

GETTING TO DEMOCRACY IN THE WORLD'S LARGEST MUSLIM COUNTRY: HOW INDONESIA DID IT ¹

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Introduction.

Indonesia successfully reformed the 1945 Constitution (UUD 1945) in a democratic and constitutional way through a seriatim 4-years process which was conducted by the People Consultative Assembly (Assembly) or *Majelis Permusyawaratan Rakyat (MPR)* from 1999 to 2002.

Although it was born from the womb of the original UUD 1945, the amended Constitution has a clear distance and with repudiation to the authoritarian concepts inherent in the original UUD 1945.

Both desirable attributes for a new political system after transition from authoritarian regime, democracy and rule of law, have been incorporated into UUD 1945 (John Ferejohn and Pasquale Paquino, 2010, p. 242).

The whole process was consensual and gradual, quite different to the 'normal' process usually discussed or recommended in various literatures. The sum of the characteristics of the process is what stamps Indonesia as distinctive, if not unique (Donald L. Horowitz, 2013, p. 2).

One by one, the fascist and integralistic tainted ideas in the initial 1945 Constitution were corrected and all principles of a democratic country such as people sovereignty, rule of law, checks and balances, independent judiciary, religious freedom, free press and other basic rights, and periodical-democratic circulation of powers are incorporated into and guaranteed by the constitution.

During the process, only 1 out 185 of changes of the 1945 Constitution, which was about the existence of the appointed delegates of the Functional Groups in the Assembly, and of all decisions to cancel other proposals, were decided by balloting.

The process was completed in 2002. As stipulated in the amended Constitution, in 2003, an independent constitutional court was established to guarantee the supremacy of the constitution.

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Since the 2004 election all members of the new House of Representatives and the Assembly were elected and thus, the military ended their involvement in politics.

In 2014 Indonesia conducted the 3rd direct presidential election and the 4th general election to elect the representatives for the national and local representative councils.

Thus, Indonesia, the largest Muslim population country, is now the 3rd largest working democracy in the world after India and USA, whereas until last century, Indonesia was the 2nd largest non-democracy.

It is noteworthy that Indonesia, an archipelago of more than 14.000 islands with a very heterogeneous people and the fourth largest country in the world, managed to accomplish the fundamental reform peacefully and intact, avoided from disintegration and balcanization.

Yet, at least initially, not everyone could comprehend the significant changes that had occurred.

The way we did the changes, without academic draft and used the old constitution as the working manuscript, gradually, piece by piece, not in one shot, through deliberations and consensus and solely by the constituted Assembly, had invited critics and funny comments.

Improperly, UN Commission on Human Rights Special Rapporteur, *Dato' Param Cumaraswamy* reported that the piecemeal amendments fail to meet the aspirations of the people for a democratic country under the rule of law. Recklessly, *Cumaraswamy* reported that there is no constitutional provision expressly guaranteeing the independence of the judiciary and there is also no express constitutional provision guaranteeing the right to a fair trial (UNITED NATIONS, *Economic and Social Council*, 13 January 2003).

Donald L. Horowitz concludes that the Indonesian's course was deviant in several respects and might have broken something like standard operating procedures regarding the sequence of democratic change (Donald L. Horowitz, 2013, pp. 8-15).

And, *Tom Ginsburg* writes that: "According to conventional wisdom, Indonesia did everything wrong but nevertheless managed to produce a vibrant constitutional democracy" (Donald L. Horowitz, 2013).

But, *Alfred Stephan* says that the big country that democratization theorists are watching most closely is Indonesia (Alfred Stephan, 2005).

And, *Mirjam Kunkler* and *Alfred Stephan* write that this world's most Muslim-majority country strikes most observers as a democratization miracle (Mirjam Kunkler and Alfred Stephan (eds.), 2013, p. 1).

The background.

To understand better the democratization process of the Constitution, it is helpful to look briefly the background surrounding the birth of the original 1945 Constitution and the nature of Indonesian politics.

The reform of the 1945 Constitution was not a work of magic or a transplantation of ready-to-copy-paste formulas of democratic concept from literatures or other resources into the prevailing Constitution. Rather, it was an ability to comprehend Indonesia's socio-political

and socio-cultural development along the history and to seize the opportunities opened by the political crisis at the end of the 1990s and to implement deliberative and consensual approach in achieving the expected reforms.

The draft of the initial 1945 Constitution was made by the Japanese Military Administration founded Investigating Commission for Independence (Investigating Commission) or *Dokuritsu Junbi Tyoosakai* in May to July 1945.

As also done in Burma and the Phillipines in 1943, the Japanese empire planned to give independence to Indonesia on September 7, 1945 as a member of a Japanese geo-political ambitious project, The Greater East Asia Co-Prosperity Sphere with the Japanese Empire as the leader. (Thakin Nu, 1954, pp. 38 – 69; Benda, Harry.J., Irikura, James K., Kishi, Koichi, pp. 275, 276).

By design, the political system built by the original UUD 1945 was an authoritarian system. In accordance with the integralistic concept adopted by this Constitution, the system did not implement the principles of checks and balances, did not recognize the election as an instrument of the circulation of power, did not assert that the judiciary is independent and it denied human rights.

At the top of the system, there was a supreme state institution with unlimited authority, the People's Consultative Assembly (Assembly), which implement the people's sovereignty in full. This supreme institution had among others, authority to elect the presiden and to ask accountabilities from all other state institutions, including the President, the Parliament and the Supreme Court.

Originally, the system was based on a single state political party which dominate the Assembly. (Sekretariat Negara, 1995, p. 504). (Later, after the Japanese surrendered, under the pressure from the Allied Forces, the plan to establish a single party system was cancelled and replaced by a multi-party parliamentary system.)

However, its Preamble that was drafted by the prominent figures of Indonesian national movement for independence eg *Soekarno* and *Hatta* behind the back of Japanese authority and free from Japanese intervention, contains principles that are pro humanity, people's sovereignty, justice and social welfare, principles that are contrary to fascism.

It contains among others, the Pancasila, the state five-principles foundation, ie.

1. Belief in Oneness of God the Almighty or Belief in the one and only God (*Ketuhanan Yang Maha Esa*).
2. Just and civilised humanity (*Kemanusiaan Yang Adil dan Beradab*).
3. The unity of Indonesia (*Persatuan Indonesia*).
4. Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives (*Kerakyatan Yang Dipimpin oleh Hikmat Kebijaksanaan, Dalam Permusyawaratan Perwakilan*).
5. Social justice for all of the people of Indonesia (*Keadilan Sosial bagi seluruh Rakyat Indonesia*).

Thus, the original Constitution consists of two parts that are not matching with one another.

Eventually, the Constitution was ratified by a new independent Preparatory Committee for Indonesian Independence (Preparatory Committee) or PPKI (*Panitia Persiapan Kemerdekaan Indonesia*) on August 18, 1945, 4-days after the Japanese surrendered and one day after Indonesia proclaimed its independence.

Thus, immediately, in the boiling revolutionary atmosphere of the proclamation of independence and the following war to defend the independence, this Constitution, despite of its shortcomings, became a revolutionary Constitution, a symbol of the victory of the struggle for independence. It became a respected and to some extent, a mythical and sacrosanct Constitution, the untouchable.

On the other hand, based on Pancasila, the Constitution affirms that Indonesia is not a confessional state nor a secular state.

These are the important factors that should be considered in making changes to the 1945 Constitution. It would be different if the Constitution in question is a hated or an imposed constitution.

During *Soekarno's* era, when this Constitution was prevailing (1959 – 1966), he tried to control the Assembly by uniting the nationalist, the religious and the communist (*nasionalis-agama-komunis* or NASAKOM) under his control but to no avail.

Subsequently, with full support from the military, *Suharto* managed to control the political parties, reducing its number to two political parties and one dominating functional groups political power, and thus, to control the Assembly, and he was in power for more than 3 decades (1966 – 1998).

Later, *President Abdurahman Wahid* failed to control the Assembly and was impeached in 2001, 2 years after he was elected by the Assembly. (At the time, the rewriting of the Constitution had not been completed).

Indeed, the original system was very unstable unless if it was supported by a single party system or implemented in authoritarian way.

Before going further, I would like to describe the features of Indonesia. Indonesia has over 250 million people. Its territory comprises of more than 13.400 islands which are inhabited by more than 1.100 tribes which speak more than 730 active languages and dialects. It takes up to 7 hours of jet flying time from the Western tip to the Eastern tip of the archipelago. All religions of the world exist in Indonesia, with Islam comprises 88% of the population. Islam in Indonesia is the largest in the world, larger than all Muslim population in the Middle East combined together. The largest tribe is the Javanese, which comprise of 41% of the population and the Sundanese, 16%. These 2 tribes are from Java island.

But, thanks to our founding fathers and mothers, this heterogenous people, in the midst of the movements to break away from colonialism in the early 20th century, managed to mould its identity as one nation of *bhinneka-tunggal-ika*, unity in diversity, *pluribus et unum*.

On October 28, 1928, the prominent figures of youth movements from all over the archipelago convened a youth congress in Batavia (Jakarta) and despite of the differences pledged that: *we are one nation, with one motherland and one national language Indonesia*. This pledge, renown as *Sumpah Pemuda* (Youth Pledge), is the main foundation of and the salient factor to the existence of a new nation, Indonesia.

Thus, Indonesia nationalism has been developing as an inclusive nationalism. Despite of its heterogeneity, the people of Indonesia perceives itself as one nation, which is united by the shared dream of the just and prosperous future, a demos type people. Indonesia's unity is not based on tribe or religion or on other primordial sentiments.

As I have mentioned before, all main religions of the world, Islam, Christianity, Buddhism, Hinduism, and others, and traditional beliefs are here in Indonesia.

Hinduism began to spread in Indonesia in the 1st century and Buddhism in the 2nd century. In early 7th century, Nestorian Christian had its settlement in Barus, western coast of North Sumatera, a harbour of area which produces campher and myrrh, used by civilization as old as ancient Egypt. It seems that the trading had been in place much earlier. In 16th century, Portuguese spread Catholicism in eastern Indonesia.

Since 12th century, Islam was introduced and spread in peaceful approach by the *sufi* peripatetic teachers cum traders from Arab Peninsula. Since then, Islam spread as a moderate and middle-path Islam (*wasatiyyah Islam*) that has a strong tradition of inclusiveness, tolerance and peaceful co-existence with adherents of other religions. It provides, for instance, greater freedom to Muslim women in religious, social, cultural and political lives. In *Azra's* words, Indonesian Islam is the least Arabicised Muslim, but no less Islamic. (*Azra. Azyumardi, 2004*).

In general, this moderate Islam, belongs either to Nahdlatul Ulama or to Muhammadiyah, the two largest Islamic organizations in Indonesia, even in the world.

Thus, the inclusive nationalism and the moderate and tolerant Islam are the two main important factors that shape the characteristics of Indonesian politics.

Aspiration for a democratic constitution had been evolving since its making. Prominent members of the Investigating Commission had tried to include principles of rule of law, adherence to basic rights, people sovereignty, but to no avail (*Sekretariat Negara, 1995, p. 225*). Subsequently, the later generations continued the efforts.

However, there were also attempts to make Indonesia an Islamic state or at least to have Islamic nuance. During the making of the 1945 Constitution, there were proposals to make Islam as the foundation of the state, or Islam as the state religion, or that a President should be a Muslim, or that the state should require the adherents of Islam to implement Islam sharia (*Sekretariat Negara, 1995, p. 224-225*). All, but one of these proposals could be canceled by deliberations during the process, except the last one, a clause in verse (1) of Article 29: "*with obligation to implement sharia Islam to its followers*", that was debated until the final session

of the The Preparatory Committee for Independence of Indonesia (Preparatory Committee) on August 18, 1945.

Eventually, due to a threat from Eastern Indonesia to secede from the newly born Indonesia if the sharia Islam is obliged, *Mohammad Hatta*, persuaded the prominent Islamic figures in the Preparatory Committee to drop the clause (Mohammad Hatta, 2011, p. 96).

Later, various groups strove again to make Islam as the state foundation, either through democratic way as was attempted by Islamic political parties, eg. Masjumi during the Constitutional Assembly (Konstituante, 1956 – 1959), or through armed rebellion. Between 1949 to 1962, *Darul Islam* waged a war of rebellions in West Java, Central Java, South Sulawesi, South Kalimantan and Aceh to establish an Islamic state in Indonesia. In Aceh it lasted until 2004.

In 1998, *Suharto* had been in power for 32 years continuously. Borned in 1921, he had been 77 years old. This 5-star Great General was a kind of liberation army who voluntarily fought for the country. All his comrade had retired including all the young revolutionaries of 17 years old age in the beginning of the revolution in 1945.

Years before, in many occasions he disclosed, including to me, his intention for a new civil supremacy political system, though that was still based on the original 1945 Constitution - I was then the head of the political section of the powerful Supervisory Board (Dewan Pembina) of GOLKAR which was chaired by *Suharto* himself. He envisaged a strong civilian GOLKAR as dominating political power to ensure the stability of the system and the sustainability of the development. *Suharto* also assigned scholars from Indonesia Institute of Sciences (LIPI) to study the future role of the Armed Forces (ABRI) in Indonesian politics (Indria Samego, et.al, 1998).

Later, in late September 1998, ABRI commander, *General Wiranto* set up a team led by *Lt.Gen. Susilo Bambang Yudhoyono*, then the Armed Forces Chief of Socio-Political Staff and later the fifth Indonesian president, to formulate “ABRI Main Ideas on Reform”. Along with this intention, discourses regarding the new civil supremacy system, along with other reformation issues, were flourishing in the society, including among the power elites and in the military. However, not all in his camp supported the idea.

On the other hand, a massive educational programs implemented by *President Suharto* since the 1970s, a program that generated well-educated peoples that became the critical element to his leadership.

Under the supervision of the Ministry of Religious Affair, a large number of educational institutions were established that promoting the non-ideological concept of Islam. The State Institute for Islamic Studies (*Institut Agama Islam Negeri* or IAIN), and especially its post-graduate program in Jakarta and Yogyakarta, played the key roles in New Order policy of promoting a modern non-ideological conception (Mujiburrahman, 2013, p. 154).

It has brought about great changes in traditional Muslim communities (ICMI, 1995, p. 236). A new generation of political Islam was born. Many of them became the new elite Indonesia which gives new twist in the relationship of Islam and the state.

They developed the notion that Islam and *Pancasila* was not opposed. *Pancasila* as the state ideology is acceptable and has been final and Indonesia shall not become an Islamic state. The actual challenge, they concluded, is how to realize *Pancasila* values into instrumental policies in various fields.

It was a huge surge of Islamic intellectuals who have a new way of thinking about philosophy of the country (Nurcholis Madjid, 1987, pp. 3-17). Most of them belong to either NU (*Nahdlatul Ulama* – The Awakening of Islamic Scholars) or *Muhammadiyah*, the two largest Islamic organizations in Indonesia.

Nurcholish Madjid is one of the major pioneers who asserted that Muslims do not need to dream to make Indonesia an Islamic state. *Madjid*, welcomes the general trend towards national convergence that evolving around the noble values of *Pancasila*. *Madjid* asserted that *Pancasila* is sufficient to accommodate the aspirations of Muslims (Ahmad Syafii Maarif, 2009, p. 173).

Abdurrahman Wahid, former chairman of *Nahdlatul Ulama* and the fourth Indonesian president, asserted that Islamic state is just an illusion that has no Islamic teaching basis (K. H. Abdurrahman Wahid, 2009, pp. 17-18, 41).

Ahmad Syafii Maarif, a prominent Islam reformist and former chairman of *Muhammadiyah*, affirms that actually, with the acceptance of *Pancasila* as the state philosophy by the majority of the new generation of the *santri* (student of Islamic boarding school), then wide opportunities to build this nation opened without bickering about theological philosophy (Ahmad Syafii Maarif, 2009, p. 173).

Rois Aam (the Supreme Advisor) of NU, the largest Islamic organization in Indonesia, *KH. Sahal Mahfudh*, reiterated that given the objective conditions of the Indonesian nation that is ordained by God with a pluralistic population and society, NU has concluded that the unitary state of Indonesia on the basis of *Pancasila* is already the final form for Indonesian nation (NU National Conference, 2006).

Besides, there are also other prominent Islamic scholars eg *Alwi Shihab*, former Foreign Minister, *Azyumardi Azra*, former president of Islamic State University, Jakarta, *Amin Abdullah*, former president of Islamic State University Yogyakarta and others, who are striving to disseminate and to consolidate the inclusive middle path Islam.

In December 1990, with blessing from *President Suharto*, Association of Indonesian Moslem Intellectuals (*Ikatan Cendekiawan Muslim Indonesia* or ICMI) was founded and *Habibie*, who later became the third Indonesian president, was elected as the chairman. It becomes a venue for the new Moslem elites, where the modernists and the traditionalists mixed, to enter into the elites of Indonesia. As admitted by *Nurcholish Madjid*, it eased the feeling of being outsider and according to *Jalaluddin Rakhmat* a sense of returning power for the Moslem (ICMI, 1995, pp. 300, 332).

In the meantime, efforts to build interfaith communication arose. Initiated by figures, such as *Mukti Ali* and *Munawir Syadzali* of Islam, and *TB Simatupang*, *Latuihamallo* and *Franz Magnis Suseno* of Christian-Catholic, interfaith dialogues were organized, together with other religions and set of beliefs, with major implications for the establishment of mutual understanding and cooperation among the various religions' followers, at least among the elites (Jan S. Artonang, 1998).

This new perception is of great influence among Muslim intellectuals in general, which distinguishes them from the older Muslim intellectual generations (Audrey R. Kahin, 2012).

It subsequently renders to the unanimous acceptance to the *Pancasila* and the Preamble as the starting position of the constitutional reform in 1999 – 2002 and had prevented the reform from the same fate of the *Konstituante* process.

Yet, it should be noted that besides them, also exist groups of Muslims who remained adamant to strive for Indonesia as an Islamic state, or at least that the implementation of Islamic *Sharia* shall be an obligation by constitution. With the rise of democracy, they have much more freedom to express their political ideologies and to develop their organizations (Mujiburrahman, 2013, p. 157). Lately, these groups quite developed among the leading universities in Indonesia and also in a number of mosques.

Rewriting the original 1945 Constitution.

During the political upheaval at the end of the 1990s, besides demanded *Suharto* to resign, demonstrators also demanded democratization and an end to military involvement in politics.

After *Suharto* resigned and *Habibie* sworn in as the new president, the Assembly, convened a special session in October 1998. It decided among others to expedite the scheduled 2002 election to 1999, to liberalize the establishment of new political parties and to annul Assembly Decree no. IV/1983 that hinder changes to the 1945 Constitution.

Thus, the election was held on June 7, 1999 and I, as a representative of the PDI-P, one of the new political party, was elected as chairman of the Indonesia Election Committee (PPI).

48 political parties, 45 of them new, contested in the election. Monitored by domestic and international observers, including *President Carter* who led observers from Carter Center, the election was successfully conducted and recognized as democratic and transparent.

Out of 462 seats contested (total seats was 500, 38 seats were allocated for appointed representatives of the Armed Forces, consisted of the military and the police, who did not use their voting rights), the new political parties won the majority, 282 seats, in which PDI-P won the most, 153 seats. The old political parties, GOLKAR, United Development Party (PPP), an Islamic political party and the Indonesia Democratic Party won 180 seats. Then, the new MPR was formed.

It could be noted that besides PPP, the new political parties with some sort of aspirations of Islamic politics, such as the Moon and Crescent Party (PBB), the new Masyumi and Abuya Parties did not perform as they expected.

Subsequently, 7 political parties that won the most seats, together with the armed forces, reached an agreement to democratize the 1945 Constitution through constitutional way with the conditions to maintain the Preamble, the unitary form of the Republic of Indonesia and to maintain the presidential system. With this agreement, the roadmap for reforming the Constitution was laid down and the new Assembly convened a general session in October 1999.

Later, in the beginning of MPR general session, the political factions in the MPR reaffirmed the agreement and agreed to democratize the 1945 Constitution constitutionally through amendment as stipulated by the Constitution, not for making a new constitution.

As I mentioned before, it could had been different if the existing constitution was not a respected constitution such in case of the changes of the 1983 South Africa Constitution in 1996 and the 1973 Phillipines Constitution in 1986.

The process.

The process was based on the Article 3 and Article 37 of the Constitution which regulate the process of conducting changes to the Constitution, a provision which is quite rare in the constitutions of the countries in the world.

Based on the Assembly's procedure, the meeting should emphasize deliberation and consensus. Only if the decision is urgently needed while the time is limited, decision by voting can be exercised.

In accordance with the Assembly's procedure, an Ad-Hoc Committee was established to prepare the draft of amendments.

It is worth noted that the Assembly did not prepare academic draft for the changes. Every factions had opportunities to submit any proposals they deemed necessary to reform the Constitution.

What was obvious was the spirit for reform that had overwhelmed most members of the Assembly and the intellectual public, so that popular terminologies, such as people's sovereignty, rule of law, separation of powers, checks and balances, independent judiciary power, and so forth, had become like a charm which were very familiar to everyone, notwithstanding that to some extent with different comprehension on its underlying concepts.

In that regard, for the factions, the text of the initial 1945 Constitution and the desire to democratize it were sufficient to guide the process.

Thereby, while reaffirming their commitment to democratize 1945 Constitution, based on their respective political insights and the aspirations of their constituents, or the ideas they deemed important in public's eyes, the factions had proposed whatever ideas they deemed necessary to improve the Constitution.

Subsequently, these proposals were compiled to become the base material of improvements of the Constitution.

This situation had built a sense of ownership and commitment of all factions in the Assembly to the amendment process and to accomplish the amendment of the 1945 Constitution which the factions had perceived as their shared duty.

Furthermore, the implementation of deliberation and consensus approach instead of majority-minority approach in decision-making, although had caused the process prolonged and rambled, had made every faction, small or big, saw themselves as contributive actors in the process.

Thus, since the beginning the factions had considered amendment of the Constitution as their own obligation and with that, an attitude that ensured the reform would work, which was seminal for the subsequent establishment of symbiotic relationship between the Constitution and its practices.

It would be different if the faction had to deal with an academic draft that had been prepared in advance, to which they had to give response to something that already had fixed shapes. Moreover if the factions only had the option to accept or to reject the drafts.

Perhaps that way could produce a better composed or better written constitution and could be completed more rapidly, but certainly that process could not build support and sense of commitment from the political public to the Constitution.

Other than that, this process was a political process that should resonate with the real challenges in the society. Through various programs, such as public hearings, seminars, workshops and comparative studies we organized both in Jakarta and in the provinces, we reached and interacted with the problems and political challenges evident in society.

Thus, for example, during the debates of the position of Islamic sharia in state affairs, a People's Congress held in North Sulawesi proclaimed to secede from Indonesia if the state obliges the implementation of Islamic sharia.

A seminar we held in Pekanbaru, Riau, a province which is rich with oil and gas, was attended by participants who claimed themselves as representatives of the Free Riau, including their presidential candidate, who demanded separation. The same also happened in Jayapura, Papua. A statement from certain groups in East Kalimantan also talked about Free East Kalimantan. They reacted to the debates regarding the unhealthy relationship between the centre and the peripheries in the unitary state of Indonesia.

The above records disclose that the public was willing to express their aspirations and their disappointments or even their anger frankly and openly to the constituted state forum. Thereby, the process interacted with sensitive issues in Indonesia politics, in which the reform of the 1945 Constitution was also an attempt to resolve the challenges.

Indeed, the process should not be sterile from but in discourses with the immediate political challenges the state is encountering, not just the process of designing a system based on theoretical principles.

Reforming the constitution in a way as if stealing a chance, and by applying majority-minority approach, might have produced a textually good constitution, but it does not guarantee that the constitution will be adhered. In certain circumstances such an approach can even lead to cleavages of a state, such as experienced by some countries during reformation.

On the other hand, the minute of the discussions of the amendment process in MPR reveals that, at least initially, the factions did not really aware of the scale of the necessary revisions to the 1945 Constitution and how far the amendment would alter the principles in its articles. No one had a comprehensive view of how the 1945 Constitution be looked like after amendments.

It is also worth noting that, at least until the second amendment, most of the factions were still very much seized by the notion that the Assembly was the highest political institution which manifests and implements the sovereignty in full as stipulated in the original 1945 Constitution.

The discussions also disclosed that actually academic communities and the political public at large did not have clear attitudes and opinions regarding the scope of the reforms to the Constitution and to what extend the principles of the initial 1945 Constitution should be revised.

Basically, the proces was open to public and broadcasted real time. The meetings of the Ad-Hoc Committee (Committee) were attended by students, researchers, NGOs, both domestic and international, journalists, and others.

Gradually, with input from the public hearings, seminars, comparative studies, considering the opinion evolving in the society, and with the help of experts, members of the Committee discussed and drafted the most acceptable changes to democratize the 1945 Constitution. Occasionally, the process was interspersed by informal consultations, lobbyings between the leaderships of the Committee, or the factions or the political parties, to overcome problems and hindrances.

At the end of the discussions, usually we formed small team for drafting the changes which were then submitted to the plenary for approval. Thus, the changes are not grafted or copy-pasted materials supplied by others, as is often claimed or alleged by various parties.

In this kind of process, which emphasizing deliberations and informal consultation, good personal relationship was important. Being in the leaderships of the student demonstrations in 1966, members of Parliament for 34 years from 1968 to 1997 and from 1999 to 2004 (so far, I am the longest in Indonesian history), in the elite of the ruling party from 1973 to 1993 and from 1999 to 2004, a dissident politician in 1993 to 1999, the chairman of the Election Committee in 1999, I have the opportunities to know the elites of the political spheres from various eras. This had helped me significantly in forming personal friendships with political activists and elites which was helpful in leading the amendment process.

With that in the backdrop, let us look how changes had been made as depicted among others on the following topics:

Reforming the People's Consultative Assembly.

In the original Constitution, the Assembly was the heart of the system which makes it authoritarian in nature.

This Assembly was considered as the personification of the people which implemented the people's sovereignty in full. Its authority was unlimited and according to its original intent, its members were representatives of a single state political party, augmented with appointed delegates from the provinces and the functional groups.

It had authority among others to elect the president, to ask accountabilities of the President, the House of Representatives (Parliament), the Supreme Court and other state high institutions.

However, because the reform process was conducted by this supreme body, and this Assembly had been in place for more than three decades, initially, most of the factions still perceived that to strengthen the people's sovereignty means to strengthen the power of this supreme Assembly.

In that regard, initially, the military and police faction and elements of several other factions tried to maintain the presence of appointed member of Assembly from the functional groups, including from the Armed Forces.

Therefore, we did not attempt to directly change the Assembly as a whole. Instead, we approached the reform from the sides. One by one of its authorities, such as to elect the President, to ask the accountabilities of the people-directly-elected President and the House of Representatives, of the independent judicial body, were revoked. Thus, eventually, we could reach agreement that the Assembly should have only certain and limited authorities, such as to change and to enact the Constitution, to elect the President or the Vice President in an emergency situation, etc. It took three years to achieve the reforms.

However, regarding the appointed members of the Assembly, eventually the decision could only be decided by voting in the last session of the Assembly in 2002. Quite a number from the factions of PDI-P, Functional Groups and PKB voted against abolishment of the appointed members.

But, it should be noted that all members of the Armed Forces faction voted for an end of the appointed members. With that decision, the involvement of the military in politics ended.

Thereby, a new verse that affirms that "Sovereignty shall be vested in the hands of the people and be executed according to the Constitution" was incorporated in the Constitution.

With the changes, Constitution is enthroned as the supreme law of the land, to which the popular sovereignty is subjugated and a mechanism of check and balances, which was absent with the existence of a supreme state institution, was established.

It is worth noting that the supreme Assembly, eventually had abolished its supreme authorities and dethroned itself.

Rule of Law.

Rule of law was one of the important topics discussed during the process. It had been raised since the beginning of the process in 1999. But the Committee concluded not to hastily assert it in the Constitution until its basic principles such as adherence to human rights, the independent judicial body, the supremacy of the Constitution, were confirmed.

Provisions on human rights were stipulated during the 2nd stage. The affirmation that judiciary is an independent authority was affirmed in the 3rd stage, the provisions regarding elections were concluded in the 3rd stage, and so forth.

Ultimately, after all the requirements fulfilled, in the 2001 Annual Session, MPR concluded to affirm that Indonesia is a state which is based on the rule of law.

Hence, by claiming rule of law, it should be ultimate that the exercise of state power is curbed by law. Therefore, in a rule of law state (*negara hukum*), the people's elected government is subjugated to the law.

Human rights.

A full set of provisions adherence to human rights was set up in the Constitution in the 2nd stage amendment. Previously, in the Assembly's special session on October 1998, a decree (no. XVII/1998) regarding adherence of human rights had been stipulated.

During the amendment process, there was no serious debate regarding the substance of the principles. Factions reaffirmed their agreement to the principles and to improve the position of human rights from Assembly decree to become constitutional law.

Indeed, there was a proposal that Indonesia should combine the Universal Declaration of Human Rights, which is universal, with 1990 Cairo Declaration of Human Rights which asserts that rights and freedoms should be subject to sharia (Islamic teachings), which is particular. But, other members of the Committee argued that the human rights are universal, inherent in the humanity, not a gift from the state. They are the basic rights which are *qodratiyah* (natural gift of God) and *fitriyah* (disposition) to human beings and what the state should do is to recognize and to guarantee the rights.

Another issue was regarding the right to convert, which was discussed informally. The Committee agreed that it had been included in the stipulation which affirms that every person shall be free to embrace a religion as stipulated in Article 28E (1) and that the right of religion is one of the human rights that cannot be reduced under any circumstances whatsoever, or non-derogable rights, as affirmed in Article 28I (1).

Based on these principles of human rights, the Committee agreed to change the requirement of a President. Historically, there was argument that the president should be a native of Indonesia and a Muslim. Then, the original 1945 Constitution stipulates that the president should only be a native of Indonesia. Eventually, during the 3rd stage of amendment process, it was concluded that it is sufficient that a President shall be an Indonesian citizen as of his/her birth and shall never accept another citizenship due to his/her own accord (Article 6 (1)).

Religion and the state.

During the 4 years amendment process there was no proposal or effort to make Islam as the state foundation or to make Islam as the state religion. All factions affirmed that they did not only accept Pancasila as the foundation of the state but asserted that Pancasila as embodied in the Preamble of the 1945 Constitution must be adhered and maintained as the foundation of the state.

The debate had shifted to how the role of the state in religious affairs should be, especially Islam, and what is the role of religions in the making of state policies, in a state that based on Pancasila with Believe in Oneness of Almighty God as the first principle.

From the 2nd stage, the Islamic factions had been adamant to reinstate the clause “*with obligation to implement sharia Islam to its followers*” after the phrase “*The state should be based on the Oneness of God the Almighty*” in Article 29, renowned as “the seven-words” issue (*tujuh-kata*).

On the other hand, the Islamic factions also proposed that the Article 31 on national education system should stipulate that education should enhance *keimanan* (faithfulness) and *ketakwaan* (devoutness) as well as noble characters.

However, although by number the proponent of the seven-words clause was much smaller than the opponents, we intentionally did not want to take decision by voting.

Eventually, in an informal consultation, the Islamic factions agreed not to hinder MPR to maintain the original Article 29 with condition that their proposal regarding paragraph (3) of Article 31 on Education should be accepted.

Other factions did not opposed the proposal of Article 31 on the basis that what was proposed was regarding the values of religions, not the literal rules of the religions.

Thus, the proponents of the seven-words allowed the plenary to conclude to retain Article 29 as the original, but they asserted not to withdraw their proposal and, although they attended the plenary, would not participate in the decision-making process.

On the other hand they, the proponents, affirmed that the plenary decision is legitimate and binding on all parties, including themselves.

Furthermore, the Islamic factions asserted that they will continue striving for the issue in the future democratically.

Intentionally, we did the deliberation openly, so that the people at large can follow and learn from the process. We did not take decisions by voting in order not to inflict wound in the heart of the people who support the idea.

Therefore, despite that MPR formally and legally had decided to retain the original Article 29, yet, disagreement over the fundamental of the issue was not solved all at once, but become a part that should be answered by the process of social change.

Conclusion.

The success of the democratization of the 1945 Constitution of Indonesia is due to several factors.

The process was carried out constitutionally and undertaken by a constitutional institution established by a democratic election. The process was not conducted in haste and not by a majority-takes-all approach, but by way of deliberation and consensus, so it had cultivated sense of ownership and commitment for its success amongst the actors. The absence of academic draft and the opportunity to propose changes deemed necessary, had added to the sense of ownership and commitment for the success.

In the backdrop, there was a successful election preceded the process, the strong aspiration for democracy among the people, the reform minded people both in the government, the Armed Forces and the oppositions who could achieved agreement to democratize the country in constitutional way.

All of the above was supported by the inclusive Indonesian nationalism, unity in diversity (*bhinneka tunggal ika*) and the existence of the moderate and middle-path (*wasatiyyah*) Islam as the mainstream Islam in Indonesia.

In that regard, the process of the making of the constitution, is not always and not necessarily similar from one country to another.

In the making of a democratic constitution, the main thing is to find the formulas of the immutable principles of a democratic constitution that can be agreed upon, rather than to impose a formula that is used elsewhere. Constitution making is a political process and political decision making is a political art.

Usually, constitutional changes happen in the midst of the reality of the political challenges and should be in interaction with the challenges. Therefore, the process should also be part of efforts to prevent the challenges to become unmanageable and to find solutions to the challenges facing the nation.

Thus, the process of constitutional change is also an instrument for conflict resolution and reconciliation.

Therefore, whether a Constitution can serve as prescription for the state to deal with its challenges is not only determined by the provisions of the constitution but also entrenched on how a Constitution had been made.

The reformed Constitution is not an end goal by itself. For Indonesia, with its diverse society which its daily life is very much influenced by diversities of norms and religious teachings, whereas, the society always changing, the society as a whole can not be assumed has been ready to follow all the principles in the Constitution.

For Indonesia, the ideal goal we want to realize are in the Preamble of the 1945 Constitution, which is an asymptotic goal on the horizon, the ideals that can never be achieved but can be approached. Thus, the amended 1945 Constitution will serve as instruments and guidelines for social changes and to navigate to the desired ideals.

This approach requires space for deliberation, an atmosphere of mutual respect, and even, friendly relations amongst the leaders.

Ultimately, there is no perfect Constitution, and the amended Constitution should be a living Constitution that could always be improved.

References:

1. Aritonang, Jan S., *Sejarah perjumpaan Kristen dan Islam di Indonesia*, BPK, 2004.
2. Azra, Azyumardi, *The Origins of Islamic Reformism in Southeast Asia*, ASAA Southeast Asia Publications Series, 2004.
3. Benda, Harry J., James K. Irikura, Koichi Kishi, *Japanese Military Administration in Indonesia: Selected Documents*. Document no. 6. Translation Series no. 6, Southeast Asia Studies, Yale University, 1965.
4. Elson, R.E., *The Idea of Indonesia. A History*, Cambridge University Press, 2008.
5. Ferejohn, John and Pasquino, Pasquale., *Rule of Democracy and Rule of Law*, in *Democracy and the Rule of Law*, Jose Maria Maravall and Adam Przeworski (ed.), 2010.
6. Hatta, Mohammad., *Untuk Negeriku, Menuju Gerbang Kemerdekaan*, an autobiography, Penerbit Buku Kompas, April 2011.
7. Horowitz, Donald L., *Constitutional Change and Democracy in Indonesia*, Cambridge University Press, 2013.
8. ICMI, *Antara Status Quo dan Demokrasi*, Nasrullah Ali-Fauzi (ed.), Penerbit Mizan, Bandung, 1995.
9. *Iftitah* (Opening) speech of Rois Am KH. MA. Sahal Mahfudh at the opening of National Conference of NU, Surabaya, 27 July 2006.
10. *Ilusi Negara Islam, Ekspansi Gerakan Islam Transnasional di Indonesia*, K. H. Abdurrahman Wahid (editor), LibForAll Foundation, 2009.
11. Kunkler, Mirjam and Stephan, Alfred, *Indonesian Democratization in Theoretical Perspective*, in Mirjam Kunkler and Alfred Stephan (eds.), *Democracy & Islam in Indonesia*, Columbia University Press, New York, 2013.
12. Maarif, Ahmad Syafii., *Islam dalam Bingkai keIndonesiaan dan Kemanusiaan*, Penerbit Mizan, Bandung, 2009.
13. Madjid, Nurcholish (1987), *Islam, Kemodernan dan KeIndonesiaan*, Mizan Publisher, Bandung, New Edition, 2008.
14. Majelis Permusyawaratan Rakyat Republik Indonesia, *Risalah Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Tahun Sidang 1999, Edisi Revisi, Sekretariat Jenderal, 2010.
15. Majelis Permusyawaratan Rakyat Republik Indonesia, *Risalah Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Tahun Sidang 2000, Buku Satu s/d Buku Tujuh, Edisi Revisi, Sekretariat Jenderal, 2010.
16. Majelis Permusyawaratan Rakyat Republik Indonesia, *Risalah Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Tahun Sidang 2001, Buku Satu s/d Buku Empat, Edisi Revisi, Sekretariat Jenderal, 2010.
17. Majelis Permusyawaratan Rakyat Republik Indonesia, *Risalah Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Tahun Sidang 2002, Buku Satu s/d Buku Lima, Edisi Revisi, Sekretariat Jenderal, 2010.
18. Mujiburrahman, *The Struggle of KPPSI in South Sulawesi*, in Martin van Bruinessen (Ed.), *Contemporary Developments in Indonesian Islam. Explaining the "Conservative Turn"*, ISEAS, 2013.
19. Nu, Thakin, Prime Minister of Burma, *Burma Under The Japanese, Pictures and Portraits*, Edited and translated with Introduction by J.S. Furnivall, London, MacMillan & CO Ltd, 1954.
20. Samego, Indria, et.al., "...Bila ABRI Menghendaki", *Desakan-Kuat Reformasi Dwi Fungsi ABRI*, Mizan Pustaka, Bandung, 1998.
21. Sekretariat Negara Republik Indonesia, *Risalah Sidang Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia (BPUPK), Panitia Persiapan Kemerdekaan Indonesia (PPKI) 28 Mei 1945 – 22 Agustus 1945*, Jakarta, 1995.

22. Stephan, Alfred, *Religion, Democracy, and the "Twin Tolerations"*, in Larry Diamond et.al. (ed.), *World Religions and Democracy*, The John Hopkins University Press, Baltimore, 2005.
23. UNITED NATIONS, *Economic and Social Council, E/CN.4/2003/65/Add.2, Commission on Human Rights, 59th session, 13 January 2003, item 11 (d) of the provisional agenda*, point 79 of Chapter X, Conclusions and Recommendations.