



**One year after the elections:  
Is democracy in Indonesia on course?**

**Andrew Ellis  
Head of Electoral Processes  
International IDEA  
[a.ellis@idea.int](mailto:a.ellis@idea.int)**

**International IDEA  
Strömsborg  
Stockholm  
20 September 2005**

## ***A Real Presidential System – The Amended 1945 Constitution of Indonesia***

In considering the progress of the first year of the Presidency of Susilo Bambang Yudhoyono (SBY), it is important to understand the context in which its successes and failures are measured – the 1945 Constitution of Indonesia as amended. The process of constitutional amendment was initiated by the MPR General Session which followed the 1999 elections, and lasted from then until 2002 – with a further year then necessary to complete consequential implementing legislation and transitional provisions.

The amended 1945 Constitution retains the original Preamble, the unitary state, and 'the presidential system'. However, this phrase now has a very different meaning. From an integralistic state with the MPR as 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 amended 1945 Constitution can be clearly identified as a mainstream presidential constitution.

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 established to deal with judicial ethics issues and proposals for Supreme Court appointments.
- Constitutional backing is given for the principles of regional autonomy.
- 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.

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 also 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 rose to 12% in 2004. 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.

### ***What makes for a successful presidential system?***

What do we know about how best to make a real presidential system work? Latin American countries and the Philippines have also trodden the path of democratic presidentialism in recent years, with differing degrees of success. Although analysis of this question (except in relation to the United States, which is probably *sui generis*) is at a surprisingly early stage, there are three institutional design elements which appear to help.

First, it helps for the President to have a substantial body of support in the legislature. Initially, this appeared a challenge for SBY, who could be characterised as a successful political insurgent – early votes on the legislative leaderships sent mixed signals. The potential problems became much less pressing when Vice-President Jusuf Kalla (JK)'s efforts to take over the Golkar leadership bore fruit. As long as the President and Vice-President work together as a team, they now have a strong body of legislative support. Pressure to break up the team may of course grow as the 2009 elections come nearer. SBY's decision on whether to seek reelection and any desire by JK to seek the Presidency in 2009 could both have major impact on the effectiveness of the Government later in the presidential term.

Second, 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. The 2004 DPR has been slow in gearing up: while there have been some clashes between

the Presidency and the legislature, notably over fuel subsidies and over the Aceh peace agreement, the ride has not so far been severe.

Third, it helps if political parties are coherent but do not direct their elected representatives with a rod of iron. However, the central leadership of Indonesia's political parties has a tendency to do just that, as has been seen in the way some political leaders have handled the recall provision in the new political legislation, using it to stifle dissent among their party's elected members.

### ***Corruption and KKN – the key issue?***

The victory of Susilo Bambang Yudhoyono and Jusuf Kalla had not been predicted for a long time in advance, but in the end came as no surprise to most commentators. In polling conducted shortly before the final vote, honesty and a good personality emerged as more important than policy to Indonesian voters. At the same time, SBY and JK scored positively on their ability to deal with the top issues – prices, corruption and jobs – as well as with security and territorial integrity.

The results of all three sets of elections in 2004 suggested that Indonesian voting patterns may however 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.

Largely unlike its predecessor, the SBY administration has been seen to take some action on the corruption issue. Prosecutions have been launched against, for example, the Governor of Aceh, elected members and officials in a number of regions, and several leading members and officials of the General Election Commission (KPU).

It may be, however, that these actions are only scratching the surface. While the KPU cases are currently sub judice, the suspicion remains that, even if the evidence against the KPU members and officials turns out to be compelling, they may be the 'soft target' in an argument over who can benefit from graft on electoral procurement contracts. A general and deep attack on KKN in central government institutions has

yet to materialise. Indeed, SBY has recently said that the eradication of corruption is a much deeper and longer task than was previously admitted.

And corruption provides the *wong cilik* – the little people – with the day to day evidence that the rule of law remains shaky. When it is necessary to make payments for permissions and licences and even to ensure that one's child's school marks are good enough, confidence in institutions cannot be easily built in the community.

### ***Reconciliation: Is Enough being Done?***

The demand for justice for violations of human rights was one of the most insistent calls during the period of transition. The long history of violence in Aceh, the destruction and killings in East Timor following the 1999 referendum, the various acts of repression carried out during the New Order under Soeharto, and the mass killings of the 1960s are none of them events for which recompense has been perceived to have been achieved. The Indonesian trials of those alleged to have been involved in the Timor mayhem, in which none of the military defendants have been convicted, did not satisfy campaigners for human rights either within Indonesia or within the international community.

A Truth and Reconciliation Commission has however now been established. Its powers are however limited, as it will consider violations only on an individual case basis, and will not be able to make policy recommendations towards preventing abuses in the future. Its commissioners are shortly to be appointed: their independence and commitment will be an important sign of how serious the TRC will be in practice. Will the TRC have wide and participatory hearings? Can this TRC establish a historical record that is owned by the people?

The real question underlying the best approach to reconciliation is how much effect the erosion of the rule of law - which inevitably accompanies a decision not to pursue violations - has in practice on the ground. If there is an implicit understanding that support – or at least lack of obstruction - of the process of reform by past perpetrators of gross rights violations is part of a 'deal', is the potential unrest caused by breaking that 'deal' worth the benefits to establishing a more solid rule of law? Is the perception of impunity as salient in the lives of many of the people as the impact of day to day corruption, or is it a question which is of most concern to an important and articulate

minority? Even if the latter, will the TRC be seen as sufficient now – and will the issue return to haunt society later?

### ***SBY The Communicator***

From a very early stage, the SBY presidency differed from its predecessor in its understanding of the need to communicate its policies and actions, both domestically and internationally. Flying presidential visits, meeting people in towns and villages, enabled the President to explain political messages and to be seen to be listening to the popular voice. Thus, even when the reduction of fuel subsidies was unpopular, this was not reflected in a major loss of confidence in the Presidency. At the same time, the President and Vice-President have shown themselves much more confident at explaining their policies directly in international circles. If reforms are to be carried through, filling in the detail of the new institutional framework and this commitment to communication will play a major role in their success.

This communication is aided by a vibrant press and media: one of the most free media environments in South East Asia has developed in Indonesia. However, freedom of expression is not unchallenged and needs to be actively defended – legal actions by commercial interests, for example against Bambang Harymurti and *Tempo*, have raised deep doubts. Neither do prosecutions for disrespect to the picture of the President encourage the view that freedom of debate is firmly established.

### ***The Largest Devolution of Power Ever***

As the Presidency tackles issues at national level, Indonesia's second great achievement of democratic transition is taking root. 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. And the effectiveness of service delivery at local level in many areas will

depend heavily on a major investment in capacity building and training.

It is too early to assess the real impact of direct election of governors and mayors, a reform which started in 2005 – although the same variety of performance between authorities should be expected. 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.

### ***Aceh – An Opportunity from Tragedy***

A year ago, it was not clear that willingness to reach a solution for the continuing conflict in Aceh was universally accepted. Previous attempts had failed, with the suspicion that the local leaderships of both the Indonesian military (TNI) and the Free Aceh Movement (GAM) found continuation of conflict lucrative and did not wish any peace agreement to succeed.

The situation was changed by the tsunami of December 2004. Many local power structures were destroyed, and a political space opened which enabled the negotiation of the August 2005 Aceh peace agreement. Inevitably, this agreement contains wording which can be presented in different ways by the different parties: that is a characteristic of all such agreements. Inevitably, too, it has been the subject of attack in the DPR and elsewhere – often by those who opposed the dismantling of the integralistic state in the constitutional reform process, and are not yet reconciled to the idea that pluralism and democratic debate can serve to strengthen the unitary state rather than break it up. The Aceh agreement can be characterised as 'so far, so good'. If it takes root, the next question is whether it can provide a precedent for willingness to tackle the very different, but equally deep-rooted, conflict in Papua.

### ***Democracy – Work in Progress***

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 remains the test of whether Indonesia will make democracy work. Effective oversight and questioning of the performance of the new government by an



opposition is likely to be a key both to its success during the current Presidency, 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.

While we mourn this year the death of Professor Nurcholish Madjid, his identification and explanation of the fundamental consistency and compatibility between Islam and democracy will stand as a cornerstone for the future. Indonesia has built an institutional framework which is capable of being the basis of a successful and ultimately prosperous democracy. This new system is now exposed to 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 the process of democratic change.