Abstract: Following the dramatic changes caused by the financial crisis in 1997, and the transition from authoritarian government to more democratic system which marked the era of reformasi, the issue of governance dominated the public discourse in Indonesia. Previously characterised by ‘the state-centrism’ which led to the practice of ‘bad governance’ and resulted in the dysfunction of governance system, the governance system has been transformed to be more accommodative to public participation. Indonesia’s reformasi activists demand the principle of good governance should be the basis of any Indonesian law reform. In practice, the changes give impact to the three main aspects of governance system, including policy, state institutions, and the relation between the state and its people. In this paper, I argue that changing paradigm on governance is fundamental to the ‘formal’ improvement of governance system. However, its chances to be fully realised are slow and difficult due to several competing interests between, on the one hand domestic or internal political pressures and, on the other hand, external or international factors.

Keywords: Indonesia; governance; law reform; authoritarian; state centrism.


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1 Introduction

Following the dramatic changes caused by the financial crisis in 1997, and the transition from authoritarian government to more democratic system which marked the era of
reformasi, the issue of governance dominated the public discourse in Indonesia. Previously characterised by ‘the state-centrism’ which led to the practice of ‘bad governance’ and resulted in the dysfunction of governance system, the governance system has been transformed to be more accommodative to public participation. Indonesia’s reformasi activists demand the principle of good governance should be the basis of any Indonesian law reform.

In practice, the changes give impact to the three main aspects of governance system, including policy, state institutions, and the relation between the state and its people. Despite the impressive outcomes of constitutional and institutional reform in Indonesia since Soeharto, the governance reform agenda has faced practical difficulties in forcing rapid change. Corruption, patron-client relations, and ‘money politics’ remain significant. As a result, strengthened voice, improved public service, reduced corruption, and increased accountability have yet occurred in many places. It is therefore argued the Indonesian governance system has been improved, at least formally, but that the implementation of governance reforms has been slow and difficult due to the absence of comprehensive legal reform design. This is because current governance reform has paid little attention to the ‘core’ governance actor, that is, the bureaucracy. Moreover, it is argued that changing paradigm on governance is fundamental to the current implementation of governance reform and that its chances to fully realised are slow and difficult due to several competing interests between, on the one hand domestic or internal political pressures and, on the other hand, external or international factors.

2 Old Indonesian governance system: legacy of the state-centrism

Adil Khan states that the characteristics of governance are often a “result of complex historical, geographical and cultural contacts and interplays”.

In short, “the one size fits all” approach is likely to be unsuitable for the discussion of governance and, accordingly, the best way is “to recognise clear-headedly the areas in which local factors are relevant and those in which certain rights, needs and interests common to all human beings should take priority”. Similarly, the characteristics of the Indonesian governance have been shaped through a wide range of experiences since the independence and as Khan argued are a “result of complex historical, geographical and cultural contacts and interplays”. Moreover, Indonesia’s governance system reflects ‘difference, dynamism and disjuncture’. ‘Difference’ refers to various political lives; ‘dynamism’ underlines the rapid process of social changes whereas ‘disjuncture’ means “the side-effects, contradiction and conflict that emerge in response or opposition to those changes”. Given these combined characteristics of governance, it is easy to understand why Indonesian governance reform has been slow and difficult.

Three crucial stages were considered important in shaping the governance system during the Old Order period: the period of defending independence, from 1945 to 1949; the period of liberal democracy in the 1950s; and the development of authoritarian regimes from 1959 to 1966. A number of themes link all these periods. These include conflict over the form of the state; the trials of democracy; the search for an appropriate guiding ideology; the emergence of militarism; and the problems of accommodating religious and ethnic/regional sentiment.

The Indonesian revolution from 1945–1949 can be seen as a challenge on two fronts, internal and external. The external threat came from the Dutch intention to reclaim
Indonesia as their colonial possession, whereas the internal challenge was caused by a conflict among the Indonesians themselves about the proposed form of their state. The latter challenge is more relevant in discussions about the Indonesian governance practices as a number of fundamental issues that emerged before the independence continued to influence the future governance practices of the new republic. These included ‘integralism’; Islam; democratic socialism; and Marxism.  

The 15 years from 1950 to 1965 is often described as a struggle between competing forces within the Indonesian Republic, including Muslims, Communists, regionalists, the army and Soekarno, the president. Although parliamentary democracy was implemented in 1950s, it did not enjoy a long period of implementation, as ‘integralist’ and Communist elements moved to the centre of politics. These debates over the form of governance were resolved temporarily in 1966 “in favour of the armed forces and their integralist views of statecraft”. In that year, President Soekarno was toppled and the New Order regime came to power.

The governance system of the New Order administration was a strong government that was very centralist in nature. It was also a “presidential variation of bureaucratic polity”, characterised by major political role for military, a top-down decision-making process and weak parliament. Moreover, governance under the bureaucratic polity system was often characterised by greater degrees of corruption and inefficiency. This is because the main concern of a bureaucratic polity is typically serving the interest of public officials, rather than the goal of national development, although it often uses the issue of development as the basis of its legitimacy. Jamie Mackie therefore argues that the key feature of governance under the New Order government was “the gradual transmutation of the Indonesian political system into a fully-fledged bureaucratic polity, a beamtenstaat or negara pejabat”. In this way, all important policies and decisions were determined by the bureaucratic apparatus.

More importantly, the concept of integralistic state, proposed by Soepomo in 1945, played a major role to back-up the authoritarian character of the New Order government. This is mainly because the concept of integralist state idea regards the individual as an organic part of the state through which the goals of the state can be obtained. The protection of the fundamental rights and liberties of individuals was not considered an important issue.

The New Order government therefore issued a number of policies and rules for governance practices, including the enactment of statutes, such as Law No. 3 of 1971 regarding Anti-Corruption. In addition to existing traditional means for supervision, such as the House of Representatives (Dewan Perwakilan Rakyat or DPR) for political supervision and the Supreme Audit Board (Badan Pemeriksa Keuangan or BPK) for financial supervision, the governments also established new institutions and agencies to implement rules. This included Corruption Eradication Teams (Tim Pemberantas Korupsi) in 1967 and 1982; Commission of Four (Komisi Empat) in 1970 and Operasi Tertib. The 1967 team, consisting mostly of ex officio law enforcement agency members, was in charge of coordinating investigations of alleged corruptors, but, sadly its findings were never made public. This team was replaced in 1982 with a team with the same name and functions with members from all law enforcement agencies. However, the team was ineffective because it lacked an implementing regulation. In early 1970s, the Commission of Four, chaired by the former Vice-President Mohammad Hatta, was established as a response to public pressure to intensify attempts to combat corruption. The main mandates were to review and assess policies in combating
corruption as well as to advice the government on policy changes. Shortly after its establishment, this Commission continued the BPK’s probes into some state-owned company, such as Pertamina (the state-owned oil and gas company) and Telkom (the state-owned telecommunication company) and made reports to the government. However, the government, again, never made a response to the Commission’s findings or disclosed them to the public. Instead, the Commission was dissolved by the government after it had been operating for a mere six months. The Operasi Tertib (Opstib) – a multi-faceted operation designed to attack on anti-government dissent – was perhaps the most successful anti-corruption agency, as it processed 1,127 cases within four years. However, this operation only submitted 34 major cases to the Attorney General.

In regard to bureaucratic accountability, the government introduced new mechanisms by which all levels of government officer were responsible for directly supervising and disciplining their subordinates (known as the inherent supervisory mechanism or pengawasan melekat or waskat). In practice, however, most alleged corruptors only received administrative sanctions from their superiors, as Law No. 8 of 1974 gave authority to superiors to select and impose punishment. In addition to waskat, the government operated a post office box (PO Box 5000) under supervision of the Vice President. This was available for be used by public to lodge their complaints in regard to services and conduct of public service agencies or government institutions and officials.

Although a number of policies, rules and agencies were introduced, the improvement of governance practices under the principle of good governance was not achieved. There are a number of reasons for this failure. First and foremost, there was no political will from the government to ensure the implementation of all adopted measures. In light of this, it was apparent that these measures were issued to reduce public anger and, accordingly, were all symbolic in nature. This was evident from the fact that the government was reluctant to follow up findings and recommendations submitted by the various agencies which were established to make these recommendations. Further, most agencies had inadequate power. They were generally established to coordinate the activities of existing law enforcement agencies, assist traditional agencies in formulating policies, or assist traditional agencies in investigating corruption cases. In this way, the work of the new agencies depended on the traditional agencies, which could thus easily undermine them.

Likewise, in line with the character of the New Order government, the adoption of policies and rules were mostly carried out without the involvement of public. From this perspective, the government played a dominant role from the very beginning of law-making process and it was thus a top-down approach. Moreover, Andrew Rosser convincingly argues that the Indonesian state policy was a result of a combination of instrumentalist, structuralist and state-centred approaches. Accordingly, these approaches did not create trust among members of the public. In simple words, the government failed to design ‘trustworthy intuitions’ that could make societies work better.

Finally, the situation became worse as the government failed to apply consistency in enforcing policies and legislation. In many cases, the government did not take firm action against corruption involving high-ranking officers. Or, if superiors found subordinates taking actions classified as corruption, they simply imposed relatively light administrative punishments, rather than allowing wrongdoer to face criminal sanctions.
3 The changing paradigm on governance

As a result of the dysfunction of governance system which culminated by the resignation of President Soeharto in May 1998, the new government introduced a number of policies, laws as well as institutions. More importantly, a series of constitutional amendment took place during 1999-2000 as ‘reformists’ argued that the ‘original 1945 Constitution’ contained significant deficiencies in governing democratic government. These included the ‘heavy’ executive arm of government; a lack of check and balance provisions; multi-interpreted provisions that benefit the ruler; over reliance on ‘organic’ statutes to further regulate the Constitution’s provision,37 the Elucidation,38 and finally legal vacuums on particular matters.39

3.1 Policy

Post-Soeharto governments have launched radical measures, including adopting a number of policies; promulgating new statutes; amending some existing statutes; and creating new agencies. In regard to policy, for example, the People’s Consultative Assembly (Majelis Permusyawaratan Rakyat or the MPR) issued several resolutions aimed to provide a strong legal basis for good governance restoration, including Resolution No. XI/MPR/1998, by which the MPR instructed the government to pursue further investigation of alleged corruptors (including former President Soeharto and his family) and to create a clean government free from corruption, collusion and nepotism. Moreover, the Resolution also explicitly stated the obligation of public officials to disclose their wealth. This Resolution then became legal basis for Law No. 28 of 1999, known as the ‘Good Governance Law’.

The Good Governance Law came into force on 19 May 1999, under the Habibie administration. This very brief statute, consisting of 24 articles, requires all state officials to report and disclose their assets before and after holding their position.40 Seven principles for organising the state’s affairs have been embedded, including legal certainty; orderliness of state organisation; public interest; openness; proportionality; professionalism; and accountability.41

3.2 State institution: more adaptive to people’s need?

3.2.1 The legislative

3.2.1.1 The DPR (the House of Representatives)

From being paralysed under the Old and New Order governments, the First Amendment paved the way for the DPR to play a significant role in enacting statute and supervising the executive. The passing of the First Amendment was, in fact, a response to executive domination under the Soeharto administration. Unsurprisingly, the major feature of the First Amendment was a transfer of power from the executive to the legislative arms of government. The powers of the DPR were clarified. It now takes a more active role in terms of legislation guaranteed under Art. 20 para (1). The President’s power “to make statutes in agreement with the House of Representatives” was changed “to being entitled to submit bills to the House of Representatives”.42 Thus, the DPR has become the key player in making laws. In addition, Presidential grants of amnesty or the dropping of charges are now required to “have regard to the opinion of the DPR”.43 In appointing
ambassadors and consuls and receiving foreign ambassadors, the President must also consider the advice of the DPR. In the Second Amendment, the DPR was further strengthened. It became a fully elected body in 2004, because the appointment of military and police representatives was ended. The powers of the ‘Lower House’ were further clarified in relation to its legislative function, supervisory function, and the right to approve the national budget. Moreover, the Amended Constitution provides that the DPR reserves the right of interpellation, investigation, and opinion. Parliamentary immunity has also been constitutionally recognised.

3.2.1.2 The Dewan Perwakilan Daerah (the ‘Senate’)

A further major reform has been the establishment of the Dewan Perwakilan Daerah (hereafter the DPD) or ‘the Upper House’ under Chapter VIIA of the Amended Constitution. In line with the growing involvement of regions in political affairs and management of the State, it is crucial to restructure regional representatives in the organisational structure of the State. The introduction of the DPD can thus be seen as an institutional reform of the old regional representatives (utusan daerah) within the MPR. The formation of the membership of the DPD is based on the election of the individuals in each province and this may one day result in a claim that members of the DPD are more legitimate than are members of the DPR.

The newly-created DPD has power “to submit laws to the DPR” and “to participate in the discussion of bills related to regional autonomy; central-region relations; the formation, expansion and merger of regions; the management of natural resources and other economic resources; dealing with financial balance between the centre and the regions”. It has the right to advise the DPR on matters of the State budget, taxation, education and religion. Additionally, it has a right to oversee the implementation of those matters and to submit its findings to the DPR.

Although it seems that the DPD holds a wide range of powers, these powers do not make it a true ‘upper house’. Bagir Manan argues that the DPD is not truly legislative body but merely a complementary chamber to the DPR. It does not have an autonomous right to make laws. Rather it has to submit bills to the DPR: Art. 20 para (1) of the Amended Constitution, which places the DPR as a sole player in making statutes. The next clear signal of the weaknesses of the DPD is found in the absence in the Amended Constitution of rights of this ‘Upper House’ or its members. The Amended Constitution does not contain single article granting immunity rights to its members. Although the MK has already handed down its decision No. 92/PUU-X/2012 by which the DPD has the same power with that of the DPR and the President dealing with law making, however, it remains to be seen whether or not this decision gives strong effect to the DPD.

3.2.2 The executive

One of the most revolutionary changes created by the series of constitutional amendments was in regard to presidency. The original 1945 Constitution provided a strong basis for the executive to run state affairs. The President was not only chief of the executive and head of state, but also the mandataris of the MPR (bearer of the MPR’s mandate), a power that led to authoritarian executive domination.
The dominant role of the President was also as a result of power to make statutes in agreement with the DPR. In the past, this provision was interpreted as meaning that the executive was the primary actor for a bill’s submission with the DPR holding only the lesser role of merely approving bills. This led it to be known as a ‘rubber stamp’ institution that existed solely to approve the President’s bills.

Lessons from the failure of the 1945 Constitution to limit executive power led to a consensus among the newly-elected post-Soeharto Assembly, implemented in the First Amendment. The President’s power to make statutes in agreement with the DPR was changed to “entitled to submit bills to the DPR”, a power shared with other members of the DPR. The role of the DPR in drafting legislation was also changed from requiring ‘approval’ of a statute to stating that the House “shall hold power to make statutes”. When a bill has obtained mutual assent from the Legislature and the President, the latter should sign it within 30 days. In the event that the President fails to sign within the time frame, a bill automatically becomes statute and must be enacted as such. This new scheme was seen to follow the procedures of the USA and was intended to serve as a check and balance on the legislative and the executive arms of government, reflecting a more balanced power between the two bodies in terms of making laws. However, Bagir Manan argues that this article is not, in fact, truly a balanced power, as it only deals with the situation where the President disregards, or where the President is silent on, the approved bill. If the Amended Constitution is to properly introduce a check and balance mechanism or balance power, it should also incorporate a Presidential veto clause.

The President is assisted by ministers in carrying out state affairs. The appointment and dismissal of these ministers is an exclusive power of the President. Although ministers are counterparts of the DPR, they are not responsible to it. Rather, they are responsible to the President. The Amended 1945 Constitution does not specifically provide a definite number of departments and ministries, so that the President has discretionary power to establish these. This means that the President can create new ministries or departments, merge and, even, abolish the existing departments or ministries at his discretion. This was a case when Wahid, the third Indonesian President, abolished the Departments of Social Welfare and Information. Soon after this abolition, officers of these Departments were transferred to other departments or regional governments. His successor, Megawati Soekarnoputri, annulled Wahid’s decision to abolish Department of Social Welfare, and eventually revived it. Under the current administration headed by President Susilo Bambang Yudhoyono, the Department of Information was also reformed, becoming the Ministry of Communication and Information.

Lessons from these ‘unpredictable’ presidential decisions concerning ministries and departments led to the passing of the Third Amendment which limited the President’s discretion. Art. 17 para (4) of the Amended Constitution simply states “the formulation, modification and dissolution of the State Ministries shall be regulated by law”. In 2008, Law No. 39 of 2008 regarding State Ministries was adopted, restricting dissolution of ministries of foreign affairs, interior and defence by the President. Other ministries may still be dissolved by the President without the DPR’s approval.

3.2.3 The judiciary

One of the most radical changes in terms of the judiciary was the establishment of the Constitutional Court. Art. 24C of the Constitution sets up the jurisdiction of the newly-formed constitutional body, including to have the final decision in reviewing laws
against the Constitution; to determine disputes concerning the authority of the State institutions whose power is derived from the Constitution; to dissolve political parties; and to determine disputes regarding results of a general election. It also has the power to issue a decision concerning the opinion of the DPR regarding alleged violations by the President and/or Vice President of the Constitution, that is, to rule on a motion of impeachment. Nonetheless, the power to review regulations below the level of statute remains with the Supreme Court (Mahkamah Agung or MA).

However, the Amended Constitution left some critical points unanswered that could affect the Court. For example, the Constitution is silent on matters regarding the position of the Court within the judicial system. It does not specify its position in relation to the MA. There are no mechanisms that deal with what will occur in the event of ‘rivalry’ between the two courts, or reference to where each court is positioned in the judicial hierarchy. These critical issues have been left, pursuant to Art. 24C para (6), to later regulation by statute.

Within some years of its establishment, the new Constitutional Court gained public attention as it successfully resolved a number of important and sensitive cases, including the 2004 general election cases, the case regarding ex-communists as candidates for general election, and the Bali bombers case. As a result, the Court has not only contributed to the development of law dealing with constitutional interpretation but also to the creation of much stronger system of checks and balances within the framework of the Indonesian constitution. This is clearly seen from the new relationship between the legislature and the judiciary. The power of the DPR and President in making law has now become ‘controlled’ by the MK.

Apart from its success story, the MK has received many critics in particular during the last five years. It has been said that the MK tends to broaden its power through a number of its decisions. This has been apparent in some of its decisions regarding its power to determine result of a general election, specifically dealing with election of head of local government. Beginning with the decision on the result of election of Head of East Java Province in which the MK ‘instructed’ the local commission for election (Komisi Pemilihan Umum Daerah or KPU) to conduct re-election in some areas, the MK has argued that it should uphold power to ensure the attainment of electoral justice system. In so doing, it reads the powers to examine process of election.

3.2.4 The commissions

In addition to the existing institutions, several new Commissions were created under President Abdurahman Wahid to strengthen the Indonesian legal reform, including the National Law Commission (Komisi Hukum Nasional or KHN) and the Ombudsman. The KHN’s core mandates are to provide the president with formal legal opinions when asked to do so and to reform legal institutions. The Ombudsman was established in order to respond to public complaints dealing with the judiciary and administrative officers. Sadly, these two Commissions have been heavily dependent on the political will of the president to enforce their recommendations. However, since 2008, the Ombudsman has been equipped with stronger legal basis taking the form of statute. It now enjoys clearer mandates, although in my opinion, enforcement its recommendation has been still dependent on the president.

The reform era also witnessed the establishment of the Judicial Commission, the increased oversight of judges, with a membership appointed by the President and the
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DPR. Art. 24B of the Amended 1945 Constitution established an independent Judicial Commission that has the role of proposing candidates of judges of the Supreme Court to the DPR. The DPR selects candidates from the proposed list and who are ‘then be confirmed’ by the President. By providing a constitutional basis for selection judges of the Supreme Court, it seems to remove President’s discretion from the process. Thus, the President should appoint all successful candidates approved by the DPR. However, the constitutional provision is silent on a number of issues, such as whether the Commission has role in regard to dismissal and extension of term of office of judges of the MA.

One aspect of the Judicial Commission’s mandate set up by the Constitution in Art. 24B para (1) is to “protect and uphold the honour, dignity and the good behaviour of judges”. This provision does not specify the meaning of ‘judges’; rather it leaves to statute for further definition. In this respect, the Commission is responsible not only for supervising the behaviour of Supreme Court judges, but could also be seen as being responsible for the Constitutional Court judges as well.

The very general constitutional provisions on these issues have been elaborated in Law No. 22 of 2004. However, this Law also fails to regulate matters in sufficient detail. It provides only basic principles in relation to the operation of the Commission’s mandates and leaves the Commission’s working mechanisms to the Commission itself. With the absence of detailed provisions and mechanisms of the operation, it is not surprising that conflict between the Commission and judges of the MK and MA has occurred. The MA and Judicial Commission have, for example, become involved in intense conflict as a result of a number of public complaints against several judges of the MA, including the Chief Justice. This conflict created opportunities for the Judicial Commission to prepare peraturan pemerintah pengganti undang-undang (regulation in lieu of laws or perpu, hereafter perpu). In response, a group of judges of the MA requested the MK to review the constitutionality of Law No. 22 of 2004. The MK decided that a number of provisions of that Law contradict Arts. 24B and 25 of the Amended 1945 Constitution.

In response to the conflict between the MA and Judicial Commission, Jimly Asshiddiqie points out that the conflict occurred as a result of problems of legislation produced by the DPR and President. In addition, Sebastian Pompe argues that the conflict was caused by the different approaches taken by each institution. The Judicial Commission applies a more political approach, in the sense that it is much closer to the DPR than the MA. In this way, the Commission sees itself as the ‘police of the judiciary’ and this role is reflected in its somewhat repressive working mechanisms. In contrast, the MA has been very defensive, using the principle of judicial independence to fend off external complaints. Moreover, Pompe argues that the conflict is only manifestation of the very basic problem, namely ‘confrontational cultures’ in each institution.

In 2011, the legal basis of the Judicial Commission was amended by Law No. 18 of 2011. A number of new provisions were included as efforts to solve the problems faced by the Commission and other relevant institutions, in particular the MA. The Commission, together with the MA, makes a code of ethics. The new law also regulates that the Commission may ask legal officer to do tapping and record conversation in the case of infringement of code of ethics. Although some new provisions have been enacted, however, it remains to be seen whether or not they will be able to build strong relation between the Judicial Commission and the MA.
3.3 Relations between state and people: are you being served?

One of the most remarkable developments as a result of the changing of governance paradigm relates to relations between the state and its citizens. This can be seen from the ‘overhaul’ of human rights norms in the Amended 1945 Constitution. The ‘original 1945 Constitution’ only guaranteed limited rights, including freedom of religion, equality before the law, the right to education, the right to assembly. In 2000, the Amended 1945 Constitution adopted commitments to human rights based on the Universal Declaration of Human Rights, ranging from civil and political rights to economic, social and cultural rights. Right to healthy environment is also protected by the Constitution.

In the level of statutes, the government has already adopted a number of laws aim to protect and to fulfil human rights, including Law No. 39 of 1999 regarding Human Rights, Law No. 26 of 2000 concerning Human Rights Court, Law on Freedom of Information, Law on the Press, Law on Public Service, Law on Education, and Law on Health. In addition, Indonesia has ratified some fundamental international legal instrument, such as International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, and so on.

4 The future

Although governance reform programmes have been intensively conducted, involving a wide range of players, including the Indonesian government, civil society, and international donors, the results of the reform remain unclear. The first and foremost reason for this is “the New Order’s legacy of patrimonial administration, characterised by secrecy, collusion, corruption and a highly personalised perception of the nature of government”,79 which was reflected in almost all government, or even state institutions. The consequence of this was ‘corruption as a state system’,80 which led to a dysfunctional governance system, and which proved difficult to correct in a short period of time. The USA, for example, evolved away from systemic corruption over a period of about 50 years, between 1870 and 1920.81

Secondly, rapid changes of government, in particular from Habibie to Abdurahman Wahid and Megawati (1998–2004), failed to provide solid grounds for governance reform. This is because four instruments of democracy, essential for the success of a transitional stage82 were not significantly improved. Many key actors in economics, politic, culture and security have acknowledged the importance of the principle of good governance for achieving public welfare. However, in reality, these actors have not yet fully implemented this principle, although they ironically often use it as a political slogan.83 Much legislation and many rules were passed, but, most have been impractical, contradictory or have created serious problems. This was the case, for example, in the introduction of laws related to autonomy. Several new established commissions did not have adequate capacity to deal with their mandates. In some cases, this incapacity was caused by inadequate comprehensive planning when drafting a bill,84 leading to possible overlapping mandates between the newly-established commissions. Moreover, most of these newly agencies have been heavily dependent upon the President to enforce their recommendations. This is true, for example, the KHN. Unclear working mechanisms, such as those found in the Judicial Commission, also create problems. More importantly,
legal enforcement has been weak. The consequence is that governments in a broadest sense have been ineffective.

Thirdly, the governments have done little in regard to administrative reform, including bureaucracy reform, and, the little that has been done has not been effective. For example, the introduction of local autonomy through the passing of Laws related to this matter has not directly improved good local governance. Ironically, widespread corruption has now occurred at the local level too. Bureaucracy has also not been responsive to the demands of the local people. Problems lie in lack of local government’s capacity to reinvent their management system to deal with new challenges. To be successful, governance reform aiming to obtain good governance needs to be more focused on bureaucracy reform.

Considering the above three reasons, it is therefore fundamental to make a comprehensive evaluation on the agenda of governance reform in Indonesia. In so doing, several priorities should be taken into account. This includes:

a securing safety and security
b strengthening constitutional government
c improving infrastructure and services
d strengthening justices and ‘reconciliation’ organisation.

5 Concluding remarks

The concept of governance is not new to Indonesia. This is in line with Graham Hassall’s argument that governance activities have been “undertaken through ages and in the context of every culture”. Moreover, discussion about governance in Indonesia reflects the aspects of dynamism, disjuncture and difference. Mechanisms and institutions have also been created. What is new, however, is that the concepts of governance and good governance have now been discussed and implemented in more intensive ways.

A number of initiatives have been adopted under governance reform programmes during the period of post-crisis. These include wide range of sectors. A series of constitutional amendments were successfully adopted. Much legislation, rules and mechanisms were also been introduced. Though improvements have been made, effective governance at national and local levels often remains elusive as there are weaknesses in performance and responsiveness. Ultimately, governance reform and process to obtain good governance have been slow and difficult. The constitutional amendments also created some problems. Newly-established institutions and their operations have also had problems in their implementation stages.

A number of arguments can be used to explain this slow process. The prolonged practice of bad governance damaged democratic principles in the public sphere and is the first reason why it is difficult to achieve the expected results within a short period of time. Secondly, four core instruments of democracy have still been relatively weak, including key actors, institutions, rules, and mechanisms. Thirdly, bureaucracy as the core element of governance system has been left largely untouched. Moreover, to a certain extent, national as well as international political pressures contribute to such slow process.
However, this slow and difficult process should not be seen as failure. Rather, it should be understood as the beginning of long process to achieve good governance. In this long process, a number of the above initiatives will be tested and, the result is what Howard Dick describes ‘muddling through’87 “the building and testing of new laws and institutions, some of which survive, some of which do not”.88

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Notes

3 Ibid 7.
6 Ibid.
7 ‘Integralism’ drew ‘its inspiration from allegedly indigenous modes of customary behaviour which emphasised the community over the individual, although it was strongly influenced by Western conceptions of conservative organicist politics’. Ibid, pp.84–85.
8 Ibid, p.86.
9 Ibid.
11 Ibid.
12 Ibid.
14 Ibid.
15 Soepomo explains that according to the integralistic concept a state is established not to protect individuals or groups, but rather to secure the interests of the whole people of that state. A state is regarded as a unity of organic society in which each member has closed relation with other members. Simanjuntak, M. (1994) Pandangan Negara Integralistik, p.85, pp.89–90, Pustaka Utama Grafiti, Jakarta.
16 Ibid 8.
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Ibid. p.134.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid., pp.134–135.

Ibid., p.135.

Ibid., p.129.

Ibid., p.135.

Ibid., p.129.

Ibid.

Ibid., p.136.

Ibid.


In Indonesia, statutes enacted as a result of Constitutional requirement are classified as ‘organic’ statutes or Laws.

The Elucidation functioned as an explanatory memorandum to the 1945 Constitution provisions. Sadly, in some matters, such as the concept of sovereignty, the Elucidation contradicted the Constitution.

For example, limitation of presidential and vice-presidential terms of office and comprehensive human rights provisions.

Art. 5 para (3) of Law No. 28 of 1999.

Art. 3 of Law No. 28 of 1999.

Art. 5 para (1) of the 1945 Constitution as amended by the First Amendment.

Art. 14 of the 1945 Constitution as amended by the First Amendment.

Art. 13 of the 1945 Constitution as amended by the First Amendment.

Art. 19 of the 1945 Constitution as amended by the Second Amendment.

Art. 20A para (1) of the 1945 Constitution as amended by the Second Amendment.

Art. 20A para (2) of the 1945 Constitution as amended by the Second Amendment.

Art. 20A para (3) of the 1945 Constitution as amended by the Second Amendment.

See for examples, Tim Lindsey, above n6, 268.

Art. 22D para (1) and (2) of the 1945 Constitution as amended by the Third Amendment.

Art. 22D para (2) of the 1945 Constitution as amended by the Third Amendment.

Art. 22D para (3) of the 1945 Constitution as amended by the Third Amendment.
As a mandataris, the President was accountable to the Assembly. Moreover, the Assembly would grant authority to the President beyond constitutional mandate. For example, in 1998 the Assembly through the Assembly Resolution No. V/MPR/1998 ordered the President to take measures in achieving and securing national development.

Art. 5 para (1) of the 1945 Constitution.

Art. 5 para (1) of the 1945 Constitution as amended by the First Amendment.

Art. 21 para (1) of the 1945 Constitution. This Article is still in the original version.

Art. 20 para (1) of the 1945 Constitution as amended by the First Amendment.

Art. 20 para (5) of the 1945 Constitution as amended by the First Amendment.

As amended by the First Amendment.

Art. 20 of Law No. 39 of 2008.

Art. 21 of Law No. 39 of 2008. The dissolution of ministries of religious affairs, legal affairs, financial affairs and security affairs requires the DPR’s approval.

Art. 24C para (2) of the 1945 Constitution as amended by the Third Amendment.

Art. 24A para (1) of the 1945 Constitution as amended by the Third Amendment.

Law No. 24 of 2003, which was passed by the DPR on 13 August 2003, provided detailed regulation concerning the MK. Consisting of eight chapters with 88 articles, this Law dealt with definitions; structures; powers; the mechanism for appointment and dismissal; and procedural matters. Art. 45 provided that dissenting judgements are allowed. The new legal basis for the MK now is Law No. 8 of 2011. A number of significant provisions remain in force. The new articles deals with term of office and the establishment of ‘Ethical Commission’ within the MK.

It was established in August 2003.


In this case, the MK struck down Art. 60g of Law No. 12 of 2003 which prohibited the candidature of former members of the ‘banned Indonesian Communist Party, including its mass organisation’ and any person ‘directly or indirectly involved in the G30S/PKI or any other illegal organisation’, Decision Number 11-017/PUU-I/2003 [online] http://www.mahkamahkonstitusi.go.id.

In this case, the MK found Indonesia’s Anti-terrorism Law No. 16 of 2002 breached the constitutional prohibition on retrospective prosecution based on Art. 28I, Decision Number 013/PUU-I/2003 [online] http://www.mahkamahkonstitusi.go.id.


Most of these public complaints related to allegations of bribery. This led the Judicial Commission to propose the idea of re-selection of judges of the MA through a ‘perpu’ (a type of legislation having same status as law and issued solely by the President but requiring later ratification by the DPR). The conflict escalated after a news release announcing that the Commission was handling complaints against a number of judges, including 13 judges of the MA and 36 judges of the district court (Pengadilan Negeri or PN) and the court of appeal (Pengadilan Tinggi or PT).


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76 Ibid.
77 Ibid.
78 Ibid.
82 According to Eep Saefulloh Fatah, the four instruments of democracy are players in a number of fields, such as economics, politic, culture, and security; institutions; rules; and mechanisms. ‘Membangun Pondasi Good Governance di Masa Transisi’, Panel Discussion, Jakarta [online] http://www.transparansi.or.id/agenda/agenda2/seri_dialog/dialog32.html (accessed 26 January 2000).
84 Ibid.
88 Lindsey, T., above n15, p.22.