



Inclusion, participation and representation: Indonesia as a case study

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The main focus of this analysis of constitution-building in Indonesia is the constitutional amendment process of 1999-2002, which was the major point in the post-1998 reform after the fall of Suharto's Presidency.

At what points in the constitution building process was representation used in Indonesia? In what institutions or forums did representation occur?

According to the then prevailing Constitution – the original Constitution of 1945 – constitutional amendments could only be made by the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat* or MPR). At the time of the reforms, which began in 1999, the People's Consultative Assembly consisted of 695 members: 500 members were at the same time the members of the House of Representatives; 130 members were the representatives of the provinces elected by the Local House of Representatives; and 65 members were representatives of societal groups appointed by the Election Committee. Among the 500 members of the House of Representatives, 38 seats were allocated to the Military and the Police Force and the rest were elected through the general election in 1999. The 1999 election was the first democratic election after Suharto's government and 12 parties were voted into the House of Representatives.

However, it is important to underline the fact that the representatives of the provinces and societal groups were appointed, not elected. Because any type of political institution, including political parties, societal organisations, non-governmental organisations (NGOs), and the like were heavily regulated by Suharto to minimise political participation by the general public, the appointed representatives were not seen as the legitimate representatives of the groups.

At the same time, Indonesian civil society started to develop a civil society coalition to advocate for a participatory constitution amendment process. In 1999, a civil society coalition was formed by a number of NGOs. The Coalition proposed a Constitution Commission with a participatory constitution-making process and at the same time advocated for several important provisions in the Constitution, ranging from human rights to direct presidential election. This two-tier advocacy was conducted as a strategy to respond the fact that the Assembly went on with the political process amidst the push for the Constitution Commission.

What different groups were represented at each of stage of the constitution building process?

During the course of the 1999-2002 amendment process, the People's Consultative Assembly, assisted by the Civil Society Coalition (which in 2000 changed its name to "Coalition for New Constitution") went to major cities nation-wide. Mostly they visited universities because universities have always been seen in Indonesia as the major source of knowledge and wisdom.

The Civil Society Coalition balanced this approach by suggesting local NGO leaders to be invited to the forums and by organising its own forums using its nation-wide network. While the formal institution mandated for the constitutional amendment process is the People's Consultative Assembly, most of the feedback presented to the Assembly's members came through hearings, paper submissions and lobby sessions from the forums organised by the Civil Society Coalition.

Military representatives were accommodated by the Constitution at that time. There was not any opportunity to reject their participation. It can be understood now when one observes the debates in the formal records of the amendment process that there were efforts by the military representatives to block major changes to the Constitution, including the separation of military and the police.

In principle and in practice, how did representatives relate to those they were representing?

As mentioned above, the representatives of the provinces and societal groups were appointed, not elected. There was not any form of formal political communication between these representatives and those represented.

The other (major) part of the Assembly was the House of Representatives, which included a number of appointed military seats. There was very minimal representation channel between the members of the House and those who elected them. Generally, the members would consult with the elite of the political parties but not their constituents. This is actually still the case at present.

The representatives assumed their freedom of action as the representatives of parties who would advocate for the interests of their respective parties.

How legitimate were the representatives in the eyes of those they represented? What factors affected their legitimacy?

The legitimacy of the representatives was based on the 1999 election process. It is important to note that the constitutional amendment process was conducted only one year after Suharto's authoritarian regime fell, thus ideas of democratic representation were not well-developed and understood by the general public. Informed members of public such as academics and NGO activists would be critical in watching the actions of the representatives, but the majority of the public followed the process only through the media.

The major factor that affected the legitimacy of representatives was their responses towards a popular issues, such as direct presidential election and the welfare provisions in the Constitution, and in particular how they would make public comments (in the media) on these issues.

Were there connections or linkages between representatives involved in these constitution building processes at the national level in Indonesia and those engaged in complementary activities at the regional level (particularly Aceh)? Are there insights to be drawn for others from the way in which representation worked across the two levels of the state?

During the 1999-2002 constitutional amendment process, Aceh was still in conflict, and a state of military emergency applied in 2003-2004. There was not any particular connection between the People's Consultative Assembly and the public in Aceh. Although there were representatives from Aceh, the representatives mainly consulted with the political parties instead of their constituents. With the conflict situation in Aceh at that time, I hardly remember any event in which the Assembly or the Civil Society Coalition went to Aceh to discuss the constitutional amendment issues.

The connection between the representatives and those engaged in complementary activities at the regional level were managed by the Secretariat of the Assembly who would compile papers and records of the regional forums. Typically, members who went to the regional forums would also share their insights in the formal meetings of the Assembly. However, a clear and transparent record on how feedback from the regional level was brought into the discussion is not available.

Similarly, input from civil society and whether or not it was considered in the deliberations was not well-recorded. Therefore, it was not clear if the issues discussed in the deliberations were taken from the regional forums and civil society. The record is made available by the Constitutional Court, but it only documents the formal sessions of the Assembly (ie minutes of meetings).

In general, what were the positive and negative aspects of the use of representation in Indonesia, with what implications for the success of the implementation of the new arrangements in Indonesia?

I would say that the amendment process was considerably successful due to the work of the Civil Society Coalition in organising forums, expert opinions, and materials for the representatives. In the then recently opened democratic sphere, with minimal channels between the representatives and their constituents and political parties that were heavily controlled by the elites, the representatives in the People's Consultative Assembly would have struggled to put the new democratic arrangements in Indonesia's Constitution.

I see this as a movement, with political opportunity for reform pushed by the civil society. Important for the movement is the social network created by the Civil Society actors and political actors in the Assembly. Hearings and lobbying sessions, in which ideas for democracy were presented, were made effective by the social network developed.

Therefore, my reflective conclusion about the positive and negative aspects of the use of representation in Indonesia is not only about the ways in which the representatives were selected/appointed and worked, but also the social network developed in the context of constitutional amendment as social movement. For the benefit of the discussion, I would move away from the technical aspects, such as the connection between central and regional level and the management of the Assembly. In the Indonesian case study, it is more relevant to see the Constitutional Amendment as a social movement instead of a mere formal process.

It is important to understand the political context in 1999, when the amendment process started, as a situation where ideas for democracy were scattered and heavily influenced by the 'old elites' from Suharto. At the same time, civil society was blooming and rightly saw constitutional amendment as a golden opportunity for democracy.

There are four points of observation on the political situation in Indonesia which led me to this conclusion.

- (1) Ideas of democracy were not fully developed and understood by the general public. The constitutional amendment process was conducted only one year after the fall of Suharto and only five months after the election. During Suharto's authoritarian regime, the public was generally taken away from politics. Political discussion was subversive and those who even mentioned the words "constitutional amendment" could get punished by the government. As a result, only very few people understood the principles and institutions of democracy and the rule of law.

- (2) The composition of the People's Consultative Assembly (the representatives) was not conducive to democratic deliberation. Only three out of ten fractions (political party groups) in the People's Consultative Assembly were well-established and had well-developed political party structures at central and regional levels, as Suharto only allowed three political party to exist during his administration. Out of the ten fractions, one was the military/police force, one was the appointed regional representatives, and one was the appointed societal organisation representatives.
- (3) Civil society (NGO activists, scholars) was blooming after the opening up of democratic space after Suharto. They were the 'new elites' entering a political space that used to be closed.
- (4) In this newly opened democratic space, ideas were driven by the elites. The elites were the main actors that could be beneficial for democracy if the political mobilisation was to be conducted. As the 'new elite' in the democratic space, the NGOs and scholars saw this as a political opportunity to have ideas discussed and adopted by the formal institution, (the Assembly) into the Constitution. Social networks were built using connections of schools (universities), organisations and personal connections, including between senior NGO activists who successfully won the election and went into the Assembly.

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