



RATIONAL CHOICE INSTITUTIONALISM, CONSTITUTIONAL REFORM, AND CONSTITUTION MAKER IN INDONESIA

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Abstract

Most political literature argues that outcomes in Indonesian constitutional reform 1999-2002 were determined mainly by the political actors. Notwithstanding the existing research providing insightful evidence, there is still a gap in which those literature discount the role of the party system in shaping and constraining the way the political actors within a party behave. Using archival research method and drawing on one of the new institutionalism concepts – ‘rational choice institutionalism’ – the argument puts forth here is that Indonesian multi-party system (independent variable) forced the political parties (intermediary variable) to form a winning-coalition which finally produced a compromised outcome (dependent variable) of constitutional reform on the articles about relations between president and legislature.

Keywords : *Indonesia, constitutional reform, democracy, institution*

Sebagian besar literatur politik berpendapat bahwa hasil reformasi konstitusi Indonesia 1999-2002 ditentukan terutama oleh aktor politik. Meskipun penelitian yang ada memberikan bukti yang mendalam, masih terdapat kesenjangan di mana literatur tersebut mengabaikan peran sistem kepartaian dalam membentuk dan membatasi cara para aktor politik dalam suatu partai berperilaku. Menggunakan metode penelitian arsip dan mengacu pada salah satu konsep new institutionalism – ‘rational choice institutionalism’ - argumen yang dikemukakan di sini adalah bahwa sistem multi-partai Indonesia (variabel independen) memaksa partai politik (variabel perantara) untuk membentuk koalisi pemenang yang akhirnya membuahkan hasil kompromi (variabel terikat) dari amandemen konstitusi pada pasal-pasal tentang hubungan presiden dan legislatif.

Kata kunci: Indonesia, Amandemen Konstitusi, Demokrasi, Kelembagaan

INTRODUCTION

Most political literature argues that outcomes in Indonesian constitutional reform 1999-2002 were determined mainly by the political actors. King (2004 p.2) argues that key politicians in the

Indonesian constitution amendment play crucial roles in reforming the checks and balances and separation of powers. Similarly, Horowitz (2013 p.1) and Indrayana (2005 p.290) found that Indonesian constitutional reform was

dominated by leaders who were active in the Suharto's authoritarian era before 1998. Moreover, Dressel and Bunte (2011 pp.12-13) argue that military actors and social forces in the Indonesian constitutional reform were successful in constructing new articles such as direct election, limited roles of military representations, and the existence of constitutional court.

Notwithstanding the existing research providing insightful evidence, there is still a gap in which those literature discount the role of the party system in shaping and constraining the way the political actors within a party behave. As, in a two-party system, generally a country has more adversarial politics between government and opposition, while the multi-party system produces more consensual politics, where political actors within the political parties will come together more to build majorities (Aldrich, 2013 p.4; Schofield et al. 2011 p.484).

Therefore, I ask: how did the Indonesian structure of political party system affect the outcomes of the constitutional reform? The purpose of this paper is to show that the structure of the Indonesian party system determined the outcome of Indonesian constitutional reform 1999-2002 through shaping the way the political actors within political

parties behaved. This paper describes an analysis of the constitutional reform, namely the article of the relations between president and legislature to support the checks and balances and separation of powers (King, 2004 p.3; Indrayana, 2005 p.129). The analysis uses data from thesis of Doctor of Philosophy from King (2004) at Ohio State University and Indrayana (2005) in Faculty of Law, University of Melbourne. The argument puts forth here is that Indonesian multi-party system (independent variable) forced the political parties (intermediary variable) to form a winning-coalition which finally produced a compromised outcome (dependent variable) of constitutional reform on the articles about relations between president and legislature.

One of the democratic era's agendas in Indonesia 1998 was to strengthen checks and balances by reducing the power of the president and by increasing the power of the legislature (Crouch, 2003 p.35). The agenda was conducted through reforming the Constitution 1945 where it happened in the People's Consultative Assembly (MPR) (p.52). MPR was a legislature session which consisted of all members from lower and upper houses of representative (p.52).

Before the constitutional reform happened, Indonesia held a legislature election for the lower house of representative (Indrayana, 2005 p.111). The results of the legislature election were Indonesian Democratic Party of Struggle (PDIP, 185 seats), Working Group Party (*Golkar*, 181 seats), Unity and Development Party (PPP, 70 seats), *Reformasi* (48 seats), Army/Police (TNI/Polisi, 38 seats), Star and Moon Party (PBB, 14 seats) (Thompson, 1999 p.16).

Process of the constitutional reform happened in dynamic ways, as all MPR factions did not agree with the idea of constitutional reform (King, 2004 p.14). The seven MPR factions were divided into two ideological blocs (p.16). First, conservative bloc which was a bloc that preferred status quo (did not want to reform the constitution) – PDIP and TNI/Polisi (p.18). Second, progressive bloc was a bloc that preferred to change the constitution – *Golkar*, PKB, PPP, and *Reformasi* (p.19).

The changes in the articles about relations between president and legislature happened gradually in three amendments in 1999-2001 (King, 2004 p.92). In the first and second amendment in 1999-2000, the conservative bloc always tried to vote against the progressive bloc's preference,

so the change was not significant (p.93). Finally, the biggest change happened in the third amendment in 2001 as conservative bloc came together with the progressive bloc to vote with the same preferences (p.93).

Notwithstanding this paper providing substantial evidence, it still does not include the role of international institutions – International Monetary Fund, the World Bank, and Asian Development Bank – in inferring the outcomes of the constitutional reform. Butt and Lindsey (2011 p.302), Crouch (2008 p.382), and Sherlock (2002 p.367) argue that those international organisations had prominent roles as donors when Indonesia was facing a political, economic, and social crisis between 1997 and 2002. Indeed, in case of anti-corruption commission as one of the products of Indonesian constitutional reform in 1999-2002, those international institutions had significant roles in the idea of reforming the commission (Schutte, 2012 p.42).

Nevertheless, those were just in the idea of reform, the way the reform worked, what institutions choice existed, what preferences were made are still based on the roles of Indonesian actors *per se* (p.42). Therefore, we can conclude that in the case of articles of relations between president and legislature, the most

significant institutional determinants of the constitutional reform are indeed the Indonesian institutions (multi-party system).

The following sections of this paper are structured as follows. First, I present briefly concepts of rational choice institutionalism which imbued the establishment of a winning-coalition among the MPR political party factions within their arena and according to their rules. Second, I analyse how multi-party system influenced the constitutional reform through shaping the political parties' behaviour.

THEORETICAL FRAMEWORK

The way to construe the relationship between behaviour and institutions can be conducted through understanding the concept of new institutionalism (Hall & Taylor, 1996 p.937). One of the new institutionalism concepts is 'rational choice institutionalism' (Shepsle, 1989 p.131). Its assumptions are: actors are utility-maximizers that have preferences (calculus approach), prisoner's dilemma exists in this regard, actors are rational with exogenous goals from an institution, and institutions will continue if they remain more precious than other institutional preferences (Shepsle, 2008 pp.2-8; Hall & Taylor, 1996 pp.944-945; Wittman, 1973 p.976).

In the multi-party system, political parties as stable organisations where political actors coordinate their activities in parliamentary assemblies come together more to build majorities (Boix, 2009 p.499; Wittman, 1973 p.977). As politicians are rational choosers where they always want to achieve winnings, they tend to form a winning coalition as large as necessary or minimal size coalition (Riker, 1962 pp.32-55; Hindmoor & Taylor, 2004 p.55). Therefore, the Indonesian multi-party system forced the actors within the constitutional reform 1999-2001 who were rational to use the MPR political party factions to achieve their utility-based preferences by coming together to build majorities as large as necessary (Shepsle, 2008 pp.2-8; Hall & Taylor, 1996 pp.944-945; Wittman, 1973 p.976).

MPR's rules

As Indonesia is *Rechtsstaat* country (rule of the law-based country) (Pollit, 2017 p.1), the way the actors behaved to shape the constitutional reform based on rational choice institutionalism was subject to the highest regulation, namely the Constitution 1945 (UNESCO, 2019 p.1). The Constitution 1945 is a written constitution which contains the sets of rules, customs, and practices where

Indonesia regarded it as a fundamental law (DeSmith & Brazier, 1989 pp.3-4).

The constitution regulated that Indonesia was a country with the presidential system (UNESCO, 2019 p.2). The chief of the executive was the president; and the legislature used a bicameral system with a session where both upper and lower houses of representative will meet together, namely in the MPR (p.2). The relation between president and MPR were that the president was elected by the MPR members every five years (p.2). The president was a mandatory part from the MPR, where the MPR had an authority to construct the state programs, then the president's task was to implement those state programs (p.2).

The Indonesian constitution could be revised (UNESCO, 2019 p.3). The requirement to revise the constitution was that if two-thirds of MPR members agreed to revise it (p.3). Moreover, within debates of the constitution amendment, a preference could be stipulated officially if the preference was supported by two-thirds of votes of MPR members who were attending (p.3).

How multi-party system influenced the constitutional reform's outcome First and second amendments 1999-2000

In the first amendment, agendas to strengthen the relationship between president and legislature were direct elections and authority to establish laws (King, 2004 p.92; Indrayana, 2005 p.129). The existing election system was an indirect election where MPR members elected the president, and there was no limitation of how many times a person could be a presidential candidate (Indrayana, 2005 p.129). Those were deemed as a threat to Indonesian democracy (p.130). The indirect election was the contributors to Soeharto's authoritarian era in maintaining his power to be the president for 32 years, as Soeharto could manipulate the MPR members (p.130).

In terms of article reform of indirect election, *Golkar*, PKB, PPP, PBB, and *Reformasi* had a goal preference to change the indirect election (King, 2004 p.93). The reason for those parties that chose to reform the indirect election was that political actors of PKB, PPP, PBB, and *Reformasi* were the victims of Suharto's authoritarian era (p.93). While *Golkar's* political actors were not the authoritarian era's victim rather, they just had

progressive thought to achieve better Indonesia (p.93).

The other two MPR political parties' preference was not the same as the previous parties (King, 2004 p.95). PDIP and TNI/Polisi had a goal preference not to change indirect election (p.95). The reason for those parties that chose not to reform the indirect election was that, first, PDIP which was the winning party in the legislative election 1999 always voted for the indirect election (p.95). Politically, after the legislative election, Indonesia held an indirect presidential election (p.96). In this election, chief of PDIP who was one of the presidential election candidate lost, because MPR members preferred to choose the chief of PKB (p.96). Based on this situation, PDIP believed that soon or later, their chief would be the next president, so they did not want to change the indirect election (96). Ideologically, the constitution was the product of Indonesian founding fathers in 1945 that meant it was a holy book which could not be changed (p.97).

Second, another reason to not change the indirect election was that TNI/Polisi regarded that the existing election was part of the Constitution 1945 (King, 2005 p.97). If TNI/Polisi voted for reforming the indirect election, then it would harm the original constitution (p.98). TNI/Polisi

believed that the constitution was a holy book, as the constitution was a leading source of the authoritarian era (1965-1998), where TNI/Polisi was the primary tool of the authoritarian era (p.98).

Considering the Indonesian multi-party system and the requirement of two-thirds of votes to win voting, all MPR party factions who were rational choosers moved to build majorities through winning-coalitions (King, 2004 p.92; Shepsle, 2008 pp.2-8; Hall & Taylor, 1996 pp.944-945; Wittman, 1973 p.976). Each moved by relying on two ideological blocs, namely whether they preferred the status quo by not changing the Constitution 1945, or they preferred to change the Constitution 1945 (King, 2004 p.92). *Golkar*, PKB, PPP, PBB, and *Reformasi* came together to build a winning-coalition under progressive blocs (King, 2004 p.92). In total, the progressive bloc's votes were 337 (Thompson, 1999 p.16).

Considering the significant preference of progressive bloc to reform the Constitution 1945 (as a constraint), PDIP or TNI/Polisi could not play alone (King, 2004 p.101). They needed to form a conservative bloc to vote against the progressive bloc's preference, as PDIP or TNI/Polisi alone did not have enough votes to vote for the constitutional reform

draft individually (p.102). On the one hand, if PDIP played alone to vote against the direct election and TNI/Polisi did not attend in the voting as their protest, then votes for direct election were 337 and votes against direct election were 185 (Thompson, 1999 p.16). So, the 337 votes fulfilled the requirement of two-thirds of votes to win voting; then the direct election would be stipulated (p.16).

On the other hand, if TNI/Polisi played alone to vote against the direct election and PDIP did not attend in the voting as their protest, then votes for direct election were 337 and votes against direct election were 38 (Thompson, 1999 p.16). So, the 337 votes fulfilled the requirement of two-thirds of votes to win voting then the direct election would be stipulated (p.16). Therefore, PDIP came together with TNI/Polisi to form a conservative bloc to build a winning coalition to cancel the direct election preference (King, 2004 p.101).

As such, in total progressive bloc's votes were 337 and conservative bloc's votes were 199 votes (Thompson, 1999 p.16). The final votes in the first amendment showed that the progressive bloc could not achieve the requirement of two-thirds of votes to win the direct election draft voting, so the conservative bloc was successful in withstanding the

progressive bloc (King, 2004 p.103). Consequently, Indonesia still implemented indirect election, as the efforts to achieve a final draft for the direct election always found failure (p.103).

In terms of authority to establish laws, there was a preference that president no longer had an authority to establish laws instead president had a right to propose a law bill to the legislature (Indrayana, 2005 p.129). The authority to establish the law was given to the legislature (p.129).

The progressive bloc was able to force the conservative bloc to come together to vote for that preference (King, 2004 p.94). The conservative bloc also was willing to come together with the progressive bloc because the preference was not regarded as a threat for the conservative bloc's interests (p.94). Thus, in terms of authority to establish the law, the voting within the MPR was successful in changing the existing article of the constitution to the new provisions (p.95).

Those first amendment patterns in terms of interests, winning coalitions, and the way the coalitions happened and worked on direct election provisions were the same in the second amendment (King, 2004 p.104). In the second amendment, the constitutional reform on strengthening the

relationship between president and legislature which still focused on changing the indirect election found failure as the conservative bloc of PDIP and TNI/Polisi voted against the direct election (King, 2004 p.; Indrayana, 2005 p.).

Third amendment 2001

In the third amendment, there were three agendas to strengthen the relations between the president and the legislature, namely direct election, president provision, and relations between MPR and president (King, 2004 p.93; Indrayana, 2005 p.198). The president provision was that the president could not dismiss lower houses (Indrayana, 2005 p.198). The relations between MPR and president were that the MPR could not dismiss president, president could only be impeached if he or she breaks the laws (betray the state, corrupt, bribery, and crime), and the task of MPR was to reform the constitution, was to stipulate the elected president, and just could dismiss president if the president's tenure period was over (p.199).

The existing conditions of those three agendas were that Indonesia still implemented indirect election as in the attempts in the first and second amendments were failed (Indrayana, 2005 p.199). So, the indirect election was still deemed as a threat to Indonesian

democracy (p.200). The indirect election was the contributors to Soeharto's authoritarian era in maintaining his power to be the president for 32 years, where Soeharto used the indirect election to manipulate the MPR members to vote for him (p.201). Similarly, in terms of president provisions, the president still had an authority to dismiss the legislature, where this authority caused President Wahid was impeached at the beginning of 2001 before the third amendment was started (p.201). Moreover, in terms of MPR and president relation, MPR position was more powerful than president position, where MPR held authorities to dismiss president; and the president was the mandatory part of MPR which the task to implement what MPR arranged for the state's programs (p.202).

As before the third amendment happened that there was a national tragedy where President Wahid (chief of PKB) in 2001 was impeached by the MPR members and the MPR stipulated Vice President Megawati (chief of PDIP) to be the president, PDIP then had a goal to save their position (King, 2004 p.104). They regarded that the existing president position under the first and second constitutional reforms was still vulnerable towards the MPR's power (p.105). PDIP thus needed to strengthen the president

position for sustaining their president's tenure by reducing the MPR power (p.105).

The way the PDIP, as a rational chooser, achieved their interest was that they understood that in the multi-party system and the requirement of two-thirds of votes, they should move to build majorities through a winning-coalition (King, 2004 p.92; Shepsle, 2008 pp.2-8; Hall & Taylor, 1996 pp.944-945; Wittman, 1973 p.976). PDIP understood the constraint in the previous reforms that the progressive bloc had a strong preference for the direct election (King, 2004 p.115). So, to force the progressive bloc to come together with PDIP and TNI/Polisi to vote for reducing the MPR power towards the president power, PDIP gave a bargaining by giving an option, namely if the progressive bloc would like to come together with the conservative bloc in regards with the MPR and president reform provisions. PDIP along with TNI/Polisi (PDIP's loyalist) then would come together with the progressive bloc in regard to the direct election reform provisions (p.115).

Finally, all MPR party factions agreed with that bargaining, then PDIP and TNI/Polisi started to move to come together with the progressive bloc in terms of implementing direct election (King,

2004 p.116). So, votes for the direct election in the third amendment were 536, where it fulfilled the requirement of two-thirds of votes to stipulate the final draft of the direct election (p.116). Moreover, progressive bloc and PDIP and TNI/Polisi came together to build a winning-coalition to pass the draft of strengthening the president position with MPR power (p.116). So, votes for the draft of strengthening the president position with MPR power in the third amendment were 536, where it fulfilled the requirement of two-thirds of votes to stipulate the final draft of strengthening the president position in relation with MPR power (p.116).

CONCLUSION

This paper analysed how the structure of the party system determined the outcome of Indonesian constitutional reform through shaping the way the political actors within political parties behaved in Indonesia constitutional reform 1999-2001. The constitution amendment happened during the MPR debates on reforming the relations between president and legislature.

This paper found that because of the Indonesian multi-party system, all MPR political party factions needed to come together to build winning coalitions under

MPR rules of the requirement of two-thirds of votes to win the voting. The winning coalitions which existed in the first amendment in 1999 on the direct election provision were that PDIP came together with TNI/Polisi to build a conservative bloc coalition under the idea that they did not want to change the indirect election. While other MPR political party factions – *Golkar*, PKB, PPP, *Reformasi*, and PBB – came together to build a progressive bloc coalition under the idea that they wanted to change the indirect election. Consequently, the direct election could not be stipulated as a progressive bloc could not achieve the two-thirds of votes requirement to win the voting, while a winning coalition which existed in the first amendment in 1999 of authority to establish laws was that progressive and conservative blocs came together to vote for the provisions of authority to establish laws. These coalition patterns on the reform of the indirect election also existed in the second amendment. While, for the third amendment, with the changing interests from PDIP (with TNI/Polisi as PDIP's loyalist), conservative and progressive blocs finally came together to vote for direct election with bargaining that they also voted for reducing MPR power on president power. Moreover, this paper's findings contribute to filling the gap of

empirical evidence of existing literature of the Indonesian constitutional reform 1999-2002 on how the structure of Indonesian party system determined the outcome of Indonesian constitutional reform 1999-2002 through shaping the way the political actors within political parties behaved.

ACKNOWLEDGEMENT

This article is based on final paper of POGO8402 The Political and Institutional Architecture of Public Policy Crawford School of Public Policy, Australian National University

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