

Framework of Amended Constitution of 1945 of the Republic of Indonesia

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Jakarta, April 2010.

Sovereignty and MPR

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- ❑ Sovereignty belongs to the people and it is implemented in accordance with the Constitution.
- ❑ Sovereignty is no longer fully exercised by MPR: The so-called “MPR system” according to the original constitution ceased to apply.
- ❑ MPR is an assembly consisting of fully-elected members of the House of Representatives (DPR, *Dewan Perwakilan Rakyat*) and House of Regional-Provincial Representatives (DPD, *Dewan Perwakilan Daerah*).
- ❑ MPR remains as a separate assembly and (super-) parliament with specific functions: (1). As a constituent assembly, to amend the constitution; (2). Removing President and Vice-President based on well grounded impeachment charge(s) initiated by DPR; (3). Swearing in the elected President and Vice-President.
- ❑ Presidential system: MPR does not elect or appoint President and Vice President; President is not accountable to MPR and there is no GBHN (state policy guidelines) to instruct President.
- ❑ Political accountability of the President is basically to the people (s/he may or may not be re-elected) and to the Constitution (his policy is based on the guidelines provided in the constitution).

Legislature: Asymmetric bicameralism

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- ❑ There is a two-chamber legislature: DPR (House) and DPD (Senate)
- ❑ DPR: House of Representatives with membership entirely elected by the people from party-list nomination according to PR system of election (PR: proportional representation).
- ❑ DPR is a full legislature holding many powerful functions: legislation, budgeting, and oversight; It also holds power to give consideration on the appointment of ambassadors, to select all justices of the Supreme Court and 3-justice of the Constitutional Court.
- ❑ DPD: Council of Regional Representatives with membership entirely elected by the people from multi-member district (i.e. provincial) electoral system.
- ❑ DPD has powers to, e.g.: (1). Initiate bills on center-region relationship; (2). Provide consideration to DPR on national budget items of taxation, education and religion; (3). Send consideration in overseeing the executive, especially with regard to the policy implementation on center-region relation, administration of economic resources, state budget, taxation, education and religion.
- ❑ DPD has no decision making power: Asymmetric and soft bicameralism.

Legislation

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- ❑ A bill may be proposed by President, DPR or DPD;
- ❑ Strikingly enough, however, the executive and the legislature merge in legislation since any law must be deliberated and consented by both the DPR and the President. It is a parliamentary-type of legislation, but both institutions have equal vote.
- ❑ President has no veto power, although he may defer the promulgation of any agreed bill for at most 30 days. Any agreed bill becomes law subsequently.
- ❑ National legislation may be reviewed by the Constitutional Court and declared unconstitutional, therefore becomes null and void (or having no legal efficacy). Democracy is being checked by the judiciary based on the doctrine of constitutional supremacy.

Judiciary

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- ❑ There is independent judiciary with dual-structure, consisting of a Supreme Court (*Mahkamah Agung*) and a Constitutional Court (*Mahkamah Konstitusi*);
- ❑ SC is the court of justice with four jurisdictions (i.e. general, administrative, religious, and military jurisdictions). SC is also granted the power to review legislations below statutes;
- ❑ CC is the court of (constitutional) law with final and binding decision, having powers of judicial review of legislation, resolving disputes between state organs (intergovernmental affairs), deciding electoral disputes, hearing the claim of the government to dissolve of political parties, and to issue a ruling on presidential impeachment charge brought by DPR;

Judiciary

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- ❑ A judicial commission (*Komisi Yudisial*) is established to conduct partial judicial recruitment, i.e. for the SC justices. It selects and nominates candidates to be decided by DPR.
- ❑ But JC/KY plays no similar role in the recruitment of CC's 9-justice. CC's 9-justice are selected by President, DPR and MA (three from each state organs);
- ❑ JC members are appointed by President with the approval of the DPR.
- ❑ JC/KY is also mandated to guard and implement the honor, dignity and conduct of judges. The commission deals with ethical issues. It should become an institutional checks on the judiciary.
- ❑ However, KY's role to do so on the CC justices has been paralyzed by the CC in 2006.

Presidential executive

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- ❑ **President is both chief executive and head of state;**
- ❑ **Presidency is a single chief executive: President and Vice President are elected in a single election ticket;**
- ❑ **President and VP are directly elected by the people through two-round FPTP election system; presidential candidates are nominated by party or coalition of parties;**
- ❑ **President holds his office for a fixed term of 5-year, and can be re-elected for another term. This helps stabilize his/her administration;**
- ❑ **President and VP may only be removed from office by MPR, based on impeachment articles and procedure initiated by the DPR. It involves the Constitutional Court to decide the validity of the charge. Parliamentary vote of no-confidence no longer becomes constitutional ground for presidential removal;**

Elections

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- ❑ **Several systems**
- ❑ **TRS-FPTP for presidential election;**
- ❑ **FPTP for provincial and district executives; individual, non-party candidacy are permitted;**
- ❑ **Proportional representation (party list) for national and local houses of representatives (DPR and DPRD). There are 6 local parties in Aceh eligible to run in the 2009 elections;**
- ❑ **Multimember district (i.e. 4 from each province) for the upper chamber parliament (DPD).**

Center-region relation: A unitary state with political decentralization

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- ❑ Indonesia is a unitary state with asymmetric center-region relationship, in the sense that the Constitution allows special arrangement between center and regions.
- ❑ Central government holds power over the entire nation, but regions are granted autonomy as provided in the Constitution and the implementing laws: e.g. The Constitution mandates the election of local councils and local executives; the Law on Local Government 2004 grants regional autonomies except on foreign policy, defense and security issues, the judicial system, monetary and fiscal policies, and religious affairs.
- ❑ Regions hold no original powers, do not give consent to or initiate constitutional amendment, established by law, and subject to national legislations. Such characteristics do not qualify regions as states in federal system.
- ❑ However, regions may issue local regulations pursuant to higher laws and subject to reviews by central executive and the judiciary (MA).

Human rights protection

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- ❑ Extensive protection of rights in the Constitution (Main ideas: dignity, freedom, equality, solidarity), including nonderogable rights (28I (1) Constitution). RI ratified ICESCR (Law 11/2006) and ICCPR (Law 12/2006);
- ❑ Duties of state (28I(4) UUD 1945): to protect, respect, enforce and fulfill human rights. 28J(2) UUD 1945: limitation of rights. 28J(1) UUD 1945: reciprocal principle to respect the rights of others;
- ❑ There is Humrights court for past and current abuses: Gross violations of human rights (genocide and crimes against humanity) are tried by HR Court: current abuses by 'regular' HR Court (in Jakarta Pusat, Surabaya, Medan, Makasar) past abuses (prior to HR Law of 2000) are tried by *Ad hoc* HR Court (established by President on DPR recommendation). Local Humrights court will be established in Aceh (Law on Government of Aceh of 2006).
- ❑ Law and institution for the protection of witnesses and victims of crimes (LPSK; not necessarily for whistle blowers on crimes).
- ❑ Constitutional Court also enforces human rights (as constitutional rights) from being violated by parliamentary laws.

Independent constitutional bodies

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- ❑ **Election commission;**
- ❑ **Judicial commission;**
- ❑ **Central bank;**
- ❑ **Law enforcement agencies: anticorruption (KPK), financial frauds (PPATK), unfair trading (KPPU), human rights commissions (Komnas HAM, Komnas Anak, etc.);**
- ❑ **Prosecution (Attorney General Office), police, prisons (under Ministry of Law and Humrights);**

Checks and balances

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- ❑ **Separation of powers: powers of the state are more distributed into several organs;**
- ❑ **State organs are horizontally related through checks and balances: several examples;**
- ❑ **Spatial distribution of powers between center and regions through decentralization (except on foreign relations, judiciary, defense, monetary and fiscal policies, and religion); it includes regional autonomy to issue local regulations pursuant to higher laws and subject to reviews by central executive and the judiciary (MA).**

***Rechtsstaat* and Constitutional Supremacy**

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- ❑ **Constitutional supremacy: Constitution as the highest law;**
- ❑ **Independent judiciary: Constitutional court; Administrative court, Humrights court;**
- ❑ **Protection of human rights;**