

## Chapter 2

# Constitutional reform in Indonesia: Muddling towards democracy

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On 10 August 2002, Indonesia's then supreme sovereign body, the MPR (Majelis Permusyawaratan Rakyat or People's Consultative Assembly), against expectations, amended the country's 1945 Constitution for the fourth time since 1999.

It was 'against expectations', because the issues decided by the amendment – including whether Islamic law would be mandatory for Muslims; whether the president would be directly elected; how membership of the legislature would be determined; and whether the military would retain a formal role in politics – go to the very nature of the Indonesian state. Few believed that the MPR, an institution with a justified reputation for party political in-fighting and horse trading, could produce the majority necessary to resolve debates that have divided Indonesia since independence in 1945 (Kurniawan and Simanjuntak, 2002; Moestafa, 2002).

In fact, not only was a majority reached on all these difficult issues but in the end the 695 members of the Assembly decided most questions unanimously, without the need to count votes (The Jakarta Post, 2002). This was an extraordinary outcome in itself and a strong answer to the many critics<sup>1</sup> of Indonesia's fledgling democracy who claimed that civilian politicians would never be able to put aside power plays and bickering in favour of the national interest.

This does not mean, however, that the process of constitutional amendment has been satisfactory or that it is complete. In fact, the Fourth Amendment was simply the latest in the series of patchwork, and sometimes ad hoc, amendments passed since the resignation of the President Soeharto in May 1998.

Before Soeharto's fall, the Constitution – a brief document hastily drafted as Indonesia declared its independence and prepared for revolution against the Dutch in 1945 – had never been amended. Pristine, skeletal, it provided the framework for the authoritarian states created by both Soeharto and his predecessor, Soekarno, the nation's first President. The post-Soeharto amendments have now brought Indonesia a long way from the two dictatorships that had prevailed from

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\* I express my gratitude to Kirsten Steiner, Helen Pausacker, Amanda Whiting and Rowan Gould, then all researchers in the Asian Law Centre, for their assistance in the preparation of this paper. I am also grateful to Denny Indrayana for valuable discussions.

1 For example, Jeffrey Winters, quoted in Moestafa (2002) as suggesting revolution was the only real alternative.

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The problem encountered in this process is three-fold. First, the democratic ideal is now clearly agreed by almost all parties as being the necessary outcome but there is still little understanding and less consensus on the detail of what that democratic ideal might look like in Indonesia. The debate is fragmented and often confused.

Second, for deep-seated historical reasons that are unlikely to alter in the short term, none of the political protagonists can muster a decisive majority sufficient to prevail over the cacophony. Compromise, deal-making and an uneven patchwork approach are thus inevitable, as democracy has been negotiated clause by clause.

Third, to move from Soepomo's integralist authoritarian state to a plural democracy, the executive and legislatures (the DPR and the MPR) – the groups that ultimately control the reform process – must divest significant power, in particular to the long-repressed and suspect judicial branch. The amendment process was marked by intense competition between them as, recognising the need to reduce power, they jostled and haggled, each seeking to keep a relative advantage over the other branches of government. In the end, the legislature (DPR) emerged as the single most important state institution in Indonesia, with the judiciary also successful to a lesser extent in accessing new independence. The MPR and the presidency proved to have lost the most real power.

The end result was a grindingly-slow, messy and uneven process, with each year's batch of painfully-wrought changes being tested in the crucible of Real-politik. But, despite all the difficulties, progress was made: the 1945 Constitution after the Fourth Amendment has many shortcomings but it is an incomparably better document than it was when Soepomo put down his pen. And, for all the shortcomings of the piecemeal legislative process adopted, historically few countries have ever managed constitutional reforms as effective as Indonesia's, purely through parliamentary debate. This leads to the conclusion that, in a nation denied constitutional debate for the past four decades, perhaps the difficult process Indonesia has endured is a necessary way to build a national understanding of the issues and put some content into the vague rhetoric of reform, rights and democracy created by Soeharto's fall. As Howard Dick has said.

The ... bolder response, as in Europe after World War II, is to try and restore vitality, skill and credibility to the domestic politics, to allow society to make political choices and hope that it will 'muddle through'. In the very long run ... 'muddling through' may be the better strategy for searching and learning, the shortest and least painful way to achieve the ... transition. (Dick, 2002: 83-84)

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