creed or observing religious precepts or commandments or exercising a form of worship in accordance with his different belief from that of others.

Section 38. Forced labour shall not be imposed except by virtue of the law specifically enacted for the purpose of averting imminent public calamity or by virtue of the law which provides for its imposition during the time when the country is in a state of war or armed conflict, or when a state of emergency or martial law is declared.

Part 4 **Rights in Judicial Process**

Section 39. No person shall be inflicted with a criminal punishment unless he has committed an act which the law in force at the time of commission provides to be an offence and imposes a punishment therefor, and the punishment to be inflicted on such person shall not be heavier than that provided by the law in force at the time of the commission of the offence.

The suspect or the accused in a criminal case shall be presumed innocent.

Before the passing of a final judgement convicting a person of having committed an offence, such person shall not be treated as a convict.

Section 40. A person shall have the rights in judicial process as follows:

- (1) right to access to judicial process easily, comfortably, quickly and indiscriminately;
- (2) fundamental rights in judicial process composing of, at least, right to public trial; right to be informed of and to examine into facts and related documents adequately; right to present facts, defences and evidences in the case; right to object the partial judges; right to be considered by the full bench of judges; and right to be informed of justifications given in the judgement or order;
- (3) right to correct, prompt and fair trial;

(4) an injured person, alleged offender, plaintiff, defendant or the accused, interested parties, interested person or witness to the case shall have the right to appropriate treatment in judicial process including the right to be investigated correctly, promptly and fairly and not to testify against himself;

(5) an injured person, alleged offender, the accused and witness to a criminal case shall have the right to necessary and appropriate protection and assistance from State. The gratuity, compensation and expenses to be paid shall be provided by the law;

(6) every child, youth, woman or aging or disabled person shall have the right to appropriate protection in judicial process and shall have the right to appropriate treatment in the case related to sexual offences;

(7) an alleged offender and the accused in criminal case shall have the right to correct, prompt and fair investigation or trial with an adequate opportunity in defending his case, the right to examine or to be informed of evidence, right to defend himself through counsel and the right to bail;

(8) a person shall, in civil action, have the right to appropriate legal assistance from State.

Part 5

Property Right

Section 41. The property right of a person is protected. The extent and the restriction of such right shall be in accordance with the provisions of the law.

The succession is protected. The right of succession of a person shall be in accordance with the provisions of the law.

Section 42. The expropriation of immovable property shall not be made except by virtue of the law specifically enacted for the purpose of public utilities, necessary national defence, exploitation of national resources, town and country planning, promotion and preservation of the quality of the environment, agricultural or industrial development, land reform, conservation of ancient monument and historic sites, or other public interests, and fair compensation shall be paid in due course to the owner thereof as well as to all persons having the rights thereto, who suffer loss by such expropriation, as provided by law.

The amount of compensation under paragraph one shall be fairly assessed with due regard to the normal market price, mode of acquisition, condition and location of the immovable property, loss of the person whose property or right thereto is

expropriated, and benefits that the State and the person whose property or right thereto is expropriated may receive from the use of the expropriated property.

The expropriation of immovable property law shall specify the purpose of the expropriation and shall clearly determine the period of time to fulfil that purpose. If the immovable property is not used to fulfil such purpose within such period of time, it shall be returned to the original owner or his heir.

The return of immovable property to the original owner or his heir under paragraph three and the claim of compensation paid shall be in accordance with the provisions of the law.

Part 6

Rights and Liberties in Occupation

Section 43. A person shall enjoy the liberties to engage in an enterprise or an occupation and to undertake a fair and free competition.

The restriction on such liberties under paragraph one shall not be imposed except by virtue of the law specifically enacted for maintaining the security and safety of State or economy of the country, protecting the public in regard to public utilities, maintaining public order and good morals, regulating the engagement in an occupation, consumer protection, town and country planning, preserving natural resources or the environment, public welfare, preventing monopoly, or eliminating unfair competition.

Section 44. A person shall enjoy the right to work safety and welfare and to living security irrespective of whether he is employed or unemployed in accordance with the provisions of the law.

Part 7

Freedom of Expression of Individual and the Press

Section 45. A person shall enjoy the liberty to express his opinion, make speech, write, print, publicise, and make expression by other means.

The restriction on liberty under paragraph one shall not be imposed except by virtue of the law specifically enacted for the purpose of maintaining the security of State, protecting the rights, liberties, dignity, reputation, family or privacy rights of other

person, maintaining public order or good morals or preventing or halting the deterioration of the mind or health of the public.

The closure of a newspaper or other mass media business in deprivation of the liberty under this section shall not be made.

The prevention of a newspaper or other mass media from printing news or expressing their opinions, wholly or partly, or interference in any manner whatsoever in deprivation of the liberty under this section shall not be made except by the provisions of the law enacted in accordance with the provisions of paragraph two.

The censorship by a competent official of news or articles before their publication in a newspaper or other mass media shall not be made except during the time when the country is in a state of war; provided that it must be made by virtue of the law enacted under the provisions of paragraph two.

The owner of a newspaper or other mass media business shall be a Thai national.

No grant of money or other properties shall be made by State as subsidies to private newspapers or other mass media.

Section 46. Officials or employees in a private sector undertaking newspaper, radio or television broadcasting businesses or other mass media business shall enjoy their liberties to present news and express their opinions under the constitutional restrictions without mandate of any government agency, State agency, State enterprise or the owner of such businesses; provided that it is not contrary to their professional ethics, and shall enjoy the right to form organisation with balancing mechanism among professional organisations so as to protect rights, liberties and fairness.

Government officials, officials or employees of a government agency, State agency or State enterprise engaging in the radio or television broadcasting business or other mass media business enjoy the same liberties as those enjoyed by officials or employees under paragraph one.

Any act done by a person holding political position, State official or the owner of business with a view to obstruct or interfere the presentation of news or an expression of opinions in public issue of the person under paragraph one or paragraph two, irrespective of whether such act has been done directly or indirectly, shall be deemed as wilfully misuse of power and take no effect except where such act has been done through the enforcement of law or professional ethics.

Section 47. Transmission frequencies for radio or television broadcasting and telecommunication are national communication resources for public interest.

There shall be an independent regulatory body having the duty to distribute the frequencies under paragraph one and supervise radio or television broadcasting and telecommunication businesses as provided by the law.

In carrying out the act under paragraph two, regard shall be had to utmost public benefit at national and local levels in education, culture, State security, other public interests and fair and free competition, including public participation in providing public mass media.

The supervision of the businesses under paragraph two shall constitute measures for the prevention of merger, acquisition or control among the mass media or by other persons which may deteriorate liberties to information of the public or may hinder the public from variety of information.

Section 48. No person holding a political position shall be the owner of, or hold shares in, newspaper, radio or television broadcasting or telecommunication business, irrespective of whether he so commits in his name, or through his proxy or nominee, or by other direct or indirect means which enable him to administer such business as if he is the owner of, or hold shares in, such business.

Part 8

Rights and Liberties in Education

Section 49. A person shall enjoy an equal right to receive education for the duration of not less than twelve years which shall be provided by State thoroughly, up to the quality, and without charge.

The indigent, disabled or handicapped, or destitute person shall enjoy an equal right under paragraph one and shall be supported by State to receive equal education with other persons.

The education and training provided by professional or private organisation, alternative education of the public, self-directed learning and lifelong learning shall get appropriate protection and promotion from State.

Section 50. A person shall enjoy an academic freedom.

Education and training, learning and teaching, research and disseminating of research according to academic principles shall be protected; provided that it is not contrary to his civic duties or good morals.

Part 9

Rights to Public Health Services and Welfare

Section 51. A person shall enjoy an equal right to receive standard public health service, and the indigent shall have the right to receive free medical treatment from State's infirmary.

The public health service by the State shall be provided thoroughly and efficiently.

The State shall promptly prevent and eradicate harmful contagious diseases for the public without charge.

Section 52. Children and youth shall enjoy the right to survive and to receive physical, mental and intellectual development potentially in suitable environment with due regard to their participation.

Children, youth, women and family members shall have the right to be protected by State against violence and unfair treatment and shall have the right to medical treatment or rehabilitation upon the occurrence thereof.

An interference and imposition of rights of children, youth and family members shall not be made except by virtue of the law specially enacted for the maintenance of family institution or utmost benefit of such person.

Children and youth with no guardian shall have the right to receive appropriate care and education from the State.

Section 53. A person who is over sixty years of age and has insufficient income for living shall have the right to welfare, public facilities and appropriate aids from State.

Section 54. The disabled or handicapped shall have the right to get access to, and to utilise of, welfare, public facilities and appropriate aids from State.

A person of unsound mind shall have the right to appropriate aids from State.

Section 55. A person who is homeless and has insufficient income for living shall have the right to appropriate aids from State.

Part 10

Rights to Information and Petition

Section 56. A person shall have the right to receive and to get access to public information in possession of a government agency, State agency, State enterprise or local government organisation, unless the disclosure of such information shall affect the security of State, public safety, interests of other persons which shall be protected, or personal data of other persons as provided by law.

Section 57. A person shall have the right to receive information, explanation and justification from a government agency, State agency, State enterprise or local government organisation before permission is given for the operation of any project or activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interest concerning him or a local community and shall have the right to express his opinions on such matters to the concerned agencies for their consideration.

The State shall organise public consultation thoroughly before the making of social, economic, politic and cultural development plan, the expropriation of immovable property, the making of town and country planning, the determination of land use, and the enactment of rule which may affect material interest of the public.

Section 58. A person shall have the right to participate in the decision-making process of State official in the performance of administrative functions which affect or may affect his rights and liberties, as provided by law.

Section 59. A person shall have the right to present a petition and to be informed of the result of its consideration within the appropriate time.

Section 60. A person shall have the right to sue a government agency, State agency, State enterprise, local government organisation or other State authority which is a juristic person to be liable for an act or omission done by its government official, official or employee.

Section 61. The right of a person who is a consumer to receive actual information shall be protected and a consumer shall have the right to make a complaint for remedy of damage and to amalgamate with another so as to protect consumers' rights.

There shall be an autonomous consumer protection organisation which is not a State agency consisting of representatives of consumers for giving opinions to a State agency on the enactment and issuance of laws, rules and regulations and on the determination of various measures for consumer protection, and for examining and making a report on any act or omission related to consumer protection. The State shall provide financial support for an operation of such autonomous organisation.

Section 62. A person shall have the right to follow up, and to request for examination of, the performance of duties of a person holding political position, State agency and State officials.

A person who provides information related to the performance of duties of a person holding political position, State agency and State officials to the organisation examining the misuse of State power or State agency shall be protected.

Part 11

Liberties to Assembly and Association

Section 63. A person shall enjoy the liberty to assemble peacefully and without arms.

The restriction on such liberty under paragraph one shall not be imposed except by virtue of the law specifically enacted for the purpose of public assembling and for securing public convenience in the use of public places or for the maintenance of public order during the time when the country is in a state of war, or when a state of emergency or martial law is declared.

Section 64. A person shall enjoy the liberty to unite and form an association, a union, a league, a co-operative, a farmer group, a private organisation, a non-governmental organisation or any other group.

The government officials and State officials shall enjoy the liberty to association as other individual if it is not affect efficiency of State administration and the continuation in providing public services as provided by law.

The restriction on such liberty under paragraph one and paragraph two shall not be imposed except by virtue of the law specifically enacted for preventing common interests of the public, maintaining public order or good morals or preventing economic monopoly.

Section 65. A person shall enjoy the liberty to unite and form a political party for the purpose of making political will of the people and carrying out political activities in fulfilment of such will through the democratic regime of government with the King as Head of State as provided in this Constitution.

The internal organisation, management and regulations of a political party shall be consistent with the fundamental principles of the democratic regime of government with the King as Head of State.

Members of the House of Representatives who are members of a political party, members of the Executive Committee of a political party, or members of a political party, of not less than the number prescribed by the organic law on political parties shall, if of the opinion that their political party's resolution or regulation on any matter is contrary to the status and performance of duties of a member of the House of Representatives under this Constitution or contrary to or inconsistent with the fundamental principles of the democratic regime of government with the King as Head of State, have the right to refer it to the Constitutional Court for decision thereon.

In the case where the Constitutional Court decides that such resolution or regulation is contrary to or inconsistent with the fundamental principles of the democratic regime of government with the King as Head of State, such resolution or regulation shall lapse.

Part 12

Community Rights

Section 66. Persons assembling as to be a community, local community or traditional local community shall have the right to conserve or restore their customs, local wisdom, arts or good culture of their community and of the nation and participate in the management, maintenance and exploitation of natural resources, the environment and biological diversity in a balanced and sustainable fashion.

Section 67. The right of a person to participate with State and communities in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and conservation of the quality of the environment for usual and consistent survival in the environment which is not hazardous to his health and sanitary condition, welfare or quality of life, shall be protected appropriately.

Any project or activity which may seriously affect the quality of the environment, natural resources and biological diversity shall not be permitted, unless its impacts on the quality of the environment and on health of the people in the communities have been studied and evaluated and consultation with the public and interested parties have been organised, and opinions of an independent organisation, consisting of representatives from private environmental and health organisations and from higher education institutions providing studies in the field of environment, natural resources or health, have been obtained prior to the operation of such project or activity.

The right of a community to sue a government agency, State agency, State enterprise, local government organisation or other State authority which is a juristic person to perform the duties under this section shall be protected.

Part 13

Right to Protect the Constitution

Section 68. No person shall exercise the rights and liberties prescribed in the Constitution to overthrow the democratic regime of government with the King as Head of State under this Constitution or to acquire the power to rule the country by any means which is not in accordance with the modes provided in this Constitution.

In the case where a person or a political party has committed the act under paragraph one, the person knowing of such act shall have the right to request the Prosecutor General to investigate its facts and submit a motion to the Constitutional Court for ordering cessation of such act without, however, prejudice to the institution of a criminal action against such person.

In the case where the Constitutional Court makes a decision compelling the political party to cease to commit the act under paragraph two, the Constitutional Court may order the dissolution of such political party.

In the case where the Constitutional Court makes the dissolution order under paragraph three, the right to vote of the President and the executive board of directors of the dissolved political party at the time the act under paragraph one has been committed shall be suspended for the period of five years as from the date the Constitutional Court makes such order.

Section 69. A person shall have the right to resist peacefully an act committed for the acquisition of the power to rule the country by a means which is not in accordance with the modes provided in this Constitution.

CHAPTER IV

Duties of the Thai People

Section 70. Every person shall have a duty to uphold the nation, religions, the King and the democratic regime of government with the King as Head of State under this Constitution.

Section 71. Every person shall have a duty to defend the country, to protect benefits of the nation and to obey the law.

Section 72. Every person shall have a duty to exercise his right to vote at an election.

The person who exercises his right to vote at an election or fails to attend an election for voting without notifying the reasonable cause of such failure shall be entitled to or lose the right as provided by law.

The notification of the cause of failure to attend an election and the provision of facilities for attendance thereat shall be in accordance with the provisions of the law.

Section 73. Every person shall have a duty to serve in armed forces, render assistance in providing public calamity prevention and rehabilitation, pay taxes, render assistance to the official service, receive education and training, protect, preserve and pass on the national arts and culture and local wisdom and conserve natural resources and the environment as provided by law.

Section 74. A Government official, official or employee of a government agency, State agency, State enterprise or local government organisation and other State official shall have a duty to act in compliance with the law in order to protect public interests, and provide convenience and services to the public according to the good public governance principle.

In performing the duty and other act relating to the public, the person under paragraph one shall be politically impartial.

In the case where the person under paragraph one neglect or fail to perform the duties under paragraph one or paragraph two, the interested person shall have the right to request the person under paragraph one or his superior to explain reason and request them to act in compliance with the provisions of paragraph one or paragraph two.

CHAPTER V

Directive Principles of Fundamental State Policies

Part 1

General Provisions

Section 75. The provisions of this Chapter are intended to serve as directive principles for legislating and determining policies for the administration of State affairs.

In stating its policies to the National Assembly, the Council of Ministers which will assume the administration of State affairs shall clearly state to the National Assembly the activities and their implementation period intended to be carried out for the administration of State affairs in implementation of the directive principles of fundamental State policies provided in this Chapter and shall prepare and submit to

the National Assembly an annual report on the result of the implementation, including problems and obstacles encountered.

Section 76. The Council of Ministers shall prepare a plan for the administration of State affairs stating measures and their details which shall be done for the administration of State affairs in each year and such plan shall be in compliance with the directive principles of fundamental State policies.

For the purpose of State administration, the Council of Ministers shall have the plan to enact laws necessarily to the administration of State affairs.

Part 2

National Security Policy

Section 77. The State shall protect and uphold the institution of kingship and the independence and integrity of its jurisdictions and shall arrange for the maintenance of necessary and adequate armed forces and ordnances as well as up-to-date technology for the protection and upholding of its independence, sovereignty, security of State, institution of kingship, national interests and the democratic regime of government with the King as Head of State, and for national development.

Part 3

State Administration Policy

Section 78. The State shall act in compliance with the State administration policy as follows:

- (1) carrying out the administration of State affairs with a view to establish sustainable development of social, economic and security of the nation and strengthening an implementation of the sufficient economy philosophy with due regard to general benefits of the nation materially;
- (2) making powers, duties and responsibilities among the central administration, provincial administration and local administration to be clear and suitable for national development, and supporting a Changwat to set up its development plan and providing financial support for the implementation of such plan for the benefit of the public within that area;
- (3) delegating powers to local governments for the purpose of autonomy and self-determination of local affairs, enhancing local governments to participate and act in

compliance with the directive principles of fundamental State policies, develop local economics, public utilities and assistances and information infrastructure in the localities thoroughly and equally throughout the country as well as developing into a large sized local government organisation a Changwat ready for such purpose with due regard to the will of the people in that Changwat;

(4) developing working system of public sector with due regard to the development of quality, merit and ethics of State officials along the line with the improvement of working processes for the efficiency of State administration, and encouraging State agencies to apply the good public governance principle in the performance of their official duties;

(5) organising officials work and other works of State with a view to enhance quick, efficiency, transparency and accountability in making or providing public services and with due regard to public consultation;

(6) preparing a legal agency providing legal opinion related to the performance of the State under the laws and examining draft laws for the State to perform its duties autonomously so as to ensure that the administration of State affairs is in accordance with the rule of law;

(7) preparing a political development plan and establishing autonomously political development council to monitor an implementation of the plan;

(8) ensuring the government officials and State officials to have appropriate rights and benefits.

Part 4

Religions, Social, Public Health, Education and Culture Policies

Section 79. The State shall patronise and protect Buddhism as the religion observed by most Thais for a long period of time and other religions, promote good understanding and harmony among followers of all religions as well as encourage the application of religious principles to create virtue and develop the quality of life.

Section 80. The State shall act in compliance with the social, public health, education and culture policies as follows:

(1) protecting and developing child and youth, promoting childhood nourishment and education, promoting the equality between women and men, creating, reinforcing and developing family integrity and the strength of communities, as well as providing

aids and welfare to the elderly, the indigent, the disabled or handicapped and the destitute person for their better quality of life and ability to become self-reliance;

(2) promoting, supporting and developing health system with due regard to the health promotion for sustainable health conditions of the public, providing and promoting standard and efficient public health service thoroughly and encouraging private sector and the communities in participating in health promotion and providing public health service, and the person having duty to provide such service whose act meets the requirements of professional and ethical standards shall be protected as provided by law;

(3) developing quality and standard in providing education at all levels and forms to be in line with economic and social changes, preparing the national education plan and the law for national education development, providing development of quality of teachers and educational personnel to meet the current changing in the present day world, and instilling awareness of being Thais, disciplines, common interests and a democratic regime of government with the King as Head of the State to learners;

(4) promoting and supporting the delegation of powers to the local governments, communities, religious organisations and private sector with a view to provide and participate in educational management for the development of educational quality standard equally and to be in line with the fundamental State policy;

(5) encouraging and supporting the making of researches in various disciplines of arts and sciences and disseminating all research results funded by the State;

(6) encouraging and instilling the right awareness of national unity and learning, and instilling and making known of arts, tradition and culture of the nation as well as good value and local wisdom.

Part 5

Law and Justice Policies

Section 81. The State shall act in compliance with the law and justice policies as follows:

(1) ensuring the compliance with, and the enforcement of, the law to be correct, quick, fair and thorough, enhancing the provision of legal assistances and knowledge to the public, providing efficient public service system and other State affairs in relation to the administration of justice with due regard to the participation of the public and the profession organisations, and providing legal aids service to the public;

(2) protecting rights and liberties of individual from any violation irrespective of whether such violation has been done by a State official or other persons, and providing justice to the public on an equal basis;

(3) preparing the law establishing the autonomous law reform organisation for the purpose of reforming and developing laws of the nation and revising the existing laws for the compliance with the Constitution, with due regard to opinions given by persons affected by such laws;

(4) preparing the law establishing the autonomous organisation for reforming the judicial process for improving and developing the performance of all agencies concerned with the judicial process;

(5) providing support for the operation of private organisations rendering legal assistance to the public, especially the people who suffers from domestic violence.

Part 6

Foreign Policy

Section 82. The State shall promote friendly relations with other countries and adopt the principle of non-discrimination and shall comply with human rights conventions in which Thailand is a party thereto as well as international obligations concluded with other countries and international organisations.

The State shall promote trade, investment and tourism with other countries and shall render protection and guardian to benefits of Thais living abroad.

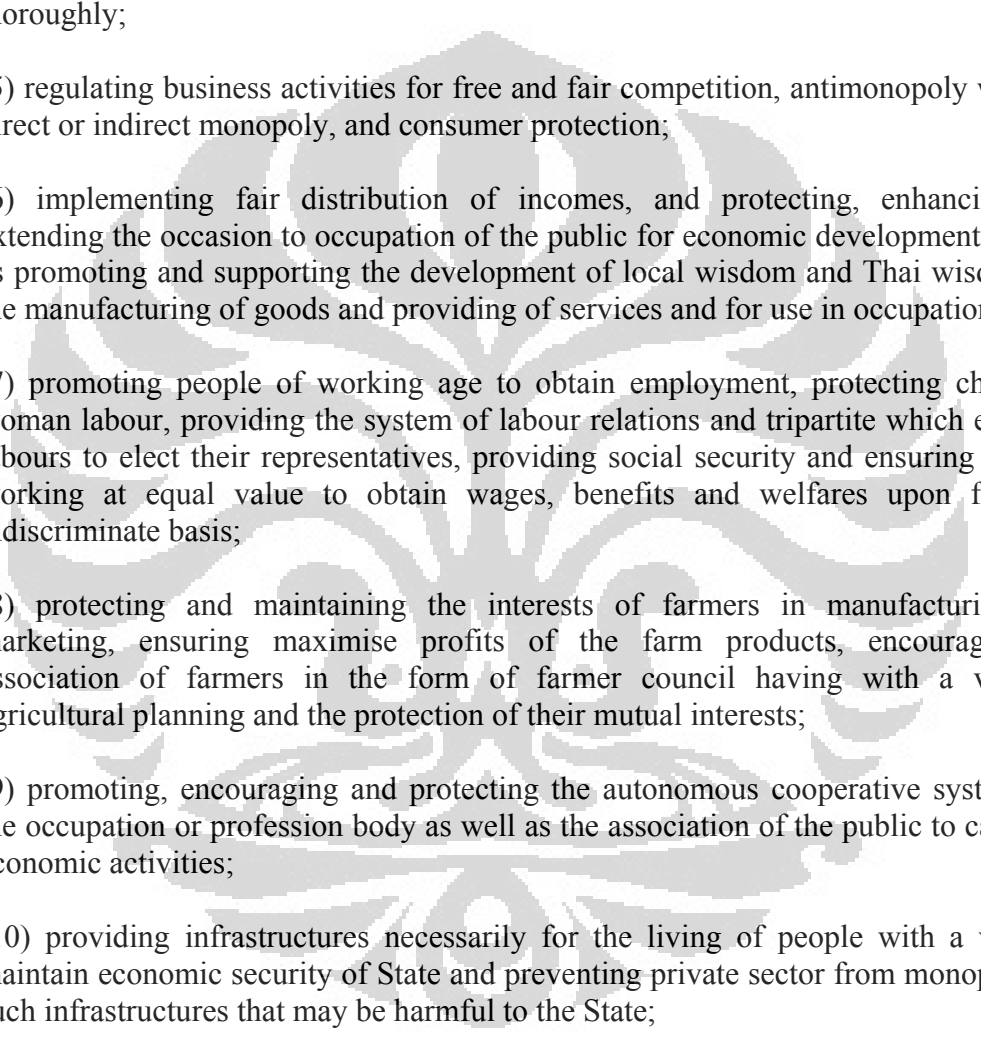
Part 7

Economic Policy

Section 83. The State shall encourage and support an implementation of the sufficient economy philosophy.

Section 84. The State shall act in compliance with the economic policy as follows:

(1) encouraging a free and fair economic system through market mechanism, ensuring the development of economics in sustainable fashion by repealing and refraining from the enactment of laws, rules and regulations controlling business which do not correspond with the economic necessity, and refraining from the engagement in an enterprise in competition with the private sector unless it is necessary for the purpose of maintaining the security of State, preserving common interests, or providing public utilities;

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- (2) encouraging entrepreneurs to use merit, ethics and corporate governance principle in carrying out of their businesses;
 - (3) preserving monetary and financial disciplines in order to strengthen balance and security of economic and social of the nation, improving tax system to be fair and compatible with the changing of economic and social conditions;
 - (4) providing saving system for old age living to the public and State officials thoroughly;
 - (5) regulating business activities for free and fair competition, antimonopoly whether direct or indirect monopoly, and consumer protection;
 - (6) implementing fair distribution of incomes, and protecting, enhancing and extending the occasion to occupation of the public for economic development as well as promoting and supporting the development of local wisdom and Thai wisdom for the manufacturing of goods and providing of services and for use in occupation;
 - (7) promoting people of working age to obtain employment, protecting child and woman labour, providing the system of labour relations and tripartite which entitling labours to elect their representatives, providing social security and ensuring labours working at equal value to obtain wages, benefits and welfares upon fair and indiscriminate basis;
 - (8) protecting and maintaining the interests of farmers in manufacturing and marketing, ensuring maximise profits of the farm products, encouraging an association of farmers in the form of farmer council having with a view to agricultural planning and the protection of their mutual interests;
 - (9) promoting, encouraging and protecting the autonomous cooperative system and the occupation or profession body as well as the association of the public to carry out economic activities;
 - (10) providing infrastructures necessarily for the living of people with a view to maintain economic security of State and preventing private sector from monopolising such infrastructures that may be harmful to the State;
 - (11) refraining from doing any act which may give rise to the transfer of ownership of the fundamental structure or network of infrastructures necessarily for the living of people or for national security to private sector or to the decrease of shares or capital held or invested by the State lower than fifty per cent;
 - (12) encouraging and supporting the merchant marine and rail transportation, and carrying out the domestic and international logistics management system;

(13) encouraging and strengthening the private sector organisations, both national and local level;

(14) encouraging agricultural products transformation industry with a view to increase value added thereto.

Part 8

Land Use, Natural Resources and Environment Policies

Section 85. The State shall act in compliance with the land use, natural resources and environment policies as follows:

(1) preparing and applying the rule on the use of land through out the country with due regard to the compliance with environmental condition, nature of land and water and the way of life of local communities, the efficient measures for preservation of natural resources, the sustainable standard for land use and opinion of the people in the area who may be affected by the rule on the use of land;

(2) distributing the right to hold land fairly, enabling farmers to be entitled to the ownership or the right in land for agriculture thoroughly by means of land reform or by other means, and providing water resources for the distribution of water to farmers for use in agriculture adequately and appropriately;

(3) preparing town and country planning, and developing and carrying out the plan effectively and efficiently for the purpose of sustainable preservation of natural resources;

(4) preparing systematic management plan for water and other natural resources for the common interests of the nation, and encouraging the public to participate in the preservation, conservation and exploitation of natural resources and biological diversity appropriately;

(5) conducting the promotion, conservation and protection of the quality of the environment under the sustainable development principle, and controlling and eliminate pollution which may affect health and sanitary, welfare and quality of life of the public by encouraging the public, the local communities and the local governments to have participation in the determination of the measures.

Part 9

Science, Intellectual Properties and Energy Policies

Section 86. The State shall act in compliance with the science, intellectual properties and energy policies as follows:

- (1) enhancing the development of science, technology and innovation in all aspects by enacting specific law in so doing, preparing budget for studying and making of researches, establishing institution for research and development, encouraging the use of results emerging from researches and development, the efficient transfer of technology and the appropriate development of researchers, and disseminating science and modern technology knowledge to the public and encouraging the public to apply science into their living;
- (2) supporting an invention or excogitation for new wisdom, preserving and developing local wisdom and Thai wisdom, and protecting intellectual properties;
- (3) promoting and supporting continuously and systematically of the research, the development and the use of natural alternative energy which is beneficial to the environment.

Part 10

Public Participation Policy

Section 87. The State shall act in compliance with the public participation policy as follows:

- (1) encouraging public participation in the determination of public policy and the making of economic and social development plan both in the national and local level;
- (2) encouraging and supporting public participation to make decision on politics and the making of economic and social development plan and the provision of public services;
- (3) encouraging and supporting public participation in the examination of the exercise of State power at all levels in the form of profession or occupation organisation or other forms;
- (4) strengthening the politics power of the public, and preparing the laws establishing civil politics development fund for facilitating the communities to organise public activities and for supporting networks of the groups of people to express opinion and requirements of the communities in the localities;
- (5) supporting and providing education to the public related to the development of politics and public administration under the democratic regime of government with the King as Head of State, and encouraging the public to exercise their rights to vote honestly and uprightly.

In providing public participation under this section, regard shall be had to approximate proportion between women and men.

CHAPTER VI

The National Assembly

Part 1

General Provisions

Section 88. The National Assembly consists of the House of Representatives and the Senate.

Joint or separate sittings of the National Assembly shall be in accordance with the provisions of this Constitution.

No person shall be a member of the House of Representatives and a senator simultaneously.

Section 89. The President of the House of Representatives is President of the National Assembly. The President of the Senate is Vice-President of the National Assembly.

In the case where there is no President of the House of Representatives, or the President of the House of Representatives is not present or is unable to perform his duties, the President of the Senate shall act as President of the National Assembly in his place.

The President of the National Assembly shall have the powers and duties as provided in this Constitution and shall conduct the proceedings of the National Assembly at joint sittings in accordance with the rules of procedure.

The President of the National Assembly and the person who acts as President of the National Assembly in his place shall be impartial in the performance of duties.

The Vice-President of the National Assembly shall have the powers and duties as provided in this Constitution and as entrusted by the President of the National Assembly.

Section 90. An organic law bill and a bill may be enacted as law only by and with the advice and consent of the National Assembly and when the King's signature has been given or deemed to be given thereto; it shall come into force upon its publication in the Government Gazette.

Section 91. Members of the House of Representatives or senators of not less than one-tenth of the total number of the existing members of each House shall have the right to lodge with the President of the House of which they are members a complaint asserting that the membership of any member of such House has terminated under section 106 (3), (4), (5), (6), (7), (8), (10), or (11) or section 119 (3), (4), (5), (7), or (8), as the case may be, and the President of the House with whom the complaint is lodged shall refer it to the Constitutional Court for decision as to whether the membership of such person has terminated.

When the Constitutional Court has made a decision, it shall notify the President of the House with which the complaint is lodged under paragraph one of such decision.

In the case where the Election Commission is of opinion that the membership of a member of the House of Representatives or a senator has terminated under paragraph one, it shall refer this matter to the President of the House which such person is a member and the President of that House shall then refer it to the Constitutional Court for decision under paragraph one and paragraph two.

Section 92. The vacation of the office of a member of the House of Representatives or a senator after the day on which his membership terminates or the day on which the Constitutional Court decides that the membership of any member terminates does not affect any act done by such member in the capacity as member including the receipt of emolument or other benefits by such member before he vacates office or the President of the House of which such person is a member has been notified of the decision of the Constitutional Court, as the case may be, except that in the case of vacation of the office on the ground of his being elected or selected in violation of the organic law on election of members of the House of Representatives and acquisition of senators, emolument and other benefits received from being in office shall be returned.

Part2

The House of Representatives

Section 93. The House of Representatives consists of four hundred and eighty members, four hundred of whom are from the election on a constituency basis and eighty of whom are from the election on a proportional basis.

The election of member of the House of Representatives shall be by direct suffrage and secret ballot, and the ballot to be used in an election shall be varied upon the election basis.

The rules and procedure for the election of members of the House of Representatives shall be in accordance with the organic law on election of members of the House of Representatives and acquisition of senators.

In the case where the office of a member of the House of Representatives becomes vacant for any reason and an election of a member of the House of Representatives has not been held to fill the vacancy, the House of Representatives shall consist of the existing members of the House.

Subject to section 109 (2), in the case where there occurs, during the term of the House of Representatives, any cause resulting in the members elected from the election on a proportional basis being less than eighty in number, such members shall consist of the existing members.

In the case where there occurs, during the general election, any cause resulting in the members of the House of Representatives elected from the election being less than four hundred and eighty in number but not less than ninety-five per cent of the total number of members of the House of Representatives, such members is deemed to constitute the House of Representatives. In this case, the acquisition for the fulfillment of the total number of members of the House of Representatives shall be completed within one hundred and eighty days and the new coming members shall hold office for the remaining term of the House of Representatives.

Section 94. In the election of members of the House of Representatives on a constituency basis, the person having the right to vote shall cast ballot for the equal number of members of the House in each constituency.

The determination of the number of members of the House of Representatives in each constituency and the determination of constituencies shall be as follows:

- (1) the determination of the ratio of the number of inhabitants to one member shall be made by reference to the division of such number of inhabitants throughout the country as evidenced in the census announced in the year preceding the year of election by the number of four hundred members of the House of Representatives;
- (2) any Changwat with inhabitants below the number of inhabitants per one member under (1) shall have one member of the House of Representative. Any Changwat with more inhabitants than the number of inhabitants per one member shall have an additional member of the House of Representatives for every such number of inhabitants as representing the number of inhabitants per one member;
- (3) upon the number of members of the House of Representatives of each Changwat being obtained under (2), if the number of members of the House of Representatives is still less than four hundred, any Changwat with the largest fraction remaining from

the determination under (2) shall have an additional member of the House of Representatives and the addition of the members of the House of Representatives in accordance with such procedure shall be made to other Changwat in respective order of fractions remaining from the determination under (2) until the number of four hundred is obtained;

(4) in a Changwat where the number of members of the House of Representatives to be elected is not more than three, the area of that Changwat shall be regarded as the constituency and in a Changwat where the number of members of the House of Representatives is more than three, the area of such Changwat shall be divided into constituencies and, for this purpose, each constituency shall have three members of the House of Representatives;

(5) in a Changwat which is divided into many constituencies, if there is unable to have three members of the House of Representatives in all constituencies, the area of such Changwat shall be firstly divided into the constituency with three members of the House of Representatives and the rest constituencies shall have not less than two members of the House of Representatives and in a Changwat where the number of members of the House of Representatives to be elected is four, the area of such Changwat shall be divided into two constituencies and each constituency shall have two members of the House of Representatives;

(6) in a Changwat which is divided into more constituencies than one, the boundary of each constituency shall be adjoining and the number of inhabitants in each constituency must be closely apportioned.

The counting of votes shall be conducted at the polling station and the result of the vote-counting shall be reported to the constituency for calculation of total votes-counting in that constituency and the result of the total vote-counting shall be announced publicly at any single place in that constituency as designated by the Election Commission, except that in the case where necessity arises in a particular locality, the Election Commission may otherwise prescribe the counting of votes, the calculation of total vote-counting and the announcement of the result of the total vote-counting in accordance with the organic law on election of members of the House of Representatives and acquisition of senators.

Section 95. An election of members of the House of Representatives on a proportional basis is an election for members of the House of Representatives from the lists of candidates prepared by political parties whereby the person having the right to vote in each constituency shall cast ballot for one political party preparing the list of candidates for such constituency.

A political party may submit the lists of candidates for the election on proportional basis for some or all constituencies.

In the case where there occurs to the submitted list of candidates for the election on proportional basis of a political party, whether on or before an election day, any cause resulting in the remaining candidates being less than the number of candidates as specified in the submitted list, the remaining candidates are deemed to be candidates of such political party and, in this case, it shall be deemed that the House of Representatives consists of the remaining members.

Section 96. The determination of the constituencies for the election of the members of the House of Representatives on a proportional basis shall be as follows:

(1) the country shall be divided into eight groups of Changwat and each group of Changwat shall be regarded as one constituency having ten members of the House of Representatives;

(2) in grouping of Changwat, the boundary of each Changwat in each group shall be adjoining and the number of inhabitants in each group must be closely apportioned by reference to the division of such number of inhabitants throughout the country as evidenced in the census announced in the year preceding the year of election and the whole area of each Changwat shall be in on constituency.

Section 97. The preparation of the lists of candidates prepared by a political party for the election of the members of the House of Representatives on a proportional basis shall be as follows:

(1) the lists of candidates for each constituency shall consist of candidates in equal number of members of the House of Representatives to be elected on a proportional basis in each constituency and placed in numerical order and shall be submitted to the Election Commission before the date an application for candidacy in an election on the constituency basis commences;

(2) candidates under (1) shall not be candidates in an election both on the constituency basis and on proportional basis of any political party and, in preparing the list of candidates, regard shall be had to opportunity and approximate proportion between women and men.

Section 98. The determination of the proportion of candidates in the list of candidates of each political party as being elected in each constituency shall be conducted by accumulating the votes received by each political party in each constituency as basis for reckoning the proportion of candidates to be elected of each political party which shall be reflected to the result of the accumulation of the votes as aforesaid, the votes received by each political party and the numbers of members of the House of Representatives to be elected on a proportional basis in such constituency. The candidates named in the list of candidates of each political party shall be regarded as being elected in accordance with the result of reckoning by numerical order as

specified the list of candidates of each political party under the rules and procedure as prescribed in the organic law on election of members of the House of Representatives and acquisition of senators.

The provisions of section 94 paragraph three shall apply *mutatis mutandis* to the counting of votes for the election of members of the House of Representatives on a proportional basis, provided that the Election Commission prescribes to conduct the preliminary calculation of total vote-counting at Changwat.

Section 99. A person having the following qualifications has the right to vote at an election:

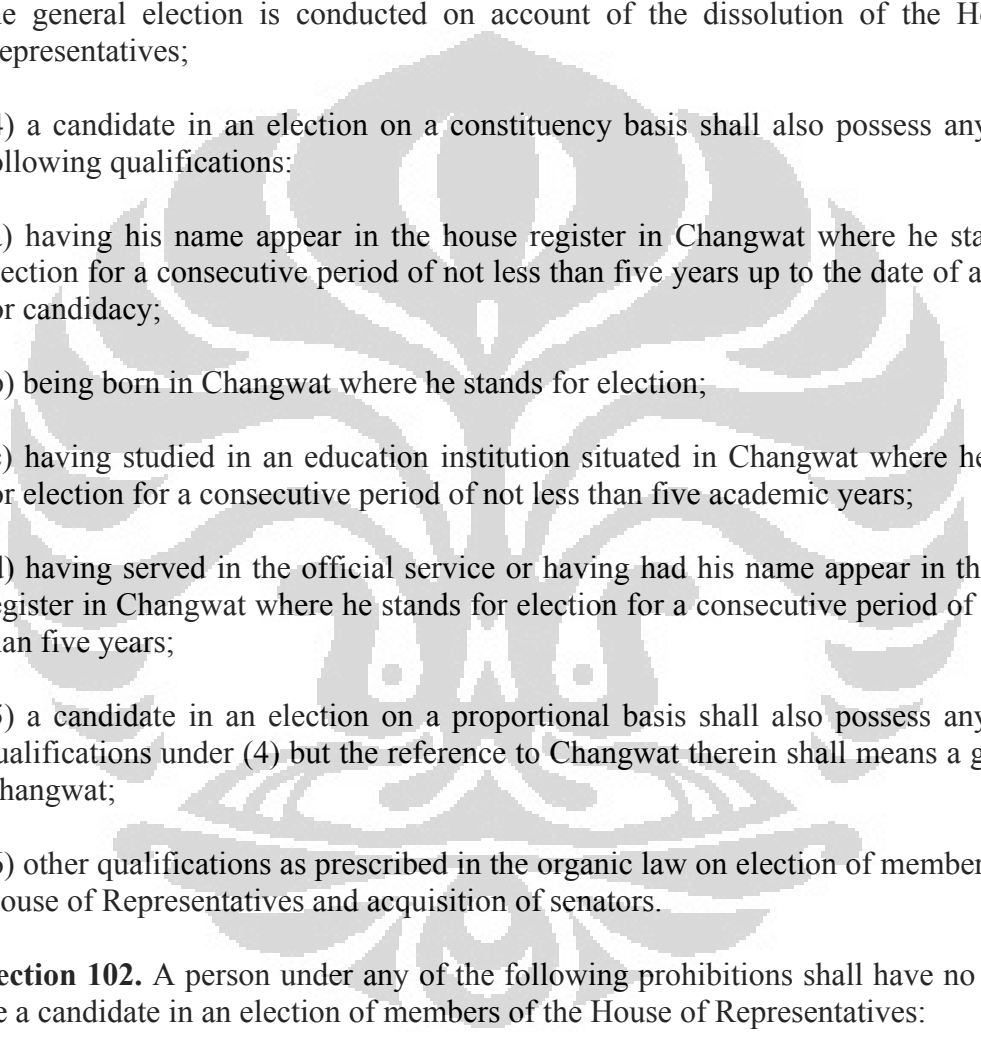
- (1) being of Thai nationality; provided that a person who has acquired Thai nationality by naturalisation must hold the Thai nationality for not less than five years;
- (2) being not less than eighteen years of age on 1st January of the year of the election; and
- (3) having his name appear on the house register in the constituency for not less than ninety days up to the election day.

A voter who has a residence outside the constituency within which his appear in the house register, or who has his name appear in the house register in the constituency for the period of less than ninety days up to the date of the election, or who has a residence outside the Kingdom of Thailand shall have the right to cast ballot in an election in accordance with rules, procedure and conditions provided by the organic law on election of members of the House of Representatives and acquisition of senators.

Section 100. A person under any of the following prohibitions on the election day is disfranchised:

- (1) being a Buddhist priest, novice, monk or clergy;
- (2) being under suspension of the right to vote;
- (3) being detained by a warrant of the Court or by a lawful order;
- (4) being of unsound mind or of mental infirmity.

Section 101. A person having the following qualifications has the right to be a candidate in an election of members of the House of Representatives:

- 
- (1) being of Thai nationality by birth;
 - (2) being not less than twenty five years of age on the election day;
 - (3) being a member of any and only one political party for a consecutive period of not less than ninety days up to the date of applying for candidacy in an election, or being a member of any and only one political party for a consecutive period of not less than thirty days up to the date of applying for candidacy in an election in the case where the general election is conducted on account of the dissolution of the House of Representatives;
 - (4) a candidate in an election on a constituency basis shall also possess any of the following qualifications:
 - (a) having his name appear in the house register in Changwat where he stands for election for a consecutive period of not less than five years up to the date of applying for candidacy;
 - (b) being born in Changwat where he stands for election;
 - (c) having studied in an education institution situated in Changwat where he stands for election for a consecutive period of not less than five academic years;
 - (d) having served in the official service or having had his name appear in the house register in Changwat where he stands for election for a consecutive period of not less than five years;
 - (5) a candidate in an election on a proportional basis shall also possess any of the qualifications under (4) but the reference to Changwat therein shall mean a group of Changwat;
 - (6) other qualifications as prescribed in the organic law on election of members of the House of Representatives and acquisition of senators.

Section 102. A person under any of the following prohibitions shall have no right to be a candidate in an election of members of the House of Representatives:

- (1) being addicted to narcotics;
- (2) being bankrupt or having been dishonestly bankrupt;
- (3) being disfranchised under section 100 (1), (2) or (4);

(4) having been sentenced by a judgement to imprisonment and being detained by a warrant of the Court;

(5) having been discharged for a period of less than five years on the election day after being sentenced by a judgement to imprisonment except for an offence committed through negligence;

(6) having been expelled, dismissed or removed from the official service, a State agency or a State enterprise on the ground of dishonest performance of duties or corruption;

(7) having been ordered by a judgement or an order of the Court that his assets shall vest in the State on the ground of unusual wealth or an unusual increase of his assets;

(8) being a government official holding a permanent position or receiving salary except a political official;

(9) being a member of a local assembly or a local administrator;

(10) being a senator or having been a senator who vacates office for a period of less than two years;

(11) being an official or employee of a government agency, State agency or State enterprise or other State official;

(12) being a judge of the Constitutional Court, an Election Commissioner, an Ombudsman, a member of the State Audit Commission or a member of the National Human Right Commission;

(13) being under the prohibition from holding a political position under section 263;

(14) having been removed from office by the resolution of the Senate under section 274.

Section 103. A political party presenting its members as candidates in the election in any constituency shall present its members as candidates in an equal amount to the number of members of the House of Representatives in such constituency.

In the case where there occurs, after presenting the complete number of candidates as required in paragraph one, any cause resulting in the remaining candidates being less than the required number, it shall be deemed that such political party has presented the complete number of candidates.

After presenting its members as candidates in the election, neither a political party nor a candidate shall revoke such presentation or alter the candidates.

Section 104. The term of the House of Representatives is four years from the election day.

During the term of the House of Representatives, the amalgamation of the political parties having their members as members of the House of Representatives shall not be made.

Section 105. Membership of the House of Representatives commences on the election day.

Section 106. Membership of the House of Representatives terminates upon:

- (1) expiration of the term or dissolution of the House of Representatives;
- (2) death;
- (3) resignation;
- (4) being disqualified under section 101;
- (5) being under any prohibition under section 102;
- (6) acting in contravention of any prohibition under section 265 or section 266;
- (7) resignation from membership of his political party or his political party passing a resolution, with the votes of not less than three-fourths of the joint meeting of the Executive Committee of that political party and members of the House of Representatives belonging to that political party, terminating his membership of the political party. In such cases, his membership shall be deemed to have terminated as from the date of the resignation or the resolution of the political party except where such member of the House of Representatives appeals to the Constitutional Court within thirty days as from the date of the resolution of the political party for raising an objection that such resolution is of such nature as specified in section 65 paragraph three. If the Constitutional Court decides that the said resolution is not of the nature as specified in section 65 paragraph three, his membership shall be deemed to have terminated as from the date of the decision of the Constitutional Court. If the Constitutional Court decides that the said resolution is of such nature as specified in section 65 paragraph three, that member of the House of Representatives may become a member of another political party within thirty days as from the date of the decision of the Constitutional Court;

(8) loss of membership of the political party in the case where the political party of which he is a member is dissolved by an order of the Constitutional Court and he is unable to become a member of another political party within sixty days as from the date on which the Constitutional Court issues its order. In such case, his membership shall be deemed to have terminated as from the day following the date on which such period of sixty days has elapsed;

(9) the Senate passing a resolution under section 274 removing him from office or the Constitutional Court having a decision terminating his membership under section 91. In such cases, his membership shall be deemed to have terminated as from the date on which the Senate passes a resolution or the Constitutional Court has a decision, as the case may be;

(10) having been absent for more than one-fourth of the number of days in a session the length of which is not less than one hundred and twenty days without permission of the President of the House of Representatives;

(11) being sentenced by a judgment to imprisonment notwithstanding the suspension of the execution of imprisonment has been granted, except for an offence committed through negligence, a petty offence or a defamation offense.

Section 107. Upon the expiration of the term of the House of Representatives, the King will issue a Royal Decree calling for a general election of members of the House of Representatives in which the election day must be fixed within forty five days as from the date of the expiration of the term of the House of Representatives and the election day must be the same throughout the Kingdom.

Section 108. The King has the prerogative to dissolve the House of Representatives for a new election of members of the House.

The dissolution of the House of Representatives shall be made in the form of a Royal Decree in which the day for a new general election must be fixed for not less than forty-five days but not more than sixty days as from the day the House of Representatives has been dissolved and such election day must be the same throughout the Kingdom.

The dissolution of the House of Representatives may be made only once under the same circumstance.

Section 109. When the office of member of the House of Representatives becomes vacant for any reason other than the expiration of the term or the dissolution of the House of Representatives, the following actions shall be taken:

(1) in the case where the vacancy is that of the office of a member of the House of Representatives elected from the election on a constituency basis, an election of a member of the House of Representatives to fill the vacancy shall be held within forty-five days as from the date of the vacancy unless the remainder of the term of the House of Representatives is less than one hundred and eighty days.

(2) in the case where the vacancy is that of the office of a member of the House of Representatives elected from the election on a proportional basis, the President of the House of Representatives shall, by publication in the Government Gazette within seven days as from the date of the vacancy, elevate the person whose name in the list of that political party is placed in the next order to be a replacing member of the House of Representatives, except where there is no person to be elevated and, in such case, the House of Representatives consists of the remaining members;

Membership of the replacing member of the House of Representatives under (1) shall commence as from the day on which the election to fill the vacancy is held, while membership of the replacing member of the House of Representatives under (2) shall commence as from the day following the date of the publication of the name of the replacing member in the Government Gazette. The replacing member of the House of Representatives may serve only for the remainder of the term of the House.

Section 110. After the Council of Ministers has assumed the administration of State affairs, the King will appoint as Leader of the Opposition in the House of Representatives a member of the House who is the leader of the political party having its members holding no ministerial positions and having the largest number of members among the political parties having their members holding no ministerial positions, provided that such number must not be less than one-fifth of the total number of members of the House of Representatives at the time of the appointment.

In the case where no political party in the House of Representatives has the description as prescribed under paragraph one, the leader of the political party, who receives a majority of supporting votes from the members of the House who belong to the political parties having their members holding no ministerial positions, shall be the Leader of the Opposition in the House. In case of an equality of supporting votes, it shall be decided by lot.

The President of the House of Representatives shall countersign the Royal Command appointing the Leader of the Opposition in the House of Representatives.

The Leader of the Opposition in the House of Representatives shall vacate office upon being disqualified as specified in paragraph one or paragraph two, and section 124 paragraph four shall apply mutatis mutandis, and in such case, the King will appoint a new Leader of the Opposition in the House of Representatives to fill the vacancy.

Part 3

The Senate

Section 111. The Senate consists of one hundred and fifty members acquired upon the basis of election in each Changwat, one elected senator for each Changwat, and upon the selection basis in an amount equal to the total number of senators deducted by the number of senators from the election basis.

In the case where the number of Changwat is increased or decreased during the term of office of the senators whom acquired by the election basis, the Senate shall be regarded as consisting of the existing senators.

Upon the vacancy of a senator by whatever reasons and the election or selection for the fulfilment of the vacancy has not yet conducted, as the case may be, the Senate shall be regarded as consisting of the remaining senators.

In the case where there occurs any cause resulting in the number of senators being less than the total number of the senators under paragraph one but not less than ninety-five per cent of the total number of senators, such senators is deemed to constitute the Senate. In this case, the election or selection for the fulfilment of the total number of senators under paragraph one shall be completed within one hundred and eighty days as from the date the aforesaid situation has occurred and the new coming senator shall hold office for the remaining term of the Senate.

Section 112. In an election of senators, the area of Changwat shall be regarded as one constituency and the number of senator for each Changwat is one. The person having the right to vote at an election of senators may cast ballot, at the election, for one candidate and the election shall be by direct suffrage and secret ballot.

For the purpose of the election of senators, the campaign to be launched by the candidates in the election is limited to the matters related to the performance of duties of the Senate.

The rules, procedure and conditions for the election of, and the launching of election campaign of candidates for, senators shall be in accordance with the organic law on election of members of the House of Representatives and acquisition of senators.

Section 113. There shall be the Senators Selective Committee consisting of the President of the Constitutional Court, the Chairperson of the Election Commission, the President of the Ombudsmen, the Chairperson of the National Counter Corruption Commission, the Chairperson of the State Audit Commission, a judge of the Supreme Court of Justice holding the position of not lower than judge of the Supreme Court of

Justice as entrusted by the general meeting of the Supreme Court of Justice and a judge of the Supreme Administrative Court as entrusted by the general meeting of the Supreme Administrative Court, having a duty to select persons under section 114 within thirty days as from the date of receiving the list of candidates from the Election Commission and to notify the selection result to the Election Commission for publication of the persons selected as senators.

Members of the Committee under paragraph one shall select one among themselves to be the Chairperson of the Committee.

In the absent of any member or a member is unable to perform his duty and the remaining members are not less than one-half of the total number of members, the Senators Selective Committee shall consist of the remaining members.

Section 114. The Senators Selection Committee shall carry out the selection process for persons who may be beneficial to the performance of powers and duties of the Senate from persons nominated by academic institutions, public sector, private sector, professional organisations and other organisations to be senators in an amount as prescribed in section 111 paragraph one.

In selection of person under paragraph one, regard shall be had to knowledge, skills or experience of the nominated persons which will be beneficial to the performance of the Senate, and the composition of the selected persons shall be regarded to interdisciplinary knowledge and experience, genders opportunity and equality, closely apportion of the persons nominated by the organisations under paragraph one and opportunity of social vulnerable groups.

The rules, procedure and conditions for the selection of senators shall be in accordance with the organic law on election of members of the House of Representatives and acquisition of senators.

Section 115. A person having the qualifications and having no any of the prohibitions as mentioned below has the right to be a candidate in an election or selection of senators:

- (1) being of Thai nationality by birth;
- (2) being of not less than forty years of age on the election day or the date of nomination;
- (3) having graduated with not lower than a Bachelor's degree or its equivalent;
- (4) a candidate in an election of senators shall also possess any of the following qualifications:

(a) having his name appear on the house register in Changwat where he stands for election for a consecutive period of not less than five years up to the date of applying for candidacy;

(b) being born in Changwat where he stands for election;

(c) having studied in an education institution situated in Changwat where he stands for election for a consecutive period of not less than five academic years;

(d) having served in the official service or having had his name appear in the house register in Changwat where he stands for election for a consecutive period of not less than five years;

(5) not being ascendants, spouse or child of a member of the House of Representatives or a person holding a political position;

(6) not being a member or a person holding any position in a political party, or having been a member or having been holding a position in a political party and his membership has terminated or he vacates office in a political party for a period of not more than five years on the date of applying for candidacy or the date of nomination;

(7) being disfranchised under section 102 (1), (2), (3), (4), (5), (6), (7), (8), (9), (11), (12), (13) or (14);

(8) not being a Minister or a person holding a political position other than a member of a local assembly or a local administrator or vacating office for a period of not more than five years.

Section 116. A senator shall not be a Minister or a person holding any political position or a person holding position in the independent constitutional organisation.

The person having held office of senator with membership having terminated for not more than two years shall not be a Minister or a person holding any political position.

Section 117. Membership of the senators acquired on the election basis commences on the election day and membership of the senators acquired on the selection basis commences on the day the Election Commission publishes the result of the selection.

The term of membership of the senates is six years as from the election day or the day the Election Commission publishes the result of the selection, as the case may be, and no senator shall hold office more than one term.

At the end of the term of office, the senators vacating office shall remain in office to continue their duties until the acquisition of the new senators.

Section 118. Upon the expiration of membership of the senators acquired on the election basis, the King will issue a Royal Decree calling for a new general election of senators in which the election day must be fixed within thirty days as from the date of the expiration of membership of the senator acquired on the election basis and the election day must be the same throughout the Kingdom.

Upon the expiration of membership of the senators acquired on the selection basis, the Senators Selection Committee shall announce the commencing and period for selection process which shall complete within sixty days as from the date of the expiration of membership of the senator acquired on the selection basis.

Section 119. Membership of the Senate terminates upon:

- (1) expiration of membership;
- (2) death;
- (3) resignation;
- (4) being disqualified under section 115;
- (5) acting in contravention of any of the prohibitions under section 116, section 265 or section 266;
- (6) the Senate passing a resolution under section 274 removing him from office or the Constitutional Court having a decision terminating his membership under section 91 or the Supreme Court having a decision under section 239 paragraph two or section 240 paragraph three; in such cases, his membership shall be deemed to have terminated as from the date of the resolution of the Senate or the decision of the Court, as the case may be;
- (7) having been absent for more than one-fourth of the number of days in a session the length of which is not less than one hundred and twenty days without permission of the President of the Senate;
- (8) being sentenced by a judgment to imprisonment notwithstanding the suspension of the execution of imprisonment has been granted, except for an offence committed through negligence, a petty offence or a defamation offense.

Section 120. When the office of a senator becomes vacant under section 119, the provisions of section 112, section 113, section 114 and section 118 shall apply mutatis mutandis to the election or selection of a senator, as the case may be, and the replacing senator shall remain in office for the unexpired term of office of the member he replaces. In the case where the term of office of a senator who vacates

office is less than one hundred and eighty days, the election or selection may be omitted.

Section 121. In considering the selection of a person to hold any position under this Constitution, the Senate shall appoint a committee for examining past records, behaviours and ethics of the person nominated for holding such position as well as gathering necessary facts and evidences to be reported to the Senate for its further consideration.

The proceeding of the committee under paragraph one shall be in accordance with the rules of procedure of the Senate.

Part 4

Provisions Applicable to both Houses

Section 122. Members of the House of Representatives and senators are representatives of the Thai people and free from any mandate, commitment or control, and shall honestly perform the duties for the common interests of the Thai people without conflict of interest.

Section 123. Before taking office, a member of the House of Representatives and a senator shall make a solemn declaration at a sitting of the House of which he is a member in the following words:

“I, (name of the declarer), do solemnly declare that I shall perform my duties in accordance with the honest dictates of my conscience for the common interests of the Thai people. I shall also uphold and observe the Constitution of the Kingdom of Thailand in every respect.”

Section 124. The House of Representatives and the Senate shall each have one President and one or two Vice-Presidents who are appointed by the King from the members of such House in accordance with its resolution.

The President and the Vice-Presidents of the House of Representatives hold office until the expiration of the term or the dissolution of the House.

The President and the Vice-Presidents of the Senate hold office until the day preceding the date of the election the new President and Vice-Presidents.

The President and the Vice-Presidents of the House of Representatives and the President and the Vice-Presidents of the Senate vacate office before the expiration of the term of office under paragraph one or paragraph two, as the case may be, upon:

- (1) loss of membership of the House of which he is a member;
- (2) resignation;
- (3) holding a position of Prime Minister, Minister or other political official;
- (4) being sentenced by a judgment to imprisonment notwithstanding the case is not come to an end or the suspension of the execution of imprisonment has been granted, except for an offence committed through negligence, a petty offence or a defamation offense.

While being in office, the President and the Vice-Presidents of the House of Representatives shall not be members of the Executive Committee of a political party or members of a political party simultaneously.

Section 125. The President of the House of Representatives and the President of the Senate shall have the powers and duties to carry out the business of each House in accordance with its rules of procedure. The Vice-presidents have the powers and duties as entrusted by the President and act on behalf of the President when the President is not present or unable to perform his duties.

The President of the House of Representatives, the President of the Senate and the persons who act on behalf of the President shall be impartial in the performance of duties.

When the President and the Vice-Presidents of the House of Representatives or the President and the Vice-Presidents of the Senate are not present at any sitting, the members of each House shall elect one among themselves to preside over such sitting.

Section 126. At a sitting of the House of Representatives or the Senate, the presence of not less than one-half of the total number of the existing members of each House is required to constitute a quorum, except that in the case of considering the agenda on interpellation under section 156 and section 157, the House of Representatives and the Senate may otherwise prescribe a quorum in the rules of procedure.

A resolution on any issue shall be made by a majority of votes, unless it is otherwise provided in this Constitution.

In casting a vote, each member has one vote. In case of an equality of votes, the presiding member shall have an additional vote as a casting vote.

The President of the National Assembly, the President of the House of Representatives and the President of the Senate shall cause the voting of each

member to be recorded and disclose such record in a place where the public entry for its inspection is possible, except for the case of the voting by secret ballot.

The casting of votes to elect or give approval to a person for holding office shall be secret, unless otherwise provided in this Constitution, and members shall have autonomy and shall not be bound by resolutions of their political parties or any other mandate.

Section 127. The National Assembly shall, within thirty days as from the date of the election of members of the House of Representatives, be summoned for the first sitting.

Each year, there shall be a general ordinary session and a legislative ordinary session.

The day on which the first sitting under paragraph one is held shall be considered as the first day of the general ordinary session, and the first day of the legislative ordinary session shall be fixed by the House of Representatives. In the case where the first sitting under in paragraph one has less than one hundred and fifty days up to the end of a calendar year, the legislative ordinary session may be omitted in that year.

During the legislative ordinary session, the National Assembly shall hold a sitting only in such cases as prescribed in Chapter 2 or in cases of the consideration of bills or organic law bills, the approval of an Emergency Decree, the approval of the declaration of war, the hearing and approval of a treaty, the election or approval of a person for holding office, the removal of a person from office, the interpellation and the amendment of the Constitution, unless the National Assembly has passed a resolution, by the votes of more than one-half of the total number of the existing members of both Houses, for considering other matters.

An ordinary session of the National Assembly shall last one hundred and twenty days but the King may prolong it.

An ordinary session may be prorogued before the end of one hundred and twenty days only with the approval of the National Assembly.

Section 128. The King convokes the National Assembly, opens and prorogues its session.

The King may be present to perform the opening ceremony of the first general ordinary session under section 127 paragraph one or may command the Heir to the Throne who is sui juris or any person to perform the ceremony as His Representative.

When it is necessary for the interests of State, the King may convoke an extraordinary session of the National Assembly.

Subject to section 129, the convocation, the prolongation of session and the prorogation of the National Assembly shall be made by a Royal Decree.

Section 129. Members of both Houses or members of the House of Representatives of not less than one-third of the total number of the existing members of both Houses have the right to present their petition to the King for the issuance of a Royal Command convoking an extraordinary session of the National Assembly.

The petition referred to in paragraph one shall be lodged with the President of the National Assembly.

The President of the National Assembly shall present the petition to the King and countersign the Royal Command.

Section 130. At a sitting of the House of Representatives or the Senate or at a joint sitting of the National Assembly, words expressed in giving statements of fact or opinions or in casting the vote by any member are absolutely privileged. No charge or action in any manner whatsoever shall be brought against such member.

The privilege under paragraph one does not extend to a member who expresses words at a sitting which is broadcast through radio or television if such words appear out of the precinct of the National Assembly and the expression of such words constitutes a criminal offence or a wrongful act against any other person, who is not a Minister or member of that House.

In the case of paragraph two, if the words expressed by the member cause damage to other person who is not a Minister or member of that House, the President of that House shall cause explanations to be published as requested by that person in accordance with procedure and within such period of time as prescribed in the rules of procedure of that House, without prejudice to the right of such person to bring the case before the Court.

The privilege provided in this section extends to printers and publishers of the minutes of sittings in accordance with the rules of procedure of the House of Representatives, the Senate or the National Assembly, as the case may be, and to persons permitted by the presiding member to give statements of fact or opinions at such sitting as well as to persons who broadcasts the sitting through radio or television with the permission of the President of such House *mutatis mutandis*.

Section 131. No member of the House of Representatives or senator shall, during a session, be arrested, detained or summoned by a warrant for inquiry as the suspect in a criminal case unless permission of the House of which he is a member is obtained or he is arrested in *flagrante delicto*.

In the case where a member of the House of Representatives or a senator has been arrested in flagrante delicto, it shall be forthwith reported to the President of the House of which he is a member and such President may order the release of the person so arrested.

In the case where a criminal charge is brought against a member of the House of Representatives or a senator, whether the House is in session or not, the Court shall not try the case during a session, unless permission of the House of which he is a member is obtained or it is a case concerning the organic law on election of members of the House of Representatives and acquisition of senators, the organic law on Election Commission or the organic law on political parties; provided that the trial of the Court shall not hinder such member from attending the sitting of the House.

The trial and adjudication of the Court conducted before it is invoked that the accused is a member of either House are valid.

If a member of the House of Representatives or a senator is detained during the inquiry or trial before the beginning of a session, when the session begins, the inquiry official or the Court, as the case may be, must order his release as soon as the President of the House of which he is a member has so requested.

The order of release under paragraph one shall be effective as from the date of such order until the last day of the session.

Section 132. During the expiration of the term or the dissolution of the House of Representatives, the Senate shall not hold its sitting except in the following cases:

- (1) a sitting at which the Senate shall act as the National Assembly under section 19, section 21, section 22, section 23 and section 189, and the votes taken shall be based on the number of senators;
- (2) a sitting at which the Senator shall consider of a person for holding office under the provision of this Constitution;
- (3) a sitting at which the Senate shall consider and pass a resolution removing a person from office.

Section 133. A sitting of the House of Representatives and of the Senate and a joint sitting of the National Assembly shall be in public under the conditions stipulated in the rules of procedure of each House. Nevertheless a sitting in camera shall be held at the request of the Council of Ministers or members of not less than one-fourth of the total number of the existing members of each House or of both Houses, as the case may be.

Section 134. The House of Representatives and the Senate have the power to make the rules of procedure governing the election and performance of duties of the President, Vice-Presidents, matters or activities which are within the powers and duties of each standing committee, performance and quorum of committees, sittings, submission and consideration of bills and organic law bills, submission of motions, consultation, debate, passing of a resolution, recording and disclosure of the passing of a resolution, interpellation, general debate, observation of the rules and orders and other relevant matters and the power to make the codes of ethics of members and committee members and other matters for the execution under this Constitution.

Section 135. The House of Representatives and the Senate have the power to select and appoint members of each house to constitute a standing committee and have the power to select and appoint persons, being or not being its members, to constitute a non-standing committee in order to perform any act, inquire into or study any matter within the powers and duties of the House and report its findings to the House. The resolution appointing such non-standing committee must specify its activities or the responsible matters clearly and without repetition or duplication.

The committee under paragraph one has the power to demand documents from any person or summon any person to give statements of fact or opinions on the act or the matter under its inquiry or study and such demand or summoning is enforceable as provided by law but it is not applicable to a judge performing his powers and duties in trial of the case or to the personnel management of each Court and to the Ombudsman or members of the independent Constitutional organisation in the performance of their powers and duties under the Constitution or the organic laws, as the case may be.

In the case where the person under paragraph two is a government official, official or employee of government agency, State agency, State enterprise or local government organisation, the Chairperson of the committee shall notify the Minister who supervises and controls the agency to which such person is attached in order to instruct him to act as prescribed in paragraph two, except that, in the case of the safety of or important benefit to the State, it shall be deemed as a ground for the exemption to the compliance with paragraph two.

The privileges provided in section 130 shall also extend to the persons performing their duties under this section.

The number of members of a standing committee appointed solely from members of the House of Representatives shall be in proportion to or in close proportion to the number of members of the House of Representatives of each political party or group of political parties in the House of Representatives.

In the absence of the rules of procedure of the House of Representatives under section 134, the President of the House of Representatives shall determine the proportion under paragraph five.

Part 5

Joint Sitzings of the National Assembly

Section 136. The National Assembly shall hold a joint sitting in the following cases:

- (1) the approval of the appointment of the Regent under section 19;
- (2) the making of a solemn declaration by the Regent before the National Assembly under section 21;
- (3) the acknowledgment of an amendment of the Palace Law on Succession, B.E. 2467 under section 22;
- (4) the acknowledgment or approval of the succession to the Throne under section 23;
- (5) the passing of a resolution for the consideration by the National Assembly of other matters during a legislative ordinary session under section 127;
- (6) the approval of the prorogation of a session under section 127;
- (7) the opening of the session of the National Assembly under section 128;
- (8) the making of the rules of procedure of the National Assembly under section 137;
- (9) the approval of the further consideration of a bill or an organic law bill under section 145;
- (10) the reconsideration of a bill or an organic law bill under section 151;
- (11) the approval of the further consideration of a Constitution Amendment, a bill or an organic law bill under section 153 paragraph two;
- (12) the announcement of policies under section 176;
- (13) the holding of a general debate under section 179;
- (14) the approval of the declaration of war under section 189;

(15) the hearing and approval of a treaty under section 190;

(16) the amendment of the Constitution under section 291;

Section 137. At a joint sitting of the National Assembly, the rules of procedure of the National Assembly shall apply. While the rules of procedure of the National Assembly has not yet been issued, the rules of procedure of the House of Representatives shall apply mutatis mutandis.

The provisions applicable to both Houses shall apply mutatis mutandis to the joint sitting of the National Assembly, except that, for the appointment of a committee, the number of committee members appointed from the members of each House must be in proportion to or in close proportion to the number of members of each House.

Part 6

The Enactment of the Organic Law

Section 138. There shall be the following organic law:

- (1) the organic law on election of members of the House of Representative and acquisition of Senators;
- (2) the organic law on Election Commission;
- (3) the organic law on political parties;
- (4) the organic law on referendum;
- (5) the organic law on rules and procedure of the Constitutional Court;
- (6) the organic law on criminal proceeding against persons holding political positions;
- (7) the organic law on Ombudsman;
- (8) the organic law on counter corruption;
- (9) the organic law on State Audit.

Section 139. An organic law bill may be introduced only by the followings:

- (1) the Council of Ministers;

(2) members of the House of Representatives of not less than one-tenth of the total number of the existing number of the House of Representatives or members of the House of Representatives and senators of not less than one-tenth of members of the both Houses; or

(3) the Constitutional Court, the Supreme Court of Justice or other independent Constitutional organisation by through the President of such Court or of such organizations whom having charge and control of the execution of the organic law.

Section 140. The consideration of the organic law bill of the House of Representatives and the Senate shall be made in three readings as follows:

(1) the voting for the acceptance of the principle of the bill in the first reading and for each section of the bill in the second reading shall be made by majority of votes of each House;

(2) the voting for approval of the bill to be enacted as the organic law in the third reading shall be made by more than one-half of the total number of the existing members of each House.

The provisions in Chapter 6, Part 7 the enactment of the Act shall apply *mutatis mutandis* to the consideration of the organic law bill.

Section 141. Before presenting the organic law bill as approved by the National Assembly to the King for His signature, it shall be submitted to the Constitutional Court for considering of its constitutionality and, in such case, the Constitutional Court shall have a decision thereon within thirty days as from the date of receiving thereof.

If the Constitutional Court decides that the provisions of an organic law bill are contrary to or inconsistent with the Constitution, such provisions shall lapse and if the Constitutional Court decides that such provisions are the essential element thereof or the organic law bill is enacted inconsistent with the provisions of the Constitution, such organic law bill shall lapse.

In the case where the decision of the Constitutional Court resulting in the lapse of the provisions which are contrary to or inconsistent with the Constitution under paragraph two, such organic law bill shall be returned to the House of Representatives and the Senate respectively for their reconsideration. In such case, the House of Representatives or the Senate shall make an amendment to the organic law bill for its constitutionality by through the votes of more than one-half of the total number of the existing members of each House and the Prime Minister shall then proceed further under section 90 and section 150 or section 151, as the case may be.

Part 7

The Enactment of an Act

Section 142. Subject to section 139, a bill may be introduced only by the followings:

- (1) the Council of Ministers;
- (2) members of the House of Representatives of not less than twenty in number;
- (3) the Court or the independent Constitutional organisation, only for the bills relating to the administration of their organisations and the law in which the President of such Court or of such organisations whom having charge and control of the execution of the Act;
- (4) the persons having the right to vote of not less than ten thousand in number whom jointly introduce a bill under section 163.

If the bill under (2), (3) or (4) is a money bill, it shall be introduced only with the endorsement of the Prime Minister.

In the case where the person having the right to vote have introduced the bill under (4) and thereafter the person under (1) or (2) introduces the bill having the same principle thereto, the provisions of section 163 paragraph four shall apply to the consideration of such bill.

A bill shall be first submitted to the House of Representatives.

In an introduction of a bill under paragraph one, a bill and its explanatory memorandum shall be submitted altogether.

A bill introduced to the National Assembly shall be opened to public and the public shall get access thereto conveniently.

Section 143. A money bill means a bill with provisions dealing with any of the following matters:

- (1) the imposition, repeal, reduction, alteration, modification, remission, or regulation of taxes or duties;
- (2) the allocation, receipt, custody, payment of the State funds, or transfer of expenditure estimates of the State;

(3) the raising of loans, or guarantee or redemption of loans, or any binding of State's properties;

(4) currency.

In case of doubt as to whether a bill is a money bill which requires the endorsement of the Prime Minister or not, it shall be the power of a joint sitting of the President of the House of Representatives and Presidents of all its standing committees to make a decision thereon.

The President of the House of Representatives shall hold a joint sitting to consider the case under paragraph two within fifteen days as from the date such case occurs.

The resolution of the joint sitting under paragraph two shall be decided by a majority of votes. In case of an equality of votes, the President of the House of Representatives shall have an additional vote as a casting vote.

Section 144. For any bill introduced by members of the House of Representatives which, at the stage of the adoption of its principle, was not a money bill but was then amended by the House of Representatives and, in the opinion of the President of the House, such amendment has rendered it to exhibit the characteristic of a money bill, the President of the House shall suspend the consideration of such bill and, within fifteen days as from the day on which such case occurs, shall refer it to a joint sitting of the President of the House of Representatives and Chairpersons of all its standing committees to make a decision thereon.

If the joint sitting under paragraph one decides that the amendment resulted in such bill exhibiting the characteristic of a money bill, the President of the House shall refer it to the Prime Minister for endorsement. In the case where the Prime Minister does not endorse it, the House of Representative shall amend it so as to prevent it from being a money bill.

Section 145. When a bill which has been specified by the Council of Ministers, in its policies stated to the National Assembly under section 176, as necessary for the administration of State affairs, if it is not approved by a resolution of the House of Representatives and the votes disapproving it are less than one-half of the total number of the existing members of the House, the Council of Ministers may request the National Assembly to hold a joint sitting for passing a resolution on another occasion. If it is approved, the National Assembly shall appoint the persons, being or not being its members, in such an equal number as proposed by the Council of Ministers, to constitute a joint committee of the National Assembly for considering such bill, and the joint committee of the National Assembly shall prepare a report thereon and submit the bill which it has already considered to the National Assembly.

If such bill is approved by the National Assembly, further proceedings under section 150 shall be taken. If it is not approved, such bill shall lapse.

Section 146. Subject to section 168, when the House of Representatives has considered a bill submitted under section 142 and resolved to approve it, the House of Representatives shall submit such bill to the Senate. The Senate must finish the consideration of such bill within sixty days; but if it is a money bill, the consideration thereof must be finished within thirty days; provided that the Senate may, as a special case, resolve to extend the period for not more than thirty days. The said period shall mean the period during a session and shall be counted as from the day on which such bill reaches the Senate.

The period referred to in paragraph one shall not include the period during which the bill is under the consideration of the Constitutional Court under section 149.

If the Senate has not finished the consideration of the bill within the period referred to in paragraph one, it shall be deemed that the Senate has approved it.

In the case where the House of Representatives submits a money bill to the Senate, the President of the House of Representatives shall also notify the Senate that the bill so submitted is a money bill. The notification of the President of the House of Representatives shall be deemed final.

In the case where the President of the House of Representatives does not notify the Senate that the bill is a money bill, such bill shall not be deemed a money bill.

Section 147. Subject to section 168, after the Senate has finished the consideration of a bill,

(1) if it agrees with the House of Representatives, further proceedings under section 150 shall be taken;

(2) if it disagrees with the House of Representatives, such bill shall be withheld and returned to the House of Representatives;

(3) if there is an amendment, the amended bill shall be returned to the House of Representatives. If the House of Representatives approves such amendment, further proceedings under section 150 shall be taken. In other cases, each House shall appoint persons, being or not being its members, in such an equal number as may be fixed by the House of Representatives, to constitute a joint committee for considering the bill and the joint committee shall prepare a report thereon and submit the bill which it has already considered to both Houses. If both Houses approve the bill already considered by the joint committee, further proceedings under section 150 shall be taken. If either House disapproves it, the bill shall be withheld.

The joint committee has the power to demand documents from any person or summon any person to give statements of fact or opinions in respect of the consideration of the bill and the privileges provided in section 130 shall also extend to the person performing his duties under this section.

At a meeting of the joint committee, the presence of the members of the joint committee appointed by both Houses of not less than one-half of the total number of its members is required to constitute a quorum and the provisions of section 137 shall apply *mutatis mutandis*.

If the Senate fails to return the bill to the House of Representatives within the period under section 146, it shall be deemed that the Senate approves such bill and further proceeding under section 150 shall be taken.

Section 148. A bill withheld under section 147 may be reconsidered by the House of Representatives only after the lapse of one hundred and eighty days as from the date the bill or the organic law bill is returned to the House of Representatives by the Senate in case of withholding under section 147 (2) and as from the date either House disapproves it in case of withholding under section 147 (3). In such cases, if the House of Representatives resolves to reaffirm the original bill or the bill considered by the joint committee by the votes of more than one-half of the total number of the existing members of the House of Representatives, such bill shall be deemed to have been approved by the National Assembly and further proceedings under section 150 shall be taken.

If the bill withheld is a money bill, the House of Representatives may forthwith proceed to reconsider it. In such case, if the House of Representatives resolves to reaffirm the original bill or the bill considered by the joint committee by the votes of more than one-half of the total number of the existing members of the House of Representatives, such bill shall be deemed to have been approved by the National Assembly and further proceedings under section 150 shall be taken.

Section 149. While a bill is being withheld under section 147, the Council of Ministers or members of the House of Representatives may not introduce a bill having the same or similar principle as that of the bill so withheld.

In the case where the House of Representatives or the Senate is of the opinion that the bill so introduced or referred to for consideration has the same or similar principle as that of the bill being withheld, the President of the House of Representatives or the President of the Senate shall refer the said bill to the Constitutional Court for decision. If the Constitutional Court decides that it is a bill having the same or similar principle as that of the bill so withheld, such bill shall lapse.

Section 150. The Prime Minister shall present the bill approved by the National Assembly to the King for His signature within twenty days as from the date of receiving such bill from the National Assembly and the bill shall come into force as an Act upon its publication in the Government Gazette.

Section 151. If the King refuses His assent to a bill and either returns it to the National Assembly or does not return it within ninety days, the National Assembly must reconsider such bill. If the National Assembly resolves to reaffirm the bill with the votes of not less than two-thirds of the total number of existing members of both Houses, the Prime Minister shall present such bill to the King for signature once again. If the King does not sign and return the bill within thirty days, the Prime Minister shall cause the bill to be promulgated as an Act in the Government Gazette as if the King had signed it.

Section 152. In considering a bill the substance of which is decided by the President of the House of Representatives to be concerned with children, the youth, women, the elderly, the disabled or handicapped, if the House of Representatives does not consider it by its full committee, the House of Representatives shall appoint a non-standing committee consisting of representatives, from private organisations concerned with the respective types of persons, of not less than one-third of the total number of members of the committee and the members thereof shall consist of women and men in closely apportion.

Section 153. In the case where the term of the House of Representatives expires or the House of Representatives is dissolved, the draft Constitution Amendment or all bills to which the King has refused His assent or which have not been returned by the King within ninety days, shall lapse.

In the case where the term of the House of Representatives expires or where the House of Representatives is dissolved, the National Assembly, the House of Representatives or the Senate, as the case may be, may, after a general election of members of the House of Representatives, continue the consideration of the draft Constitution Amendment or the bill which has not yet been approved by the National Assembly if the Council of Ministers which is newly appointed after the general election so requests within sixty days as from the first sitting day of the National Assembly after the general election and the National Assembly approves it. If the Council of Ministers does not so request within such period of time, such draft Constitution Amendment or bill shall lapse.

The further consideration of the draft Constitution Amendment or the bill under paragraph two shall be in accordance with the rules of procedure of the House of Representatives, the Senate or the National Assembly, as the case may be.

Part 8

Constitutionality of Laws

Section 154. After any bill has been approved by the National Assembly under section 150 or has been reaffirmed by the National Assembly under section 151, before the Prime Minister presents it to the King for signature:

(1) if members of the House of Representatives, senators or members of both Houses of not less than one-tenth of the total number of the existing members of both Houses are of the opinion that provisions of the said bill are contrary to or inconsistent with this Constitution or such bill is enacted contrary to the provisions of this Constitution, they shall submit their opinion to the President of the House of Representatives, the President of the Senate or the President of the National Assembly, as the case may be, and the President of the House receiving such opinion shall then refer it to the Constitutional Court for decision and, without delay, inform the Prime Minister thereof;

(2) if the Prime Minister is of the opinion that the provisions of the said bill are contrary to or inconsistent with this Constitution or it is enacted contrary to the provisions of this Constitution, the Prime Minister shall refer such opinion to the Constitutional Court for decision and, without delay, inform the President of the House of Representatives and the President of the Senate thereof.

During the consideration of the Constitutional Court, the Prime Minister shall suspend the proceedings in respect of the promulgation of the bill until the Constitutional Court gives a decision thereon.

If the Constitutional Court decides that the provisions of such bill are contrary to or inconsistent with this Constitution or it is enacted contrary to the provisions of this Constitution and that such provisions of the bill form the essential element thereof, such bill shall lapse.

If the Constitutional Court decides that the provisions of such bill are contrary to or inconsistent with this Constitution otherwise than in the case specified in paragraph three, such conflicting or inconsistent provisions shall lapse and the Prime Minister shall proceed further in accordance with section 150 or section 151, as the case may be.

Section 155. The provisions of section 154 shall apply mutatis mutandis to draft rules of procedure of the House of Representatives, draft rules of procedure of the Senate and draft rules of procedure of the National Assembly which have already been approved by the House of Representatives, the Senate or the National Assembly, as the case may be, but remain unpublished in the Government Gazette.

Part 9

Control of the Administration of State Affairs

Section 156. Every member of the House of Representatives or senator has the right to interpellate a Minister on any matter within the scope of his authority, but the Minister has the right to refuse to answer it if the Council of Ministers is of the opinion that the matter should not yet be disclosed on the ground of safety or vital interest of the State.

Section 157. In the administration of State affairs on any matter which involves an important problem of public concern, affects national or public interest, or requires urgency, a member of the House of Representatives may notify the President of the House of Representatives in writing prior to the commencement of the sitting of the day, that he will interpellate the Prime Minister or the Minister responsible for the administration of State affairs on that matter without specifying the question, and the President of the House of Representatives shall place such matter on the agenda of the meeting of that day.

The interpellation and the answer to the interpellation under paragraph one may be made once a week, and a verbal interpellation by a member of the House of Representatives on a matter involving the administration of State affairs may be made not exceeding three times on each matter in accordance with the rules of procedure of the House of Representatives.

Section 158. Members of the House of Representatives of not less than one-fifth of the total number of the existing members of the House have the right to submit a motion for a general debate for the purpose of passing a vote of no-confidence in the Prime Minister. Such motion must nominate the suitable next Prime Minister who is also a person under section 171 paragraph two and, when the motion has been submitted, the dissolution of the House of Representatives shall not be permitted, except that the motion is withdrawn or the resolution is passed without being supported by the vote in accordance with paragraph three.

In the submission of the motion for a general debate under paragraph one, if it is concerned with the behaviour of the Prime Minister, which involves circumstances of unusual wealthiness, exhibits a sign of malfeasance in office or intentionally violates the provisions of the Constitution or law, it shall not be submitted without the petition under section 271 having been presented. Upon the submission of the petition under section 271, it may be proceeded without awaiting the outcome of the proceedings under section 272.

If the general debate is concluded with a resolution not to pass over the agenda of the general debate, the House of Representatives shall pass a vote of confidence or no-confidence. Voting in such case shall not take place on the date of the conclusion of the debate. The vote of no-confidence must be passed by more than one-half of the total number of the existing members of the House of Representatives.

In the case where a vote of no-confidence is passed by not more than one-half of the total number of the existing members of the House of Representatives, the members of the House of Representatives who submit the motion for the general debate shall no longer have the right to submit another motion for a general debate for the purpose of passing a vote of no-confidence in the Prime Ministers throughout the session.

In the case where a vote of no-confidence is passed by more than one-half of the total number of the existing members of the House of Representatives, the President of the House of Representatives shall submit the name of the person nominated under paragraph one to the King for further appointment and section 172 shall not apply.

Section 159. Members of the House of Representatives of not less than one-sixth of the total number of the existing members of the House of Representatives have the right to submit a motion for a general debate for the purpose of passing a vote of no-confidence in an individual Minister and the provisions of section 158 paragraph two, paragraph three and paragraph four shall apply mutatis mutandis.

In the case where the Minister vacates his portfolio but being appointed to hold another portfolio after the submission of a motion under paragraph one, he still be a subject of a general debate for the purpose of passing a vote of no-confidence under paragraph one.

The provisions of paragraph two shall apply mutatis mutandis to the Minister who vacates his portfolio for the period of not exceeding ninety days before the submission of a motion under paragraph one but being appointed to be the Minister of another portfolio.

Section 160. In the case where the number of members of the House of Representatives whose their political parties having members holding no ministerial positions is less than the number of members of the House required for the making of submission of a motion for a general debate under section 158 or section 159, more than one-half of the existing number of such members of the House of Representatives have the right to submit a motion for a general debate for the purpose of passing a vote of no-confidence in the Prime Minister or in an individual Minister under section 158 or section 159 if the Council of Ministers conducts the administration of State affairs for more than two years.

Section 161. Senators of not less than one-third of the total number of the existing members of the Senate have the right to submit a motion for a general debate in the Senate for the purpose of requesting the Council of Ministers to give statements of fact or explain important problems in connection with the administration of State affairs without a resolution to be passed.

The motion for the general debate under this section may be submitted only once in each session.

Section 162. In the sitting of the House of Representatives or the Senate for consideration of an interpellation on any matter within the scope of the authority of Minister or for a general debate for the purpose of passing a vote of no-confidence in the Prime Minister or in an individual Minister, the Prime Minister or such Minister shall attend the sitting of the House of Representatives or the Senate for giving statement or answer thereon by himself, provided that there occurs an inevitably cause which hinder him in so doing but he shall notify the President of the House of Representatives or the President of the Senate on or before the sitting date.

A member of the House of Representatives is not bound by the resolution of his political party in submitting an interpellation, debating and voting of no-confidence.

CHAPTER VII

Direct Political Participation of the Public

Section 163. The persons having the right to vote of not less than ten thousand in number shall have a right to submit a petition to the President of the National Assembly to consider such bill as prescribed in Chapter 3 and Chapter 5 of this Constitution.

A bill must be attached to the petition referred to in paragraph one.

The rules and procedure for the petition and the examination thereof shall be in accordance with the provisions of the law.

In considering the bill under paragraph one, the House of Representatives and the Senate shall facilitate representatives of the persons submitting a petition to state the principles of the bill and the non-standing committee for considering such bill shall consist of representatives of the persons submitting a petition in an amount of not less than one-third of the total number of its members.

Section 164. The persons having the right to vote of not less than twenty thousand in number shall have a right to lodge with the President of the Senate a complaint in

order to request the Senate to pass a resolution under section 274 removing the persons under section 270 from office.

The request under paragraph one shall clearly itemise circumstances in which such persons have allegedly committed the act.

The rules, procedure and conditions for the lodging of the complaint by the voters under paragraph one shall be in accordance with the organic law on counter corruption.

Section 165. A person having the right to vote in an election shall have the right to vote in a referendum.

A referendum shall be held when:

(1) the Council of Ministers is of the opinion that any issue may affect national or public interests, the Prime Minister, with the approval of the Council of Ministers, may consult the President of the House of Representatives and the President of the Senate for the purpose of publishing in the Government Gazette calling for a referendum;

(2) it is required by law.

A referendum under (1) or (2) may be held for the purpose of finding solution of the subject matter of a referendum through the majority of votes in a referendum or for the purpose of public consultation to the Council of Ministers, provided that otherwise prescribed by law.

A vote in a referendum shall be made for either approval or not approval to the subject matter of a referendum. A referendum shall not be held on an issue specifically relating to any individual or group of persons.

Before the referendum day, the State shall provide sufficient information to the public and provide equal opportunity to the peoples who agree or disagree with the subject matter of a referendum to state their opinions.

The rules and procedure for voting in a referendum shall be in accordance with the organic law on referendum which shall at least consist of details of the procedure for voting, referendum period and the number of votes required for final decision.

CHAPTER VIII

Monetary, Finance and Budget

Section 166. The expenditure estimates of the State shall be made in the form of an Act. If the Annual Appropriations Act for the following fiscal year is not enacted in time, the law on annual appropriations for the preceding fiscal year shall apply for the time being.

Section 167. In an introduction of the annual appropriations bill, the bill shall be annexed with documents stating estimated incomes, obscure objectives, activities, plans or projects of each item of expenditures including monetary and financial status of the country through the overview of economic condition arising from spending and gathering of incomes, benefits and deficiencies resulting from any specific tax exemption, justification for binding of over-year obligations, State debts and its incurring and financial status of State enterprises of that year and the previous year.

If any expenditure is unable to be directly allocated to a government agency, State enterprise or other State agencies, it shall be allocated to the item of reserved expenditure and, in such case, justification and necessary of such allocation shall also be stated.

There shall be a law on State monetary and finance laying down monetary and financial disciplines as well as the rules relating to a financial planning for medium term range, the gathering of incomes, a determination of guidelines for the making of expenditure estimates of State, the financial and properties management, an accounting, the public funds, an incurring of debts or any act resulting in the binding of properties of or the incurring of financial obligation of State, the rule for a determination of the amount of reserved money to be paid for emergency or necessity situation and other relevant acts which are the scope for the gathering of incomes and supervising of spending in accordance with the principles of balancing, economic sustainable development and social fairness.

Section 168. The House of Representatives must finish the consideration of an annual appropriations bill, a supplementary appropriations bill and a transfer of appropriations bill within one hundred and five days as from the date the bill reaches the House of Representatives.

If the House of Representatives has not finished the consideration of the bill within the period referred to in paragraph one, such bill shall be deemed to have been approved by the House of Representatives and shall be submitted to the Senate.

In the consideration by the Senate, the Senate must approve or disapprove the bill without any amendment within twenty days as from the date the bill reaches the Senate. Upon the lapse of such period, such bill shall be deemed to have been approved; in such case and in the case where the Senate approves it, further proceedings under section 150 shall be taken.

If the Senate disapproves the bill, the provisions of section 148 paragraph two shall apply *mutatis mutandis*.

In the consideration of the annual appropriations bill, the supplementary appropriations bill and the transfer of appropriations bill, a member of the House of Representatives shall not submit a motion adding any item or amount to the bill, but may submit a motion reducing or abridging the expenditures which are not expenditures according to any of the following obligations:

- (1) money for payment of the principal of a loan;
- (2) interest on a loan;
- (3) money payable in accordance with the law.

In the consideration by the House of Representatives, the Senate or a committee, any proposal, submission of a motion or commission of an act, which results in direct or indirect involvement by members of the House of Representatives, senators or members of a committee in the use of the appropriations, shall not be permitted.

In the case where members of the House of Representatives or senators of not less than one-tenth of the total number of the existing members of each House are of the opinion that the violation of the provisions of paragraph six has occurred, they shall refer it to the Constitutional Court for decision and the Constitutional Court shall decide it within seven days as from the date of its receipt. In the case where the Constitutional Court decides that the violation of the provisions of paragraph six has occurred, such proposal, submission of the motion, or commission of the act shall be ineffective.

The State shall allocate adequate budgets for the autonomous administration of the National Assembly, the Constitutional Court, the Courts of Justice, the Administrative Courts and other Constitutional organisations.

In the consideration of the expenditure estimates of the National Assembly, the Courts and the organisations under paragraph eight, if such organisation is of the opinion that the allocated budget is insufficient, it shall submit a motion to the committee directly.

Section 169. The payment of State funds shall be made only when it has been authorised by the law on appropriations, the law on budgetary procedure, the law on transfer of appropriations or the law on treasury balance, except that it may be prepaid in the case of urgent necessity under the rules and procedure provided by law. In such case, the expenditure estimates for reimbursement must be set aside in the Transfer of Appropriations Act, the Supplementary Appropriations Act, or the

Annual Appropriations Act for the following fiscal year, and the sources of incomes for reimbursement of expenditures paid-up from the treasury balance must be stated.

During the time when the country is in state of war or fighting, the Council of Ministers has the power to transfer or shift the budget allocated for any government agency or State enterprise to be used for other items forthwith even it is different from the provisions of the Annual Appropriation Act and it shall be reported to the National Assembly without delay.

If there is a transfer or shift of the budget allocated for any item to be used for other items of any government agency or State enterprise, the Government shall report the National Assembly for information every six months.

Section 170. A State agency having income which is not required to be remitted as State revenue shall report the receipt and spending of such money to the Council of Ministers at the lapse of each fiscal year and the Council of Ministers shall report further to the House of Representatives and the Senate.

A spending of income under paragraph one shall be in accordance with the monetary and financial disciplines under this Chapter.

CHAPTER IX

The Council of Ministers

Section 171. The King appoints the Prime Minister and not more than thirty-five other Ministers to constitute the Council of Ministers having the duty to carry out the administration of State affairs with collective accountability.

The Prime Minister must be a member of the House of Representatives appointed under section 172.

The President of the House of Representatives shall countersign the Royal Command appointing the Prime Minister.

The Prime Minister shall not hold office for more than eight consecutive years.

Section 172. The House of Representatives shall complete its consideration and approval of the person suitable to be appointed as Prime Minister within thirty days as from the day the National Assembly is convoked for the first sitting under section 127.

The nomination of a person who is suitable to be appointed as Prime Minister under paragraph one shall be endorsed by members of the House of Representatives of not less than one-fifth of the total number of the existing members of the House.

The resolution of the House of Representatives approving the appointment of a person as Prime Minister shall be passed by the votes of more than one-half of the total number of the existing members of the House of Representatives. The passing of the resolution in such case shall be by open votes.

Section 173. In the case where the period of thirty days as from the date the National Assembly is convoked for the first sitting of members of the House of Representatives has elapsed and no one has been approved for appointment as Prime Minister under section 172 paragraph three, the President of the House of Representatives shall, within fifteen days as from the lapse of such period, present to the King for the issuance of a Royal Command appointing the person who has received the highest votes as Prime Minister.

Section 174. A Minister must possess the qualifications and must not be under any of the prohibitions as follows:

- (1) being of Thai nationality by birth;
- (2) being not less than thirty five years of age;
- (3) having graduated with not lower than a Bachelor's degree or its equivalent;
- (4) not being under any of the prohibitions under section 102 (1), (2), (3), (4), (6), (7), (8), (9), (11), (12), (13) or (14);
- (5) having been discharged for a period of less than five years before the appointment after being sentenced by a judgment to imprisonment, except for an offence committed through negligence or petty offence;
- (6) not being a senator or having been a senator whose membership has terminated for not more than two years up to the date of the appointment as Minister.

Section 175. Before taking office, a Minister must make a solemn declaration before the King in the following words:

“I, (name of the declarer), do solemnly declare that I will be loyal to the King and will faithfully perform my duty in the interests of the country and of the people. I will also uphold and observe the Constitution of the Kingdom of Thailand in every respect.”

Section 176. The Council of Ministers which will assume the administration of State affairs must, within fifteen days as from the date it takes office, state its policies and explanation for an implementation of the directive principles of fundamental State policies under section 75; provided that no vote of confidence shall be passed, and must, after giving such statement, prepare a plan for the administration of State affairs as guideline for the administration of State affairs for each year under section 76.

Before stating policies to the National Assembly under paragraph one, if there occurs a case of importance and necessary urgency which, if left delayed, will affect material benefits of State, the Council of Ministers which has taken office may, for the time being, carry out such acts in so far as it is necessary.

Section 177. A Minister has the right to attend and give a statement of facts or opinions at a sitting of the House. In the case where the House of Representatives or the Senate has passed a resolution requiring Ministers to attend a sitting for any matter, he shall attend the sitting. The provisions of section 130 governing privileges shall apply *mutatis mutandis*.

In the case where a Minister is a member of the House of Representatives simultaneously, he must, in the sitting of the House of Representatives, abstain from voting in relation to the matter concerning with the holding of his position or the performance of his duty or the matter he has interests therewith.

Section 178. Ministers shall carry out the administration of State affairs in accordance with the provisions of the Constitution, laws and the policies stated under section 176, and shall be accountable individually to the House of Representatives for the performance of their duties and shall also be accountable collectively to the National Assembly for the general policies of the Council of Ministers.

Section 179. In the case where there is an important problem in the administration of State affairs in regard to which the Council of Ministers deems it advisable to take opinion of members of the House of Representatives and senators, the Prime Minister may give a notice to the President of the National Assembly requesting that a general debate be held at a joint sitting of the National Assembly. In such case, no resolution shall be passed by the National Assembly on the issue put in the debate.

Section 180. Ministers vacate office *en masse* upon:

- (1) the termination of ministership of the Prime Minister under section 182;
- (2) the expiration of the term or the dissolution of the House of Representatives;
- (3) the resignation of the Council of Ministers.

In the case where the ministership of the Prime Minister terminates under section 182 (1), (2), (3), (4), (5), (7) or (8), the procedure under section 172 and section 173 shall apply *mutatis mutandis*.

Section 181. The outgoing Council of Ministers shall remain in office for carrying out duty until the newly appointed Council of Ministers takes office, but in case of vacation of office under section 180 (2) the Council of Ministers and a Minister is able to carry out any duty as necessary within the following conditions:

(1) refraining from the exercise of power which resulting in the appointment or transfer of government officials holding permanent positions or salaries or of officials of State agency, State enterprise or any enterprise in which the State is a major shareholders or resulting in leaving such persons from the performance of their duties or offices or replacing other persons to replace him except by prior approval of the Election Commission;

(2) refraining from doing an act which resulting in giving of approval to spend budget reserved for emergency or necessity situation except by prior approval of the Election Commission;

(3) refraining from doing an act which resulting in giving approval of work or project or which the forthcoming Council of Ministers may be bound;

(4) refraining from using resources or personnel of State to do an act which may affect the result of a general election, and refraining from the violation of any prohibitions under the rules prescribed by the Election Commission.

Section 182. The ministership of an individual Minister terminates upon:

(1) death;

(2) resignation;

(3) being sentenced by a judgment to imprisonment notwithstanding the suspension of the execution of imprisonment has been granted, except for an offence committed through negligence, a petty offence or a defamation offense;

(4) the passing of a vote of no-confidence by the House of Representatives under section 158 or section 159;

(5) being disqualified or being under any of the prohibitions under section 174;

(6) the issuance of a Royal Command to remove a Minister from office under section 183;

(7) having done an act prohibited by section 267, section 268 or section 269;

(8) being removed from office by a resolution of the Senate under section 274.

Apart from the termination of ministership of individual Minister under paragraph one, the ministership of the Prime Minister terminates upon the lapse of the period under section 171 paragraph four.

The provisions of section 91 and section 92 shall apply to the termination of ministership under (2), (3), (5) or (7) or paragraph two and, in such case, the Election Commission may also refer the matter thereof to the Constitutional Court for decision.

Section 183. The King has the prerogative to remove a Minister from his office upon the advice of the Prime Minister.

Section 184. For the purpose of maintaining national or public safety or national economic security, or averting public calamity, the King may issue an Emergency Decree which shall have the force as an Act.

The issuance of an Emergency Decree under paragraph one shall be made only when the Council of Ministers is of the opinion that it is the case of emergency and necessary urgency which is unavoidable.

In the next succeeding sitting of the National Assembly, the Council of Ministers shall submit the Emergency Decree to the National Assembly for its consideration without delay. If it is out of session and it would be a delay to wait for the opening of an ordinary session, the Council of Ministers must proceed to convoke an extraordinary session of the National Assembly in order to consider whether to approve or disapprove the Emergency Decree without delay. If the House of Representatives disapproves it or approves it but the Senate disapproves it and the House of Representatives reaffirms its approval by the votes of not more than one-half of the total number of the existing members of the House, the Emergency Decree shall lapse; provided that it shall not affect any act done during the enforcement of such Emergency Decree.

If the Emergency Decree under paragraph one has the effect of amending or repealing any provisions of any Act and such Emergency Decree has lapsed in accordance with paragraph three, the provisions of the Act in force before the amendment or repeal shall continue to be in force as from the day the disapproval of such Emergency Decree is effective.

If the House of Representatives and the Senate approve the Emergency Decree, or if the Senate disapproves it but the House of Representatives reaffirms its approval by

the votes of more than one-half of the total number of the existing members of the House, such Emergency Decree shall continue to have the force as an Act.

The Prime Minister shall cause the approval or disapproval of the Emergency Decree to be published in the Government Gazette. In case of disapproval, it shall be effective as from the day following the date of its publication in the Government Gazette.

The consideration of an Emergency Decree by the House of Representatives and the Senate in case of reaffirmation of an Emergency Decree must take place at the first opportunity when such Houses hold their sittings.

Section 185. Before the House of Representatives or the Senate approves an Emergency Decree under section 184 paragraph three, members of the House of Representatives or senators of not less than one-fifth of the total number of the existing members of each House have the right to submit an opinion to the President of the House of which they are members that the Emergency Decree is not in accordance with section 184 paragraph one or paragraph two, and the President of such House shall, within three days as from the date of receipt of such opinion, refer it to the Constitutional Court for decision. After the Constitutional Court has given a decision thereon, it shall notify such decision to the President of the House referring such opinion.

When the President of the House of Representatives or the President of the Senate has received the opinion from members of the House of Representatives or senators under paragraph one, the consideration of such Emergency Decree shall be deferred until the decision of the Constitutional Court under paragraph one has been notified.

In the case where the Constitutional Court decides that any Emergency Decree is not in accordance with section 184 paragraph one or paragraph two, such Emergency Decree shall not have the force of law ab initio.

The decision of the Constitutional Court that an Emergency Decree is not in accordance with section 184 paragraph one or paragraph two, must be given by the votes of not less than two-thirds of the total number of judges of the Constitutional Court.

Section 186. If, during a session, it is necessary to have a law on taxes, duties or currency, which, in the interests of State, requires an urgent and confidential consideration, the King may issue an Emergency Decree which shall have the force as an Act.

The Emergency Decree issued under paragraph one must be submitted to the House of Representatives within three days as from the day following the date of its

publication in the Government Gazette, and the provisions of section 184 shall apply mutatis mutandis.

Section 187. The King has the prerogative to issue a Royal Decree which is not contrary to the law.

Section 188. The King has the prerogative to declare and lift the martial law in accordance with the conditions and manner under the Martial Law.

In the case where it is necessary to declare the martial law in a certain locality as a matter of urgency, the military authority may do so under the Martial Law.

Section 189. The King has the prerogative to declare war with the approval of the National Assembly.

The approval resolution of the National Assembly must be passed by the votes of not less than two-thirds of the total number of the existing members of both Houses.

During the expiration of the term or the dissolution of the House of Representatives, the Senate shall perform the function of the National Assembly in giving the approval under paragraph one, and the resolution shall be passed by the votes of not less than two-thirds of the total number of the existing senators.

Section 190. The King has the prerogative to conclude a peace treaty, armistice and other treaties with other countries or international organisations.

A treaty which provides for a change in the Thai territories or the Thai external territories that Thailand has sovereign right or jurisdiction over such territories under any treaty or an international law or requires the enactment of an Act for its implementation or affects immensely to economic or social security of the country or results in the binding of trade, investment budget of the country significantly must be approved by the National Assembly. In such case, the National Assembly must complete its consideration within sixty days as from the date of receipt of such matter.

Before the conclusion of a treaty with other countries or international organisations under paragraph two, the Council of Ministers must provide information thereon to the public, conduct public consultation and state information in relevant thereto to the National Assembly. In such case, the Council of Ministers must submit negotiation framework to the National Assembly for approval.

Upon giving signature to the treaty under paragraph two, the Council of Ministers shall, prior to give consent to be bound, facilitate the public to get access to the details of such treaty. In the case where the application of such treaty has affected the

public or small and medium entrepreneurs, the Council of Ministers must revise or render remedy to such effects rapidly, expediently and fairly.

There shall be a law determining measure and procedure for the conclusion of a treaty having immense effects to economic or social security of the country or resulting in the binding of trade or investment of the country significantly and the revision or rendering of remedy to the effects of such treaty with due regard to the fairness among the beneficiaries, the affected persons and the general public.

A matter arising from the provisions of paragraph two falls within the jurisdiction of the Constitutional Court and the provisions of section 154 (1) shall apply mutatis mutandis to the referring of the matter to the Constitutional Court.

Section 191. The King has the prerogative to grant a pardon.

Section 192. The King has the prerogative to remove titles and recall decorations.

Section 193. The King appoints and removes officials in the military service and civil service who hold the positions of Permanent Secretary of State, Director-General and their equivalents except in the case where they vacate office upon death.

Section 194. A government official and a State official holding a permanent position or receiving a salary and not being a political official shall not be a political official or hold other political positions.

Section 195. All laws, Royal Prescripts and Royal Commands relating to State affairs must be countersigned by a Minister unless otherwise provided in this Constitution.

All laws which have been signed or deemed to have been signed by the King shall forthwith be published in the Government Gazette.

Section 196. Emoluments and other remuneration of Privy Councillors, President and Vice-Presidents of the House of Representatives, President and Vice-Presidents of the Senate, Leader of the Opposition in the House of Representatives, members of the House of Representatives and senators shall be prescribed by the Royal Decree which the provisions thereof must not allow payment prior to the date such persons taking offices.

Gratuities, pensions or other remuneration of Privy Councillors who vacate their office shall be prescribed by the Royal Decree.

CHAPTER X

The Courts

Part 1

General Provisions

Section 197. The trial and adjudication of cases are the power of the Courts, which must be proceeded by justice in accordance with the Constitution and the law and in the name of the King.

Judges are independent in the trial and adjudication of cases with accurate, rapid and impartial practice in accordance with the Constitution and the law.

The transfer of a judge without his prior consent shall not be permitted except in the case of termly transfer as provided by law, promotion to a higher position, being under a disciplinary action or becoming a defendant in a criminal case, being affected to justice in the trial and adjudication or in case of force majeure or any other inevitable necessity as provided by law.

Judges shall not be political officials or hold political positions.

Section 198. All Courts may be established only by Acts.

A new Court for the trial and adjudication of any particular case or a case of any particular charge in place of the Court existing under the law and having jurisdiction over such case shall not be established.

A law having an effect of changing or amending the law on the organisation of Courts or on judicial procedure for the purpose of its application to a particular case shall not be enacted.

Section 199. In the case where there is a dispute on the competent jurisdiction among the Court of Justice, the Administrative Court, the Military Court or any other Court, it shall be decided by a committee consisting of the President of the Supreme Court of Justice as Chairperson, the President of the Supreme Administrative Court, the President of such other Court and not more than four qualified persons as provided by law as members.

The rules for the submission of the dispute under paragraph one shall be as provided by law.

Section 200. The King appoints and removes judges except in the case of removal from office upon death.

The appointment and removal from office of a judge of any Court other than the Constitutional Court, the Court of Justice, the Administrative Court and the Military Court as well as the adjudicative jurisdiction and procedure of such Courts shall be in accordance with the law on the establishment of such Courts.

Section 201. Before taking office, a judge shall make a solemn declaration before the King in the following words:

“I, (name of the declarer) do solemnly declare that I will be loyal to His Majesty the King and will faithfully perform my duty in the name of the King without any partiality in the interest of justice, of the people and of the public order of the Kingdom. I will also uphold and observe the democratic regime of government with the King as Head of the State, the Constitution of the Kingdom of Thailand and the law in every respect.”

Section 202. Salaries, emoluments and other benefits of judges shall be as prescribed by law; provided that the system of salary-scale or emoluments applicable to civil servants shall not be applied.

The provisions of paragraph one shall apply to Election Commissioners, Ombudsmen, members of the National Counter Corruption Commission and members of the State Audit Commission *mutatis mutandis*.

Section 203. No person may simultaneously become a member, whether an *ex officio* member or a qualified member, of the Judicial Commission of the Courts of Justice, the Administrative Court or any other Court as provided by law.

Part 2

The Constitutional Court

Section 204. The Constitutional Court consists of the President and eight judges of the Constitutional Court to be appointed by the King upon advice of the Senate from the following persons:

(1) three judges of the Supreme Court of Justice holding a position of not lower than judge of the Supreme Court of Justice and elected at a general meeting of the Supreme Court of Justice by secret ballot;

(2) two judges of the Supreme Administrative Court elected at a general meeting of the Supreme Administrative Court by secret ballot;

(3) two qualified persons in law who having orientated knowledge and experience in this field and having been selected under section 206;

(4) two qualified persons in political science, public administration or other social sciences who having orientated knowledge and experience in the administration of State affairs and having been selected under section 206.

In the case where no judge of the Supreme Court of Justice or judge of the Supreme Administrative Court having been elected under (1) or (2), the Supreme Court of Justice or the Supreme Administrative Court, as the case may be, shall elect, at its general meeting, other persons whom qualified and not being under the prohibitions provided in section 205, having orientated knowledge and experience in law and suitable for the performance of the duty as judges of the Constitutional Court to be judges of the Constitutional Court under (1) or (2), as the case may be.

The elected persons under paragraph one shall hold a meeting and elect one among themselves to be the President of the Constitutional Court and notify the result to the President of the Senate accordingly.

The President of the Senate shall countersign the Royal Command appointing the President and judges of the Constitutional Court.

Section 205. The qualified persons under section 204 (3) and (4) shall possess the qualifications and shall not be under any of the prohibitions as follows:

(1) being of Thai nationality by birth;

(2) being not less than forty five years of age;

(3) having been a Minister, a judge of the Supreme Military Court, an Election Commissioner, an Ombudsman, a member of the National Counter Corruption Commission, a member of the State Audit Commission or a member of the National Human Rights Commission, or having served in a position of not lower than Deputy Prosecutor General, Director-General or a person holding an administrative position in a government agency having administrative power equivalent to Director-General, or holding an academic position of not lower than Professor or having been a lawyer practicing legal profession regularly and continuously for not less than thirty years up to the date of nomination;

(4) not being under any of the prohibitions under section 100 or section 102 (1), (2), (4), (5), (6), (7), (13) or (14);

(5) not being a member of the House of Representatives, senator, political official, member of a local assembly or local administrator;

(6) not being or having been a member or holder of other position of a political party over the period of three years preceding the taking of office;

(7) not being an Election Commissioner, an Ombudsman, a member of the National Counter Corruption Commission, a member of the State Audit Commission or a member of the National Human Rights Commission.

Section 206. The selection and election of judges of the Constitutional Court under section 204 (3) and (4) shall be proceeded as follows:

(1) there shall be a Selective Committee for Judges of the Constitutional Court consisting of the President of the Supreme Court of Justice, the President of the Supreme Administrative Court, the President of the House of Representatives, the Leader of the Opposition in the House of Representatives and the President of the Constitutional independent organisations whom elected among themselves to be one in number, as members. The Selective Committee must complete the selection under section 204 (3) and (4) within thirty days as from the date a ground for the selection occurs and then nominates the selected persons, with their consents, to the President of the Senate. The selection resolution shall be by open votes and passed by the votes of not less than two-thirds of the total number of the existing members of the Selective Committee. In the case where there is no member in any position or a member is unable to perform his duty and the number of the remaining members is not less than one-half thereof, the Selective Committee shall consist of the remaining members; provided that the provisions of section 113 paragraph two shall apply *mutatis mutandis*;

(2) the President of the Senate shall convoke a sitting of the Senate for the passing of approval resolution to the selected persons under (1) within thirty days as from the date of receipt of the nomination. A resolution shall be made by secret ballot. In case of approval resolution, the President of the Senate shall tender the nominated persons to the King for His appointment. In the case where the Senate disapproves the nomination, whether wholly or partly, it shall be returned to the Selective Committee for reselection. In such case, if the Selective Committee disagrees with the Senate and reaffirms its resolution unanimously, the names of the selected person shall be nominated to the President of the Senate to present to the King for His appointment, but if the reaffirmation is not passed by unanimous resolution, the reselection shall be commenced and it shall complete within thirty days as from the date a ground for the selection occurs.

If it is unable to complete the selection under (1) within the specified period by any cause, the Supreme Court of Justice shall, at its general meeting, appoint three judges of the Supreme Court of Justice holding a position of not lower than a judge of the Supreme Court of Justice and the Supreme Administrative Court shall, at its general

meeting, appoint two judges of the Supreme Administrative Court to be members of the Selective Committee for the carrying out the duty under (1).

Section 207. The President and judges of the Constitutional Court shall not:

- (1) be a government official holding a permanent position or receiving a salary;
- (2) be an official or employee of a State agency, State enterprise or local government organisation or a director or adviser of a State enterprise or State agency;
- (3) hold any position in a partnership, a company or an organisation carrying out business with a view to sharing profits or incomes, or be an employee of any person;
- (4) engage in any independent profession.

In the case where the general meeting of the Supreme Court of Justice or of the Supreme Administrative Court or the Senate, has approved the person in (1), (2), (3) or (4) with the consent of that person, the selected person can commence the performance of duty only when he has resigned from the position in (1), (2) or (3) or has satisfied that his engagement in such independent profession has ceased to exist. This must be done within fifteen days as from the date of the selection or approval. If such person has not resigned or has not ceased to engage in the independent profession within the specified period, it shall be deemed that that person has never been selected or approved to be a judge of the Constitutional Court and the provisions of section 204 and section 206, as the case may be, shall apply.

Section 208. The President and judges of the Constitutional Court shall hold office for nine years as from the date of their appointment by the King and shall hold office for only one term.

The outgoing President and judges of the Constitutional Court shall remain in office to perform duty until the newly appointed President and judges of the Constitutional Court take office.

The President and judges of the Constitutional Court shall be judicial officials under the law.

Section 209. In addition to the vacation of office upon the expiration of term, the President and judges of the Constitutional Court vacate office upon:

- (1) death;
- (2) being of seventy years of age;

- (3) resignation;
- (4) being disqualified or being under any of the prohibitions under section 205;
- (5) having done an act in violation of section 207;
- (6) the Senate passing a resolution under section 274 for the removal from office;
- (7) being sentenced by a judgment to imprisonment notwithstanding the suspension of the execution of imprisonment has been granted, except for an offence committed through negligence, a petty offence or a defamation offense.

When a case under paragraph one occurs, the remaining judges shall continue to perform their duties subject to section 216.

Section 210. In the case where the President and judges of the Constitutional Court vacate office en masse at the expiration of term, the proceedings under section 204 and section 206 shall be taken within thirty days as from the date of the vacation of office.

In the case where the President and judges of the Constitutional Court vacate office otherwise than in the case under paragraph one, the following proceedings shall be taken:

- (1) in the case of the judge of the Constitutional Court who was selected at the general meeting of the Supreme Court of Justice, the proceedings under section 204 shall complete within thirty days as from the date of the vacation of office;
- (2) in the case of the judge of the Constitutional Court who was selected at the general meeting of the Supreme Administrative Court, the proceedings under section 204 shall complete within thirty days as from the date of the vacation of office;
- (3) in the case of the judges of the Constitutional Court under section 204 (3) or (4), the proceedings under section 206 shall complete within thirty days as from the date of the vacation office.

In the case where some or all judges of the Constitutional Court vacate office out of a session of the National Assembly, the proceedings under section 206 shall be taken within thirty days as from the date of the opening of a session of the National Assembly.

In the case where the President of the Constitutional Court vacates office, the provisions of section 204 paragraph three shall apply.

Section 211. In the application of the provisions of any law to any case, if the Court by itself is of the opinion that, or a party to the case raises an objection with reasons that, the provisions of such law fall within the provisions of section 6 and there has not yet been a decision of the Constitutional Court on such provisions, the Court shall submit, in the course of official service, its opinion to the Constitutional Court for consideration and decision. During such period, the Court may continue the trial, but the adjudication to the case shall be suspended until the Constitutional Court has made its decision.

In the case where the Constitutional Court is of the opinion that the objection of a party under paragraph one is not essential for decision, the Constitutional Court may refuse to accept the case for consideration.

The decision of the Constitutional Court shall apply to all cases but shall not affect final judgments of the Courts.

Section 212. A person whose rights and liberties recognised by this Constitution are violated, has the right to submit a motion to the Constitutional Court for its a decision as to whether the provisions of the law are contrary to or inconsistent with the Constitution.

The exercise of right under paragraph one must be in the case of unable to exercise the right by other means as provided in the organic law on rules and procedure of the Constitutional Court;

Section 213. In the performance of duty, the Constitutional Court shall have the power to demand documents or relevant evidence from any person or summon any person to give statements of fact as well as request inquiry officials, a government agency, State agency, State enterprise or local government organisation to carry out any act for the purpose of its consideration.

The Constitutional Court shall have the power to appoint a person or a group of persons to carry out duty as entrusted.

Section 214. In the case where a dispute arises as to the power and duty among the National Assembly, the Council of Ministers or the Constitutional organisation other than the Courts and such dispute arises between two or more of such organisations, the President of the National Assembly, the Prime Minister, or such organisation shall submit a matter together with its opinion to the Constitutional Court for decision.

Section 215. In the case where the Constitutional Court is of the opinion that a matter or issue submitted for its consideration has been decided, the Constitutional Court may refuse to accept such matter or issue for consideration.

Section 216. The quorum of judges of the Constitutional Court for hearing and rendering a decision shall consist of not less than five judges. The decision of the Constitutional Court shall be made by a majority of votes, unless otherwise provided in this Constitution.

Every judge of the Constitutional Court who constitutes a quorum shall give a decision on his own part and make an oral statement to the meeting before passing a resolution.

The decisions of the Constitutional Court and all judges thereof shall be published in the Government Gazette.

The decision of the Constitutional Court must at least consist of the background or allegation, summary of facts obtained from hearings, reasons for the decision on questions of fact and questions of law and the provisions of the Constitution and the law invoked and resorted to.

The decision of the Constitutional Court shall be deemed final and binding on the National Assembly, Council of Ministers, Courts and other State organs.

The rules and procedure of the Constitutional Court shall be in accordance with the organic law on rules and procedure of the Constitutional Court.

Section 217. The Constitutional Court shall have its autonomous secretariat, with the Secretary-General of the Office of the Constitutional Court as the superintendent responsible directly to the President of the Constitutional Court.

A person to be appointed as the Secretary-General of the Office of the Constitutional Court must be nominated by the President of the Constitutional Court with approval of judges of the Constitutional Court as provided by law.

The Office of the Constitutional Court shall have autonomy in its personnel administration, budget and other activities as provided by law.

Part 3

Courts of Justice

Section 218. The Courts of Justice have the power to try and adjudicate all cases except those specified by this Constitution or the law to be within the jurisdiction of other Courts.

Section 219. There shall be three levels of Courts of Justice, viz, Courts of First Instance, Courts of Appeal and the Supreme Court of Justice, except otherwise provided by this Constitution or other laws.

The Supreme Court of Justice has the power to try and adjudicate cases provided by the Constitution or the law to submit directly to the Supreme Court of Justice and appeals against judgments or orders of Courts of First Instance or Courts of Appeal as provided by law, except where the Supreme Court of Justice is of the opinion that the question of law or the question of fact of the such appeals is not essential for decision, it has the power to refuse the acceptance of such cases for consideration in accordance with the rule provided by its general meeting.

The Supreme Court of Justice has the power to try and adjudicate the election related cases and the suspension of the right to vote at an election of members of the House of Representatives and acquisition of senators, and the Court of Appeal has the power to try and adjudicate the election related cases and the suspension of the right to vote at an election of members of a local assembly or local administrators; provided that, the rules and procedure for trial and adjudication of such cases shall base upon inquisitorial system in accordance with the rules and procedure provided by a general meeting of the Supreme Court of Justice and shall be conducted without delay.

There shall be in the Supreme Court of Justice a Criminal Division for Persons Holding Political Positions, the quorum of which consists of nine judges of the Supreme Court of Justice holding a position of not lower than judge of the Supreme Court of Justice or senior judges having held a position of not lower than judge of the Supreme Court of Justice whom elected at a general meeting of the Supreme Court of Justice by secret ballot and on a case-by-case basis.

The competence of the Supreme Court of Justices Criminal Division for Persons Holding Political Positions and the criminal procedure for such persons shall be as provided by this Constitution and the organic law on criminal procedure for persons holding political positions.

Section 220. The appointment and removal from office of a judge of a Court of Justice must be approved by the Judicial Commission of the Courts of Justice before they are tendered to the King.

The promotion, increase salaries and punishment of judges of the Courts of Justice must be approved by the Judicial Commission of the Courts of Justice. In such case, the Judicial Commission of the Courts of Justice shall appoint a sub-committee in each level of Courts for rendering opinion thereon for its consideration.

In giving approval of the Judicial Commission of the Courts of Justice under paragraph one and paragraph two, regard shall be had to knowledge, competency and moral behaviour of such person.

Section 221. The Judicial Commission of the Courts of Justice consists of the following persons:

(1) President of the Supreme Court of Justice as Chairperson;

(2) qualified members of all levels of Courts, viz, six members from the Supreme Court of Justice, four members from the Courts of Appeal, and two members from the Courts of First Instance, who are judges of each level of Courts and elected by judicial officials of all levels of Courts;

(3) two qualified members who are not judicial officials and elected by the Senate.

The qualifications, prohibitions and procedure for the election of the qualified members shall be in accordance with the provisions of law.

In the case where there is no qualified member under paragraph one (3) or the number of such members is less than two and if not less than seven members of the Judicial Commission of the Courts of Justice are of the opinion that there is an urgent matter to be approved, the said number of the members of the Judicial Commission of the Courts of Justice shall constitute a quorum to consider such urgent matter.

Section 222. The Courts of Justice shall have an autonomous secretariat, with the Secretary-General of the Office of the Courts of Justice as the superintendent responsible directly to the President of the Supreme Court of Justice.

A person to be appointed as the Secretary-General of the Office of the Courts of Justice must be nominated by the President of the Supreme Court of Justice with approval of the Judicial Commission of the Courts of Justice as provided by law.

The Office of the Courts of Justice shall have autonomy in its personnel administration, budget and other activities, as provided by law.

Part 4

Administrative Courts

Section 223. Administrative Courts have the power to try and adjudicate cases of dispute between a government agency, State agency, State enterprise, local government organisation or Constitutional organisation, or between State officials and private individual, or between a government agency, State agency, State enterprise, local government organisation or Constitutional organisation, or among State officials themselves, as a consequence of the exercise of an administrative power provided by law, or of the carrying out of an administrative act of a government agency, State agency, State enterprise, local government organisation, Constitutional organisation or State officials, as provided by law, as well as to try and adjudicate matters prescribed by the Constitution or the law to be under the jurisdiction of the Administrative Courts.

The jurisdiction of the Administrative Courts under paragraph one does not include the adjudication of disputes made by Constitutional organisation as the direct exercise of their powers under the Constitution.

There shall be the Supreme Administrative Court and Administrative Courts of First Instance, and there may also be the Appellate Administrative Court.

Section 224. The appointment and removal from office of an administrative judge must be approved by the Judicial Commission of the Administrative Courts as provided by law before they are tendered to the King.

Qualified persons in the field of law or the administration of State affairs may be appointed as judges of the Supreme Administrative Court. Such appointment shall be made in the number of not less than one-third of the total number of judges of the Supreme Administrative Court and must be approved by the Judicial Commission of the Administrative Courts as provided by law and by the Senate before it is tendered to the King.

The promotion, increase of salaries and punishment of administrative judges must be approved by the Judicial Commission of the Administrative Courts as provided by law.

The number of administrative judges in each level of the Courts shall be as prescribed by the Judicial Commission of the Administrative Courts.

Section 225. The appointment of an administrative judge as President of the Supreme Administrative Court, shall, when already approved by the Judicial Commission of the Administrative Courts and the Senate, be tendered by the Prime Minister to the King for appointment.

Section 226. The Judicial Commission of the Administrative Courts consists of the following persons:

- (1) President of the Supreme Administrative Court as Chairperson;
- (2) nine qualified members who are administrative judges and elected by administrative judges among themselves;
- (3) three qualified members, two of whom are elected by the Senate and the other by the Council of Ministers.

The qualifications, prohibitions and procedure for the election of the qualified members shall be in accordance with the provisions of law.

In the case where there is no qualified member under paragraph one (3) or the number of such members is less than three and if not less than six members of the Judicial Commission of the Administrative Courts are of the opinion that there is an urgent matter to be approved, the said number of the members of the Judicial Commission of the Administrative Courts shall constitute a quorum to consider such urgent matter.

Section 227. The Administrative Courts shall have an autonomous secretariat, with the Secretary-General of the Office of the Administrative Courts as the superintendent responsible directly to the President of the Supreme Administrative Courts.

A person to be appointed as the Secretary-General of the Office of the Administrative Courts must be nominated by the President of the Supreme Administrative Courts with approval of the Judicial Commission of Administrative Courts as provided by law.

The Office of the Administrative Courts shall have autonomy in its personnel administration, budget and other activities as provided by law.

Part 5

Military Courts

Section 228. Military Courts have the power to try and adjudicate the cases which offenders are subjected to the jurisdiction of the Military Courts and other cases, as provided by law.

The appointment and removal from office of military judges shall be as provided by law.

CHAPTER XI

Constitutional Organisation

Part 1

Independent Organisations

1. The Election Commission

Section 229. The Election Commission consists of a Chairperson and other four Commissioners appointed, by the King with the advice of the Senate, from persons of apparent political impartiality and integrity.

The President of the Senate shall countersign the Royal Command appointing the Chairperson and Commissioners under paragraph one.

Section 230. An Election Commissioner shall have the qualifications and shall not be under any prohibition as follows:

- (1) being of not less than forty years of age;
- (2) having graduated with not lower than a Bachelor's degree or its equivalent;
- (3) having qualifications and not being under any of the prohibitions under section 205 or section 205 (1), (4), (5) and (6);
- (4) not being a judge of the Constitutional Court, an Ombudsman, a member of the National Counter Corruption Commission, a member of the State Audit Commission or a member of the National Human Right Commission.

The provisions of section 207 shall also apply *mutatis mutandis* to the Election Commissioner.

Section 231. The selection and election of Chairperson and Election Commissioners shall be proceeded as follows:

- (1) there shall be a Selective Committee of seven members consisting of the President of the Supreme Court of Justice, the President of the Constitutional Court, the President of the Supreme Administrative Court, the President of the House of Representatives, the Leader of the Opposition in the House of Representatives, a person selected at a general meeting of the Supreme Court of Justice and a person selected at a general meeting of the Supreme Administrative Court as members to be in charge of the selection and nomination of three persons, who have the qualifications under section 230 and suitable to be Election Commissioners, to the President of the Senate upon their consents. The selection resolution shall be passed by the votes of not less than two-thirds of the total number of the existing members of the Selective Committee. In the case where there is no member in any position or a member is unable to perform his duty and the number of the remaining members is not less than one-half thereof, the Selective Committee shall consist of the remaining members; provided that the provisions of section 113 paragraph two shall apply *mutatis mutandis*;

Persons selected by the Supreme Court of Justice and the Supreme Administrative Court at their general meeting under paragraph one shall not be judges and shall not be members of the Selective Committee for other Constitutional organisations simultaneously.

(2) the Supreme Court of Justice shall, at its general meeting, consider and select two persons who have qualifications under section 230 and suitable to be Election Commissioners for making nomination to the President of the Senate upon their consents;

(3) the selection under (1) and (2) shall be made within thirty days as from the date when a ground for the section of persons to be in such office occurs. In the case where it is unable to make nomination within specified period, or unable to make nomination in the complete number within the period specified in (1), the Supreme Court of Justice shall, at its general meeting, make selection to obtain the complete number within fifteen days as from the date of the expiration of the nomination time under (1);

(4) the President of the Senate shall convoke the Senate for passing a resolution, by secret ballot, approving the nominated persons under (1), (2) and (3);

(5) in the case where the Senate approves the nomination, the proceedings under (6) shall be proceeded, but in the case where the Senate disapproves the nomination, whether wholly or partly, it shall be returned to the Selective Committee or the Supreme Court of Justice, at its general meeting, for reselection. In such case, if the Selective Committee or the Supreme Court of Justice, at its general meeting, disagrees with the Senate and reaffirms its resolution unanimously or by the votes of not less than two-thirds of the general meeting of the Supreme Court of Justice, as the case may be, the proceedings (6) shall be proceeded, but in the case where the reaffirmation is not passed unanimously or by the votes of less than the required number, the reselection shall be commenced and it shall complete within thirty days as from the date a ground for the selection occurs.

(6) the person approved under (4) or (5) shall meet and elect among themselves to be Chairperson of the Election Commission and, then, notify the President of the Senate of the result. The President of the Senate shall tender to the King for further appointment.

Section 232. Election Commissioners shall hold office for a term of seven years as from the date of their appointment by the King and shall serve for only one term.

The Election Commissioners who vacate office upon the expiration of the term shall remain in office to continue to perform their duties until the newly appointed Election Commissioners take office.

The provisions of section 209 (1), (2), (3), (5), (6), (7) and the disqualifications and the prohibitions under section 230 shall also apply mutatis mutandis to the vacation of office of Election Commissioners.

Section 233. Members of the House of Representatives, senators, or members of both Houses of not less than one-tenth of the total number of the existing members of the two Houses have the right to lodge with the President of the National Assembly a complaint that any Election Commissioner is disqualified or is under any of the prohibitions or has acted in contravention of any of the prohibitions under section 230 and the President shall refer that complaint, within three days as from the date of receipt of the complaint, to the Constitutional Court for its decision.

When the Constitutional Court has passed a decision, it shall notify the President of the National Assembly and the Chairperson of the Election Commission of such decision.

The provisions of section 92 shall also apply *mutatis mutandis* to the vacation of office of Election Commissioners.

Section 234. In the case where the Election Commissioners have vacated office en masse at the expiration of term, the selective process under section 231 shall be taken within ninety days as from the date of the vacation.

In the case where Election Commissioners vacate office for any reason other than the expiration of term, the selection process under section 231 shall be completed within sixty days as from the date in which the reason has occurred, and the approved person shall serve only for the remainder of the term of the replaced Commissioners.

Section 235. The Election Commission shall control and hold, or cause to be held, an election of members of the House of Representatives, senators, members of a local assembly and local administrators, as the case may be, including the voting in a referendum for the purpose of rendering it to proceed in an honest and fair manner.

The Chairperson of the Election Commission shall have the charge and control of the execution of the organic law on election of members of the House of Representatives and acquisition of senators, the organic law on political parties, the organic law on Election Commission, the organic law on referendum and the law on election of members of local assemblies or local administrators and shall be the political-party registrar.

There shall be the Office of the Election Commission being an agency having autonomy in its personnel administration, budget and other activities as provided by law.

Section 236. The Election Commission shall have the following powers and duties:

(1) to issue notifications or regulations determining all acts necessary for the execution of the laws referred to in section 235 paragraph two including regulations

relating to a launching of election campaigns and any act of political parties, candidates and persons having the right to vote to proceed in an honest and fair manner and determining rules to be complied by State in giving support of fair election and equal opportunity in campaigning;

(2) to lay down regulations determining prohibitions in performance of duties of the Council of Ministers and portfolio Minister under section 181 with due regard to the maintenance of interest of State and to honesty, fairness, equality and equal opportunity in an election;

(3) to determine measures for controlling of a donation of money to political parties, rendering of financial support by State, spending of money of political parties and candidates and auditing publicly of accounts of political parties, and to control a disbursement and receipt of money for benefit in voting at an election;

(4) to give orders instructing government officials, officials or employees of a State agency, State enterprise or local government organisation or other State officials to perform all necessary acts under the laws referred to in section 235 paragraph two;

(5) to conduct investigations and inquiries and to make decisions on arising problems or disputes under the laws referred to in section 235 paragraph two;

(6) to order a new election or a new voting at a referendum to be held in any or all polling stations when there occurs convincing evidence that the election or the voting at a referendum in that or those polling stations has not proceeded in an honest and fair manner;

(7) to announce the result of an election and the voting in a referendum;

(8) to promote and support or co-ordinate with government agency, State agency, State enterprise or local government organisation or to support private organisations in giving education to the public on the democratic regime of government with the King as Head of State and the enhancement of public participation in politics;

(9) to perform other acts as provided by law.

In the performance of duties, the Election Commission has the power to summon any relevant document or evidence from any person, or summon any person to give statements as well as to request public prosecutors, inquiry officials, government agencies, State agencies, State enterprises or local government organisations to take action for the purpose of performing duties, investigating, conducting inquiries and passing decisions.

The Election Commission has the power to appoint persons, a group of persons or representatives of private organisations to perform such duties as entrusted.

Section 237. A candidate in an election who commits an act or causes or supports another person to act in violation of the organic law on election of members of the House of Representatives and acquisition of senators or regulations or notifications of the Election Commission which resulting in the election not to be honest and fair, his right to vote at an election shall be suspended under the organic law on election of members of the House of Representatives and acquisition of senators.

If it appears convincing evidence, through an act of the person under paragraph one, that the President or an executive board of director of a political party connives or neglects at such commission or such commission is known to him but he fails to deter or revise such commission for the maintenance of honest and fair election, it shall be deemed that such political party doing an act for the acquisition of the power to rule the country by means which is not in accordance with the provisions of this Constitution under section 68. In such case, if the Constitutional Court orders to dissolve such political party, the right to vote at an election of the President or the executive board of directors of a political party shall be suspended for the period of five years as from the date such order is made.

Section 238. The Election Commission shall conduct an investigation and inquiry forthwith upon the occurrence of any of the followings;

- (1) an objection is made by a voter, a candidate at an election or a political party having its members stand for at an election in any constituency that an election in that constituency is not appropriate or unlawful;
- (2) an objection is made by a candidate in the selection or a member of the organisation referred to in section 114 paragraph one that the selection of senators is not appropriate or unlawful;
- (3) it appears convincing evidence that, prior to being elected or selected, a member of the House of Representatives, senator, member of a local assembly or local administrator had committed any dishonest act to enable him to be elected or selected or he has been elected or selected dishonestly as a result of any act committed by any person or political party in violation of the organic law on election of members of the House of Representatives and acquisition of senators, the organic law on political parties or the organic law on election of members of local assemblies and local administrators;
- (4) it appears convincing evidence that voting in a referendum is in violation of law or an objection is made by a person having the right to vote that voting in a referendum in any polling station is not appropriate or unlawful.

The Election Commission shall, at the completion of the conducts under paragraph one, pass forthwith a decision thereon.

Section 239. In the case where the Election Commission passes the decision to have re-election or suspend the right to vote at an election before the announcement of the result of the election of members of the House of Representatives and senators, such decision shall be final.

If the Election Commission is of the opinion, after the announcement of the result of election, that re-election must be held or the right to vote at an election of a member of the House or Representatives or a senator must be suspended, it shall submit a complaint to the Supreme Court of Justice for decision. When the Supreme Court of Justice receives the complaint of the Election Commission, such member of the House or Representatives or senator shall not be able to perform his duty until the complaint is dismissed by the Supreme Court of Justice. In the case where the Supreme Court of Justice has an order for re-election in any constituency or for suspension of the right to vote at an election of any member of the House of Representatives or senator, the membership of the House of Representatives or the membership of the Senate in such constituency shall terminate.

In the case where the person under paragraph two is unable to perform his duty, he shall not be regarded as one of the existing members of the House of Representatives or the Senate, as the case may be.

The provisions of paragraph one, paragraph two and paragraph three shall apply mutatis mutandis to the election of members of local assemblies and local administrators and, in such case, a submission of a complaint under paragraph two shall be made to the Courts of Appeal and the order of the Courts of Appeal shall be final.

Section 240. If there is an objection that the selection of a senator is not appropriate or unlawful or there is convincing evidence that a senator committed an act under section 238 prior to be selected, the Election Commission shall conduct an investigation and inquiry forthwith.

Upon reaching any decision, the Election Commission shall forthwith submit its decision to the Supreme Court of Justice for decision and the provision of section 239 paragraph two and paragraph three shall apply mutatis mutandis to an inability of such senator.

In the case where the Supreme Court of Justice orders to revoke the selection or suspend the right to vote at an election of a senator, the membership of the Senate of such senator shall terminate as from the date such order is made, and the selection to fulfil the vacancy shall be taken.

The Chairperson of the Election Commission shall not participate in the proceeding or the giving of decision under paragraph one or paragraph two and, in this case, it shall be deemed that the Election Commission consisting of the remaining Commissioners.

The objection and consideration of the Election Commission shall be in accordance with the organic law on election of members of the House of Representatives and acquisition of senators.

Section 241. During the period in which a Royal Decree calling for an election of members of the House of Representatives or senators, a Notification calling for selection of senators or a Notification calling for the voting in a referendum is effective, no Election Commissioner shall be arrested, detained or summoned by a warrant for inquiry except in the case where permission of the Election Commission is obtained or where the arrest is made in flagrante delicto.

In the case where an Election Commissioner has been arrested in flagrante delicto, or where an Election Commissioner is arrested or detained in other cases, it shall be forthwith reported to the Chairperson of the Election Commission and the Chairperson may order a release of the person so arrested, but in the case where the Chairperson of the Election Commission is arrested or detained, the remaining Election Commissioners shall have the power to order a release.

2. The Ombudsmen

Section 242. There shall be three Ombudsmen who shall be appointed by the King with the advice of the Senate from the persons recognised and respected by the public, with knowledge and experience in the administration of State affairs, enterprises or activities of common interests of the public and with apparent integrity.

The elected persons to be Ombudsmen shall hold a meeting and elect one among themselves to be the President of the Ombudsmen and notify the result to the President of the Senate accordingly.

The President of the Senate shall countersign the Royal Command appointing the Ombudsmen.

The qualifications and prohibitions of the Ombudsmen shall be in accordance with the organic law on Ombudsmen.

The Ombudsmen shall hold office for a term of six years as from the date of their appointment by the King and shall serve for only one term.

There shall be the Office of the Ombudsmen being an agency having autonomy in its personnel administration, budget and other activities as provided by law.

Section 243. The provisions of section 206 and 207 shall apply *mutatis mutandis* to the selection and election of the Ombudsmen. In such case, there shall be a Selective Committee of seven members consisting of the President of the Supreme Court of Justice, the President of the Constitutional Court, the President of the Supreme Administrative Court, the President of the House of Representatives, the Leader of the Opposition in the House of Representatives, a person selected at a general meeting of the Supreme Court of Justice and a person selected at a general meeting of the Supreme Administrative Court and the provisions of section 231 (1) paragraph two shall apply *mutatis mutandis*.

Section 244. The Ombudsmen have the powers and duties as follows:

- (1) to consider and inquire into the complaint for fact-findings in the following cases:
 - (a) failure to perform in compliance with the law or performance beyond powers and duties as provided by law of a government official, an official or employee of a government agency, State agency, State enterprise or local government organisation;
 - (b) performance of or omission to perform duties of a government official, an official or employee of a government agency, State agency, State enterprise or local government organisation, which unjustly causes injuries to the complainant or the public whether such act is lawful or not;
 - (c) investigation any omission to perform duties or unlawful performance of duties of the Constitutional organisation or agencies in the administration of justice, except the trial and adjudication of the Courts;
 - (d) other cases as provided by law;
- (2) to conduct the proceeding in relation to ethics of persons holding political positions and State officials under section 279 paragraph three and section 280;
- (3) to monitor, evaluate and prepare recommendations on the compliance with the Constitution including considerations for amendment of the Constitution as deemed necessary;
- (4) to report the result of its investigation and performance together with comments to the Council of Ministers, the House of Representatives and the Senate annually. Such report shall be published in the Government Gazette and disclosed to the public.

In exercising of powers and duties under (1) (a), (b) and (c), the Ombudsmen shall proceed where there is a complaint thereon, provided that the Ombudsmen is of the opinion that such act causes injuries to the public or it is necessary to protect public interests and, in such case, the Ombudsmen may consider and conduct investigation irrespective of a complaint.

Section 245. The Ombudsmen may submit a case to the Constitutional Court or Administrative Court in the following cases:

(1) if the provisions of any law begs the question of the constitutionality, the Ombudsmen shall submit the case and the opinion to the Constitutional Court and the Constitutional Court shall decide without delay in accordance with the organic law on rules and procedure of the Constitutional Court;

(2) if rules, orders or actions of any person under section 244 (1) (a) begs the question of the constitutionality or legality, the Ombudsmen shall submit the case and the opinion to the Administrative Court and the Administrative Court shall decide without delay in accordance with the Act on Establishment of the Administrative Courts and Administrative Courts Procedure.

3. The National Counter Corruption Commission

Section 246. The National Counter Corruption Commission consists of the President and eight members appointed by the King with the advice of the Senate.

Members of the National Counter Corruption Commission shall be persons of apparent integrity, with qualifications and without any of the prohibitions under section 205 and having been a Minister, an Election Commissioner, an Ombudsman, a member of the National Human Rights Commission or a member of the State Audit Commission, or having served in a position of not lower than a Director-General or a person holding an administrative position in a government agency having administrative powers equivalent to a Director-General or a person holding an academic position of not lower than Professor, or a representative of a private development organisation or a professional practitioner of a professional organisation established under the law who practises such profession for not less than thirty years whom certified and nominated to the selection by such private development organisation or professional organisation.

The provisions of section 204 paragraph three and paragraph four, section 206 and section 207 shall apply mutatis mutandis to the selection and election of members of the National Counter Corruption Commission and, in such case, the Selective Committee shall consist of five members, viz, the President of the Supreme Court of

Justice, the President of the Constitutional Court, the President of the Supreme Administrative Court, the President of the House of Representatives and the Leader of the Opposition in the House of Representatives.

The President of the Senate shall countersign the Royal Command appointing the President and members of the National Counter Corruption Commission.

There shall be a Counter Corruption Commissioner to each Changwat and its qualifications, selection and powers and duties shall be in accordance with the organic law on counter corruption.

Section 247. Members of the National Counter Corruption Commission shall hold office for a term of nine years as from the date of their appointment by the King and shall serve for only one term.

Members of the National Counter Corruption Commission who vacate office at the expiration of term shall remain in office to continue to perform their duties until the newly appointed members take office.

The provisions of section 209 and section 210 shall apply mutatis mutandis to the vacation from office, the selection and an election for the fulfilment of the vacancy of members of the National Counter Corruption Commission.

Section 248. Members of the House of Representatives of not less than one-fourth of the total number of the existing members of the House or voters of not less than twenty-thousand in number have a right to lodge with the President of the Senate a complaint that any member of the National Counter Corruption Commission has acted unjustly, intentionally violated the Constitution or laws or has been under any circumstance which is seriously detrimental to the dignity of the holding of office, in order to request the Senate to pass a resolution removing him from office.

The resolution of the Senate removing the member of the National Counter Corruption Commission from office under paragraph one shall be passed by the votes of not less than three-fourths of the total number of the existing members of the Senate.

Section 249. Members of the House of Representatives, senators or members of both Houses of not less than one-fifth of the total number of the existing members of both Houses have a right to lodge with the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions an allegation that any member of the National Counter Corruption Commission has become unusually wealthy or has committed an offence of corruption or malfeasance in office.

The request under paragraph one shall clearly itemise the circumstance in which such person has allegedly committed the act under paragraph one and shall be submitted to the President of the Senate. When the President of the Senate has received the said request, the President shall refer it to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions for trial and adjudication.

The alleged member of the National Counter Corruption Commission shall not perform his duty until the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions has dismissed the said request.

In the case where a member of the National Counter Corruption Commission is unable to perform his duty under paragraph three and the remaining members of the National Counter Corruption Commission are less than one-half of the total number thereof, the President of the Supreme Court of Justice and the President of Supreme Administrative Court shall jointly appoint a person having qualifications and is not under the same prohibitions of members of the National Counter Corruption Commission as acting member of the National Counter Corruption Commission pro tempore. The appointed person shall act as a member of the National Counter Corruption Commission until a member of the National Counter Corruption Commission he acting for is able to perform his duty or until there is a decision of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions that such person has committed an offence.

Section 250. The National Counter Corruption Commission shall have the following powers and duties:

- (1) to inquire into facts, summarise the case and prepare opinions in relation to the removal from office to be submitted to the Senate according to section 272 and section 279 paragraph three;
- (2) to inquire into facts, summarise the case and prepare opinions in relation to a criminal proceedings of the persons holding political positions to be submitted to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions in accordance with section 275;
- (3) to inquire and decide whether a State official of high administration level or a government official holding a position of a Divisional Director or its equivalent or higher level has become unusually wealthy or has committed an offence of corruption, malfeasance in office or malfeasance in judicial office, and to take such actions against a State official or a government official of lower level who participates in the commission of such offence with the person holding the said position or the person holding political position or who commits an offence in the manner deemed appropriate by the National Counter Corruption Commission in accordance with the organic law on counter corruption;

(4) to inspect the accuracy, actual existence as well as change of assets and liabilities of the persons holding positions under section 259 and section 264 as stated in the account and supporting documents submitted in accordance with the rules and procedures prescribed by the National Counter Corruption Commission;

(5) to supervise and monitor moral and ethics of persons holding political positions;

(6) to submit an inspection report and a report on the performance of duties together with recommendations to the Council of Ministers, the House of Representatives and the Senate annually. The report shall be published in the Government Gazette and disclosed to the public;

(7) to carry on other acts as provided by law.

The provisions of section 213 shall apply *mutatis mutandis* to the performance of duties of the National Counter Corruption Commission.

The President of the National Counter Corruption Commission shall be judicial officials under the law.

Section 251. The National Counter Corruption Commission shall have an autonomous secretariat, with the Secretary-General of the National Counter Corruption Commission as the superintendent responsible directly to the President of the National Counter Corruption Commission.

A person to be appointed as the Secretary-General of the National Counter Corruption Commission must be nominated by the President of the National Counter Corruption Commission with approval of members of the National Counter Corruption Commission.

The Office of the National Counter Corruption Commission shall have autonomy in its personnel administration, budget and other activities as provided by law.

4. The State Audit Commission

Section 252. The State audit shall be carried out by the State Audit Commission that is independent and impartial.

The State Audit Commission consists of the Chairperson and six other members appointed by the King from persons with expertise and experience in state audit, accounting, internal audit, finance and other fields.

The provisions of section 204 paragraph three and paragraph four, section 206 and section 207 shall apply mutatis mutandis to the selection and election of members the State Audit Commission and the Auditor-General, provided that the composition of the Selective Committee shall be in accordance with section 243.

The President of the Senate shall countersign the Royal Command appointing the Chairperson and members of the State Audit Commission and the Auditor-General.

Members of the State Audit Commission shall hold office for a term of six years from the date of their appointment by the King and shall serve for only one term.

Qualifications, prohibitions and vacation of office of members of the State Audit Commission and the Auditor-General as well as powers and duties of the State Audit Commission, the Auditor-General and the Office of the State Audit Commission shall be in accordance with the organic law on State Audit.

The determination of qualifications and procedure for the selection of persons to be appointed as members of the State Audit Commission and the Auditor-General shall be made in the manner which can secure persons of appropriate qualifications an integrity and which can provide for the guarantee of the independence in the performance of duties of such persons.

Section 253. The State Audit Commission has the powers and duties to determine standards relating to State audit, to provide opinions, suggestions and recommendations for the correction of faults in State audit and to appoint the independent Financial Disciplinary Committee to render decisions on actions relating to financial discipline, finance and budget and the cases of dispute in relation to the decisions of the Financial Disciplinary Committee shall be under the jurisdiction of the Administrative Courts.

The Auditor-General shall have the powers and duties in relation to State Audit and shall be independent and impartial.

Section 254. The State Audit Commission shall have an autonomous secretariat, with the Auditor-General as the superintendent responsible directly to the Chairperson of the State Audit Commission.

There shall be the Office of the State Audit Commission being an agency having autonomy in its personnel administration, budget and other activities as provided by law.

Part 2

Other Organisations

1. The Public Prosecutors

Section 255. Public prosecutors shall have the powers and duties as provided in this Constitution and the law on powers and duties of public prosecutors and other laws.

Public prosecutors are independent in considering and making orders to the cases and in the performance of duties for fairness.

The appointment and removal from office of the Prosecutor General shall be by the resolution of the Public Prosecutors Committee upon the approval of the Senate.

The President of the Senate shall countersign the Royal Command appointing the Prosecutor General.

The Public Prosecutors shall have its autonomous secretariat having autonomy in its personnel administration, budget and other activities, with the Prosecutor General as the superintendent as provided by law.

A public prosecutor shall neither being a member of the board of directors of a State enterprise or other enterprises of State having similar nature; provided that an approval is given by the Public Prosecutors Committee, nor engaging in any occupation or profession or in any enterprise that may affect the performance of his duties or may detriment the dignity of his office and shall not be a member of the board of directors, director, legal advisor or holding any other position having similar nature in any partnership or company.

The provisions of section 202 shall apply mutatis mutandis.

2. The National Human Rights Commission

Section 256. The National Human Rights Commission consists of a President and six other members appointed, by the King with the advice of the Senate, from the persons having apparent knowledge and experiences in the protection of rights and liberties of the people with due regard to the participation of representatives from private organisations in the field of human rights.

The President of the Senate shall countersign the Royal Command appointing the President and members of the National Human Rights Commission.

The qualifications, prohibitions, selection, election, removal and determination of the remuneration of members of the National Human Rights Commission shall be as provided by law.

The members of the National Human Rights Commission shall hold office for a term of six years as from the date of their appointment by the King and shall serve for only one term.

The provisions of section 204 paragraph three, section 206, section 207 and section 209 (2) shall apply mutatis mutandis, provided that the composition of the Selective Committee shall be in accordance with section 243.

There shall be the Office of the National Human Rights Commission being an agency having autonomy in its personnel administration, budget and other activities as provided by law.

Section 257. The National Human Rights Commission has the powers and duties as follows:

(1) to examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties to which Thailand is a party, and propose appropriate remedial measures to the person or agency committing or omitting such acts for taking action. In the case where it appears that no action has been taken as proposed, the Commission shall report to the National Assembly for further proceeding;

(2) to submit the case together with opinions to the Constitutional Court in the case where the Commission agrees with the complainant that the provisions of any law are detrimental to human rights and beg the question of the constitutionality as provided by the organic law on rules and procedure of the Constitutional Court;

(3) to submit the case together with opinions to the Administrative Courts in the case where the Commission agrees with the complainant that any rule, order or administrative act is detrimental to human rights and begs the question of the constitutionality and legality as provided by the law on establishment of Administrative Courts and Administrative Court Procedure;

(4) to bring the case to the Courts of Justice for the injured person upon request of such person if it deems appropriate for the resolution of human rights violation problem as a whole as provided by law;

(5) to propose to the National Assembly and the Council of Ministers policies and recommendations with regard to the revision of laws, rules or regulations for the promotion and protection of human rights;

(6) to promote education, researches and the dissemination of knowledge on human rights;

(7) to promote co-operation and co-ordination among government agencies, private organisations and other organisations in the field of human rights;

(8) to prepare an annual report for the appraisal of situations in the sphere of human rights in the country and submit it to the National Assembly;

(9) other powers and duties as provided by law.

In the performance of duties of the National Human Rights Commission, regard shall be had to interests of the country and the public.

The National Human Rights Commission has the power to demand relevant documents or evidence from any person or summon any person to give statements of fact including other powers for the purpose of performing its duties as provided by law.

3. The National Economic and Social Council

Section 258. The National Economic and Social Council has the duties to give advice and recommendations to the Council of Ministers on economic and social problems as well as related laws.

A national economic and social development plan and other plans as provided by law shall obtain opinions of the National Economic and Social Council before they can be adopted and published.

The composition, sources, powers and duties and operation of the National Economic and Social Council shall be in accordance with the provisions of law.

There shall be the Office of the National Economic and Social Council being an agency having autonomy in its personnel administration, budget and other activities as provided by law.

CHAPTER XII

Inspection of the Exercise of State Power

Part 1

Inspection of Assets

Section 259. Persons holding the following political positions shall submit an account showing particulars of assets and liabilities of themselves, their spouses and children who have not yet become sui juris to the National Counter Corruption Commission on each occasion of taking or vacating office:

- (1) Prime Minister;
- (2) Ministers;
- (3) members of the House of Representatives;
- (4) senators;
- (5) other political officials;
- (6) local administrators and members of a local assembly as provided by law.

The account under paragraph one shall be submitted together with supporting documents evidencing the actual existence of such assets and liabilities as well as a copy of the personal income tax return of the previous fiscal year.

The account showing particulars of assets and liabilities under paragraph one and paragraph two shall include assets of the persons holding political positions under direct or indirect possession or care of other persons.

Section 260. The account showing particulars of assets and liabilities under section 259 shall disclose the particulars of assets and liabilities actually existing as of the date of taking or vacating office, as the case may be, and shall be submitted within the following period:

- (1) in the case of the taking of office, within thirty days as from the date of taking office;
- (2) in the case of the vacation of office, within thirty days as from the date of the vacation;
- (3) in the case where the person under section 259, who has already submitted the account, dies while being in office or before submitting the same after the vacation of office, an heir or an administrator of an estate of such person shall submit an account showing the particulars of assets and liabilities existing on the date of such person's death within ninety days as from the date of the death.

In addition to the submission of the account under (2), the person holding a position of Prime Minister, Minister, local administrator, member of a local assembly or the person holding a political position but having vacated office shall also re-submit an account showing particulars of assets and liabilities within thirty days as from the date of the expiration of one year after the vacation of office.

Section 261. The account showing particulars of assets and liabilities and supporting documents submitted by the Prime Minister, Ministers, members of the House of Representatives and senators shall be disclosed to public without delay but not later than thirty days as from the date of the expiration of the time limit for the submission of such account. The account of the persons holding other positions shall be disclosed in the case where the disclosure thereof may be beneficial to the trial and adjudication of case or for the making of decision and a request is made by the Courts, an interest person or the State Audit Commission.

The President of the National Counter Corruption Commission shall convene a meeting of the Commission to inspect the accuracy and the actual existence of assets and liabilities without delay.

Section 262. In the case where the submission of the account is made by reason of the vacation of office or death of any person holding a political position, the National Counter Corruption Commission shall inspect the change of assets and liabilities of such person and prepare a report of the inspection. Such report shall be published in the Government Gazette.

In the case where it appears that the assets of the person under paragraph one have unusually increased, the President of the National Counter Corruption Commission shall send all documents together with the inspection report to the Prosecutor General to institute an action in the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions so that the unusually increasing assets shall vest in the State and the provisions of section 272 paragraph five shall apply *mutatis mutandis*.

Section 263. Any person holding a political position who intentionally fails to submit the account showing assets and liabilities and the supporting documents as provided in this Constitution or intentionally submits the same with false statements or conceals the facts which should be revealed, the National Counter Corruption Commission shall refer the matter to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions for further decision.

If the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions decides that any person holding a political position committed an offence under paragraph one, such person shall vacate office on the date such decision is made and the provision of section 92 shall apply *mutatis mutandis*. In this case, such person is prohibited from holding any political position or any position of a political

party for the period of five years as from the date the decision of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions is made.

Section 264. The provisions of section 259, section 260, section 261 paragraph two and section 263 paragraph one shall apply *mutatis mutandis* to State officials as determined by the National Counter Corruption Commission.

The National Counter Corruption Commission may disclose the account showing particulars of assets and liabilities as submitted to interested parties if such disclosure is beneficial to the trial or decision of offences as provided by the organic law on counter corruption.

Part 2

Conflict of Interests

Section 265. Members of the House of Representatives and senators shall not:

- (1) hold any position or have any duty in a government agency, State agency or State enterprise, or hold a position of a member of a local assembly, local administrator or local government official;
- (2) receive or interfere or intervene in, whether directly or indirectly, any concession from State, a government agency, State agency or State enterprise, or become a party to a contract of the nature of economic monopoly with State, a government agency, State agency or State enterprise, or become a partner or shareholder in a partnership or company receiving such concession or becoming a party to the contract of that nature;
- (3) receive any special money or benefit from a government agency, State agency or State enterprise apart from that given by a government agency, State agency or State enterprise to other persons in the ordinary course of business.
- (4) act in violation of the prohibitions under section 48.

The provisions of this section shall not apply in the case where a member of the House of Representatives or a senator receives military pensions, gratuities, pensions, annuities for royalty or any other form of payment of the same nature, and shall not apply in the case where a member of the House of Representatives accepts or holds a position of committee member of the National Assembly, the House of Representatives or the Senate, or committee member appointed in the course of the administration of State affairs.

The provisions in (2), (3) and (4) shall apply to spouses and children of members of the House of Representatives or senators and to other persons other than spouses and children of such members of the House of Representatives or senators who act as agents or partners of, or who are entrusted by, members of the House of Representatives or senators to act under this section.

Section 266. A member of the House of Representatives and a senator shall not, through the status or position of member of the House of Representatives or senator, interfere or intervene the following matters, directly or indirectly, for the benefit of his own or other persons or of political party:

(1) the performance of official duties or routine works of a government official, official or employee of a government agency, State agency, State agency, an enterprise in which the State is a major shareholders or a local government organisation;

(2) the recruitment, appointment, reshuffle, transfer, promotion and elevation of the salary scale of a government official holding a permanent position or receiving salary and not being a political official, an official or employee of a government agency, State agency, State enterprise or local government organisation;

(3) the removal from office of a government official holding a permanent position or receiving salary and not being a political official, an official or employee of a government agency, State agency, State enterprise or local government organisation.

Section 267. The provisions of section 265 shall apply to the Prime Minister and Ministers, except for the holding of position or an act to be done under the provisions of law. The Prime Minister and Ministers shall neither hold any position in a partnership, a company or an organisation carrying out business with a view to sharing profits or incomes nor being an employee of any person.

Section 268. The Prime Minister and a Minister shall not perform any act in violation of the provisions of section 266, except the performance of powers and duties for the administration of State affairs as stated to the National Assembly or as provided by law.

Section 269. The Prime Minister and a Minister shall not be a partner or shareholder of a partnership or a company or retain his being a partner or shareholder of a partnership or a company up to the limit as provided by law. In the case where the Prime Minister or any Minister intends to continue to receive benefits in such cases, the Prime Minister or such Minister shall inform the President of the National Counter Corruption Commission within thirty days as from the date of the appointment and shall transfer his shares in the partnership or company to a juristic person which manages assets for the benefit of other persons as provided by law.

The Prime Minister and a Minister shall not do any act which, by nature, amounts to the administration or management of shares or affairs of such partnership or company.

This section apply to the spouse and children who have not yet become sui juris of the Prime Minister and a Minister and section 259 paragraph three shall apply mutatis mutandis.

Part 3

Removal from Offices

Section 270. A person holding a position of Prime Minister, Minister, member of the House of Representatives, senator, President of the Supreme Court of Justice, President of the Constitutional Court, President of the Supreme Administrative Court or Prosecutor General, who is under the circumstance of unusual wealthiness indicative of the commission of corruption, malfeasance in office, malfeasance in judicial office or an intentional exercise of power contrary to the provisions of the Constitution or law or seriously violates or fails to comply with ethical standard, may be removed from office by the Senate.

The provisions of paragraph one shall also apply to the persons holding the following positions:

- (1) judge of the Constitutional Court, Election Commissioner, Ombudsman and member of the State Audit Commission;
- (2) judge, public prosecutor or high ranking official in accordance with the organic law on counter corruption.

Section 271. Members of the House of Representatives of not less than one-fourth of the total number of the existing members of the House have the right to lodge with the President of the Senate a complaint in order to request the Senate to pass a resolution under section 274 removing the persons under section 270 from office. The said request shall clearly itemise circumstances in which such persons have allegedly committed the act.

Senators of not less than one-fourth of the total number of the existing members of the Senate have the right to lodge with the President of the Senate a complaint in order to request the Senate to pass a resolution under section 274 removing a senator from office.

Voters of not less than twenty-thousand in number have the right to lodge a complaint in order to request the Senate to pass a resolution under section 164 removing the persons under section 270 from office.

Section 272. Upon receipt of the request under section 271, the President of the Senate shall refer the matter to the National Counter Corruption Commission for inquisition without delay.

When the inquisition is complete, the National Counter Corruption Commission shall prepare a report thereon for submission to the Senate. The said report shall clearly state whether, and to what extent, the accusation put in the request is prima facie case together with convincing evidences and shall state the resolutions therefor.

In the case where the National Counter Corruption Commission is of the opinion that the accusation put in the request is an important matter, the National Counter Corruption Commission may make a separate report specifically on the said accusation and refer it to the Senate in advance.

If the National Counter Corruption Commission passes a resolution by the votes of not less than one-half of the total number of the existing members that the accusation has a prima facie case, the holder of the position against whom the accusation has been made shall not, as from the date of such resolution, perform his duties until the Senate has passed its resolution. The President of the National Counter Corruption Commission shall submit the report, existing documents and its opinion to the President of the Senate for proceeding in accordance with section 273 and to the Prosecutor General for instituting prosecution in the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions. If the National Counter Corruption Commission is of the opinion that the accusation has no prima facie case, such accusation shall lapse.

In the case where the Prosecutor General is of the opinion that the report, documents and opinion submitted by the National Counter Corruption Commission under paragraph four are not so complete as to institute prosecution, the Prosecutor General shall notify the National Counter Corruption Commission for further proceedings and, for this purpose, the incomplete items shall be specified on the same occasion. In such case, the National Counter Corruption Commission and the Prosecutor General shall appoint a working committee, consisting of their representatives in an equal number, for collecting complete evidence and submit it to the Prosecutor General for further prosecution. In the case where the working committee is unable to reach a decision as to the prosecution, the National Counter Corruption Commission shall have the power to prosecute by itself or appoint a lawyer to prosecute on its behalf.

Section 273. Upon receipt of the report under section 272, the President of the Senate shall convoke a sitting of the Senate for considering the said matter without delay.

In the case where the National Counter Corruption Commission submits the report out of session of the Senate, the President of the Senate shall inform the President of the National Assembly in order to tender a petition to the King for the issuance of a Royal Command convoking an extraordinary session of the National Assembly. The President of the Senate shall countersign the Royal Command.

Section 274. A senator shall have autonomy in casting a vote, which must be by secret ballot. A resolution for the removal of any person from office shall be passed by the votes of not less than three-fifths of the total number of the existing members of the Senate.

A person who is removed from office shall vacate office or be released from government service as from the date of the resolution of the Senate. Such person shall be deprived of the right to hold any political position or to serve in the government service for five years.

The resolution of the Senate under this section shall be final and no request for the removal of such person from office shall be made on the same ground, without, however, prejudice to the trial of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions.

Part 4

Criminal Proceedings Against Persons Holding Political Positions

Section 275. In the case where the Prime Minister, a Minister, member of the House of Representatives, senator or other political official has been accused of becoming unusually wealthy, or of the commission of malfeasance in office according to the Penal Code or a dishonest act in the performance of duties or corruption according to other laws, the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions shall have the competent jurisdiction to try and adjudicate the case.

The provisions of paragraph one shall also apply to the case where the said person or other person is a principal, an instigator or a supporter including a person who gives, asks to give or promises to give property or other benefits to the person under paragraph one with a view to induce him from acting or omitting or delaying an act resulting in a dishonest act in the performance of duties.

The submission of an accusation requesting the National Counter Corruption Commission to conduct the proceedings under section 250 (2) shall be in accordance with the organic law on counter corruption.

In the case where the accused under paragraph one is a person holding position of Prime Minister, Minister, President of the House of Representatives or President of the Senate, the person injured by such act may submit an accusation to the National Counter Corruption Commission to conduct the proceedings under section 250 (2) or to the Supreme Court of Justice to appoint, at its general meeting, an independent inquisitor under 276. If the injured person has submitted the said accusation to the National Counter Corruption Commission, he may submit the accusation to the Supreme Court of Justice only when the National Counter Corruption Commission refuses to accept the accusation for further inquisition, proceeds the inquisition with materially delay or is of the opinion that the accusation has no prima facie case.

If the National Counter Corruption Commission is of the opinion that there is a ground under paragraph four and it has the resolution to conduct the proceedings under section 250 (2) by the votes of not less than one-half of the total number of its existing member, the National Counter Corruption Commission shall conduct the proceedings under section 250 (2) forthwith and, in such case, the injured person shall not submit an accusation to the Supreme Court of Justice under paragraph four.

The provisions of section 272 paragraph one, paragraph four and paragraph five shall apply *mutatis mutandis*.

Section 276. In the case where the Supreme Court of Justice, at its general meeting, is of the opinion that the submitted accusation should be proceeded under section 275 paragraph four, the Supreme Court of Justice, at its general meeting, may appoint an independent inquisitor from a person of apparent political impartiality and integrity or refer the matter to the National Counter Corruption Commission for inquisition under section 250 (2) in lieu of the appointment of an independent inquisitor.

Qualifications, powers and duties, inquisition and other necessary acts of an independent inquisitor shall be provided by law.

If the independent inquisitor, after inquiring into facts, summarising the case and preparing opinions, is of the opinion that accusation has prima facie case, he shall submit the report and existing documents together with its opinion to the President of the Senate for further proceedings under section 273 and shall submit the inquisition file and opinion to the Prosecutor General to bring the case to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions. The provisions of section 272 paragraph five shall apply *mutatis mutandis*.

Section 277. In a trial, the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions shall rely on the file of the National Counter Corruption Commission or of the independent inquisitor, as the case may be, and may conduct an inquisition in order to obtain additional facts or evidence as it thinks fit.

The rules and procedure of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions shall be as provided in the organic law on criminal proceedings against persons holding political positions, and the provisions of section 213 shall apply mutatis mutandis to the performance of duties of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions.

The provisions on the immunity of members of the House of Representatives and senators under section 131 shall not apply to a trial of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions.

Section 278. An adjudication of a case shall be made by a majority of votes; provided that every judge constituting the quorum shall prepare his written opinion and make oral statements to the meeting prior to the passing of a resolution.

Orders and decisions of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions shall be disclosed and final, unless in case of paragraph three.

In the case where a person who has been sentenced by a judgement of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions finds newly-discovered evidence which may alter the fact of the case materially, he may appeal to the general meeting of the Supreme Court of Justice within thirty days as from the date of rendering of a judgement of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions.

An appeal and the consideration and adjudication of the general meeting of the Supreme Court of Justice shall be prescribed in the regulation laid down by the general meeting of the Supreme Court of Justice.

CHAPTER XIII

Ethics of Persons Holding Political Positions and State Officials

Section 279. Ethical standard of each kind of person holding political position, government official or State official shall be in accordance with the established Code of Ethics.

Ethical standard under paragraph one shall consist of mechanism and system that ensure its effective enforcement and shall have punishment procedure for each degree of violation.

Any violation or failure to comply with ethical standard under paragraph one is deemed to be in breach of discipline. In the case where a person holding political

position violates or fails to comply therewith, the Ombudsmen shall report to the National Assembly, the Council of Ministers or related local assemblies, as the case may be, and shall refer the matter, in case of serious violation or failure, to the National Counter Corruption Commission for further proceedings and it is deemed the cause for removal from office under section 270.

The consideration, selection, scrutiny or appointment of any person to hold the position relating to the exercise of power of State power, including the transfer, promotion and elevation of the salary scale and punishment of such person shall be in accordance with merit system with due regard to ethical behaviour of that person.

Section 280. For the purpose of this Chapter, the Ombudsmen have the powers and duties in giving suggestion or recommendation in the making of or improving the Code of Ethics under section 279 paragraph one and enhances ethical consciousness of persons holding political positions, government officials and State officials, and have duties to report any violation of the Code of Ethics to the responsible person for the enforcement of the Code under section 279 paragraph three.

In the case where the violation or failure to comply with the ethical standard is made in a serious manner or there is a reasonable ground to believe that the responsible may act unfairly, the Ombudsmen may conduct inquisition and disclose the result thereof to the public.

CHAPTER XIV

Local Administration

Section 281. Subject to section 1, the State shall give autonomy to local government organisation with the principle of self-government according to the will of the people in a locality and shall encourage local government organisation to be the principal public services provider and to participate in rendering resolution to any problem occurs within its vicinity.

Any locality has a tendency to self-government shall have the right to be formed as a local government organisation as provided by law.

Section 282. The supervision of local government organisations shall be exercised in so far as it is necessary under the rules, procedure and conditions which are clear, expedient and appropriate for each type of local government organisation as provided by law but must be protecting local interest or the interests of the country as a whole, provided, at any rate, that it shall not substantially affect the principle of self-government according to the will of the people in the locality otherwise than as provided by law.

In the conduct of supervision under paragraph one, there shall be a supervision standard to be applied to local government organisations, upon their own selection, with regard to the appropriateness and difference of level of development and efficiency in the administration of each type of local government organisation without prejudice to capability of local government organisations in making decision for the fulfillment of their requirements and there shall be a mechanism for the examination of performance thereof which is executed mainly by the people.

Section 283. Local government organisations have the powers and duties to maintain and provide, in general, public services for the benefit of the people in localities and enjoys autonomy in laying down policies, administration, provision of public services, personnel administration, finance and shall have powers and duties particularly on their own part with regard to the compliance with the development of Changwat and the country as a whole.

Local government organisations shall receive any promotion and support to strengthen their autonomous in administration and capability to response efficiently to requirements of the people in their localities, to develop locally financial system so as to provide all public services under their powers and duties and to establish or jointly establish organisations to provide public services under their powers and duties with a view to provide valuable and beneficial services to public thoroughly.

There shall be a law determining plans and process for decentralisation prescribing the delineation of powers and duties and the allocation of revenue between central and provincial administrations and local government organisation and between local government organisations themselves with due regard to an increasing of distributed powers along the capability of each type of local government organisation. In such case, an examination and evaluation system by the committee consisting of representatives of concerned government agencies, representatives of local government organisations and qualified persons in an equal number shall be provided by law.

There shall be a law on local revenue prescribing powers and duties for the collection of taxes and other revenues of local government organisations and the provisions of which shall be in compliance with the nature of each type of taxes, the distribution of resources in public sector and the balance of revenue and expenditure of local government organisations. In such case, regard shall be had to level of economic development of localities, financial status of local government organisations and sustainability of State finance.

In the case where the delineation of powers and duties and the distribution of revenue to local government organisations has made, the committee under paragraph three shall review them every five years in order to consider the suitability of the

delineation of powers and duties and the allocation of revenue previously made, having particular regard to the promotion of decentralisation.

The proceeding under paragraph five shall be effective when the approval of the Council of Ministers has been obtained and the National Assembly has been notified thereof.

Section 284. A local government organisation shall have a local assembly and local administrative committee or local administrators.

Members of a local assembly shall be elected.

A local administrative committee or local administrators shall be directly elected by the people or shall be from the approval of a local assembly.

An election of members of a local assembly and local administrative committee or local administrators who must be directly elected by the people shall be made by direct suffrage and secret ballot.

Members of a local assembly, local administrative committee or local administrators shall hold office for the period of four years.

A member of a local administrative committee or local administrator shall not be a government official holding a permanent position or receiving a salary or an official or employee of a government agency, State agency, State enterprise or local government organisation and shall not have any conflict of interest in the holding of position as provided by law.

The qualifications of the person having the right to vote and the person having the right to apply for candidacy in an election of members of a local assembly, members of a local administrative committee and local administrators and rules and procedure therefor shall be in accordance with the provisions of the law.

In the case where a local administrative committee has vacated office en masse or local administrators vacate office and a local administrative committee or local administrators must be temporarily appointed, the provisions of paragraph three and paragraph six shall not apply, as provided by law.

The establishment of the special local government organisation having different organisational structure from the provisions in this section shall be as provided by law, provided that a local administrative committee or local administrators thereof shall be elected.

The provisions of section 265, section 266, section 267 and section 268 shall apply mutatis mutandis to members of local assembly and local administrative committee or local administrators.

Section 285. If persons having the right to vote in an election in any local government organisation consider that any member of the local assembly or any administrator of that local government organisation is not suitable to remain in office, such persons shall have the right to vote for removal of such member of the local assembly or any administrator from office. The number of persons having the right to lodge such request, rules and procedure for lodging a request, the examination of request and voting shall be provided by law.

Section 286. Persons having the right to vote in any local government organisation shall have the right to lodge with the President of the local assembly a request for the issuance by the local assembly of local ordinances.

The number of persons having the right to lodge such request, rules and procedure for lodging a request and the examination of request shall be provided by law.

Section 287. People in a locality have the right to participate in the administration of local government organisation and the local government organisation shall facilitate the people to have participation thereto.

In the case where any act of the local government organisation may be detrimental to way of life of the people within its locality materially, the local government organisation shall provide information thereof to the people prior to the commencement of such act within a reasonable period. If it deems appropriate or upon the request of people having the rights to vote at an election in such locality, the local government organisation shall conduct public consultation on such matter before the commencement of such act or conduct the referendum for decision thereon as provided by law.

The local government organisation shall report to the public of its preparation of appropriation, expenditures and the result of the performance of its duties in each year with a view to enhance public examination and supervision of its administration.

The provisions of section 168 paragraph six shall apply mutatis mutandis to the preparation of appropriation of a local government organisation under paragraph three.

Section 288. The appointment and removal of officials and employees of a local government organisation shall be in accordance with the need of and suitability to each locality but personnel administration of local government organisations shall be based upon similar standard and it may be jointly developed or personnel transfer

among local government organisations shall be made and it shall obtain prior approval from the Local Officials Committee, the central personnel administration of local government organisations, as provided by law.

There shall be the Local Officials Merit Protection Committee, in personnel administration of local government organisations, so as to establish and maintain merit and ethics protection system in personnel administration as provided by law.

The Local Officials Committee under paragraph one shall consist, in an equal number, of representatives of relevant government agencies, representatives of local government organisations and qualified persons possessing the qualifications as provided by law.

The transfer, promotion, increase of salaries and the punishment of the officials and employees of a local government organisation shall be in accordance with the provisions of law.

Section 289. A local government organisation has the duty to conserve local arts, custom, wisdom and good culture of locality.

A local government organisation has the right to provide education and professional training in accordance with the suitability to and the need of that locality and participate in the provision of education and training by State with regard to the compliance with the national education standard and system.

In providing education and training under paragraph two, the local government organisation shall also have regard to the conservation of local arts, custom, wisdom and good culture.

Section 290. A local government organisation has the powers and duties to promote and conserve the quality of the environment as provided by law.

The law under paragraph one shall at least contain the following matters as its substance:

- (1) the management, preservation and exploitation of the natural resources and environment in the area of the locality;
- (2) the participation in the preservation of natural resources and environment outside the area of the locality only in the case where the living of the inhabitants in the area may be affected;

(3) the participation in considering the initiation of any project or activity outside the area of the locality which may affect the quality of the environment, health or sanitary conditions of the inhabitant in the area;

(4) the participation of local community.

CHAPTER XV

Amendment of the Constitution

Section 291. An amendment of the Constitution may be made only under the rules and procedure as follows:

(1) a motion for amendment must be proposed either by the Council of Ministers or members of the House of Representatives of not less than one-fifth of the total number of the existing members of the House of Representatives or members of both Houses of not less than one-fifth of the total number of the existing members thereof or persons having the right to votes of not less than fifty thousand in number under the law on the public submission of a bill;

A motion for amendment which has the effect of changing the democratic regime of government with the King as Head of State or changing the form of State shall be prohibited;

(2) a motion for amendment must be proposed in the form of a draft Constitution Amendment and the National Assembly shall consider it in three readings;

(3) the voting in the first reading for acceptance in principle shall be by roll call and open voting, and the amendment must be approved by votes of not less than one-half of the total number of the existing members of both Houses;

(4) in the consideration section by section in the second reading, consultation with the people who submit a draft Constitution Amendment shall be held;

The voting in the second reading for consideration section by section shall be decided by a simple majority of votes;

(5) at the conclusion of the second reading, there shall be an interval of fifteen days after which the National Assembly shall proceed with its third reading;

(6) the voting in the third and final reading shall be by roll call and open voting, and its promulgation as the Constitution must be approved by votes of more than one-half of the total number of the existing members of both Houses;

(7) after the resolution has been passed in accordance with the above rules and procedure, the draft Constitution Amendment shall be presented to the King, and the provisions of section 150 and section 151 shall apply *mutatis mutandis*.

Transitory Provisions

Section 292. The Privy Council holding office on the date of the promulgation of this Constitution shall be the Privy Council under the provisions of this Constitution.

Section 293. The National Legislative Assembly under the Constitution of the Kingdom of Thailand (Interim), B.E. 2549 shall act as the National Assembly, the House of Representatives and the Senate under the provisions of this Constitution until the first meeting of the National Assembly under section 127.

During the period under paragraph one, if the provisions of this Constitution or other laws prescribes that the President of the National Assembly, the President of the House of Representatives or the President of the Senate shall countersign the Royal Command, the President of the National Legislative Assembly shall countersign the Royal Command in lieu thereof.

At the initial period, if there is the first meeting of the National Assembly under section 127 but the Senate is unavailable, the National Legislative Assembly shall act as the Senate; except the consideration for appointment or removal any person from office under the provisions of this Constitution, until there is the Senate under this Constitution. In such case, any act done by the National Legislative Assembly during such period is deemed to be an act of the Senate and in the case where this Constitution or other laws prescribes that the President of the Senate shall countersign the Royal Command, the President of the National Legislative Assembly shall countersign the Royal Command in lieu thereof.

The provisions of section 93, section 94, section 101, section 102, section 106, section 109, section 111, section 113, section 114, section 115, section 119, section 120, section 197 paragraph four and section 261 and the provisions of other laws which prohibit persons from holding political positions shall not apply to the holding of positions of members of the National Legislative Assembly.

The provisions of section 153 shall apply *mutatis mutandis* to the lapse of the National Legislative Assembly.

Section 294. The Constituent Assembly and the Constitution Drafting Commission under the Constitution of the Kingdom of Thailand (Interim), B.E. 2549 shall lapse on the date of the promulgation of this Constitution.

In order to deter conflict of interest, no member of the Constitution Drafting Commission shall apply for candidacy in an election of members of the House of Representatives or holding a position of senator within two years as from the date of vacation from office under paragraph one.

Section 295. The National Legislative Assembly shall complete the consideration of the organic law bill on election of members of the House of Representatives and acquisition of senators, the organic law bill on political parties and the organic law bill on Election Commission as submitted by the Constitution Drafting Commission within the period prescribed in the Constitution of the Kingdom of Thailand (Interim), B.E. 2549.

In the case where the National Legislative Assembly is unable to finish the consideration of such organic law bills within the period under paragraph one, the President of the National Legislative Assembly shall present the organic law bills submitted by the Constitution Drafting Commission to the King for His signature within seven days as if the approval of the National Legislative Assembly is given thereto.

During the period the organic law on political parties and the organic law on Election Commission under paragraph one is not come into force, the Organic Law on Political Parties, B.E. 2541 and the Organic Law on Election Commission, B.E. 2541 shall still in force until the said organic laws come into force.

Section 296. The election of members of the House of Representatives under this Constitution shall be held within ninety days and the acquisition of senators under this Constitution shall be held within one hundred and fifty days as from the date the organic law under section 295 comes into force.

At the first general election of members of the House of Representatives after the promulgation of this Constitution, a person who is eligible to be a candidate in an election shall be member of only one political party for not less than thirty days up to the election day and, in such case, the period under section 101 (4) (a) shall be one year and the period under section 101 (4) (c) and (d) shall be two years.

At the initial period, the persons having been senators elected for the first time under the Constitution of the Kingdom of Thailand, B.E. 2540 shall not hold positions of senators whom will be firstly acquired under this Constitution, and the provisions of section 115 (9) and section 116 paragraph two shall not apply to the persons whom elected for the last time under the Constitution of the Kingdom of Thailand, B.E. 2540.

Section 297. At the initial period, senators acquired upon the selection basis hold office for a term of three years as from the commencement of membership and the

provisions prohibiting senators from holding office for more than one term shall not apply to such persons in the subsequent selection.

Section 298. The Council of Ministers carrying out the administration of State affairs on the date of promulgation of this Constitution shall be the Council of Ministers under this Constitution and shall vacate office en masse when the Council of Ministers appointed under this Constitution taking office.

The National Security Council under the Constitution of the Kingdom of Thailand (Interim), B.E. 2549 shall vacate office en masse at the time when the Council of Ministers carrying out the administration of State affairs on the date of promulgation of this Constitution vacate office.

The provisions of section 171 paragraph two, section 172, section 174 and section 182 (4), (7) and (8) shall not apply to the holding of office of the Prime Minister and Ministers carrying out the administration of State affairs on the date of promulgation of this Constitution.

Section 299. The Ombudsmen holding positions on the date of promulgation of this Constitution shall be the Ombudsmen under this Constitution and shall be in offices until the expiration of the term of office. In such case, the term of office shall commence as from the date the appointment is made by the King and the Ombudsmen shall elect one among themselves to be the President of the Ombudsmen within sixty days as from the date of promulgation of this Constitution and the provisions of section 242 paragraph two and paragraph three shall apply mutatis mutandis.

Election Commissioners, members of the National Counter Corruption Commission and members of the National Economic and Social Council holding positions on the date of promulgation of this Constitution shall be in office until the expiration of the term of office and, in such case, the term of office shall commence as from the date of appointment.

Members of the National Human Rights Commission holding positions on the date of promulgation of this Constitution shall be in office until the appointment of the National Human Rights Commission under this Constitution. In the case where such persons hold office for not more than one year as from the date of promulgation of this Constitution, the provisions prohibiting members of the National Human Rights Commission from holding office for more than one term shall not apply to such persons in the first appointment of members of the National Human Rights Commission under this Constitution.

The persons under this section shall continue the performance of duties under the organic laws or other relevant laws which are in force on the date of promulgation of

this Constitution until the enactment of the organic laws or other laws for the compliance with this Constitution, unless the provisions thereof are contrary to or inconsistent with the provisions of this Constitution, the provisions of this Constitution shall replace.

Section 300. The Constitutional Tribunal under the Constitution of the Kingdom of Thailand (Interim), B.E. 2549 shall be the Constitutional Court under this Constitution and the person holding the position of President of the Supreme Court of Justice shall be the President of the Constitutional Court, the person holding the position of President of the Supreme Administrative Court shall be the Vice-President of the Constitutional Court and the judges of the Supreme Court of Justice and of the Supreme Administrative Court selected under section 35 of the Constitution of the Kingdom of Thailand (Interim), B.E. 2549 shall be judges of the Constitutional Court until the appointment of the Constitutional Court under this Constitution which shall finish within one hundred and fifty days as from the date of appointment of the President of the House of Representatives and the Leader of the Opposition in the House of Representatives after the first general election of members of the House of Representatives under this Constitution.

The provisions of section 205 (3), section 207 (1) and (2) and section 209 (5) shall not apply to the holding of position of the judges of the Constitutional Court under paragraph one.

The provisions of section 35 paragraph two, paragraph three and paragraph four of the Constitution of the Kingdom of Thailand (Interim), B.E. 2549 shall continue in force until the enactment of the organic law on rules and procedure of the Constitutional Court.

All cases or acts under the consideration of the Constitutional Tribunal under paragraph one shall be considered by the Constitutional Court under this section and when the Constitutional Court under this Constitution is appointed, all pending cases or acts shall be in the jurisdiction of the newly appointed Constitutional Court.

During the period the organic law on rules and procedure of the Constitutional Court is not yet enacted, the Constitutional Court has the powers to prescribe a determination related to its trial and rendering of decisions but such organic law shall be enacted within one year as from the date of promulgation of this Constitution.

Section 301. The selection for the State Audit Commission and the Auditor-General shall finish within one hundred and twenty days as from the date of appointment of the President of the House of Representatives and the Leader of the Opposition in the House of Representatives after the first general election of members of the House of Representatives under this Constitution and, if the President of the Constitutional

Court from the selection proceedings under this Constitution does not exist, the Selective Committee shall consist of the existing members.

In the case where the State Audit Commission does not exist, the Auditor-General shall act as the President of the State Audit Commission and the State Audit Commission.

Section 302. The following organic laws shall continue in force under the conditions under this section:

- (1) Organic Law on Ombudsmen, B.E. 2542 and the President of the Ombudsmen shall have charge and control of the execution of this Organic Law;
- (2) Organic Law on Counter Corruption, B.E. 2542 and the Chairperson of the National Counter Corruption Commission shall have charge and control of the execution of this Organic Law;
- (3) Organic Law on State Audit, B.E. 2542 and the Chairperson of the State Audit Commission shall have charge and control of the execution of this Organic Law;
- (4) Organic Law on Criminal Proceeding Against Persons Holding Political Positions, B.E. 2542 and the President of the Supreme Court of Justice shall have charge and control of the execution of this Organic Law.

Amendment to the organic laws by the Acts promulgated during the period the Constitution of the Kingdom of Thailand (Interim), B.E. 2549 being in force is deemed to be made by the organic laws under this Constitution.

Persons having charge and control of the execution of the organic laws under paragraph one shall cause revision to the organic laws for the compliance with this Constitution within one year as from the date of promulgation of this Constitution or, in the case where the person having charge and control of the execution of such organic law does not exist, the period of one year shall commence as from the date of appointment of such person.

The House of Representatives shall complete the consideration of the organic law bills under this section within one hundred and twenty days as from the date of receipt of such organic law bills and the Senate shall finish its consideration thereon within ninety days as from the date of receipt of such organic law bills.

A resolution approves such amendment or disapproves the organic law bills under paragraph one shall be made by the votes of not less than one-half of the total members of each House.

The Election Commission shall prepare the organic law bill on referendum for the compliance with this Constitution and the provisions in paragraph three, paragraph four and paragraph five shall apply *mutatis mutandis*.

Section 303. At the initial period, the Council of Ministers taking office after the first general election under this Constitution shall cause a preparation or amendment to laws in the matters and within the specific period as follows:

(1) laws related to the determination of measures for supporting and protecting rights and liberties under section 40, section 44, Freedom of Expression of Individual and the Press in Part 7, Rights and Liberties in Education in Part 8, Rights to Public Health Services and Welfare in Part 9 and Rights to Information and Petition in Part 10 as well as laws on personal data under section 56, Community Rights in Part 12, law establishing autonomous consumer protection organisation under section 61 paragraph two, law on political development council under section 78 (7), law establishing organisation for reforming the judicial process under section 81 (4), law establishing farmer council under section 84 (8), law establishing civil politics development fund under section 87 (4) and law on National Human Rights Commission under section 256; within one year as from the date its policies is stated to the National Assembly under section 176;

(2) law for the development of national education under section 80 which promotes formal education, non-formal education, education-at-will, self-learning, life-long learning, community college or other forms of education and causes amendment to law for determining agencies to be responsible for the provision of education appropriately and in conformity with all levels of all education systems of basic education; within one year as from the date its policies is stated to the National Assembly under section 176;

(3) law under section 190 paragraph five which consists of, at least, detailed measure and procedure for the conclusion of treaty having system for the balancing of powers thereon between the Council of Ministers and the National Assembly and securing transparency, efficiency and actual public participation, and details of studies or researches conducted independently before the commencement of negotiation in which there is no conflict of interests between interests of State and the of researchers through the binding period of the treaty; within one year as from the date its policies is stated to the National Assembly under section 176;

(4) law under section 86 (1) and section 167 paragraph three; within two years as from the date its policies is stated to the National Assembly under section 176;

(5) law determining plans and process for decentralisation, law on local revenue, law on establishment of local government organisation, law on local officials and other laws as referred to in Chapter XIV Local Administration for the compliance with this

Constitution; within two years as from the date its policies is stated to the National Assembly under section 176. Such law may be compiled in form of Local Administration Code.

In the case where the laws enacted before the date of promulgation of this Constitution have compatible substances with this Constitution, the execution of this section to such laws is exempted.

Section 304. The Code of Ethics under section 279 shall finish within one year as from the date of promulgation of the Constitution.

Section 305. At the initial period, the some provisions of this Constitution shall not apply to specific cases under specific conditions as follows:

(1) the provisions of section 47 paragraph two shall not apply until the enactment of the law under section 47 to establish the regulatory body having duty to distribute the frequencies and supervise radio and television broadcasting and telecommunication businesses which shall not more than one hundred and eighty days as from the date the government policies is stated to the National Assembly. Such law shall, at least, establish specialised committees within such regulatory body whereby one of which for supervision of radio or television broadcasting and the other one for supervision of telecommunication businesses and they work apart, and shall have details on the supervision and protection of business, the establishment of telecommunication resources development fund and the promotion of public participation in running of public mass media, but the aforesaid shall not affect the permissions, concessions or legal contracts concluded before the date of promulgation of this Constitution until the termination of such permissions, concessions or contracts;

(2) subject to section 296 paragraph three, the provisions of section 102 (10) particularly to the requirement on having been senator, section 115 (9) and section 116 paragraph two shall not apply to the first election of members of the House of Representatives and the holding of political positions at the first time under this Constitution;

(3) the provisions of section 141 shall not apply to the enactment of the organic law under section 295;

(4) the provisions of section 167 paragraph one and paragraph two, section 168 paragraph nine, section 169 particularly to the requirement on the determination of sources of income for reimbursement of expenditures paid-up from the treasury balance, and section 170 shall not apply within one year as from the date of promulgation of this Constitution;

(5) any act in relation to the conclusion or implementation of treaty which have been done prior to the date of promulgation of this Constitution shall be valid and the provisions of section 190 paragraph three shall not apply; provided, at any rate, that the provisions of section 190 paragraph three shall apply to the pending procedure that must be continued;

(6) the provisions of section 209 (2) shall not apply to members of the National Human Rights Commission holding office on the date of promulgation of this Constitution;

(7) the provisions of section 255 paragraph five and section 288 paragraph three shall not apply within one year as from the date of promulgation of this Constitution.

Section 306. At the initial period, judges of the Supreme Court of Justice having held positions of not lower than judges of the Supreme Court of Justice who turn to sixty years of age in the fiscal year 2550 shall perform the duties of senior judges in the Supreme Court of Justice under section 219 until the amendment of law prescribing rules for the performance of duties of senior judges.

Within one year as from the date of promulgation of this Constitution, there shall enact the law extending term of office of judges of the Courts of Justice to seventy years of age and a judge of the Courts of Justice who turns to sixty years of age or more in any fiscal year, performs of duties for not less than twenty years and passes the performance capability test may request to hold the office of senior judge in the Courts of not higher than the Court he held his last office.

The law to be enacted under paragraph one and paragraph two shall have the provisions that persons who turn to sixty years of age or more in any fiscal year, within the first ten years as from the date such law come into force, gradually and continually vacate their offices and enable such persons to make a request for holding the office of senior judge.

The provisions of paragraph two and paragraph three shall apply mutatis mutandis to public prosecutors.

Section 307. Qualified members of the Judicial Commission of the Courts of Justice holding office on the date of promulgation of this Constitution shall remain in office; except a qualified member who turns to sixty years of age in the fiscal year 2550 and a qualified member in any level of the Courts who transferred from the such level of the Court, but not more than one hundred and eighty days as from the date of promulgation of this Constitution.

Section 308. The Council of Ministers carrying out the administration of State affairs on the date of promulgation of this Constitution shall appoint the independent Law

Reform Committee within ninety days as from the date of promulgation of this Constitution having duties to study and give recommendation on the preparation of laws to be enacted for the compliance with this Constitution and to prepare the law establishing the law reform organisation under section 81 (3) within one year as from the date of promulgation of this Constitution and such law shall have, at least, the provisions that entrusting to such organisation a duty to support the preparation of bills of persons having the right to vote in an election.

The execution under paragraph one is not prejudice to the powers and duties of other organisations in the preparation of bills under their responsibilities.

Section 309. Any act that its legality and constitutionality has been recognised by the Constitution of the Kingdom of Thailand (Interim), B.E. 2549, including all acts related therewith committed whether before or after the date of promulgation of this Constitution shall be deemed constitutionally under this Constitution.

Countersigned by:

Meechai Ruchuphan

President of the National Legislative Assembly

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