After a complete redesign of the state, democracy building for the long term

Seminar
‘Democracy in Indonesia:
Hopes, Challenges and Obstacles’

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The 1945 Constitution of Indonesia

Understanding any process of political change requires understanding also of history, at least in the form that it shapes and informs the perceptions of citizens. The 1945 Constitution of Indonesia is not just a document defining how the independent state would be organised. Indeed, in its original form, it is a short document of only 37 articles, written as a temporary document. No other nation has since adopted its pattern of state institutions, which was substituted in practice within three months of its promulgation. Yet the 1945 Constitution is a document with strong emotional and enduring significance to most Indonesians, a symbol of the struggle for independence from colonialism and a founding pillar of the unitary state of the Republic of Indonesia. In understanding the fundamental changes that have taken place in Indonesia since 1998, it is necessary to think not only of the substance of the 1945 Constitution, but of ‘the 1945 Constitution’ as symbol.

The basic principle of state organization was that the sovereignty of the people was to be exercised ‘in full through the MPR (Majelis Permusyawaratan Rakyat or People’s Consultative Assembly)’. The MPR concept derived from the doctrine of the integralistic state, which rejected both the principle of separation between the individual and the state and the principle of separation of powers. As drafting committee chair Soepomo described it: “the principles of unity between leaders and people and unity in the entire nation”.

The MPR was to be established as the highest institution of state and ‘the manifestation of all the people of Indonesia’, and was to ‘determine both the Constitution and the Guidelines of State Policy’ – the latter institutionalised as the Garis-Garis Besar Haluan Negara or GBHN. The MPR was to consist of directly elected legislators, regional representatives, and representatives of functional groups – originally conceived as ‘cooperatives, labour unions and other collective organisations’. The MPR was to meet once every five years ‘to decide the policy of the state to be pursued in the future’ and thus to give its mandate to the President.

A ‘Presidential System’?

Indonesians described the 1945 Constitution as presidential. While the Republic of Indonesia has always had a President, the conventional
definition of a presidential system requires considerably more. It has three specific characteristics: a one person rather than collegiate executive, an executive directly elected by the voters, and a fixed term chief executive not subject to legislative confidence. The 1945 Constitution was not conventionally presidential.

No parallel can be found in conventional presidential systems to the indirect election of the President by the MPR. The President was not elected by the voters on a policy manifesto, and the MPR was certainly not merely an electoral college. The MPR set the GBHN without presidential involvement. The President was specifically tasked with implementation of policy in line with it.

The MPR had the right, through a special session requested by the DPR (Dewan Perwakilan Rakyat or People’s Representative Council), to dismiss the President before the end of his/her term in the event of clear violation of national policy - which included not only the 1945 Constitution itself but also the contents of the GBHN. While the procedures were lengthy and complex, the removal from office of President Abdurrahman Wahid during 2001 showed that they had real teeth. By contrast, in a conventional presidential system, the grounds for impeachment are normally restricted to breach of the constitution or criminal acts, with sometimes the addition of moral turpitude.

**Struggle, Democracy and Authoritarianism**

It was a long time before the concepts of the 1945 Constitution were tested under conditions that could be described as democratic or even transitional. While Indonesia was still fighting to realise its independence from the Netherlands, the full set of institutions envisaged in the 1945 Constitution could not be established. In October 1945, institutions of a more parliamentary nature were put in place: although their consistency with the 1945 Constitution is perhaps debatable, they were generally accepted, and lasted until the Round Table Agreement with the Netherlands in 1949.

The federal constitution of the Round Table settlement was rapidly replaced by the Temporary Constitution of 1950, which established a more parliamentary form of government within the framework of the unitary state. However, the 1950s did not see a consolidation of democratic institutions. President Soekarno on 5 July 1959 reintroduced the 1945 Constitution by decree. From this time onwards, he characterised it as a historic document, the symbol of the
basis of the revolution, and not amenable to amendment, addition or improvement.

From the mid 1960s to 1998, President Soeharto developed the 1945 Constitution further as an instrument of authoritarian rule with power concentrated in the executive. The MPR met every five years as required but acted throughout the New Order years as a silent partner which followed Soeharto’s bidding – a silence ensured by Soeharto’s control over much of the nomination process for membership of the MPR. Soeharto, like Soekarno before him, promoted the 1945 Constitution as a fixed text which was not capable of amendment or improvement. Those who articulated the aims of reformasi at the time of Soeharto’s fall in 1998 therefore included constitutional change as one of their key demands.

**The Constitutional Review**

The MPR General Session following the 1999 election agreed by consensus to a review of the Constitution. Amendments would be made to the existing 1945 Constitution, rather than adopting an entirely new constitution. An Ad Hoc Committee (Panitia AdHoc I or PAH I) was formed to handle the review of the Constitution. It rapidly established ground rules and broad principles, immediately reaffirming support for the existing Preamble, the unitary state, and the presidential system – but without saying what ‘the presidential system’ meant. There was next to no support for any move to a parliamentary system. The memories of the 1950s had made the concept and phrase politically unacceptable, just as the Round Table Agreement and the 1949 constitution had made the concept and the word ‘federalism’ unacceptable.

Debate on the constitutional review lasted from 1999 to 2002. From an integralistic state with a single highest state institution, Indonesia has changed to a state with constitutional checks and balances and with separation of powers between the legislature, executive and judiciary. The MPR has set a remarkable international precedent by agreeing to vote away its all-powerful status. It also recognised that the complete package of amendments is consistent, good enough to define the new structure of the state and to organise the 2004 elections – although some rough edges remain.

The major changes made to the 1945 Constitution by the four Amendments and the subsequent implementing legislation are:
The sovereignty of the people is no longer exercised in full through the MPR but is implemented in accordance with the Constitution itself.

The MPR has limited specific functions only. These include considering constitutional amendments, swearing in the elected President and Vice-President, and deciding action if the Constitutional Court rules that an impeachment charge is well grounded. The presidential/vice-presidential impeachment process excludes removal from office on policy grounds.

The MPR no longer has the constitutional function to make Broad Guidelines of State Policy (GBHN).

There will no longer be military representation in representative assemblies, marking the end of the *dwifungsi* principle which formalised a political role for the military. The MPR is to consist entirely of elected representatives - the members of the DPR and the members of the new regional chamber, the DPD (Dewan Perwakilan Daerah or Regional Representative Council).

The DPD will participate in legislation on issues relating to regional autonomy, centre/region relations and natural resource management, and exercise oversight on these issues plus budget management, tax, education and religion.

The president and vice-president are elected as one ticket in a direct election, with two rounds if no ticket achieves 50% + 1 of the vote and at least 20% in half the provinces in the first round.

The independence of the election commission is specified. Political parties are the participants in DPR elections, and individual candidates in DPD elections.

A Constitutional Court separate from the Supreme Court has been established with powers of judicial review of legislation, resolving disputes between state institutions, hearing claims for the dissolution of political parties and disputes relating to election results, and ruling on motions to impeach. (The general power of the Constitutional Court to interpret the Constitution remains unclear.)

An independent Judicial Commission is being established dealing with judicial ethics issues and proposals for Supreme Court appointments.

Constitutional backing is given for the principles of regional autonomy, confirming the spirit of the 1999 ‘big bang’ decentralisation and devolution laws.

A central bank whose independence and accountability is to be determined by law is provided in the Constitution.

Human rights provisions are added in line with the larger part of the Universal Declaration of Human Rights. This changes the
fundamental thinking of 1945, when proposals to include human rights provisions in the Constitution had been specifically rejected. Soekarno had said that such individual rights detracted from the freedom of the sovereign state: Soepomo had stated that the individual was nothing more than an organic part of the state.

- Future constitutional amendments can be introduced by at least one-third of the members of the MPR and will require the support of over half its total membership with two-thirds of the members present. The Preamble is not amendable. The form of the unitary state is unamendable, although the article containing this provision can itself be amended.

**Islam and the Indonesian State**

The constitutional review gave the opportunity for parties based on Islam to reopen the debate on the addition of seven key words of the ‘Jakarta Charter’ of 1945: ‘with the obligation for adherents of Islam to carry out syariah law’. This had been contained in the original 1945 Constitution until the penultimate draft and remained the subject of deep divisions during the constitutional debates of the 1950s. It was controversial even within Indonesian Islam. It was equally controversial among followers of other religions, some of whom feared it as the cornerstone of an Islamic state, and among more secular nationalists. It was never going to command even a simple majority in the MPR – let alone the two-thirds required if the issue had gone to a vote.

**Implementing legislation**

The constitutional review did not in itself complete the redesign of the Indonesian institutional framework. Five major pieces of implementing legislation – new laws on general elections, presidential elections, political parties, the Constitutional Court, and the structure and composition of state elected bodies – were necessary. The most important features of these include:

- The electoral system for the DPR is a list proportional system using districts electing an average of about 8 members, and giving voters a very limited (and in practice ineffective) form of open choice between candidates.
- The electoral system for the DPD is the single non transferable vote, with four representatives elected from each province and each voter having one vote only.
- Parties were encouraged to bear in their heart the desirability of 30% of their candidates being women. This was not fully achieved,
but the proportion of women members of the DPR has risen to 12%. In addition, 21% of the members elected to the DPD are women.

- A firm tendency towards tight control in political parties remains, with nominations of candidates submitted by central party organisations.
- A recall provision has been put in place, under which elected members may be removed from the DPR and replaced by other party members under some circumstances. It will be interesting to see how widely this is interpreted; a first indication is that Golkar is trying to use it as a sanction against dissent, refusing to seat two elected DPR members who campaigned for SBY against party instructions.

**The Largest Devolution of Power Ever**

This new institutional framework stands alongside Indonesia’s second great achievement of democratic transition. In the largest decentralisation ever attempted, wide ranging powers to deliver the services on which people rely day to day – education, health services, infrastructure – have been transferred from central government to over four hundred local authorities. Over two million civil servants have accompanied these powers.

Success so far has been mixed, as might be expected. There has been resistance and rearguard actions by some parts of central government ministries. Some local authorities have used their new powers to make an impact, some have muddled through, some have failed, and some have slept. Some have been a new focus for corruption, with the election of local executive heads by local legislative assemblies (DPRDs) a prime target. Direct election of governors and mayors, adopted by the old government and DPR as almost their last act, will be the next innovation which has the potential to bring major change to the delivery of services to communities across Indonesia, although their accountability to local elected bodies is not yet fully clear. Communities that choose effective leadership will benefit. In the longer term, local elected leadership may join national representative office as a route for a new generation of national leaders – and the country will benefit from a wider pool of talent.

**The 2004 Elections**
Three nationwide elections have been conducted in 2004; legislative elections in April, followed by a first round presidential election in July and a second round in September. The elections have been widely accepted as well conducted and marred by surprisingly few incidents of intimidation or logistic problems. (Elections in democracies with a longer history of ‘freedom and fairness’ also have administrative problems from time to time.)

In addition, turnout in all three rounds exceeded 70%. Although recent analysis of the United States suggests that presidentialism may lead to lower turnout, the level of participation in Indonesia does not suggest a problem at this stage – although it will be wise to watch this indicator in the future.

Abdurrahman Wahid’s administration was a roller coaster ride where nobody ever knew quite what was going to happen next, and the day to day practice of government was not its strength. Megawati Soekarnoputri’s administration was stable, but disillusionment set in over its actual or perceived lack of action in many areas – of which corruption was perhaps the most important. In polling conducted shortly before 20 September, honesty and a good personality emerged as more important than policy to Indonesian voters. At the same time, Susilo Bambang Yudhoyono and running mate Jusuf Kalla scored positively on their ability to deal with the top issues – prices, corruption and jobs – as well as with security and territorial integrity. Their victory came as no surprise to most commentators.

The results of all three sets of elections suggest that Indonesian voting patterns may have been significantly affected for the first time by a policy issue: corruption. In the legislative election, the parties did not differ much in programmatic terms on this issue: all stated their opposition to korupsi, kolusi dan nepotisme or KKN to a greater or lesser degree. The credibility of this message appeared highly dependent on who was saying it. Voters seeking action and reform on corruption appear to have given credit to PKS as a party in the DPR elections, and to SBY as an individual throughout the three elections.

**SBY’s Task Ahead**

As the swearing in of the first ever directly elected president in October approaches, the next key question of democratisation is whether Indonesia’s ability to enact the laws for far reaching change will be matched by the ability to make democracy deliver. The process of constitutional change and the three successful elections mean that
democratic practice is becoming less of a novelty and more of an assumption. There is a vibrant press and media, too, although its freedom of expression is not unchallenged and needs to be actively defended – the code used and the verdict recently brought against Bambang Harymurti have certainly raised concerns.

SBY starts his term of office as a president with the legitimacy arising from direct election – and indeed he is unlikely ever to have more strength and goodwill that he does now. Will he be able to gather sufficient consistent support in a legislature containing seven significant parties? Will the ‘national unity’ basis of cabinet formation remain or will a concept of ‘government’ and ‘opposition’ parties take root? How can party leaderships maintain party coherence in political debate – and will they be persuaded that internal discussion may be healthier than rigid control?

Tackling the practical tasks of day to day governance, economic development, fighting corruption and building the rule of law is much less glamorous than building a new institutional framework after years of authoritarian government, but it will be the test of whether Indonesia will make democracy work. The opportunity exists to establish a coherent team of ministers and direction of policy for the five year term. Effective oversight and questioning of the performance of the new government by an opposition is likely to be a key both to its success in the next five years, and to the establishment of important democratic traditions. Reform of the now independent judiciary, where there has been less change than in either the legislative or the executive arena and where corruption and legal uncertainty remain major problems, will be another critical area. The unitary state framework may be used either as a challenge to enable the emergence of debate, different approaches and different leaders within a common purpose, or as a dead hand with which the centre stifles new ideas and purpose. Politicians will always be tempted to reduce competition and increase their chances of remaining powerful and influential. The success of democracy building requires realisation that Indonesia’s national slogan, Unity in Diversity, can reflect not only the vast cultural and ethnic wealth of Indonesia but also innovation and a variety of approaches to problem solving within a clear framework.

What do we know about how best to make a real presidential system work? Latin American countries and the Philippines have also trodden this path in recent years, with differing degrees of success. It helps for the President to have a substantial body of support in the
legislature. This could be a challenge for SBY, who can be characterised as a successful political insurgent – early votes on the legislative leaderships have sent mixed signals. It helps if the President governs in partnership with the legislature and does not seek regularly to bypass it – and equally if the legislature does not devote itself to blocking, as distinct from overseeing, the actions of the executive. Indonesia’s constitution makes the possibility to govern by decree limited. It helps if political parties are coherent but do not direct their elected representatives with a rod of iron – although the central leadership of Indonesia’s political parties has a tendency to do just that.

There are still major unsolved problems for Indonesia’s incoming presidency. On the most difficult issues, like the continuing conflicts in Aceh or Papua, the willingness to reach a solution may not even be universally accepted. Although the definition of separate roles for the TNI in external security and the National Police in internal security were defined by the MPR in 2000 and legislation on the military was another product of the last days of the Megawati administration, the financing of TNI, the role of military business, the role of the military in the community, and the relationship between TNI and Polri are still very much part of the reform debate. A former general is as well placed as anyone to tackle such issues if he wishes.

The task of setting Indonesia on a successful democratic path is as slow as that of turning round a large oil tanker. While the change is taking place, efforts are focused internally: the largest nation in South East Asia has not been able to pull its full weight in ASEAN and on the world stage. If the new system and the new President succeed, this may start to change. A revival of economic progress combined with the creation of pluralist political institutions combined with maintaining tolerance in a diverse society combined with real progress on the rule of law and corruption would be an achievement to make not only Asia but the rest of the world sit up and take notice.

Heroes or Men and Women of Clay?

One consequence of living through a complex process of change blow by blow is seeing it warts and all. Rambling discussions, contributions to debate which might be better forgotten, and excursions into blind alleys stand alongside the making of far-reaching decisions. Impatient observers contrast the process with the clear-cut achievements of the Founding Fathers of Indonesia or the progenitors of the United States Constitution.
What is forgotten is not so much that history is written by winners (although that is relevant) but that history is by definition condensed. The boring bits, the irrelevant bits and most of the ridiculous bits get edited out. The books tell stories of grand purpose and achievement which inevitably do not reflect the experience of a contemporaneous participant in or observer of a process of political change. Indonesia has built a framework, and a broad willingness, which could be the basis of a successful and ultimately prosperous democracy. The new system has now to be exposed to the test of the realities of government, of real political conflict, and of the fact that short term, sectoral and venal interests will inevitably be evident in many quarters as well as long term and visionary interests. Indonesians and Indonesia’s friends will need good judgment in distinguishing real problems and warning signs from the inevitable messiness and problems of democratic change.