A. Introduction

Since the fall of the Suharto regime, profound differences of opinion have arisen concerning Indonesia’s constitutional organisation. Many of the country’s existing provinces are striving for comprehensive autonomy or even leaving the unitary state which has existed up to now. Until 1998, however, the strict state unity of the island realm was regarded as forming the bedrock of Indonesia’s future survival. This was because Indonesian-Javanese politics regard any weakening of existing unity as tantamount to weakening the whole state. Accordingly, any form of federalism is regarded as indicative of separatism or even secession and thereby represents a threat to Indonesia’s survival. In order to strike a balance between these conflicting interests, extensive reforms of the Indonesian structural model were initiated following the fall of the Suharto regime. The reforms generally reflect the three constitutional amendments of 1999, 2000 and 2001.

The vertical state organisation is now governed by the reformed or recently introduced Articles 1, 18, 18A, 18B and Articles 24A, 24B, 24C together with the whole of Chapter VII of the UUD 1945 regulating the second parliamentary chamber. In this respect, the constitution granted the ordinary legislature several powers to implement the vertical state organisation and thereby the Indonesian state structural model. Two of the more important statutes which have already been enacted and implemented in this connection are UU 22 and 25 (1999) on regional autonomy and its financing. However, many supporters of the central government have rejected the reforms as being “too federal”. The delegation of constitutional powers to subordinate administrative levels - broadly formulated by the UU 22/99 - has only served to increase the federal dangers of secession.

However, do these new structures actually transform Indonesia into a federal state? In this connection, there is a great need to clarify structures of state organisation. Therefore, the effects of the constitutional reforms will be measured against the criteria of political science and the Indonesian state classified under a definite structural model. In order to do this, criteria distinguishing unitary and federal states must first be compiled from political science. The reformed Indonesian state can then be categorised under one of the classical state structural models on the basis of its characteristics (II.). The conclusion will ascertain whether criticism of the reforms is plausible in terms of legal science (III.).

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In this connection it must be contributed that owing to the changeable and partly unstable circumstances which still present, the reforms to the state structure were neither anchored nor wholly implemented in terms of decentralisation. Thereby, the author can only make an abstract investigation of the legislation enacted in Jakarta.
B. Test criteria

Before proceeding any further, it must be recognised that any state structure is more or less unique and rooted to its local conditions. Accordingly, political science cannot produce any wholesale definitions for all state structural models. It is nevertheless possible to isolate common characteristics which define generally recognised, fundamental differences between the state structural models on the "floating scale between federalism and unitarism." In this connection, the first question concerns the correct use of "federalism" in the legal sense of the word.

The term "federalism in general"

When defining the term "federalism," one initially encounters "endless variety" both in relation to attempts at interpretation and areas of application. However, all theories of federalism identify the term's main characteristic as being "philosophical variety within a common framework." Thereby, federalism is to be interpreted as a principle of political regulation, which combines the various more or less independent constituencies into a superior whole. It aims to protect individual constituents from becoming assimilated into the

whose and thereby the whole from losing its variety.

In terms of constitutional law this means that a federal state, unlike a unitary state, requires "sovrower" societal units. Together these constitute a higher level (not in a hierarchical sense, however), which satisfies the common interests and needs of all units in relation to each other. Consequently, any combination of states can be characterised either as a constitutional federal or federalist structure. Political theory then subdivides this general term "combinations of states" into the state structural models of intergovernmental cooperation, international organization, confederation or federal state. Accordingly, it is simply incorrect to equate federalism with definite structural principles of constitutional law. The "federal state" is merely a sub-form of the category of "federalism" reduced by state law although the two terms are not synonymous. If the reform of the Indonesian state structural model is accused of establishing "federalism" then, in terms of constitutional law, this can only be investigated within the framework of the existing structural models of political theory.

† Kelten, Allgemeine Staatslehre, p. 207.
‡ From "federal" (Lat.): Federation, pact.
§ For a thorough investigation of no fewer than 250 different expanded terms of federalism, c.f. Jensek, Föderalismus und Bundesstaat, Vol. I, p. 113. For the different meanings of "federalism" (e.g. social-political, sociological, economic) c.f. Deutsch, Föderalismus.
∥ See also Asseburg, "Die Idee des Föderalismus," p. 11.
△△ Krimmers, in: Asseburg/Kirchhof (eds.), Föderalismus im Nordamerikanische Staat, p. 247 para. 1. However, this is often the case in the view of the Anglo-Saxon speaking world. There, "federalism" does not represent the opposite to the centralised and unitary state but instead to "confederation" in terms of the North American example in the USA. That is to say that the Anglo-Saxon view concentrates on the common whole which a common state must form instead of the autonomy of the constituent states as a "federal" order. This view is not shared by the German general state doctrine. C.F. Kammeyer, Justizstaat: Föderalismus (Reedere Kompetenzzuweisungen), pp. 239 ff.

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State structural models

The structure of any state in terms of organizational law is characterized by.
its genuine sociological, political, ethnological and historical peculiarities. Such country-specific characteristics mean that when examining the reformed Indonesian state organization recourse one cannot refer to any consensual theory or universal political definition of all structural models.10 Political science has already established common characteristics by comparative investigations of existing state structures common to many states and which we distinguish from each other.11 Such information is collected at a general abstract level in order to obtain at least a theoretical foundation for the examination of other state structural models.12 This foundation is called the "floating scale of federalism".13 The running continuum of this scale is the distinction between unitarism and federalism, i.e. the factual and legally attained integration of the individual state into the whole.

A running, or even "floating scale" results from the unique nature of the degree of integration explained above. Despite this unique nature, the scale classifies related areas to a particular state structural model. This gives rise to a kind of catalogue by means of which it is possible to investigate actual examples and classify them to particular state structural models. In this context, the following investigation of the Indonesian structures only requires particular characteristics of the federal state.14

Federal State

In terms of state law, the federal state is a combination of states formed by a constitution. Both individual member states as well as the superior whole state possess the quality of a state. In this respect, state authority is distributed between the whole state and its constituent parts according to areas of responsibility. Accordingly, both the whole and its constituent parts exercise state power independently of other state levels in those areas of responsibility which the constitution allocates to them. Since there are two state levels, they must both have their own constitutions. The bi-level state is distinct from the unitary state insofar as the regional subdivisions of the latter merely amount to decentralised administrative units.15

11 "... this even today there is still no theory of the federal system and if necessary one can therefore have recourse to the individual building blocks of a possible..." Hans, Perspektive des Föderalismus in Deutschland, DÖV 1991, 586, in: Jassow/Kocher (eds.), UN-Sekt. IV, § 46 para. 1.
12 Spiro, Staatsrecht I, para. 446.
13 Cf. Hergt, Allgemeine Staatslehre, pp. 403 ff.; Zippelius, Allgemeine Staatslehre, § 40.1. It is generally accepted that Indonesia was a unitary state. No investigations are necessary concerning this aspect. With regard to the reforms, no structural model other than the federal state can be used since all other models of international associations vary in quality and accordingly do not amount to any state at the level of the association. According to the "three element doctrine", the quality of a state is constituted by the state citizenship, state territory and original state power; cf. Spiro, Völkerrecht, § 5 para. 2 i f. with further references. The "three-element doctrine" was established inter alia by Hans Kelsen, Allgemeine Staatslehre, p. 96 (of 1923). According to this doctrine, Indonesia is clearly recognised as a state.
15 Degenhart, Staatsrecht I, para. 84.
16 The exercise of state power is decentralised if it is exercised by administrative carriers which are legally independent from the state. The decentralised regional authorities in the unitary state also have substantially defined terms within which they may act according to their discretion. The limits to this discretion are only determined by law and statute. Accordingly, there are no reviews of the legitimacy of individual decisions. By contrast, deconcentration means the mere vertical administrative division into legally non-autonomous and thereby dependent sub-units. Deconcentrated municipalities have to be responsible to the central authority when exercising their transferred powers both with regard to the lawfulness and expediency of their decisions, cf. Zippelius, Allgemeine Staatslehre, § 14 f. 1.2; De Laender/Verniers/Guideras, Traité de Droit administratif, Vol. I, p. 119 ff., 123 ff.; Maurer, Staatsrecht, § 10 para. 6; Chambres, Droit constitutionnel et science politique, p. 66.
Despite the basic independence of both federal levels, interdependencies between them mean that the whole state must be granted influence over the constituent states and the latter must have rights of participation in the formation of policy at national level. The participation of constituent states in the formation of national policy is usually guaranteed by a special federal organ. A federal state is also characterized by a certain degree of heterogeneity between these components which serve, to guarantee a common basis for procuring the independence of constituent states. On the one hand, this basis is available for all citizens of the nation state and on the other it ensures the equal development of individual states. Should internal or external circumstances make equal development in all constituent states impossible, the federal principle of state solidarity obliges constituent states to mutually support each other economically.

In addition, the national constitution may only be amended if the constituent states give their consent—usually by means of the federal organs at national level. The mere participation of constituent states in the form of constitution or hearings is insufficient which reflects the importance of the constitution for both state levels. Owing to the existence of two original state powers neither the federation nor the federal states can arbitrarily ignore the constitutional power of the other and alter their interaction. An amendment requires the consent of all state levels which are on an equal footing with each other. This situation resembles that of an international treaty. Different states conclude treaties and amendments cannot be made unilaterally but only by the common consent of all signatories.

Finally, the federal state system requires constitutional jurisdiction which supervises the acts and legislations of both state levels and which can collect revenue where necessary. Since there is no recognized third level which could order the resolution of jurisdictional conflicts, solutions must be found which are proven acceptable to both levels. Consequently, both levels must have created the legal basis upon which a possible jurisdictional conflict rests and any amendments to the same may only be made by both state levels acting in tandem. This requirement is only satisfied by a federal constitution.

Catalogue of criteria
Federal and unitary states are distinguished according to the following criteria:
1. The constitutional quality of regional authorities must be examined. In this connection, a distinction must be drawn between those having original state power and those having merely derived state power.
2. Any interdependencies between regional authorities and the nation or central state must be investigated. The relevant criteria are:
   a. Influence of regional authorities over the nation or central state;

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48 Stern, Staatsrecht, Vol. 1, § 191 l.
49 It is a matter for each federal state whether to constitute such a federal chamber. Whether a federal, second chamber however is an ineludible and therefore constitutive element of a federal state is controversial. See Hart, Bundesstaat und Bundestag, p. 25 with further references op. p. 195.
50 State, Staatsrecht, Vol. 1, § 191 l.
51 Constitutional jurisdiction does not have to be exercised competently by a formally and institutionally autonomous jurisdiction. Accordingly, constitutional jurisdiction which is essential for the federal state can also be exercised by courts of other jurisdictions, i.e. so-called "mepied constitutional jurisdiction". C.f. Schond, Aus Politik und Zeitgeschichte B 37 (1920), p. 8 (an example would be the Supreme Court, of the USA, which has ordinary and constitutional jurisdiction).
52 C. F. Spohr, Vom Grunde der Verfassung und Verfassungspflichtbarkeit, p. 11 (23).

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b. Influence of the nation or central state, such as supervisory powers;
c. Any co-operation between the levels;
d. Discretion of financial resources.

3. The procedure for constitutional amendment. A federal state requires the participation and consent of regional authorities.

4. Constitutional jurisdiction. A constitutional jurisdiction necessarily includes a federal state. A constituent element of the federal state is absent where there is no constitutional jurisdiction or if such jurisdiction adopts a basis for decision-making other than a constitution which can only be altered with the consent of different federal units.

C. The structural model of the Indonesian State

Article 1(1) UUD '45 remained unchanged by the constitutional reform instituted by the People's Consultative Assembly (MPR). It proclaims the Indonesian Republic as a unitary state but amounts to nothing more than a purely formal description. This begs the question whether the comprehensive changes themselves only amount to what Wahid claimed in 1999 when he declared that owing to political demands one had to establish a federal structure and simply call it a unitary state. By contrast, the Second Amendment of October 2000 replaced Article 18 UUD '45 with a new version augmented by two further Articles 18A and 18B UUD '45. This amendment aimed to decentralise extensive areas of state organisation and to upgrade the regions. The subsequent amendment of November 2001 created a second federally constituted parliamentary chamber and a constitutional court. The following examination asks whether these changes federalised the vertical state organisation to such an extent that they gave rise to a federal state.

Constitutional quality of the regional authorities

A distinction must be drawn according to whether regional authorities have either original or derived state power. Article 18 (1) of the new version declares the subdivision of the unitary state into provinces which in turn are subdivided into regencies or municipalities. These two levels administer their own affairs by freely elected representative bodies (paras. 2 and 3). The legal representatives of the provinces is the governor and in the regencies or municipalities the regent or mayor. All such representatives must be democratically elected. In addition, regional jurisdictions are established in the constitution (Article 18 (5) and (6) UUD '45). Actual political areas are still not identified accordingly; the jurisdictions are to be interpreted as "wide-ranging" and can only be restricted by a law of the central government. Article 18A UUD '45 requires the legislator to regulate the relationship between the central government and the provinces, the provinces to each other and between the provinces and their administrative subdivisions. Article 18B allows individual regions their peculiarities in the form of societal structures and traditions as "their" rights which

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*By contrast, constitutional jurisdiction can exist in a unitary state but is not necessary for its constitution. For example, a unitary state such as the Netherlands does not have any constitutional jurisdiction. The Dutch constitution does not provide for any institutional or formally autonomous constitutional jurisdiction and prohibits in Article 150 of the constitution every judge from judging the constitutionality of laws and treaties. Disputes between the supreme organs of the state can only be resolved politically. C.f. Wahl, Aas Politik und Zeitschriften B 37-38/2001, p. 45.*

*"The regional governments shall carry out the widest possible autonomy, except in governmental affairs that by the laws shall be determined as being the affairs of the Central Government."* Article 18 (5) and (6) UUD '45 new edition.

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the state must not only acknowledge but also respect. However, if these “individual” rights contravene the principle of the unitary state such acknowledgment becomes retroactively ineffective. The legislature decides the rights to be allocated and their scope (Article 168 (2) UUD'45).

Unlike the earlier regulation, the self-administration of the regions now enjoys constitutional status. The fact that such self-administration is the responsibility of democratically legitimated elected organs is also novel in comparison to the former regulation. This serves to increase the autonomy of the regions and does indeed federalize the state structure. In this connection, the political discussion in Indonesia fails to grasp that the quantity of competencies to be transferred and not the quality (i.e. original and constitutionally protected state power of regional authorities), constitutes an essential of the Federal State. In addition, Articles 18, 18A and 158B UUD'45 refer several times (7) to many elements which still have to be implemented by ordinary legislation. This statute implements UU 22/99 to a considerable degree and will form the basis for investigating the latter.

1. The regions: provinces (propinsi), regencies (kabupaten) and municipalities (kota)

To begin with, Article 2 (1) UU 23/99 declares that the territory of Indonesia is subdivided into autonomous provinces which in turn are subdivided into regions or municipalities. Para. 2 of the same Article places provinces on an equal footing with administrative regions. According to Article 1 (1) and (2), the interpretation of the terms

"autonomy" and "administrative region" are synonymous with those under the former regulation of UU 5/74. Accordingly, the provinces represent both a de-concentrated (administrative) and decentralized (autonomous) regional authority. Once Article 4 UU 22/99 defines the task of decentralization in relation to the whole statute, Article 5 (2) establishes the borders, names and capitals of the regions at both levels. A region can only be dissolved by legislative Act (Article 6 (4)). The regional division of individual units must always correspond to the requirements of Article 5 (1) UU 22/99. Accordingly, each regional authority must be constituted in such a way that it can exercise its tasks of self-administration according to size and efficiency (Article 4 (1) UU 22/99). Thereby, the establishment, dissolution and alteration to the borders of the propinsi, kabupaten and kota are exclusively determined by regulations of the central state. The regions themselves do not have any decision-making powers in this respect. The state power of the regions cannot be original if the establishment or dissolution of the regions can be determined by another state power. Original state power distinguishes itself by virtue of the fact that it can decide its own existence separately and independently. Accordingly, the regional authorities represent administrative units of the central executive.

In contradiction to this, UU 22/99 often refers to regional “government” and “legislature.” According to general state
doctrine, a "government" or "legislature" can only exist where there is a separate original state power. However, it has been proved that the regions do not have original state power. This is also seen from the fact that regional government and legislature can only be defined and constituted by UU 22/99. Consequently, the rights, constitution or even dissolution of the two can only be amended or revoked by the central state without any consent or participation of the regions. UU 22/99 therefore uses the terms regional "government" and "legislature" differently from the definitions of general constitutional doctrine. Like the whole region, both organs are part of the central state administration.

Despite this already clear result, the accusation that Indonesia is being transformed into a federalist state is mainly based on the upgrading of regional powers. First of all, Article 7 (1) and (2) UU 22/99 establishes a residual jurisdiction of the autonomous regions. Article 7 (1) and (2) UU 22/99 exhaustively list the responsibilities allocated to the central authority so that those not mentioned fall within regional jurisdiction. Articles 9 ff. UU 22/99 then regulate the division of state powers between the two regional levels. The provinces, as daerah otonom (decentralised regional authorities) have sole responsibility for the agencies or towns according to Article 9 (1) UU 22/99. In addition, Article 9 (2) UU 22/99 requires the provinces to perform all the tasks which regencies and towns cannot or cannot yet perform. According to paragraph 3, the provinces are also allocated responsibilities by the legal systems of central government. Article 11 UU 22/99 designates the performance of all further tasks to the second regional level of the kabupaten and kota. Thereby, responsibilities are mainly allocated to the second regional level. Furthermore, Article 11 (2) UU 22/99 establishes individual areas of responsibility which must be performed by the kabupaten and kota. The regulation must be regarded in systematic connection with Article 9 (2) UU 22/99. Accordingly, provinces can assume the responsibilities of the kabupaten and kota as decentralised state power (daerah otonom), which the latter cannot or cannot yet perform owing to administrative organization. According to the special explanation of Article 9 (2) UU 22/99, only the provinces can decide whether such administrative problems exist following a hearing of the kabupaten and kota. From an historical standpoint, the purpose of Article 11 UU 22/99 and, in particular, of paragraph 2 could therefore be to protect the smaller regional authorities from the withdrawal of jurisdiction by the

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8 C.f. also the municipalities as regional authorities of the constitutive states of the German state structure. Accordingly, §§ 40 ff. Gemeindeordnung Nordrhein-Westfalen regulate the "legislative organs" of the communities as administrative organs and not as a legislature, c.f. v. Mattox, Kommunalrecht, para. 716, Stobeck, Kommunalrecht, § 2 III 1.2 and 15 II 3. The communal council therefore does not have any legislative power but has "regional regulatory autonomy".

9 Residual: (lat.) "left as a residue or residuum". Anything which is not explicitly regulated comes within residual jurisdiction.

10 Para. 1 still contains a clause facilitating powers "in other areas", which are defined in the special comments to Article 9 (1) in a to g:

11 PP 19/2001, "amending provisions on decentralisation".

12 According to, UU 22/99 also replaces any kind of hierarchy between the provinces and the kabupaten- and kota-levels, see general comments 1. 1.

13 The exact contents of the allocated powers are not crucial here for the distinction between unitary and federal elements.
propinsi. Once more, the genetic interpretation of the regulations provides a different explanation. In the laddoese concept of a state only those responsibilities are worth having which promise income, such as responsibilities relating to charges or the sale of concessions. State responsibilities are often regarded as amounting to nothing more than "procurement powers".10 Competencies which incur costs are eagerly dispensed with or simply left unused. Consequently, the kabupaten and kota are indeed protected from the withdrawal of lucrative competencies by Article 11 (2) UU 22/99. However, the same provision also prevents kabupaten and kota from passing on costly areas of responsibility to the propinsi pursuant to Article 9 (2) UU 22/99. The central government has further defined the areas of responsibility by means of the governmental ordinance (PP) 25/2000 on the basis of Article 12 UU 22/99. The central government allocates all regional responsibilities between the regions in accordance with UU 22/99 and Articles 18, 18A and 18B UUD '45. In this connection, the central government can expand, limit or revoke any regional responsibility at any time. Consequently, the regions do not have original state power with regard to the allocation of responsibilities either.

2. The villages (desa)
On the basis of the characteristics of the traditional social units cited in Article 18B UUD '45, the "village level" (desa level) will be examined in isolation from its regional counterpart. Unlike UU 15/74, UU 22/99 also regulated the level of the village community (desa) besides the regions (Article 93 ff). The village level only exists in the kabupaten but not however, in the kota. For a start, the foundation, dissolution or merging of individual village communities in accordance with Article 93 (1) UU 22/99 can only be carried out upon the initiative of the population concerned. Any further requirements in this regard are regulated by regional ordinances of the regencies (Article 93 (2) UU 22/99). The villages are administered by democratically elected boards and a directly elected local governor (kapolda desa). In principle, Articles 107 ff UU 22/99 regulate the financing of the villages, although further details are regulated in acts of the regions and central state. Articles 99 ff list the responsibilities of villages. Article 99 allocates village communities all responsibilities of the regencies which are not exercised or have yet to be exercised (b) as well as other responsibilities which the central government allocates to the villages, provinces or regencies by ordinance. In addition, Article 99 (a) lists existing responsibilities which are based on "original privileges". Such "original privileges" are also cited in Article 1 (6) and Article 111 (2). The former provision defines the

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n A practical example is forestry management. Transferring powers to the regional authorities will result in an uncontrollable deforestation. Every level which is officially authorised for this purpose will attempt to share in the profits and award concessions. See "Indonesien: Anarchie den Nationalparks", GEO Nr. 7/2001, p. 161.

n Examples are health care, education with accompanying infrastructure of schools and universities as well as environmental protection.

n With regard to the desa level, UU 22/99 is therefore the successor to UU 57/99.

n UU 25/99 is fundamental in this respect.

n "Village authorities shall include the following matters: a) authorities already exist based on the Village original privilege [...]. Article 99 (a) UU 22/99.

n Local community based on origin and local customs and traditions acknowledged in the National Governance system", Article 1 (a) UU 22/99.

n "Regional Regulations as intended in paragraph (1) must acknowledge and respect the Village rights, origin as well as customs and traditions." Article 111 (2) UU 22/99.
village level as a legal unit with "original traditions" which must be acknowledged by the central authority and Article 111 (2) declares that these "original rights, customs and traditions" must be taken into account when regional ordinances of the kabupaten and kecra are enacted. According to the grammatical interpretation, the village level has an independent, original state power owing to the fact that it was already in existence before the central government. Furthermore, the existing boundaries of village communities and the population living therein constitute an autonomous population and territory. Consequently, all requirements of a state appear satisfied, so that the village communities could represent the constituent states of an Indonesian federal state. Even if additional responsibilities would be transferred as derivative state power to the village community by statute or ordinances there would remain an original state area which would qualify the villages as constituent states.

Certainly, a federal state with over 65,000 potential constituent states would be unprecedented. Again, only the historical-genetic interpretation can explain and correct the dogmatically very unusual and seemingly absurd result of the grammatical interpretation. Besides the family, Indonesians identify most strongly with the village community. Owing to such high social identification village communities exert the main influence over Adat law even today. This is a form of customary law which pervades all areas of society and is also applied by the courts. By influencing such generally applied customary law, village communities have a normative strength which influences all acts of the central government. Rynaas Rasyid, the Habibie government minister responsible for decentralisation measures and the drafting ofUU 22/99 was well aware of the special status of the village community. Rasyid regarded the village communities as a purely social phenomenon, similar to the family and neighbourhood structures. The privileges of the village community, which had existed for centuries, were to remain legally unregulated. However, the objection was raised that the non-regulation of villages risked excluding the approx. 65,000/regional authorities from the decentralisation process instituted byUU 22/99. Owing to Indonesian legislative practice, this could present the danger that other regulations could effectively weaken the lower regional authorities. However, the village level was to be unified as much as possible and exhaustively regulated in order to institute the process of democratisation following the fall of the Suharto regime right down to the lowest regional level. The solution now contained inUU 22/99 was adopted as a compromise. However, the responsibilities of the village level remain very unclear owing to the locally different Adat rules. The villages were to be allowed to continue their traditions within democratic limits established byUU 22/99. The "original privileges" thereby represent a mixed form of social traditions and legally regulated responsibilities. None of the parties involved in the legislative process intended the linguistic compromise of "original privileges" to establish, at least in grammatical terms, member states of a

\* Which legal consequences for the ordinances of the regencies and towns a contention against Article 111 (2)UU 22/99 incurs, remains unregulated. According to the grammatical-systematic interpretation, both Adat regulations and acts of the village community would have to suppress or even quash regional acts of the kabupaten and kecra.

\* Concerning the constitutive characteristics of a state c.f. the "three-elements doctrine", supra at RL 18.
potential federal state. According to the historical-generic interpretation of Article 99(a)(o) and Article 111 UUD 21999, which corrects this anomaly, village communities do not have original but derived state power.

In conclusion, it can be stated that the Indonesian state structure is strongly decentralised and thereby federalised. Despite this, all responsibilities continue to be derived from the central government. Consequently, the regional authorities do not have any original state power which represents an important element of a unitary state.

interdependencies

In a unitary state, the regional authorities do not in principle have any opportunity to influence the central government. On the other hand, the central government exerts wide-ranging influence over the regional authorities. In the federal state, the constituent states, as regional authorities of the whole state have extensive opportunities to influence the formation of policy of the whole state. By contrast, the constitution defines and generally restricts the powers of whole state to interfere by exercising the original state power of constituent states. In this connection, the following aspects must be investigated:

1. The influence of the regions over the central state government
2. The influence and supervisory powers of the central government in relation to the regions.

1. Influence of the regional authorities on the whole state or central government

As part of the third constitutional reform of 2001, the new Section VIA created a regional council (dewan perwakilan daerah; hereinafter: "DPD") as a second chamber. The following investigates the constitution and powers of the DPD.

According to Article 28C(1)(2) UUD 45, all members of the DPD are elected from the provinces by general election. The DPD is thereby federal but has only minor powers. According to Article 22D (1) and (2) UUD 45, the DPD has the right of initiative in the areas listed and the right to participate in the readings of a bill. However, its representatives do not have any voting rights when passing bills. They are only responsible for the supervision of legislation enacted in this way although contraventions in accordance with paragraph 3 of the same article can be reported to the first chamber. By means of the federally constituted second chamber (DPD), regional authorities also influence the formation of policy by the central government. However, the powers are so limited that, in qualitative terms, such influence is insufficient to establish a federal element. It is indeed typical for powers of a federally constituted second chamber to be limited to core areas and interests of regional authorities. However, this would require the DPD to have a right to vote or at least to vote in relation to the enactment of the bill it submits. According to Article 21B UUD 45 in participation amounts to nothing more than a hosting which does not guarantee the protection of the regional authorities' interests. Consequently, the creation of the DPD represents another small step on the
"floating scale of federalism", which further distances Indonesia from the strict unitarism of the Sukarno regime. However, the DPD did not grant regional authorities a sufficient influence over the central government in qualitative terms, regardless of its definition in ordinary statute law.

In federal terms, the regional authorities could also exercise sufficient influence over the central government by their representatives in the Peoples’ Congress (MPR) which they send in accordance with Article 18 (1) (b) UU 22/99. As the highest constitutional organ of Indonesia, the MPR has the power to amend the constitution and elect the president according to Articles 3, 6 (1) and 4 (2) UUD’45. All such decisions are made by absolute majority (Article 2 (3) UUD’45). In the MPR itself, 112 members are elected directly while the remaining 700 members are indirectly elected by the local governments (Article 2 (2) UU 4/99), 113 of which come from the regions (Article 2 (2) (b)). Consequently, the regional delegates cannot even block decisions of the MPR because they have scarcely one fifth of the votes. Accordingly, their representatives in the MPR alone do not grant the regional authorities sufficient influence over the central government which would indicate a federal state. The regions do not have any other apparent opportunities to significantly influence central government.

2. Influence of the whole state or central government over the regional authorities

By contrast, the central government has numerous opportunities to influence regional authorities according to UU 22/99.

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a. Supervisory powers

The supervisory powers of the central government over the kabupaten and kota are set forth in Articles 112 to 114 UU 22/99. Since there is no express hierarchical relationship between either the provinces and the kabupaten or kota level or between the regions, no supervision can be exercised in this regard. Accordingly, UU 22/99 solely regulates the relationship between the central government on the one hand and the autonomous regions of the kabupaten and kota on the other in terms of supervision. According to Article 112 (1) UU 22/99, the central government must support "the implementation of state authority in the regions" as part of this supervision. This "support" is defined by the governmental ordinance (PP) 20/2001 issued on the basis of Article 112 (2) UU 22/99. According to Article 7 (2) PP 20/2001 the central government supervises regional administration. The supervision over kabupaten and kota can be delegated to the governor of the province belonging to the territory as a deconcentrated state power (Article 7 (2) PP 20/2001 of the same article).

Substantively, a distinction is made between repressive, functional, legislative and allocative supervision:

Repressive supervision is limited to all regional general abstract acts (Article 8 a) PP 20/2001). The Interior Minister has sole responsibility for supervising
the provinces and the governor supervises the Aduhupen and koua as a decentralized state power on the instruction of the Interior Minister (Article 9(1) and (2) PP 20/2001). With regard to the procedure of repressive supervision in Article 114 (2), UU 22/99 adds that all regional general-abstract acts must be submitted to the central government or governor within 15 days following their issue or enactment. According to Article 114 (1) UU 22/99 and Article 10(1) PP 20/2001, the measure is any superior law as well as the "public interest". However, the latter is not defined any further either by UU 22/99 or PP 20/2001. Consequently, it remains unclear whether the standard of "public interest" also extends to decisions made on the basis of exigency. Acts which contravene the interests of the public or the laws of the central state law can then be quashed according to Article 114 (1) UU 22/99. Any decision of the central government to reverse an act can be submitted to the Supreme Court (mahkamah agung, MA) for review upon the request of the regions. In addition, the regions can also appeal against such a decision to the Interior Minister according to Article 10 (3) PP 20/2001. The same applies to the Aduhupen and koua with regard to the governor responsible for the territory (Article 10(2) and 4 PP 20/2001).

If repressive supervision contrasts the general-abstract act itself then the functional supervision only supervises the way that acts are put into effect (Article 8) by PP 20/2001). In accordance with Article 11 PP 20/2001 it is exercised by "institutions" (bendha), "public law bodies" (badan) and certain "units" in agreement with existing law, in substantive terms, measures can be taken against organs of the regional authorities which act unlawfully (Articles 13 to 15 PP 20/2001). The standard of functional supervision extends to considerations of expedience with regard to individual acts besides requirements of legality (Article 12 (2) PP 20/2001).

The regionally-elected representative body of the region (DPD) also exercises legislative supervision over the whole regional executive (Article 17 (1) PP 20/2001). Legislative supervision serves to control the lawful implementation of the acts issued. Article 18 (1)(1) UU 22/99 also extends legislative supervision to the implementing acts of the central state. Whether this means that legislative supervision - unlike functional supervision - also comprises a test of exigency is not suggested either by Article 17 PP 20/2001 or Article 18 UU 22/99.

Finally, Article 18 PP 20/2001 regulates the supervision of the plebiscite. According to paragraph 1, any natural and legal person can submit a written or oral "request for an explanation" to the central or regional government as well as the DPD. These organs are then obliged to provide the necessary information to the party concerned (Article 18 (2) PP 20/2001).

The central state therefore continues to exert extensive control over the regional authorities. It supervises all...
areas of legislation as well as its implementation.

b. Regionally-elected representative bodies (DPRED)

Articles 14 to 29 UU 22/99 regulate the DPRED as a "legislative organ" of the regions. The DPRED has the task of strengthening democratic principles in the regions on the basis of the Pancasila and to take over the self-administration of the regional "governments". Like the powers, tasks and obligations of the DPRED pursuant to Articles 15 and 17(1) UU 22/99, the number of members and their election are regulated by further legislative measures of the central state. Therefore, the central power also supervises the basic structural framework of UU 22/99 and further implementation.

c. Election and dismissal of the regional governor (kepala daerah)

The kepala daerah used to be nominated by the central government. However, the election of the head of staff of the regions in UU 22/99 has been comprehensively reformed by Arts. 34 ff. with the aim of rolling back the influences of the central state. Once the DPRED of the province has held elections for governor as the head of the regions (Article 31 (1) UU 22/99), the last two remaining candidates must be introduced to the President (Article 38 (1) UU 22/99). This is not required in relation to the elections of regents (bupati) as regional governors of the towns (Article 32 (1) and (2) UU 22/99). According to Article 39 (1) UU 22/99, the election of the regional governor of all levels only requires a 2/3 majority of members of the DPRED as well as confirmation and appointment by the President (Articles 40(1), 42 (1) UU 22/99). Considering the influence of central government, it is unclear whether the President can reject the governors' proposals according to Article 38 (1) UU 22/99 and if so, according to which criteria. Besides his position as kepala daerah of the self-administering body, the governor also acts as the head of the deconcentrated direct state authority and thereby as part of the central government. The former regulation according to Articles 15 ff. UU 5/74, required the latter to nominate the governor owning to this prominent position in relation to central government. The statutory explanations to Article 38 (1) UU 22/99 and the teleological interpretation require the President to retain a right of veto to reject candidates. However, such rejection is only permitted where can be proved that the kepala daerah is unsuitable to be the regional representative of the central government. The DPRED can appeal to

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*One of the fundamental differences between deconcentrated and decentralized state power is the standard of a supervisory central authority. Therefore, it remains dogmatically incomprehensible how decisions of the states can be made under the state of expediency as a partly decentralized state power. Deconcentrated state power is not subject to a control of legality (so-called "specialized supervision"), decentralized state power may only be investigated for its lawfulness, i.e. for any contraventions against superior law. The division made by Article 2 (1) and 2 UU 22/99 into (decentralized and) deconcentrated regional authorities can only be renewed dogmatically if, in the context of Indonesia, the terms are defined differently than in general state doctrine. In the context of Indonesia the only difference appears to be the legal personity which has become independent from the state power and the powers allocated to it by Article 7 ff. UU 22/99.

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the Supreme Court (MA) against the President's decision. During the confirmation and appointment of the kepala daerah according to Article 40 (3) UU 22/99, the President does not have any substantive right of veto, however. The President can only refuse confirmation if formal irregularities occur during the elections or election powers are clearly abused. An appeal against decisions to the MA would also have to be possible under such circumstances.

The central government is also required to intervene concerning the dismissal of the kepala daerah. Since the regional governor is responsible to the DPRD in accordance with Article 19 UU (a) 22/99, he can also be dismissed by the DPRD where there is a contravention of the rules exhaustively listed in Article 49 a) to b) UU 22/99. However, the central government must review and confirm any potential dismissal (Article 50(1) UU 22/99). The examination only extends to the lawfulness of the dismissal and grounds of exigency cannot be considered under any circumstances (Article 50(1) UU 22/99).

Generally speaking, the influence exercised by the central government over the regions has been strongly repressed which serves to federalise the structural model of the Indonesian state. Despite the independence achieved, the central state has realised its influence in relation to supervision as well as the election and dismissal of the kepala daerah.

Other interdependencies

Besides unilateral influence, powers between the central government and regions can interrelate by conferring rights and obligations on both levels and which can be classified to particular structural models of a state.

1. Co-operation

The opportunities for the regions to cooperate are not expressly regulated either in UU 22/99 nor in UUD 45. Within the framework of the right of self-administration pursuant to Article 18 (5) UUD 45 in connection with Articles 7 ff UU 22/99 they can, however, conclude co-operations on the basis of administrative agreements. This applies both in relation to agreements at horizontal level as well as those between provinces and the kabupaten and kota. According to Article 5 (2) PP 25/2000, the regions can even conclude agreements with international institutions and other official regional authorities provided that they do not contravene international agreements of the central authority. This is monitored within the framework of central state supervision according to Articles 114 ff. UU 22/99 in connection with Articles 7 ff. PP 20/2001. By contrast, UU 22/99 expressly grants the opportunity for villages to enter into co-operations in Article 109 (1). Accordingly village communities can join together in exercising their obligatory tasks. According to the interpretation of "original privileges", village communities must also have the opportunity to agree.

* According to the election of the governor of the province of North Maluku of 5 July 2001 challenged by the DPRD and brought before the Supreme Court. The accusation that the election had been influenced by financial reports could not however be proved before the court so that the council government will appoint the governor, c.f. The Jakarta Post, "President urged to install North Maluku governor" under http://www.thejakartapost.com, downloaded on 4 December 2001.
administrative agreements with other administrative levels concerning unwritten facts as part of their own responsibilities. Consequently, horizontal and vertical cooperation is possible at all levels of administrative law within the framework of central state legislation. As far as regencies and towns are concerned, this possibility extends to international level. Admittedly, all these competencies are determined by the central government alone without any participation; rights and cannot therefore only be amended or repealed by the central state with influence by the DPR. Factually however, the powers correspond to those of the constituent units of a federal state.

2. Finances

With regard to regional finances, a distinction is first made in accordance with Article 78 UU 22/99 between expenditure for regional and central state tasks. In accordance with paragraph 1, tasks of the central state are financed by the central state budget, regional tasks by regional income. According to Article 79 UU 22/99, regional income consists of regional taxes, income from regional penal and administrative fines, profits of undertakings operated by regional authorities and the regional health system as well as regional compensation funds, loans and other income. According to Article 82 (1) UU 22/99, central state legislation establishes the criteria governing regional taxes whereas the amount and extent of the individual taxes are established by governmental ordinance according to paragraph 2 of the same article. In this connection, Article 80 (2) UU 22/99 restricts the regulatory power of the central state insofar as the income from taxes on real estate and buildings remain with the region responsible for raising such taxes. All of this is defined by UU 25/99 referred to in Article 82 UU 22/99. By contrast, Articles 107 ff. UU 22/99 state that village finances extend to individual income under Article 107 (1) (a) and financial contributions of the regions according to Article 107 (1) (b). Guidelines on the definition of village budgets are issued as regional ordinances (Article 107 (4) UU 22/99).

All regional authorities therefore have their own financial resources which correspond to the financial provision of constituent units of a federal state. This means that regional authorities also have a degree of financial freedom which allows them fundamental independence when making political decisions for the regions within the framework of existing legislation. For this purpose, the constitution guarantees an "equitable" financial provision between the regional authorities and central government in Article 18A (2) UUD’45. In precise terms, "Law of the Republic of Indonesia number 15 of 1999, concerning the fiscal balance between the central government and the region", hereinafter "UU 22/99". The Act was enacted practically the same time as UU 22/99 in order to reform the regional financial provision by means of statute as one of the most important aims of the new political leadership. Without the corresponding finance the division of powers cannot function. However, the principle of financial division regulated in UU 22/99 is sufficient to investigate the financial regulations for unitary and federal elements. The details of raising and division under UU 25/99 are therefore not referred to for the purposes of this text.

These include company profits, profits from real estate and investments, financial contributions of the village population and other income. The latter is also not further defined in the comments.

These include percentage share of the income from tax and administrative fines of the regions, shares of compensation funds, direct relief payments, financial contributions of third parties and village loans.

This is fundamentally different from the financial provisions existing before the reforms which was independent of the expenditure decisions of the central authority.

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the guarantee lies solely with the regional legislator, however. In result, only the central government can modify regional financial provision at central state level contrary to the wishes of the regional authorities and to their detriment despite the powers of the DPD as a “regional chamber”. In factual terms this appears to be a federal element but the absence of any legal safeguard means that, in legal terms, it amounts to another fundamental element of a unitary state.

Constitutional amendment

The degree to which regional authorities participate in amendments to the constitution forms a further criterion in determining whether Indonesia amounts to a federal or unitary state. According to the federal state structural model, constitutional change requires both the participation of the regional authorities in the form of consultation or hearing and their consent. Consultation or hearing bodies are possible and they must give their positive consent to an amendment, regardless of the matter concerned. This function is often assumed by a second federally-constituted chamber as representing the interests of the constituent states at federal level. By contrast, a unitary state does not require the consent of regional authorities because they are only part of the same central government. However, they can be involved by means of a hearing or other rights of participation.

According to Article 3 (1) UUD’45, the MPR has the power to amend the constitution. Article 3 is augmented by Article 37 UUD’45, which states the modalities of constitutional amendment. In order to amend the constitution, two thirds of the statutory members of the MPR must vote in favour of the amendment (Article 37 (1) and (2) UUD’45). Neither the general nor specific explanations of Article 37 make any further comment in this respect. Consequently, the participation of regional authorities in the process of constitutional amendments is limited to 135 of the 700 members of MPR.

Accordingly, the regions do indeed have participation rights but these do not amount to a right of veto. Therefore, the consent of the regions is not required to amend the constitution nor can the rejection of the regional authorities prevent the central state from approving a constitutional amendment.

Constitutional jurisdiction

The federal state requires constitutional jurisdiction in order to resolve disputes between the two equal state powers by force of law. By contrast, the unitary state does not require constitutional jurisdiction. In order to establish constitutional jurisdiction of the federal state, Indonesia must have a supreme state organ which resolves jurisdictional conflicts between the central government and regional authorities. Such an organ derives its powers from a legal foundation which can only be constituted and modified by the central government and regional authorities.

1. Organ with a federal decision-making power

Article 24C introduced by the third constitutional reform towards the end of 2001 created a constitutional court which has still to be established. According to Article 24C (1) and (2) UUD’45, the constitutional court will deal with the following proceedings: disputes between organs, i.e. “the power to decide over

18 E.g. the Federal Council (Schweiz) in Germany.
19 Article 2 (23) (13) (4)99.
20 As an act of the MPR, Ketaperan N 2010 recommends that under fulfilment legislation 2.3) the DPR pass an Act Establishing a Constitutional Court as a matter of priority.
conflicts on the authority of the state institutions whose authority was provided by the constitution; review of rules, prohibition of political parties, contraventions of electoral rules ("disposals on the result of the general election") and the indictment of the president (i.e. "by the decision of the House of Representatives (DPR) concerning suspicious violations of the provision and/or the Vice-President according to the Constitution."). The constitution provides the sole measure. However, of these proceedings only conflicts between organs could involve disputes of a federal nature. For this purpose, constitutional organs or their components which represent the interests of regional authorities and which are constituted by their representatives would have to claim that their own constitutionally protected rights had been infringed. This would be the case if, for example, the DPR were not granted a hearing in the legislative process concerning the areas stated in Article 220 (1) and (2); if the SIR were to reject a bill of the DPR concerning such areas or if the rights of the 135 regional representatives in the MPR were infringed. For this purpose, the recently adopted Article 244 UUD'45 grants the Supreme Court (MA) the status of an appeal court to review all subordinate statutory rules - including those of PERDA issues by the individual DPD - against the standard of ordinary legislation. The MA can also subject PERDAS to a specific or abstract review at any time without judicial review proceedings having to be requested or formally instituted. They can therefore be declared invalid if they contravene superior law. (§ 5 MPR, monori II/MPR 2000). Finally, UU 22/99 regulates two further federal jurisdictional conflicts which are assigned to the MA. Inter-regional jurisdictional disputes and decisions of the central government concerning the right of supervision vis-à-vis the regions can be reviewed and decided by the MA (Articles 89 (2), 114 (4) UU 22/99).

Accordingly, there are two organs with the power to resolve federal disputes. This would suffice for a constitutional jurisdiction of a federal state.

2. Legal basis of jurisdiction

The legal basis of constitutional jurisdiction can only be constituted by both levels together and by under no circumstances can only one of the two levels be modified in isolation. The powers of the constitutional court and the MA is constituted by UUD'45 along with all other laws. However, despite being involved in constitutional amendments regional representatives hardly exercise any influence in their numerical inferiority. UU are enacted solely by the House of Representatives (DPR) and can only be modified by the latter following a hearing of the DPR. In this connection, the DPR does not have any decision-making powers, as stated above. Therefore, only the central government enacts or modifies the legal foundations of constitutional jurisdiction. Consequently, a unitary element also exists according to the criterion of "constitutional jurisdiction."

D. Result

1. In order to establish a federal state, Indonesia would have to have regional authorities which possess the qualities of a
state. However, the lack of original state power means that the regions of both the first and second levels are purely administrative units.

2. Furthermore, regional authorities would have to have extensive opportunities to influence the decision-making of the central state. Admittedly, the regions are represented in the MPR by 135 delegates pursuant to 11 (c) and (3) U 4/99 and at central state level by the second federal chamber, the DPD, according to Article 22C and 22D. However, neither quantity nor quality does such representation grant the regions a right of veto with regard to constitutional amendments or the legislative process. Accordingly, this requirement for the classification of Indonesia as a federal state is not satisfied either.

3. In a federal state the central government can only intervene in the affairs of the regional authorities in exceptional cases which are regulated by statute. Admittedly, existing the central government's exercise power of intervention were represented as part of the supervisory powers according to Article 112 U 2/99 in connection with PP 25/2001, the participation rights in the election of the heads of state and financial allocations. However, the central government still has pronounced powers of intervention in relation to the regional authorities. This contradicts the equality between the central state level and regional authorities which exists in a federal state as a rule.

4. In a federal state the constitution can only be amended with the consent of the regional authorities. Even following the reforms, the Indonesian constitution can be amended without the consent of the regional authorities.

5. Finally, a federal state also requires constitutional jurisdiction which resolves legal conflicts between the central government and regional authorities according to standards which cannot be attacked by either level alone. The recently established constitutional court and Supreme Court (MA) have indeed been granted powers to resolve conflicts at a central level by representatives of the regions and inter-regional disputes between regions and central authority by force of law. However, the central government alone can determine the legal foundation and therefore the standard of jurisdiction. Owing to this fact, the structural model of the Indonesian state also lacks the final element required for a federal state.

Accordingly, none of the requirements which constitute a federal state are satisfied. Instead, an examination of the above-mentioned criteria reveals that a structural model of the unitary state continues to exist in Indonesia despite the comprehensive reforms. Each of the constitutional reform has further "federalize" Indonesia in the constitutional sense. In result, however, the floating scale of federalism reveals that Indonesia remains a unitary state.

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