

Report of Assessment of Political Parties and Human Rights  
SETARA Institute, Jakarta 22 December 2008

# ASSESSING THE COMMITMENT OF POLITICAL PARTIES ON HUMAN RIGHTS



## FOREWORD

In order to promote the human rights enforcement in Indonesia, SETARA Institute and Indonesian Legal Aid and Human Rights Association (PBHI) made an assessment of Political Parties' Commitment on Human Rights. The assessment was conducted by reviewing documents of political parties and analyzing position of political parties on various human rights violations.

The assessment was also meant to be a medium of public education to know the commitment of political parties on human rights; therefore, electors can decide the right choice in General Election 2009.

Toward General Election 2009, prospective electors need at least two things: [1] evaluation on the output of works of political parties that are in power at this moment, including those that are in the Parliament; and [2] objective

information on parties that are proper and suitable to be chosen. SETARA Institute and PBHI, as associations that have concerns on the promotion of human rights, have conducted an assessment on political parties' commitment on the enforcement of human rights in Indonesia.

At the end, I, on behalf of SETARA Institute and Indonesian Legal Aid and Human Rights Association (PBHI), would like to thank everyone that are always appreciating and making use of human rights publications as references to take stand and make decision.

Jakarta, 22 December 2008

Chairperson

**HENDARDI**

**List of Political Parties, Indonesia, 2008:**

PAN	: National Mandate Party
PBB	: Crescent Star Party
PBR	: Star Reform Party
PDIP	: Indonesian Democratic Party of Struggle
PKD	: Nationality Democracy Party
PDP	: Democratic Reform Party
PDS	: Prosperous Peace Party
PIS	: Prosperous Indonesia Party
PKB	: National Awakening Party
PKDI	: Indonesian Democratic Party of Devotion
PKNU	: National Ulema Awakening Party's
PKPB	: Concern for National Function Party
PKPI	: Indonesian Functional Party of Struggle
PKS	: Prosperous Justice Party
PPD	: Regional Unity Party
PPDI	: Indonesian Democratic Vanguard Party
PPNUI	: United Indonesian Nahdlatul Ummah Party
PMB	: National Sun Party
PNBKI	: Indonesian Populist Fortress Bull National Party
PNI Marhainisme	: Marhaenism Indonesian National Party
PPI	: Indonesian Youth Party
PIIB	: New Indonesia Party of Struggle
PPP	: United Development Party
PPRN	: National People's Concern Party
PSI	: Islamic United Party
Pakar Pangan	: Labor Party of Struggle
Partai Barnas	: National Front Party
Partai Buruh	: Labor Party
Partai Demokrat	: Democratic Party
Partai Gerindra	: Greater Indonesia Movement Party
Partai Golkar	: Golkar Party
Partai Hanura	: People's Conscience Party
Partai Kedaulatan	: Sovereignty Party
Partai Merdeka	: Freedom Party
Partai Patriot	: Patriotic Party
Partai Pelopor	: Pioneer Party
Partai Pengusaha dan Pekerja	: Indonesian Entrepreneurs and Workers Party
Partai Republik	: Republican Party

## **ASSESSING THE COMMITMENT OF POLITICAL PARTIES ON HUMAN RIGHTS**

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### **1**

#### **INTRODUCTION**

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Human rights, as a universal value, mostly have been adopted by Government of Indonesia. Until 2008, at least two (2) covenants and four (4) conventions have been ratified by Government of Indonesia. The normative performance on human rights has shown the seriousness of Government of Indonesia to make international human rights laws to be part of Indonesian national laws. As well, Indonesian Constitution, the Constitution of Republic of Indonesia 1945, has emphasized guarantee of constitutional rights of its citizens.

Ratification and affirmation of guarantee of citizens' constitutional rights required the State executives to fulfill their obligation, by harmonizing legislations, amending legislations, as well as direct actions of State executives in the life of State and nation and in providing public services.

Nevertheless, the enforcement of human rights has not been directly proportional with the normative guarantee as enshrined in the ratified covenants and conventions. The enforcement of human rights which has not been optimum in Indonesia is due to not only deviation of international human rights law, but also the low commitment of the State executives in promoting, protecting and fulfilling human rights.

Political parties, which by democracy mechanism have become one of mechanisms to recruit State executives, have an important role in assuring the commitment and consistency of human rights enforcement in Indonesia. Law No. 2 Year 2008 on Political Parties has emphasized that political parties have obligation "to highly respect the supremacy of law, democracy and human rights" (Article 3 Point a). Although they are not the party that signs the commitment of human rights enforcement as a State Party does, since candidates of State executives among others come from political parties, political parties should show their commitment on human rights. By having a serious commitment, when the aforementioned political parties become State executives, either as Parliament members or as executives, the commitment on human rights enforcement is able to be fulfilled.

In the General Election 2009, there are going to be 44 political parties participated; those are composed of 38 national political parties and 6 local parties of Nanggroe Aceh Darussalam. In order to encourage commitment of political parties on human rights enforcement, SETARA Institute and Indonesian Legal Aid and Human Rights Association (*Perhimpunan Bantuan Hukum dan Hak Asasi Manusia Indonesia*/PBHI) made an assessment of the 38 national political parties.

## 2

### PURPOSE

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- a. Assessing human rights commitment of political parties which are participants of General Election 2009.
- b. Providing knowledge to society on the human rights record of political parties.
- c. Encouraging the strengthening of political parties and Parliament, particularly those elected in General Election 2009, to have commitment on human rights.

## 3

### METHODOLOGY

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The assessment was conducted by using the following approaches:

- [1] literature study, by reviewing the soft laws (*Anggaran Dasar dan Anggaran Rumah Tangga*) of political parties, particularly vision and mission of political parties;
- [2] analysis of the stand of political parties on several events of human rights violations, as recorded from statements of leaders of political parties as well as in documents of court sessions in parliament. There were five events used as the measuring instrument in this assessment:
  - a. death penalty;
  - b. case of Trisakti, Semanggi I & II;
  - c. murder of a human rights activist, Munir;
  - d. enforced disappearance; and
  - e. violations of freedom of religion and belief.
- [3] documentation of the stand of political parties on draft of laws under consideration; and

[4] documentation of breakthroughs or performance of political parties in Parliament in considering the laws.

The four approaches above were used to assess the commitment of parties that have been having seats in the Parliament. To assess the new parties or parties that have not had seats in Parliament, the study was only based on documents of political parties.

In analyzing documents, assessing the stand, and testing the stand of political parties, the study was using the guarantee of constitutional rights of citizens as enshrined in the Constitution 1945, Law No. 39/1999 on Human Rights, Law No. 10/2000 on Human Rights Court and international human rights instruments.

Specifically in assessing the political parties that have been having seats in Parliament, the study limited its period of time to the work period of House of Representatives of Republic of Indonesia (DPR RI) 2004-2009. Therefore, the legislations passed by the House of Representatives since end of 2004 to end of 2008 were also used as indicators.

## 4

### FINDINGS

#### 1. Vision and Mission of Political Parties<sup>1</sup>

1. 24 political parties explicitly state human rights in their vision and mission. 13 political parties do not state it. Although the statement of human rights in the vision and mission is not a guarantee of the political parties' commitment on human rights, it can be an initial indicator that the aforementioned parties have normative concern on human rights.

**Table 1:**  
**Stating "Human Rights" in Vision and Mission of Political Party**

stating human rights	not stating human rights
Hanura, PKPB, Gerindra, PKS, PAN, PPIB, Partai Kedaulatan, PPD, PKB, PPI, PNI Marhainisme, PDP, PPDI, Partai Pelopor, Partai Golkar, PPP, PDS, PBB, PDIP, PBR, Partai Demokrat, PKNU, PPNUI, Partai Buruh	Partai Pengusaha & Pekerja, PPRN, Partai Barnas, PKPI, Pakar Pangan, PMB, PDK, PNBKI, Partai Patriot, PKDI, PIS, Partai Merdeka, PSI, Partai Republikan

2. Although not stating "human rights", all (38) political parties generally have human rights vision in their platform, in various formulation which

<sup>1</sup> Local parties in Aceh are not included in the object of this study. Thus, there are only 38 parties.

basically refer to their commitment in the fulfillment of human rights. Nevertheless, only 22 political parties that normatively and comprehensively state the vision of civil and political rights and economic, social and cultural rights. The rest of the parties merely emphasize on civil and political rights, or on economic, social and cultural rights.

**Table 2:**  
**Political Parties that Comprehensively State**  
**Human Rights Principles**

Partai Hanura	Partai Karya Perjuangan
PKPB	Partai Pelopor
Partai Pengusaha dan Pekerja	Partai Golkar
Partai Gerindra	PDS
PKS	PBB
PAN	PPP
PPIB	PDIP
Partai Kedaulatan	PNBKI
PKB	Partai Demokrat
PPI	Partai Buruh
PDP	Partai Merdeka

3. Civil and political rights at most found in vision and mission of political parties are right to freedom of assembly, thoughts, association, freedom of religion/belief, right to be free from discrimination, and the right to security of person.
4. Economic, social and cultural rights at most mentioned are right to education, work, health, environment, housing, and fulfillment of the right to food.
5. From the literature study, it was found that political parties do not completely understand the concept and practices of human rights enforcement. As the international laws require the State Parties to promote, protect and fulfill the rights of citizens, human rights should be put down as a vision and mission that is binding to the State to be fulfilled. Nevertheless, the concept of basic obligation<sup>2</sup> was still found in the documents of political parties. The consequence is that there is bias

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<sup>2</sup> The only party stating “human rights obligation” is Partai Bulan Bintang; in the party’s program document part governance/national/home affairs, there is a statement, “protection of obligation and human rights.” For further information, please see [www.pbb-info.com](http://www.pbb-info.com).

in understanding the concept of human rights which requires non-State parties to fulfill their obligation. Further implication is going to be the eroding of State's responsibility and attribution of the obligation of fulfilling human rights to non-State parties. The principle of State actor and non-State actor in violations of human rights is an articulation and manifestation of bias understanding on the human rights concept as explained above.

6. From 38 political parties, there are 31 political parties stating Pancasila and/or the Constitution 1945 as their principle(s). Six (6) political parties state Islam as their principle and one (1) political parties state Marhaenism Taught by Bung Karno as its principle. The stating of particular principles and characteristic of political parties has been given a space by Law No. 2/2008 on Political Parties, as long as the principles are not in contradiction to Pancasila and the Constitution 1945. Therefore, stating particular characteristics of political parties is able to be justified, including putting down Islam as a principle. Nevertheless, as a principle that becomes the basis of struggle of a political party, the vision of political party is going to be used as the practical political reference. The articulation of a political party is truly based on principles it believes.

**Table 3:**  
**Principles of Political Parties Participants of General Election 2009**

<b>Principle</b>	<b>Political Party</b>
Islam Ahlussunah Waljamaah	PKNU
[Progressive] Islam	PMB
Islam	PKS, PPP, PBB, PBR, PPNUI
Justice and Democracy	PPIB
Marhaenism Taught by Bung Karno	PNI Marhaenisme
Pancasila	Hanura, PKPB, PAN, Partai Kedaulatan, PPD, PKB, PPD, Partai Pelopor, Partai Golkar, PDIP, Partai Demokrat, Partai Pengusaha dan Pekerja, PPRN, Partai Barnas, PKPI, Pakar Pangan, PDK, PNBKI, Partai Patriot, PKDI, Partai RepublikaN, PIS, Partai Merdeka, PSI
Pancasila and Constitution 1945	Gerindra, PPI, PDP, PDS, Partai Buruh

7. The mapping of principles of political parties also normatively showed the classification of political parties based on religion and nationalistic parties, although the limitation of this classification is not too definite since some nationalistic parties also put down religious conviction as their principle and aspiration of struggle. As a constitutional state, the basis of the practices of parties and State executives should be established and stood on Constitution. These findings underlines further the vision and character of political practices in Indonesia which have not been able to affirm their consistency to the Constitution as the basis of the life of State. The measures of Constitution might be shifted and changed because religious view is often used as an independent variable which influences other variables.

## **2. Stand on Human Rights Violations**

### **a. Death Penalty**

8. Death penalty is a form of punishment which is in contradiction with human rights. The right to life is a right guaranteed by the Constitution, particularly Article 28 I (1), as well as the International Covenant of Civil and Political Rights which has been ratified by Government of Indonesia through Law No. 12 Year 2005.
9. All political parties that have seats in the Parliament support death penalty. The support of political parties to death penalty is based on the positive law which still adopts death punishment. The support has made legal reform is difficult to be carried out, particularly in order to eliminate death punishment from at minimum 11 positive law products adopted death penalty. Political parties do not have the initiative to eliminate death penalty from Indonesian positive laws. Three (3) drafts of law (Draft of Law on Criminal Code (KUHP), Draft of Law on State Secrecy, and Draft of Law on Intelligence) even still adopt death penalty.
10. The support of political parties to death penalty shows that political parties do not thoroughly take notice on the Constitution which mandates the guarantee of right to life of every citizen. The stand and support of political parties are shown in statements of leaders and members of political parties.<sup>3</sup> Among the support of political parties elites

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<sup>3</sup> During 2004-2008, there has not been any law which adopts death penalty was enacted. Nevertheless, a number of statements delivered by leaders and members of political parties are able to be indicators of support of political parties to death penalty. Hidayat Nurwahid-PKS [Case of Corruption], Mahfudz Siddiq-PKS [Case of Amrozi], Tifatul Sembiring-PKS [Case of Amrozi and Case of Corruption], A.M. Fatwa-PAN, Lukman Hakim Syaifuddin-PPP [Case of Amrozi], Anas Urbaningrum [Case of Amrozi], Agung Laksono, Jusuf Kalla-Partai Golkar, etc.



on death penalty, there are some elites of parties based their argumentation on certain religion to endorse death penalty.<sup>4</sup>

**b. Trisakti, Semanggi I & II**

11. Tragedy of Trisakti, Semanggi I and Semanggi II were cases of shooting of students in front of Trisakti University and Semanggi Highway. It happened by the time President Soeharto was required to resign and before the enactment of Law on Tackling Dangerous Situation at the governance of President B.J. Habibie. From the inquiry of National Commission on Human Rights (Komnas HAM), the tragedy which is known as TSS allegedly involved Indonesian National Military (TNI).
12. The inquiry documents of Komnas HAM have been delivered to the Office of General Attorney and House of Representatives (DPR). However, as the General Election 2009 approaches, the handling of the cases has not been clear yet, including after Constitutional Court in the judicial review of Law No. 26/2000 in February 2008 declared that the Office of General Attorney no longer needs the recommendation from House of Representatives (DPR) to do inquiry on the allegation of crime against humanity.
13. DPR RI period 1999-2004, to be precise on July 9, 2001, has decided two stands on the tragedy of Trisakti, Semanggi I and II: [1] to finish these cases through Military Court; and [2] to support the establishment of an ad hoc Human Rights Court. Until the end of their period, these cases had not received further concern from the DPR. In the new period (2004-2009), these cases were going to be raised again. Nonetheless, on January 17, 2006, Meeting of Leaders decided that the decision of Special Committee of DPR RI on Trisakti, Semanggi I and II was not able to be annulled, which meant that these cases were closed because there were no serious human rights violations in it.
14. Among those supported to finish the cases through Military Court were Partai Golkar, Demokrat, PKS, PPP, PBB, and PBR. This group later, in the period 2004-2009, also refused the disclosure of Case of TSS I & II. Meanwhile, PDIP, PKB, PDS, and PAN<sup>5</sup> stated that they supported to finish the cases through an ad hoc Human Rights Court. These are parties which support the disclosure of TSS Case in period 2004-2009.

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<sup>4</sup> A.M. Fatwa, Thursday, May 3, 2007, [www.mpr.go.id](http://www.mpr.go.id).

<sup>5</sup> "Penolakan DPR atas Kasus Trisakti-Semanggi Cacat Moral" ("Refusal of House of Representatives (DPR) on Case of Trisakti-Semanggi is Morally Flawed"), Sinar Harapan, March 4, 2007.

15. As a crime against humanity, the support to Case of TSS I & II was a form of commitment of political parties to the fulfillment of human rights. On the contrary, the refusal to disclose these cases was a form of refusal of the fulfillment of human rights. For parties that refused the disclosure, there was an inconsistency between vision and mission of parties with the political practice of human rights enforcement.

**c. Murder of a Human Rights Activist, Munir**

16. The murder of a human rights activist, Munir, was a conspired crime carried out by someone who has been employed by state institution, State Intelligence Body. The crime has been an indicator of Government's commitment of fulfillment of human rights: whether the Government is able to reveal the perpetrator and give fair punishment or not, to ignore the case. DPR even established Joint Monitoring Team of Revealing of the Death of Munir. Although this team was a non-structural instrument of DPR, the team was able to give significant political support to the disclosure of Case of Munir. The team also did not issue an official document on the case.
17. In the Case of Munir, the support of disclosure came almost from all political parties in the Parliament. At first, PDIP was resistant to the disclosure of the case; it could be understood because one of the leaders of the party, Hendropriyono, at that time was alleged of being involved as he was the Head of State Intelligence Body (BIN) when the killing happened. Nevertheless, as the public support to this case was getting stronger, PDIP finally declared their support.
18. The support of political parties to the disclosure of the case was a significant capital to the works of law enforcers and Facts Finding Team (TPF) that just started to find initial facts of the incidents. Different from Case of TSS, the support of political parties to this case could almost be assured to be politically advantageous. On the opposite, there was no direct detriment to political parties after giving their support.
19. With the support from political parties and [particularly] the hard work of the victim's family and mass organization supporting the disclosure of Case of Munir, the case has had significant development.
20. A new party that has explicitly refused the disclosure of the case was Partai Gerindra, which is supported by Prabowo Subianto, since one of the party's leaders, Muchdi Pr., has been the accused of the court of the

Murder Case of Munir. Meanwhile, other new parties have not given any stand.<sup>6</sup>

#### **d. Enforced Disappearance**

21. Case of enforced disappearance was filed to DPR after Komnas HAM finished their initial investigation to a number of people knowing the incident of enforced disappearance at the beginning of 1998. As usual, the document of investigation results has only become a wild ball, thrown from Office of General Attorney to DPR vice versa.
22. Following up the report of Komnas HAM, DPR RI at first established Special Committee on Forced Disappearance on February 27, 2007, which was approved by all leaders of party factions in the Parliament. However, the Special Committee (Pansus) had not operated for quiet a time. They just started to have meetings again in October 2008.
23. Several parties in the Parliament explicitly refuses the solving of the case, among others, were: Golkar, PDS, PBB and Partai Demokrat. On the other hand, parties supported the solving of the case were PDIP, PPP, PKB, PAN, and PKS<sup>7</sup>. Parties that refused the solving regarded that the case has been settled. Specifically, there were two (2) new parties refused the solving of the case, i.e. Partai Hanura and Partai Gerindra. There was a strong assumption that those two parties refused it because functionaries of the parties, namely Prabowo (Gerindra)<sup>8</sup> and Wiranto (Hanura)<sup>9</sup>, that were respectively Pangkostrad and Commander of ABRI when the incidents happened, were allegedly involved.

#### **e. Violations of Freedom of Religion/Belief**

24. The guarantee of freedom of religion is one of the rights enshrined in the Constitution and International Covenant on Civil and Political Rights ratified by Government of Indonesia through Law No. 12 Year 2005. Several recent years, a number of religious sects which were alleged heretical by Islamic mass organization, such as MUI, FPI, etc, has

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<sup>6</sup> Partai Gerindra through Fadli Zon stated the opinion that the arrest of the former Deputy V of BIN, Mayjen [Purn.] Muchdi Pr. had a strong political interest rather than law enforcement. For further information, see [www.kompas.com](http://www.kompas.com), Friday, June 20, 2008.

<sup>7</sup> Kompas, December 11, 2008.

<sup>8</sup> *"Gerindra Tuding DPR Jegal Prabowo"* (Gerindra Accused DPR Intercepted Prabowo), Tempo Interaktif, October 17, 2008.

<sup>9</sup> *"Hanura Tak Takut Popularitas Wiranto Turun"* (Hanura is not Afraid the Popularity of Wiranto is Decreasing), Detik.com, October 17, 2008.

emerged. The Government rounded up these groups by using articles of religious dishonor. Particularly on Ahmadiyah, the Government also took a repressive action by issuing Joint Decree of Three Ministers, No. 3 Year 2008, No.: KEP-033/A/JA/6/2008, No.: 199 Year 2008 on Warning and Order to the Followers, Members, and/or Board Members of Jamaah Ahmadiyah Congregation (*Jemaat Ahmadiyah Indonesia/JAI*) and Citizens, which basically discontinue the religious activities of Ahmadiyah followers in Indonesia.

25. Although the policy was issued by the Government, due to claims of civil society, including SETARA Institute and National Alliance for Freedom of Religion and Belief (*Aliansi Kebangsaan untuk Kebebasan Beragama dan Berkeyakinan/AKKBB*), DPR promised to follow up various violence experienced by religious/belief communities differ from the mainstream communities. DPR in this context was regarded to not be able to do the monitoring role, including by not warning the Government and the law enforcers, as well as the three (3) Ministers issuing the Joint Ministerial Decree. Political parties in the parliament also did not use their legislative authority to do legislative review to a number of legal products which have been so far restrictive and repressive to guarantee of freedom of religion/belief.
26. On the issue of the right to have religion/belief, particularly the stand of political parties on the Joint Ministerial Decree, PAN, PKS, PPP<sup>10</sup>, Golkar<sup>11</sup>, PBB<sup>12</sup>, PBR<sup>13</sup> and Partai Demokrat<sup>14</sup> stated their support to the Joint Ministerial Decree. On the opposite, PDIP<sup>15</sup> and PKB refused.
27. Except Joint Ministerial Decree on Ahmadiyah, DPR RI also did not give particular attention on the Joint Regulation of Three Ministers No. 8 and 9 Year 2006 on the Implementation Guide for Head/Vice-head of Local Area in the Maintenance of the Harmony between Religious Society, the Empowerment of the Forum for Religious Harmony (FKUB), the Building

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<sup>10</sup> "Fraksi PPP, PAN dan PKS: SKB Kebijakan Arif" (Faction PPP, PAN and PKS: Joint Ministerial Decree is a Wise Policy), [www.kompas.com](http://www.kompas.com), June 11, 2008.

<sup>11</sup> "Jemaah Ahmadiyah Makin Terancam" (Ahmadiyah Followers are Getting Threatened), [www.sinarharapan.co.id](http://www.sinarharapan.co.id), June 11, 2008.

<sup>12</sup> "Presiden Tak Berani Keluarkan Kepres" (President Does not Dare to Issue Presidential Decree), [www.okezone.com](http://www.okezone.com), June 24, 2008.

<sup>13</sup> "Penundaan SKB Pembubaran Ahmadiyah Bisa Memancing Konflik" (Delay of Joint Ministerial Decree on Ahmadiyah Can Trigger Conflict), [www.dewandakwah.com](http://www.dewandakwah.com), May 12, 2008.

<sup>14</sup> "Demokrat Desak Pemerintah Soal SKB" (Democrats Urge Government about Joint Ministerial Decree), [www.kompas.com](http://www.kompas.com), May 10, 2008.

<sup>15</sup> "Pemerintah Tak Arif Soal SKB Ahmadiyah" (Government is not Wise about Joint Ministerial Decree on Ahmadiyah), [www.kompas.com](http://www.kompas.com), June 20, 2008.

of Religious Place of Worship. The regulation was created based on the logical thinking of religious majority versus minority and in fact has limited the minority groups in establishing place of worship.

### **3. Stand and View of Political Parties on Several Laws**

#### **a. Law on Pornography**

28. The enactment of Draft of Law on Pornography to Law on Pornography is the beginning of political contestation climax in the Parliament and society. It was believed by parties endorsers of Draft of Law on Pornography would be advantageous to parties, by manipulating the substance of regulating the distribution of material of pornography to be an instrument that was viewed as an effort of saving the nation, children and women. The controversy upon this Law can be guaranteed will continue, considering the contradictive substance in it, as well as its denial to substantive principles of making legislations.
29. From the perspective of Constitution and human rights, Draft of Law on Pornography had discriminative contents and had potential in creating new violence, as well as threatening the civil rights. By believing of gaining public support, DPR RI finally agreed to enact the Draft of Law to be a Law on October 30, 2008. Aside from being an instrument of politicization, arguments suggested by some religious (Islamic) based parties were close to religious views. The enactment of the Law was supported by almost all factions, except PDIP and PDS.
30. The contestation in the discussion of Draft of Law on Pornography also emphasized that vision and mission of political parties supported the protection of human rights, pluralism and tolerance is not a guarantee that political parties will support the enforcement of human rights in formulating legislations.

#### **b. Sharia-inspired Policies and Legislations**

31. Indonesian Parliament has been recorded as producing a lot of laws based on religious (Islamic) views. These various laws were born as a form of accommodating the politics of Islam followers. There were several Sharia-inspired legislations: Draft of Law on Guarantee of *Halal* Products, Law No. 13/2008 on Revision of Law No. 17/1999 on Organizing Haj, Draft of Law on Revision of Law No. 38/1999 on Management of Tithe (*Zakat*), revision of Law No. 7/1989 to Law No. 3/2006 on Religious Court, Law No. 19/2008 on State Shariah Securities.

32. On all of the above legislations, all factions in DPR showed their approval. Except on Law No. 21 Year 2008 on Sharia Banking, PDS faction stated their refusal.
33. It is admitted that the emerging of various Sharia-inspired legislations is not directly related with the practices of human rights enforcement. However, the spirit of uniformity and the expose of religious views at the plural public domain were worried about to reduce diversity which is the base of the life of nation and State.
34. Parties that claimed to be nationalistic should be able to filter ideas that have the potential of emerging the threat of uniformity. Nevertheless, as observed, the approval of nationalistic parties mostly was based on the belief that those legislations do not directly threaten the civil freedom. Furthermore, those legislations are related with the administrative implementation of Islamic regulations.
35. Different that the legislations at national level, local policies, either in the form of local regulation or decree/circular letter of head of region, substantively in general have discriminative contents and have opened the space of seizing the civil freedom. The local autonomy has actively encouraged several regions to produce discriminative local regulations (particularly discriminative to gender). Indonesia now has 162<sup>16</sup> products of local policy, in the form of Local Regulation (*Perda*), Decree of Mayor/Regent, Village Regulation, etc, which are discriminative and have the potential of threatening the civil freedom.
36. On Sharia local regulations, political parties in the Parliament have never taken any stand. Generally, they argued that DPR has not direct authority to intervene such a domain. In fact, if the function of monitoring to Government can be implemented effectively, DPR is able to give strong warning to the President to discipline Local Governments so in making local regulation, it should obey the higher legislations, particularly the Constitution, including to the guarantee of human rights.
37. Spontaneous reaction opposing Sharia local regulations came from 56 members of DPR. They planned to give a memorandum to the President. Those 56 members were from faction of PDIP, Partai Demokrat, PDS, Kebangkitan Bangsa Bintang Pelopor Demokrasi and Partai Golkar. On the contrary, 134 members of DPR supported Sharia local regulations; those

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<sup>16</sup> Koalisi Perempuan Indonesia, *Catatan Kebijakan Politik Tahun 2007: Politik Inkonstitusional, Otonomi Daerah dan Pemenuhan Hak Politik Perempuan*, p. 8.

were from PPP and PKS.<sup>17</sup> Nevertheless, the plan was discontinued after they were “reconciled” by DPR leader.

38. Support from parties with principles other than Islam to Islamic economic regulations, such as State Shariah Securities and Islamic Banking was based on the need of society to create social welfare. The Islamic economic regulations were regarded to be in line with the ideology of Pancasila. This support can be indicated as an effort to gain support from Islam followers in the General Election.

**c. Cluster of Laws Related with Economy, Social and Cultural Rights**

39. On economy, social and cultural rights, in the period of 2004-2009, there were several stands which can be used as indicators to assess the commitment of political parties to human rights: stand of political parties on Draft of Laws on Capital Investment; Draft of Law on Mineral and Coal; Draft of Law on Education Legal Entity.
40. Law on Capital Investment was enacted on March 29, 2007. As a law to be referenced as the practices of financing, the law is very strategic as it relates with the capital/world investment flow. In the discussion, including when it has been enacted, several articles of the law attracts controversy.
41. One of the articles used as an indicator of DPR’s commitment in fulfilling human rights is Article 22 Paragraph 1 of the law, which says “the easy of the service and/or permit of the right of land as meant by Article 21 Point (a) can be given and extended in advance as well as can be renewed based on request of capital investor in the form of: (a) the Commercial Use Rights (*Hak Guna Usaha*), can be given to 95 (fifty five) years by being given and extended in advance for 60 years and can be renewed for 35 (thirty five) years; (b) Building Use Rights (*Hak Guna Bangunan*), can be given to 80 (eighty) years by being given and extended in advance altogether for 50 (fifty) years and can be renewed for 30 years; and (c) Land Use Rights (*Hak Pakai*) can be given up to 70 (seventy) years by being given and extended in advance altogether for 45 (forty five) years and can be renewed for 25 (twenty five) years.”
42. The law is regarded as a serious threat to the fulfillment of human rights, particularly the right to have access to land as mandated by Fundamental Law of Agrarian. Almost all factions in DPR stated their approval on the

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<sup>17</sup> The effort of DPR members to give a memorandum of disapproval of Sharia-inspired local regulations was not followed up to the President. The decision was taken in the consultation meeting of DPR leader and factions. For further information, please see [www.dpr.go.id](http://www.dpr.go.id), July 5, 2006.

enactment of Law on Capital Investment<sup>18</sup>, except PDIP that stated their disapproval by walking out and faction of PKB that critically stated to be irresponsible of the implication of the law.

43. Legislation in education recorded in the period of 2004-2009 was the enactment of Draft of Law on Education Legal Entity. Substantively, the draft of law regarded by many elements as an instrument of capitalization and commercialization of education sector. Education, in the human rights perspective, is a State's obligation which should be fulfilled. Having proper, qualified and accessible education is human rights. The right is also a component of positive rights, which fulfillment requires the presence of the State. A State will be accused of ignoring the right to education when the State escapes from it and gives it to another entity, for instance corporate world. The choice of DPR RI to enact the Draft of Law on Education Legal Entity is a form of escaping State's responsibility to fulfill the right to education. The draft of law emphasized the Presidential Regulation No. 76 Year 2007 on Criteria and Requirements of Closed Business Area and Opened Business Area with Requirements in Capital Investment Area. The Presidential Regulation is a derivation of Law No. 25 Year 2007 on Capital Investment. In the perspective of human rights, the enactment of Draft of Law on Education Legal Entity to become Law has kept out the right of citizens to have access to proper, cheap and qualified education.
44. To Draft of Law on Education Legal Entity, 10 factions in DPR stated their approval on the enactment. It was enacted on December 17, 2008, without any record of objection. Using this as an indicator, all political parties that are having seats in the Parliament has shown their low commitment to support the guarantee of the fulfillment of right to education.
45. Another law which risks human rights in the economic area is Law on Mineral and Coal, which was just enacted on December 16, 2008. The law was a revision of the previous law which was considered irrelevant with the current condition. The main argument of this revision is to strengthen the position of State as a party in the agreement of natural resources management. Nevertheless, since the discussion to the enactment, the main idea of "restoring the economic independency of the nation" was ignored. The draft of law still gives special treatments to investors and ignores the rights of people. The draft of law also has not given guarantee

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<sup>18</sup> Law No. 25 Year 2007; several NGOs filed a judicial review on the law. On the request of judicial review, Constitution Court on March 25, 2008, decided that Article 22 Paragraph 1 and Article 21 Point (a), which says "in advance altogether", are considered to not have binding legal power.



to the settlement of environment problems comprehensively which may be caused of exploitation of natural resources.

46. Before, on the draft of law, three factions walked out as a sign of disapproval of the enactment of the draft of law. Those three factions were faction of Partai Amanat Nasional (PAN), faction of Kebangkitan Bangsa (FKB) and faction of Partai Keadilan Sejahtera (PKS). Seven other factions agreed the enactment of the draft of law to be law. Those seven factions were: faction of PDIP, PDS, Golkar, PPP, Demokrat, Bintang Pelopor Demokrasi and PBR.
47. The objection of a number of factions was triggered by Article 169 Point (a) which was considered to be discriminative. In Chapter XXV Article 196 Point (a) says that the service contract and agreement with coal mining entrepreneur that are already existed before the law is in effect are still in effect until the end of the contract/agreement term. The existence of the article showed that the Government and DPR which was represented by a number of parties had excessive worry about world investors. The enactment of the draft of law without having substantial change in the management of natural resources will be highly influential on the right to acceleration of the fulfillment of right to natural resources and right to distributive development. How is it possible for the State to have sufficient capital if the relation of mining management contracts shows that the investors are more supreme than the Government?

#### **4. Normative Performance of DPR in the Area of Human Rights**

48. Beside controversial outputs which risk human rights, this study also recorded a number of normative performances of DPR in supporting the fulfillment of human rights.
49. Up to December 2008, DPR of period of 2004-2009 has produced a number of laws which has the potential to strengthen human rights, among others:
  - a. Law No. 11/ 2005 on Ratification of Covenant on Civil, Social and Cultural Rights;
  - b. Law No. 12/2005 on Ratification of Civil and Political Rights;
  - c. Law No. 11/ 2006 on Governance of Aceh;
  - d. Law No. 12/ 2006 on Citizenship;
  - e. Law No. 13/ 2006 on Protection of Witness and Victim;
  - f. Law No. 27/ 2006 on Handling Disaster;
  - g. Law No. 21/ 2007 on Elimination of Trafficking in Persons;

- h. Law No. 37/ 2008 on Ombudsman of Republic of Indonesia;
  - i. Law No. 40/2008 on Elimination of Racial and Ethnic Discrimination.
50. A number of normative outputs in human rights actually still requires harmonization of legislations in a more detailed and comprehensive manner. Ratification of two main human rights covenants, for instance, has not been followed up by harmonizing other domestic legislations to be in line with the substance of those two covenants above. Furthermore, DPR also still has to fulfill their political promise, to ratify International Criminal Court,<sup>19</sup> which should be ratified during 2005-2008. The promise was also written in the National Action Plan on Human Rights, which was formulated by the Government.
51. DPR RI also showed their concern on regional issues related with human rights as there were some roles played by Caucus of Indonesian Parliament for Burma, Caucus of Women in Parliament for Human Rights, and Caucus of Parliament for Migrant Workers.
52. Caucus of Women in Parliament for Human Rights several times have stated constructive stands to the defending of migrant workers<sup>20</sup>, violence against children and women, fulmination against Vice President on sexual tourism in Indonesia<sup>21</sup>, refusal on revision of Law No. 10 Year 2008 on General Election, etcetera. This caucus also has succeeded in watching over the guarantee of fulfillment of 30% quota of women in board of political parties and legislative candidates to be seated in the Parliament.

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<sup>19</sup> Rome Statute is the instrument of International Criminal Court (scheduled to be ratified in 2008), Convention on the Protection of the Rights of Migrant Workers and Their Families (scheduled to be ratified in 2005), Convention on the Prevention and Punishment of the Crime of Genocide (scheduled to be ratified in 2007), Optional Protocol of Convention against Torture (scheduled to be ratified in 2008) and Optional Protocol of CEDAW (scheduled to be ratified in 2005).

<sup>20</sup> August 24, 2007, a release signed by Annisah Mahfudz [FKB], Anna Muawanah [FKB], Badriyah Fayumi [FKB], Ida Fauziah [FKB], Maria Ulfah Anshor [FKB], Nursyahbani Katjasungkana [FKB], Syaidah Syakwan [FKB], Eva K. Sundari [FPDIP], Ribka Tjiptaning [FPDIP], Tumbu Saraswati [FPDIP], Chairunnisa [FPG], Aisyah Hamid Baidlowi [FPG], Mariani Akib B [FPG], Marliah Amin [FPG], Nari Hardiyanti [FPG], Watti Amir [FPG], Sri Harini [FPG], Tyas Iskandar [FPG], Sudarmani Wiryatmo [FPG], Tisnawati Karna [FPG], Maryamah N.B. [FPG], Hayani Isman Sutoyo [FPG], Asiah Salekan [FPG], Latifah Iskandar [PAN], Kasmawati Tahir [FPBR].

## CONCLUSION

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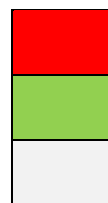
1. Documents of political parties that are participants of General Election 2009 which were reviewed in the study clearly show the weakness of political parties in formulating their vision and mission. The weakness of vision and mission also show the bad quality of political parties. Without visionary spectrum of thought, as illustrated in the vision and mission of political parties, the life of State in the next 5 years is at risk.
2. Normatively, commitment of political parties to human rights is quiet high, as written in the documents of political parties. Nevertheless, at practice, the politic of interests of elites in parties is still dominant: human rights are yet ignored.
3. From all political parties (particularly those that are already having seats in Parliament) that became the object of the study, none of them consistently and continuously preserves their vision and mission on human rights as stated in their parties' platforms. Vision of political parties has not been able to be the foundation of political performance and behavior of political parties in promoting the fulfillment of human rights.
4. Specifically to political parties that are having seats in Parliament, political parties resulted from General Election 2004 shows inconsistency between their vision and mission and a number of legislations related with human rights. Human rights as a universal value have not completely become a commitment of political parties in Indonesia. Political parties only give their voice to human rights if it does not have the potential to create negative image to their parties. Political pragmatism of political parties in viewing human rights has emphasized that politic of (human rights) value has not yet become the mainstream in political practices of political parties in Indonesia.
5. From all variables used as indicators of assessment, there is no single party has a high commitment on human rights. Several parties seated in Parliament that have quiet high rank in their commitment on human rights are PDIP and PKB; those in middle rank are PAN, PKS, PDS; while, those at the bottom are big and ruling parties, which are Partai Golkar, Partai Demokrat, PPP, PBB, and PBR.

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### Stand and View of Political Parties on Several Laws

Variabel	Golkar	PDIP	Demokrat	PKB	PAN	PKS	PPP	PBR	PDS	PBB
Law on Pornography										
Sharia-inspired Law										
Sharia Local Regulation										
Law on Capital Investment										
Law on Education Legal Entity										
Law on Mineral and Coal										

Remarks



Deny

Support

Unidentified

### Stand against Incidents of Human Rights Violations

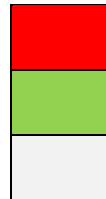
Variable	Golkar	PDIP	Demokrat	PKB	PAN	PKS	PPP	PBR	PDS	PBB
Abolishment of Death Penalty										
Ending Case of TSS										
Ending Case of Munir										
Ending Case of Forced Disappearance										
Guarantee of Freedom of Religion/Belief										

For the Case of TSS  
and Enforced  
Disappearance  
Gerindra

Hanura



Remarks



Deny

Support

Unidentified