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Democratization Process In Indonesia*

Ismail Suny**

Reformasi politik di Indonesia yang terjadi 1998 menjadi titik tolak dilaksanakannya amandemen atas Undang-undang Dasar 1945 (UUD 1945). UUD 1945, yang merupakan konstitusi negara Republik Indonesia, telah mengalami empat kali amandemen sejak 1999 hingga 2002. Amandemen tersebut dilaksanakan untuk tujuan tercapainya suatu bentuk negara demokrasi yang baru. Melalui amandemen-amandemen tersebut, UUD 1945 pada dasarnya telah mengubah struktur dari institusi-institusi di Indonesia dan juga mekanisme hubungan diantara institusi-institusi tersebut.

Indonesia and Japan have a long historical relationship. Since the early days of Indonesian independence in 1945, Japan played a critical role in helping Indonesia when Indonesia built the country. Recently, at a time when Indonesia is trying to build a solid democracy, there is a hope that Japan will continue to help Indonesia to realize its dream to become a modern, democratic, and law-abiding nation.

The Government of Japan views that the experience of some Asian countries' in constructing their constitutions could provide

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beneficial insight in the drafting of the new Iraqi Constitution that must be prepared by the members of the Transitional National Council of Iraq before August 15, 2005.

Indonesia's quest to reform its basic law to accommodate the need and vision of a nation made of many different ethnic, cultural and religious backgrounds may offer useful or at least, relevant information for the members of the Transitional National Council of Iraq.

In this article, there will be a further elaboration on Indonesia's constitutional reform in its pursuit to become a modern democratic nation, by discussing the basic idea and process of the amendments, as well as the issue of sovereignty, freedom of religion, and gender equality

The agenda of the political reform in 1998 had led to the amendments of the 1945 Constitution of the Republic of Indonesia that had been continually carried out into four series from 1999-2002. Through the amendments, the Constitution had basically amended and changed the nature and structure of Indonesia's states institutions as well as mechanism of relationship among the state institutions.

Form of State and Sovereignty

This part will begin with Form of the State and Sovereignty. Chapter I, article 1 of the 1945 Constitution on Form of the State and Sovereignty, provided:

1. *The State of Indonesia shall be a unitary state in the form of a republic.¹*
2. *Sovereignty is in the hand of the people and is implemented according to this Constitution.*

¹ See Arend Lijphart, *Pattern of Democracy*, Government Form and Performance in Thirty-Six Countries. Yale: University Press, 1999.

3. *The State of Indonesia shall be a state based on the rule of law.*

People's Consultative Assembly

The only article in the fourth amendments of Indonesia's Constitution, even in all previous three Constitution's amendments that was decided through voting was article 2, section I. The article said:

"The People's Consultative Assembly shall consist of the members of the House of Representatives and the members of the Regional Representative Council who have been elected through general elections, and shall be further regulated by law".

This article further implicates Indonesia national law system with the enactment of article 22E of the constitution that stated:

1. *General elections shall be conducted in general, free, secret, honest, fair, and direct manner once every five years.*
2. *General elections shall be conducted to elect the members of the House of Representatives, the Regional Representative Council, the President and the Vice-President, and the Regional House of Representatives.*

President and Vice-President

Prior to the amendments, as per article 6, President and Vice-President are selected by People's Consultative Assembly (MPR) based on highest vote in the Assembly. There was no term limit for these positions allowing them to be selected for unlimited times. In accordance to article 6A section I amendment of 1945 Constitution, the President and the Vice-President shall now be elected as a single ticket directly by the people. Article 7 further regulates that the President and the Vice-President shall hold an office for a term of five years and may subsequently be reelected to the same office for one further term only.²

² For further study, see Hans Thoolen (ed.), *Indonesia and the Rule of Law*, Twenty Years of "New Order" Government, A Study prepared by the International Commission of Jurists and the Netherlands Institute of Human Rights. London: Frances Printer (Publishers), 1987.

Judicial Power

To complement House of Representatives (DPR), President, Supreme Court, Supreme Audit Board (BPK), the amended 1945 Constitution formed three new decision making agencies, namely Constitutional Court, Judicial Committee, and Election Committee. Out of these three, the Constitutional Court is the most important body.

Chapter IX article 24 of the amendment of 1945 Constitution regarding judicial power, declared that:

- 1. The judicial power shall be independent and shall possess the power to organize the judicature in order to enforce law and justice.*
- 2. The judicial power shall be implemented by a Supreme Court and judicial bodies underneath it in the form of public courts, religious affairs courts, military tribunals, and state administrative courts, and by a Constitutional Court.*

Article 24C section 1 and 2 amendments of 1945 Constitution regulates that the Constitutional Court shall possess the authority to try a case at final and binding and shall have the final power of decision to several cases such as:

- 1. Reviewing laws against the Constitution;*
- 2. Determining disputes over the authorities of state institutions whose powers are given by the Constitution;*
- 3. Deciding over the dissolution of a political party;*
- 4. Deciding over disputes on the results on a general election;*
- 5. Deciding over a petition concerning alleged violations by the President and/or the Vice-President as provided by the Constitution.*

Indonesia still has People's Assembly (MPR), made of House of Representatives (DPR) and Regional Representative Councils (DPD). The total DPD members cannot be more than one third of

total DPR members. Though all members of MPR are directly elected through general election, to become DPR member, one has to represent a political party.³ Where as to become a DPD member one can represent him/herself as individual.

Unlike previous occasions, where elections are held by the government, starting 2004, the Election Commission is responsible to hold the election. This commission is nationwide, permanent, and independent.

Human Rights

As a consequence for being a law abiding nation, Indonesia has to respect the three basic principles of law, which are supremacy of law, equality before the law, and due process of law. The amended 1945 Constitution includes more protection of Human Rights compared to the original 1945 Constitutions.⁴

Indonesia has also ratified several international conventions on Human Rights:

1. International Convention on the Elimination of All form of Racial Discrimination (CERD).
2. Convention on the Elimination of All forms of Discrimination against Women (CEDAW).
3. Convention against Torture and Other Cruelty, Inhuman or Degrading Treatment or Punishment (CAT).
4. Convention on the Rights of the Child (CRC).

³ The historian of American Democracy Clinton Rossiter once wrote, "No American without democracy, no democracy without politics, no politics without parties" His statement is true everywhere. Without parties, politics become a game for individuals, interest groups, and strongman. See Fareed Zakaria, *The Future of Freedom, Illiberal Democracy at Home and Abroad*. New York London: W. W. Norton & Company. 2003, p. 94.

⁴ See The History and the Future of Human Rights in Indonesia, Ismail Suny, *Anthology of Indonesian Law*. Jakarta: Badan Pembinaan Hukum Nasional Departemen Kehakiman dan HAM RI., p. 62-75.

The Indonesian press has also followed the international norms. The freedom of press is also guaranteed by law. There is no need to get government permit to establish a press organization.

Indonesia also plans to ratify many more important covenants such as International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights (CESCR).

These covenants have not been ratified yet, because there are so many legislative programs that should be changed to ensure democratic government and the limitation of time and resources.

Religious Freedom

Freedom to practice self-selected religion continued to be protected by the constitution. Article 29 of the 1945 Constitution remains intact. There were several heated debates, with several groups demanding the inclusion of Islamic Law for the Muslim people. However, since the majority members of the current House come from nationalist parties, this demand was not accepted. I am confident that the coming 2009 election will also result in the House dominated by nationalist parties.

Legal Policy to validate Islamic Law (Syariah Islam) for Acehese people who are Moslem and citizen of Nanggroe Aceh Darussalam in all aspects provided in law on the specificity of the Special Territory of Aceh Province (Law No. 44/1999).⁵

It is in my opinion, these changes are crucial in ensuring that Indonesia has a modern and true democratic system. Moreover, constitutional reform should progress further to fight corruption, collusion and nepotism (well-known as KKN in Indonesia) in order

⁵ See Penegakan Syariat Islam di Aceh: Ditinjau dari Aspek Hukum Positif (The Escalation of Islamic Law in Aceh: A Study from Positive Law Aspect) in Ismail Suny, *Jejak-jejak Hukum Islam Dalam Sistem Ketatanegaraan Indonesia* (Steps of Islamic Law in Constitutional System of Indonesia), Jakarta: Penerbit Konstitusi Press, 2005. p. 101-108.

to ensure good governance, stability and prosperity in the multi-ethnics, multi-religions Indonesia. Even though there is still a long way to go, but with the will of Indonesian people and the support of other countries, Indonesia can finish this homework successfully.

Finally, writer hope that Indonesia's constitutional reform could provide useful information for the members of the Transitional National Council of Iraq in drafting the new Iraqi Constitution thus ensures a democratic and secure Iraq. I thank all of you for your attention. I wait for your inputs to enrich our knowledge through this discussion.