ASSESSMENT OF INDONESIA’S HUMAN RIGHTS PROGRESS AND CONTRIBUTION AS A MEMBER OF THE UNITED NATIONS HUMAN RIGHTS COUNCIL

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A. Introduction

The United Nations Human Rights Council (HRC) was established in 2006 to replace the UN Commission on Human Rights and redress its shortcomings, especially regarding objectivity and politicization. To accomplish this, United Nations General Assembly (UNGA) has established resolution laid out the HRC’s basic functions and the principles guiding its work. In addition, members of the Council are elected by the General Assembly based on their progress in respect to the implementation human rights and have to prove further their commitment to the promotion and protection of those rights.

Indonesia served two terms in the HRC: first as an initial member from 2006 for a one-year term, and second for a full three-year term from 2007 to 2010. On May 9, 2006 the UN General Assembly elected Indonesia along with 46 other nations to be first members of the Human Rights council. Because the membership term is staggered, Indonesia was among 14 others chosen by drawing of lots to only a one-year term of office ending on 18 June 2007.

At that time, Indonesia ran for re-election and presented to the Assembly a document of Indonesia's voluntary pledges and commitments. On May 17, 2007, UNGA held the election of 14 members of the UNHRC to replace those chosen the year before. In Group B (Asian States) the candidates and votes obtained are as follows: India (185), Indonesia (182), Philippines (179), Qatar (170), Timor-Leste (1), Bahrain (1). Having obtained more than the required majority of 97 of the total 192 Member States of the UN, Indonesia was elected for a full three-year term of office in the HRC starting from 20 June 2007.

In presenting its candidature in 2007, Indonesia produced a document outlining its pledges and commitments in terms of human rights. During its term at the HRC in 2008, Indonesia was put under the Universal Periodic Review mechanism. The outcome report formulated several important recommendations and an additional voluntary commitment by the state under review.

In 2011, Indonesia is planning to run for a third term of membership in the Council. To that end, Indonesia must convince again the General Assembly of its commitment to the highest standards of promotion and protection of human rights. Member States will assess

1 This research was conducted for Human Rights Working Group, Indonesia, December 2010.
Indonesia’s prior contribution to the HRC and progress in improving its human rights situation domestically.

As all eyes will be on Indonesia, the circumstance of Indonesia’s 2011 candidature would provide a good opportunity for the civil society to engage in the process: to demand and support equally for a better human rights situation in the country and a more effective role played by Indonesia for the betterment of the human rights condition on an international level.

For that purpose, it is necessary for the civil society to have in hand a document outlining, first, Indonesia’s level of fulfillment of its voluntary pledges and commitments as well as recommendations from the UPR Working Group; second, a record of positions taken by Indonesia on important international human rights issues, both on thematic issues and country situations, and assess whether they are progressive or otherwise; and third, Indonesia’s overall contribution to the accomplishment of the HRC’s basic functions and how its role has been played in line with the HRC’s guiding principles.

B. United Nations Human Rights Council

On 15 March 2006, UNGA established the United Nations Human Rights Council (UNHRC) by adopting a resolution A/RES/60/251. The UNHRC was established as a subsidiary body of the United Nations General Assembly, in order to replace the previous Commission on Human Rights (CHR).

The UNGA resolution recognized the work undertaken by the Commission on Human Rights and need to preserve and build on its achievements and to redress its shortcomings. Implicitly, the UNGA refers to those shortcomings by stating the importance of ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, as well as the elimination of double standards and politicization. Based on the UNGA’s resolution, the UNHRC shall, inter alia:

(a) Promote human rights education and learning as well as advisory services, technical assistance and capacity-building, to be provided in consultation with and with the consent of Member States concerned;
(b) Serve as a forum for dialogue on thematic issues on all human rights;
(c) Make recommendations to the General Assembly for the further development of international law in the field of human rights;
(d) Promote the full implementation of human rights obligations undertaken by States and follow-up to the goals and commitments related to the promotion and protection of human rights emanating from United Nations conferences and summits;
(e) Undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session;

(f) Contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies;

(g) Assume the role and responsibilities of the Commission on Human Rights relating to the work of the Office of the United Nations High Commissioner for Human Rights, as decided by the General Assembly in its resolution 48/141 of 20 December 1993;

(h) Work in close cooperation in the field of human rights with Governments, regional organizations, national human rights institutions and civil society;

(i) Make recommendations with regard to the promotion and protection of human rights;

(j) Submit an annual report to the General Assembly;

According to the establishing resolution, the UNHRC's basic functions are:

1. To promote universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner;

2. To address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon;

3. To promote the effective coordination and the mainstreaming of human rights within the United Nations system.

In carrying out these functions, the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, and constructive international dialogue and cooperation.

The Council consists of forty-seven Member States elected directly and individually through secret ballot by members of the General Assembly. The members serve for a period of three years and shall not be eligible for immediate re-election after two consecutive terms.
The membership in the Council are open to all States Members of the United Nations, taking into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made. After being elected, the members shall uphold the highest standards in the promotion and protection of human rights, shall fully cooperate with the Council and be reviewed under the universal periodic review mechanism during their term of membership.

C. The Voluntary Pledges and Commitments Fulfillment

In accordance with General Assembly resolution A/RES/60/251, when electing members of the Human Rights Council, Member States shall take into account (1) the contribution of candidates to the promotion and protection of human rights and (2) their voluntary pledges and commitments made thereto. Additionally, members elected to the Council shall (1) uphold the highest standards in the promotion and protection of human rights; (2) fully cooperate with the Council and (3) be reviewed under the universal period review mechanism during their term.

UNHRC has formulated some suggested elements of voluntary pledges and commitments which will be made by candidates for election. These suggestions are not intended to be exhaustive, member States might also wish to provide additional information and make additional pledges and commitments as appropriate. To the extent possible, States are encouraged to include specific, measurable and verifiable commitments in their submissions.

Member States are encouraged to share informations on their voluntary pledges and commitments both with the public in their respective countries and with all other Member States. They are further invited to provide that information to the Secretariat for posting on the websites of the United Nations General Assembly and the Office of the High Commissioner for Human Rights.

The suggested elements consist of state’s human rights information and contribution at international and national level. At the international level, the suggested elements are:

a. List of international human rights instruments to which the State is already party and indications of intent to ratify further instruments and to withdraw reservations

b. Co-operation with special procedures, accepting requests for visits, extending standing invitations, and responding positively to communications and follow-up on recommendations
c. Cooperation with treaty monitoring bodies, timely submission of reports and implementation of concluding observations and contribution to the global reform of the treaty body system

d. Contribution to international initiatives for the promotion and protection of human rights through the provision of human, technical and financial resources

e. Cooperation with OHCHR and support for its activities

f. Contribution to the deliberation of international human rights fora.

g. Commitment to fully support and engage constructively in the deliberations of the Human Rights Council, its subsidiary bodies and mechanisms including the special procedures

h. Commitment to open and constructive engagement in a robust universal review procedure including reporting on measures taken to follow-up on its recommendations

i. Commitment to the meaningful engagement of NGOs with the Council.

On the other side, the suggested elements at the national level comprise of:

a. Description of national human rights policy, including information on national human rights planning, the existence of independent national human rights institutions, guarantees of effective remedies to redress human rights abuses, etc.

b. Identification of principal human rights challenges as well as indication of steps to be taken to meet those challenges

c. Indication of approach to the contribution of civil society, including in the formulation and implementation of domestic human rights policy and programs

d. Commitment to protect against and prevent discrimination in all its forms, in both law and in practice.

e. Pledge to uphold the highest standards in the promotion and protection of human rights;

On 12 April 2007, The Permanent Mission of Indonesia to the UN addressed the Indonesia’s Voluntary Pledges and Commitments to the President of the UNGA. The Permanent Mission of Indonesia said that the Government and people of Indonesia firmly believe that the promotion and protection of human rights are essential to building a peaceful, secure and equitably prosperous world. As the third-largest democracy in the world and with the world’s largest Muslim population, Indonesia is firmly committed to the principle of religious freedom and tolerance and has been actively advocating and promoting

2 Document UNGA A/61/855.
dialogue as the most effective means of enabling different communities to understand and respect one another. With regard to norm-setting and legislation on human rights and their institutionalization, Indonesia has ratified and acceded to a number of international human rights instruments. It has also enacted several national laws on human rights, one of which created the Human Rights Court while another ensures the independence of the National Human Rights Commission. Indonesia is also proud of its vibrant and active human rights civil society organizations and of its free and dynamic press as important pillars of democracy. In this respect, Indonesia attached the greatest importance to the critical role of the non-governmental organizations (NGOs) and other civil society organizations. In this endeavor, the Government of Indonesia has been working in close partnership with them. Indonesia has also established independent national commissions for human rights (Komnas HAM), the rights of women (Komnas Perempuan) and child protection (Komnas Anak).

At the international level, in the voluntary pledges and commitments were described that Indonesia has engaged actively and constructively in the human rights deliberations in both the Human Rights Council and the General Assembly by virtue of the various recommendations made to those institutions. In the context of the development of international human rights instruments, Indonesia has strongly supported the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance, the Draft United Nations Declaration on the Rights of Indigenous Peoples, and the Convention on the Rights of Persons with Disabilities.

As part of its efforts to promote and strengthen cooperation and partnerships in the field of human rights, Indonesia had held bilateral as well as plurilateral dialogues and cooperation on human rights with a number of countries. In this respect, the Permanent Mission of Indonesia said that Indonesia will continue to strengthen and expand the opportunities for such endeavors with more countries in this field. If re-elected, Indonesia will continue its active and constructive engagement in the promotion of universal respect for all human rights and fundamental freedoms on the basis of the principles of universality, indivisibility and non-selectivity, impartiality, interdependence and interrelationship. To this end, Indonesia had reiterated its human rights pledges and commitments, involving the following: At the international level:

1. Indonesia will continue its program of accession to or ratification of international human rights instruments in accordance with the stipulations of the second National Plan of Action on Human Rights 2004-2009.
2. Indonesia will continue to work and fully cooperate with relevant treaty monitoring bodies, through the timely submission of its national reports and the implementation of their respective recommendations thereon.

3. Indonesia will also carry on and enhance its endeavors to ensure that all human rights: civil, political, economic, social, and cultural rights, but also the right to development, are given equal emphasis in the work of the Human Rights Council.

4. Indonesia will continue to strengthen its constructive engagement and cooperation with other members of the Human Rights Council in the final deliberations and conclusions of its institution-building mechanisms, including the finalization of the modalities of the universal periodic review mechanism.

5. Indonesia will play a more active role in the promotion of dialogue on human rights and interfaith cooperation at the regional, interregional, and multinational levels.

6. In the context of the promotion of religious tolerance, Indonesia is of the view that the Council’s deliberations on human rights issues should take into account, based on respect for and freedom of religion and belief, the different cultural and religious values of all States and of different communities.

7. Indonesia will continue to lend its support to the work of the Office of the High Commissioner for Human Rights.

8. Indonesia will continue its efforts to strengthen the role of civil society in the promotion and protection of human rights at the regional and international levels.

At the national level:

1. Indonesia will continue to implement its second National Plan of Action on Human Rights 2004-2009 consisting of 146 strategies on human rights and entailing: (a) the ratification of international instruments; (b) the harmonization of domestic laws with international norms; (c) education and dissemination; (d) the application of norms and standards; (e) strengthening the institutional framework; and (f) monitoring, evaluating, and reporting on the national human rights situation.

2. Indonesia will also continue to strengthen its close engagement and partnership with civil society in the promotion and protection of human rights, among others, by supporting the existing national human rights institutions that is the National Commission on Human Rights, the Commission on Child Protection and the National Commission on Women. By the same token, it will pursue the empowerment of the newly established local human rights commissions at the provincial and district levels.
3. Indonesia will also maintain its active support for the national, regional and international processes on promoting and protecting women’s rights and the rights of the child, particularly in the efforts to eliminate discrimination and violence against women, as well as its fight against human trafficking at the national, regional and international levels.

4. Indonesia also remains committed to the further strengthening of good governance and the rule of law, by enhancing the effectiveness of its legal institutions such as the Constitutional Court, the National Law Commission, the Judicial Commission, the Prosecution Commission, the Police Commission, the Ombudsman Commission and the Anti-corrupt Practices Commission.

5. Indonesia will maintain its efforts in the strengthening of its engagement and partnership with national civil society in the promotion and protection of human rights.

   Given the above considerations, Indonesia believed that its continued membership on the Human Rights Council would contribute to ensuring that the Council becomes a credible and efficient institution that could galvanize international cooperation in the promotion and protection of human rights.

   Considering the Indonesia’s voluntary pledges and commitments, this part will focus on the pledges and commitments at the national level, while the pledges and commitments at international level will be analyzed as part of the Indonesia’s Role and Position in International Human Rights Issues.

   There are at least 6 pledges and commitments at the national level. **First**, Indonesia pledged to advocating and promoting freedom of religion and tolerance. **Second**, strengthening institutional framework, including ensure the independent and empowerment of the National Human Rights Commission, and also pursue the empowerment of the newly established local human rights commissions at the provincial and district levels. **Third**, recognizing the important role of the free and dynamic press and critical role of the NGO, the Government of Indonesia will maintain efforts in the strengthening of its engagement and partnership with national civil society organization in the promotion and protection of human rights. **Fourth**, Indonesia promised to continue the ratification of international instruments and the harmonization of domestic laws with international norms. **Fifth**, Indonesia would also maintain its active support for the protecting women’s rights and the rights of the child, particularly in the efforts to eliminate discrimination and violence against women, as well as its fight against human trafficking at the national, regional and international levels. **Sixth**, Indonesia pledged to the further strengthening of good
governance and the rule of law, by enhancing the effectiveness of its legal institutions such as the Constitutional Court, the National Law Commission, the Judicial Commission, the Prosecution Commission, the Police Commission, the Ombudsman Commission and the Commission for Corruption Eradication.

The first issue is freedom of religion. Freedom of religion in Indonesia is guaranteed by the 1945 Constitution. Article 29 of the Constitution clearly guarantees the freedom of every citizen to observe each of their own religions and to practice in accordance to those religions and beliefs. Furthermore, Article 28E point 1 of the Constitution states that every person is free to observe and practice his religion. But, the condition of freedom of religion since Indonesia made pledge to advocating and promoting the freedom of religion becomes more critical.

Even though the Constitutional guarantee of the freedom of religion, there are many laws that infringe the freedom of religion. In the public services sphere, the administration of the government only officially recognizes six religions. As consequence, the other religions, all of them are the minority, face discrimination and restriction.

The other law that violates freedom of religion is Presidential Regulation No. 1/PNPS/1965 which decides which religion or belief is acknowledged or not. This Presidential Regulation is then adopted in KUHP article 156 A on Blasphemies that gives the State the authority to criminalize any religions or beliefs that are declared to deviate. Presidential Regulation No. 1/PNPS/1965 is clearly in contradiction with the 1945 Constitution, as well as with the ICCPR, article 18 of which has been ratifed into Law No. 12/2005. But unfortunately, the Constitutional Court of the Republic of Indonesia has decided that the whole Presidential Regulation No. 1/PNPS/1965 is not in contradiction with the Constitution.3

In 2007, there were 32 groups that faced religion violence.4 These numbers of cases increase to 200 in 2009 and 28 cases just in January to July 2010.5 Indonesian’s Setara Institute also identified that the violence was acted by the state actors either by commission or by omission, and also by the militant organizations. There are many kinds of violation to the freedom of religion such as discrimination based on religion in public services, permit to build worship houses, physical violation, burning the worship houses, attacking to the minority religion communities, and the criminalization of the minority religions based on blasphemies law.

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4 detikcom 22/12/2007 18:29 WIB
The recent freedom of religion cases are the violation to the HKBP group in Bekasi and the continued attacking to the Ahmadiyah community in Kuningan. The HKBP case shows that the regulation on build the worship houses is discriminative and it do not protect the right of the minority religions to build worship houses and to practice worship because the government only gives the permission if there is no objection from the local people where the worship house will be built. This case was culminated in the physical attacking of 2 peoples HKBP group.

In the Ahmadiyah case, the violations have been continued until the recent year. In July 26, 2010, municipal police and hundreds of people organized by militant groups have made several attempts to force an Ahmadiyah mosque in Manis Lor village, Kuningan regency, West Java, to close, resulting in violence. The municipal police were acting on the orders of the regent of Kuningan to close the mosque. On July 29, the religious affairs minister, Suryadharma Ali, publicly stated that the Indonesian government would not tolerate violence in religious disputes, but he also warned that the Ahmadiyah followers "had better stop their activities" and said the police would enforce a 2008 (SKB) decree barring them from spreading their faith.  

The decision of the deviation of Ahmadiyah was issued by the Council of Indonesian Ulema (MUI). This decision was used by the hardline groups as legitimacy to violate the Ahmadis community, and on the other hand as based for the Government Decree that barring Ahmadis from spreading their faith. The MUI is the social-religious organization consist of the leader of the majority moslem sect.

MUI is not state organ and of course have the right to make decision concerning their own religious sect. As consequence, the decision of MUI is not law. Government of Indonesia should not use the decision as base to ban a certain religious sect. In the case of Ahmadiyah, Government has been hijacked by majority that intolerate and violate minority groups. Thus the role of government in providing the protection for the religious minority, as promised expressed in the pledges, should be questioned.

The second pledge is strengthening institutional framework. Even though the Indonesian National Human Rights Commission (Komnas-HAM) has been granted “A” accreditation status by the International Coordinating Committee (ICC), there are many fundamental weaknesses that deter its independence and function. The weaknesses are the lack of powers to force other State party institution cooperation, the lack of power to summon the state apparatus, inability to challenge a decision of the Attorney-General not to

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prosecute a certain cases, and the absence of security of appointment of its members. Another weakness is the limitation of the Komnas HAM authority to conduct initial investigation only for the “gross violations of human rights”, i.e. genocide and crime against humanity. Komnas HAM has no power to conduct initial investigation in other human rights cases, such as torture and discrimination. Those weaknesses impede the basic functions of Komnas HAM.

The ICC has noted the weaknesses and give recommendation as well as one of the Indonesia's pledges are to ensure the independent and empowerment of Komnas HAM. But, there have not been enough effort yet to amend Law 39/1999 and Law 26/2000 to strengthen Komnas HAM. There is no institutional support progress since Indonesia declares the voluntary pledges and commitments. Similarly with Komnas HAM, there is no change according to the capacity and power of the local human rights commission at all level.

Third, the Government of Indonesia has promised to maintain efforts in the strengthening of its engagement and partnership with national civil society organization, particularly with the press and NGO which have important and critical role, in the promotion and protection of human rights. These pledges assume that the Government of Indonesia will respect and protect the freedom of press and the role of NGO’s.

Since reformation era in 1998, the freedom of press has grown rapidly because the constitutional guarantee of freedom of expression and the freedom of press protection on Law 40/1999. Furthermore, the Constitutional Court has nulled Articles 134, 136 bis, 137 (insulting President and Vice President), 154 and 155 (provocation) of Criminal Code.

Unfortunately, there are still a number of Article of criminal code that can be used to allow prison sentences for press offences, such as Article 310 on defamation, Article 317 on false news, Article 207 on libel to state officials or institution, Article 143 and 144 on foreign diplomatic defamation, Article 160 and 161 on inciting hatred against government, and Article 156 on blasphemy. Although there is Law 40/1999 on Press that also regulate and set up mechanism to solve dispute, the law enforcement including the police and other public official would prefer to use the criminal procedure. This practice is against the law principle that “the specific law will defeat the general law”, “lex specialis derogat legi generalis”.

The government and the legislator have not yet have plan to remove the Article of the criminal code that threat the freedom of press, and still applies it to suppress freedom of expression and opinion. According to the Independent Journalist Allies (AJI), there were 6 cases that journalist was brought to court in 2008 and increase to 7 cases in 2009. AJI also noted that there were other kinds violation to the journalist and press in 2008 and 2009, including cruel treatment (21 cases in 2008 and 20 cases in 2009), prohibition to cover an
event (9 cases in 2008 and 4 cases in 2009), intimidation (19 cases in 2008 and 1 case in 2009), illegal censor (4 cases in 2008 and 2 cases in 2009), demonstration against the press (1 case in 2008 and 2 cases in 2009), journalist murder (1 case in 2009), and taking journalist as a hostage (2 cases in 2009).

There are three obvious killing journalist cases recently. The victims are Agus Hutapea, Anak Agung Gde Narendra Prabangsa, and Marlon Brando Mramra. In 2009, Agus G. Hutapea (Aspirasi weekly, Northern Sumatra) was killed and no one single suspect was brought to trial. In the same year, Anak Agung Gde Narendra Prabangsa (Radar Bali) was killed after reporting corruption on education project. The mastermind, Susrama (member of local parliament) was sentenced for life, and the executors were sentence for 5 years to 20 years. This is the first justice for journalists that were assassinated. In February 2010, Marlon Brando Mramra, camera person of Mandiri Papua TV was killed by unknown man when he tried to protect a woman that was being attacked. Police does not capture the killer even though he was killed in public.

The civil society organizations have grown due to the guarantee of freedom of organization since 1998. But, similar with the lack of protection to the journalist, the NGO’s activist or Human Rights Defenders (HRD) faces the same problems. IMPARSIAL noted that there were at least 19 HRD violation in 2008 and at least cases 9 from January to July 2009. The type of the violations are similar with violation to journalist, including intimidation, killing, cruel treatment, and criminalization using the same article of criminal code. Unfortunately, the majority of those cases are lead to the impunity.

HRD continue to be subject to frequent threats and intimidation, particularly where activists confront local corruption or defend vulnerable religious and social groups. While many such threats are anonymous, some intimidation can be traced directly to the statements and actions of police, military, and intelligence officers, and occasionally prosecutors.

The murder of Munir Said Thalib case represents how impunity is the biggest problem in Indonesia. Mr. Munir Said Thalib was killed by poisoning on a Garuda flight from Jakarta to Amsterdam on 7 September 2004. The trial has been conducted, but the judges decided to release the mastermind of the murder, Mr. Muhdi PR. Attorney General had chance to file extra ordinary appeal through reconsideration mechanism in the Supreme Court, but they did not do that.

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7 http://hukum.tvone.co.id/berita/view/30803/2009/12/29/aji_kekerasan_terhadap_wartawan_capai_40_kasus
Many civil society organizations and NGOs have promoted the importance of the HRD protection. They have been success to push the HRD Protection Bill as the priority bill that would be discussed by the law maker in 2010. Unfortunately, this bill has not been considered yet until the end of 2010.


Unfortunately, Indonesia has not ratified yet several conventions that have been recommended by civil society and international community. Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is not yet ratified eventhough in 2007 the Indonesia’s Minister of Law and Human Rights said that this convention would be ratified in the near future. In spite of was one of the first signatories of the Convention Against Torture, Indonesia also not ratified Optional Protocol of the Convention Against Torture yet.8

For the harmonization of domestic laws with international norms, in July 2010 Komnas HAM released the result of their research that there are 3.200 local laws which in

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contradiction with human rights norms and principle. Around 900 local laws out from 3,200 have been invalidated by central government. In other words, Indonesia still has 2,300 local laws that will infringe human rights.

The bulk number of the problematic local laws show that not only the local legislator do not have enough human rights understanding and perspective but also the central government has been fail to promote human rights and to control local government. To solve this problem, Ministry of Law and Human Rights has set up Law Centre in 8 provinces as institution where the local government can ask or consult the expert to harmonize and synchronize local law.

The next pledge is Indonesia will support the protecting women’s rights and the rights of the child, particularly in the efforts to eliminate discrimination and violence against women, as well as its fight against human trafficking at the national, regional and international levels.

The government of Indonesia has expressed commitment to a policy of gender mainstreaming at all levels, including the establishment of the gender mainstreaming mechanism and obligations resulting from Presidential Instruction No. 9 on Gender Mainstreaming in National Development. It expresses its appreciation for the adoption of two national objectives to promote gender equality and justice in the five-year national development program 2000-2004 and the inclusion of gender mainstreaming as one of the strategies in the 2004-2009 midterm national development plan. On the other hand, there are many facts showing the fail or least the weakness of the gender mainstreaming policy at the implementation level. In early 2010, Komnas Perempuan has released their research’s result that found 154 local laws and policies which is used as tool to institutionalize discrimination to women. Those local laws or policies also limit the rights of women, especially the freedom of expression, the rights of protection and equality before the law, freedom from fear, and freedom from discriminated treatment. This research was conducted in 16 districts governments and 7 provincial governments. Fortunately, Komnas Perempuan also noted 40 local policies that support the women empowerment, giving services to the violation victim’s women and child, management of migrant workers, removing trafficking, gender mainstreaming, and HIV/AIDS.

For the national laws, even though the United Nations Committee on the Elimination of Discrimination Against Women, Komnas Perempuan, and other civil society organizations

9 http://www.antarajatim.com/ihat/berita/38868/komnas-ham-3200-perda-di-indonesia-bermasalah
have recommended to amend or remove certain laws that discriminate women, the laws still exist and applied. In Marriage Law 1974 there are many discriminatory provisions, such as providing that men are the heads of households and women are relegated to domestic roles, allow polygamy and set a legal minimum age of marriage of 16 for girls. The new Law on Citizenship does not provide women with the same rights as men to retain or transmit their Indonesian citizenship and the time limits and administrative requirements for women to retain their Indonesian citizenship creates obstacles to women’s full enjoyment and retention of their citizenship rights. And this law also makes circumstances more difficult for female migrant workers and there are no special measures by the State to protect Indonesian women who work overseas. Furthermore, Indonesia has not yet ratified the Optional Protocol to CEDAW.

Indonesia has made progress by the enactment of the Law 23/2004 on the Elimination of Violence in the Household, which include the protection of the domestic workers, which most of them are women. However, this law has not to be fully implemented yet, particularly about the domestic workers protection. The domestic workers still face very huge problems because they are not included in the provisions of the Manpower Act which regulates work hours, minimum wages, health insurance and other basic rights of worker. The other progresses are the enactment of Law 21/2007 on the Eradication of Human Trafficking and Law 40/2008 on the Elimination of Racial and Ethnic Discrimination. But, similar with Law 23/2004, both Law 21/2007 and Law 40/2008 have been not fully implemented yet.

There are at least about 345,992 Indonesian people are deployed as labor migrants, and the majority are women (76.85 %). There are a lot of violations against migrant workers cases every year. In 2009 as many as 1,018 Indonesian labor migrants were killed while working overseas (Migrant Care 2009), mostly in Middle Eastern countries and Malaysia. In 2009 different abuses against Indonesian labor migrants increased: torture increased up to 39%, sexual abuses up to 33%, work accidents up to 61%, and sickness for hard works increased to 107 %. Those facts show the lack of significant protection by the government. Indonesian labor migrants are very vulnerable of abuses and hence so prone to be victims of forced labor or slavery and trafficked in human beings. Actually, Indonesia has signed the memorandums of understanding on the rights of migrant workers with some countries, but this bilateral agreements and memorandums of understanding have not been entered into with all countries and regions to which Indonesian women migrate and that the rights of women workers who migrate through informal channels are not adequately protected.
Moving to the rights of child, Indonesia has enacted Law 23/2002 on Child Protection and Law 23/2004 on the Elimination of Domestic Violence that will give serious sanctions against parents who commit ill-treatment and violence to child. And the most critical problem on legislation is the corporal punishment for child. According to the Penal Code and Law 3/1997 on Children’s Court, child above 8 years old can be punished in corporal punishment. In the efforts to ensure the implementation of the Government’s policy for the protection of children, the Government has been in the process of revising Law No. 3/1997 on Children’s Court (from the discourse of diversion, restorative justice, increasing the minimum age for the penalization of children from 8 to 12 years of age) since 2007. Otherwise, the bill on the Revised Law on Child Justice has not been considered a priority in the National Legislation Program until 2010.

The cases of child violence have increased in 2008 and 2009. Komnas Anak has received 1.998 denunciations of violence against child case in 2009. This number increase from 1.736 cases in 2008. The violation is including sexual as well as physical violence. In 2009, there were 1.258 cases that children face the court, and almost 89.8 % that cases end to penalize child. This facts also can be proven by 5.308 children spent their time in jail. Only lest than 10% of the children court cases that were decided to go to Social Department or give back to the parents. In these points the laws enforceemds have been fail to implement the Law on Children Protection, Law on Children Court, as well as UN Convention on the Rights of Child.12

Komnas Anak noted that in 2009 there were 2.5 million children in the obligatory elementary school age that could not get their right of education in elementary school level. And also 1.87 million children in the age of 13-15 did not get their right of education. The other form of the violation against child is victim abortion child, which the number is increase from 2.567 children in 2008 to 4.382 in 2009. Komnas anak also received 186 denunciations of throwing baby cases in 2009 that increase from 104 cases in 2008. The cases of the child sexual trafficking also increase from 507 in 2008 to 836 in 2009.13

In July 2010, Komnas Anak released their report about child violence from January to June 2010. The new finding was 7 cases of the restraining baby cases by the hospital because the parent did not have enough money to pay the cost. From January to June 2010, Komnas Anak noted 483,272 children drop out from elementary school, and 520 children drop out from junior high school. In the violence against children, there were 453

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physical violence cases, 646 sexual violences, and 550 psyches violence. And for trafficking cases, there were 199 cases.\textsuperscript{14}

The last but not least issues are good governance and the rule of law. Indonesia has made pledge to further strengthen good governance and rule of law, by enhancing the effectiveness of its legal institutions such as Constitutional Court, the National Law Commission, the Judicial Commission, the Prosecution Commission, the Police Commission, the Ombudsman Commission and the Commission for Corruption Eradication.

Since 2008, the legislation body of the Parliament has drafted a bill to amend Law 24/2003 on the Constitutional Court. This bill was a priority in national legislation program in 2009 and 2010. The inclination of this bill is not strengthen the constitutional court, but to limit and lock up the court. There are at least 4 issues that could limit and lock up the court. First, in decision making process, the bill require absolute majority, at least 6 judges from 9 judges have to in the same side (Article 45 point 6). This absolute majority vote will lock up the vote because according to the Law 24/2003, decision can be made by simple majority, and several important cases have been decided by split decision, 5 against 4 judges. If a decision has to be made by absolute majority, it will be a lot of deadlock cases. Second, Article 45A of the bill declares that the decision of the Constitutional Court must not contain injunction that out or more than the petition of the plaintiff. This article will limit the authority of the court in the case where the court nulls the whole act. The court has null 5 Act as whole because the article that against the constitution is the heart of the Act. Third, in the case of judicial review, the bill add requirement for legal standing. Citizens or organizations have the right to file a judicial review petition only if they have already suffered a constitutional rights or authority loss (Article 51 point 1a). It will limit the possibility to file a petition to the court. Based on Law 24/2003, Citizens or organizations have the right to file a judicial review petition even if their constitutional rights or obligations have been broken potentially, not yet in reality. Fourth, the bill limits the decision of the court that must not include the order to the law maker and the new norm formula that replaces the other that has been nulled by the court. This limitation will barren the court and also will make problem in the execution of the court’s decision.

The other institutions that support good governance and rule of law and the Government of Indonesia had commitments to strengthen are the Judicial Commission, the Prosecution Commission, the Police Commission, the Ombudsman Commission and the Commission for Corruption Eradication. Unfortunately, from 2007 until now there is no strengthening process for Judicial Commission, the Prosecution Commission, as well as the

\textsuperscript{14} \textit{Jurnal Kecil Fakta dan Data Pelanggaran Hak Anak}. Komisi Nasional Perlindungan Anak, 2010.
Police Commission. Otherwise, the government and parliament have ignored the importance of these commission and made delay to amend the law as well as to select the commissioners. The Commissioner of the Judicial Committee Should end their term in August 2nd, 2010, but the President has prolong their term due to the process of selection has not finish until this report is made. The Commissioner selection was also delayed for the Commission for Corruption Eradication and Ombudsman.

One progress in this area is the enactment of Law 37/2008 on the Ombudsman of the Republic of Indonesia. This law becomes new stronger basic for the Ombudsman that replaces Presidential Decree that formed the Ombudsman Commission. Ombudsman has more powerful authority including give sanction to the public officer who conduct maladministration or neglect public services.

On the other hand, the Judicial Commission, the Prosecution Commission, as well as the Police Commission are still lack of power and authority. Although they had already received a thousand of complaint, they do not have enough powers to investigate and decide to give the sanction. The only thing they can do is give recommendation, the Judicial Commission give recommendation to the Supreme Court, the Prosecution Commission give recommendation to the Attorney General Office, and the Police Commission give recommendation to the Head of National Police. The recommendation is often ignored. Judicial Commission has little bit more power because they have representative in the Honorary of Judges Council that has the authority to decide the sanction for the judges.

The specific and critical event has already happen to the Commission for Corruption Eradication. This case is well known as “Cicak vs. Buaya”. In this case, law mafia worked together with a person in police and Victim and Witness Protection Agency to arrange the legal process so that two leaders of Anti Corruption Commission (Bibit Samat Riyanto and Chandra M Hamzah) could be arrested by the police, and they had been arrested. Even this case has already been finished, but this case has downgrade the Commission and disturbs the work of the Commission at least for one year.

D. The Universal Periodic Review Recommendation Fulfillment

In order to carry out its function, the UNHRC, among others, undertake a universal periodic review (UPR) of the fulfillment by each UN Member State of its human rights obligations and commitments. In addition, the review also assesses positive developments and challenges faced by the State. The process also provides the forum for the sharing of best practice among States and other stakeholders and encourages cooperation among
them and also with the UN. The end objective is the improvement of human rights situation on the ground.

All Member States of the UN are subject to the UPR mechanism once every four years. This was set up to ensure universal coverage and equal treatment of all States in terms of human rights review. For HRC members, the resolution stipulates that the Council members shall be reviewed under the Universal Periodic Review mechanism during their term of membership.

Based on HRC Resolution 5/1 of 2007 [Appendix 3], the basis of the review are the Charter of the United Nations, the Universal Declaration of Human Rights (UDHR), Human rights instruments to which a State is party. For HRC members, the voluntary pledges and commitments made when presenting candidatures for election to the HRC are also the basis for review.

For the purpose of the review, the State under review prepares national report containing all relevant information. Additionally, credible and reliable information provided by other relevant stakeholders are also taken into consideration by the Council, including contributions from NGOs.

The outcome of the universal periodic review, as a cooperative mechanism, should be implemented primarily by the State concerned and, as appropriate, by other relevant stakeholders. The subsequent review should focus, inter alia, on the implementation of the preceding outcome

Indonesia’s turn for review came in 2008, during the HRC’s First session, April 7–18th. The Government of Indonesia presented their national report. On the 10th meeting held on 11 April 2008, the Working Group adopted the report on Indonesia. The Human Rights Council’s Universal Periodic Review Working Group reviewed the fulfillment of human rights obligations by Indonesia, during which 43 Council members and observers raised a number of issues pertaining to the human rights situation in the country.15

Presenting the national report of Indonesia was REZLAN ISHAR JENIE, Director-General of Multilateral Affairs of the Department of Foreign Affairs of Indonesia, who noted that Indonesia was a country of 222 million people scattered over 33 provinces, said that per its Law on Local Government representatives of government held consultations with all relevant stakeholders, including NGOs and national human rights institutions in relation to the current review. It was the view of Indonesia that the review should be replicated from

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the multilateral to the local level consistent with the State’s National Action Plan on Human Rights as guided by the principle of popular participation in a democratic environment.

Responding to written questions posed beforehand, the Director-General said Indonesia had formulated a series of National Action Plans on Human Rights for successive period of five years during which concrete steps were implemented at the national level. Systematic and comprehensive implementation of the Indonesian National Action Plan on Human Rights was designed to help a culture of respect for human rights. Through a strengthened culture of respect for human rights throughout Indonesian society it was possible to create a conducive atmosphere in combating impunity.

The Second National Action Plan on Human Rights had been strengthened by additional pillars. Chief among these were the establishment and enhancement of the institutions that were either directly responsible for or instrumental in the promotion and implementation of the National Action Plan on Human Rights. Since 2002, hundreds of local regulations had been revoked for infringing universal human rights values. Building up the capacity of local committees to establish a complaint procedure and to cope with the drafting of legislation was imperative if the committees were to function effectively in supporting the full implementation of the National Action Plan.

The Government was also in the process of boosting the capacity of the legal bureau of the local government throughout Indonesia to better guarantee the compliance of local regulations with the ratified human rights instruments, the Director-General added. To this end, the Government passed the Law on Lawmaking and concluded a draft Guidelines on the Harmonization of the Local By-Laws to be in conformity with the human rights standards. This achievement was followed by the strengthening of democratic processes in the 33 provinces in order to enhance the autonomy of the Indonesia regions through the direct election of governors, district heads and other local officials. Heads of local government and legal bureaus were consequently expected to play an important role between the local government and local human rights defenders. The Government intended to involve the participation of heads of local government legal bureaus and members of criminal investigation units of the national police in Indonesia’s national delegations to future regular meetings of the Council and it dialogues with treaty bodies. A wide array of Indonesia’s national human rights NGOs, national human rights institutions and human rights activists worked together in an alliance known as the National Alliance for the Revision of the Penal Code, which had actively contributed its expertise to the drafting of the Bill in compliance with human rights standards. In the area of criminal policy, the Penal Code bill
had increased the minimum age from 8 to 12 years and had stipulated that the crime of torture was a human rights violation.

The Director-General noted that Indonesia was currently in the final stages of the establishment of a national institution for the protection of witnesses and victims in order to guarantee the effective investigation and prosecution of certain crimes. Indonesia was in the process of harmonizing its laws, administrative practices and policies, including bringing the Penal Code in line with the principles of the ratified International Covenant on Civil and Political Rights. Many initiatives had also been introduced at the community level at the initiative of the prominent think-tank, which had a wide network all over Indonesia, including in the province of Nangroe Aceh Darussalam. National efforts to achieve full-fledged democracy in Indonesia were ongoing and will continue to be strengthened. In this regard, on 4 April 2008 Indonesia’s national parliament passed the Freedom of Public Information Law through which all State agencies and public institutions were obliged to disclose, among other things, their financial reports to the public. Under the new law, political parties, judicial bodies and international NGOs were expected to reveal information about their activities. Initiatives had also been taken on drafting a freedom of information Bill as led by a group of 30 NGOs and a number of individuals who established a Coalition for Freedom of Information in November 2000. The State was also undertaking to strengthen its efforts to ratify the Optional Protocol of the Convention against Torture by 2009.

During the three-hour interactive discussion delegations noted a number of positive achievements of the State under review. These included the State’s efforts to enhance human rights on the ground; the eradication of child labor and the protection of the rights of the child, in general; protecting the rights of women; combating poverty; efforts to combat terrorism; the respect of the rights of migrant workers; the State’s capacity-building measures in support of the programs and projects; efforts to achieve religious freedom; combating trafficking in humans; and the establishment of the national commission on violence against women.

Questions posed by the Working Group, comprised of the 47 members of the Council, and Observers participating in the interactive discussion, related to the enhancement of the role of national human rights institutions through civil society; the independence of the judiciary; measures to reinforce the independence and impartiality of the national commission on human rights; engagement with Special Procedures and how their recommendations have assisted in the promotion and protection of human rights in the country; steps taken in amending the State Constitution and the role of the Constitutional
Court since its establishment in the promotion and protection of human rights; experiences in combating trafficking of persons; plans to raise the status of the Convention on the Rights of the Child in line with national laws and information on efforts to combat child pornography and prostitution; and detailed information on the State’s campaign to eradicate trafficking in children. Several speakers posed questions concerning the efforts of the State to promote and protect the rights of women and children and the progress made with respect of ratifying the optional protocols to the Convention on the Rights of the Child.

Other issues and questions raised dealt with intercultural and interfaith dialogue; measures adopted or planned to implement the decision to have 30% of women represented in political parties and electoral commissions, as set out by the Government; measures taken to safeguard freedom of expression and opinion; the results of steps taken to eradicate extreme poverty; unequal pay between men and women; ending impunity for human rights violators; how the crime of torture was addressed in the National Action Plan; plans to install a special contact persons for human rights defenders within the provincial government; the approach taken to address priority issues such as those which arose in the aftermath of the Tsunami; illiteracy rates; the human rights of individual in Papua; steps taken to ensure the protection of economic, social and cultural rights, in general; and combating discrimination against ethnic and religious minorities.

Information was also sought on the State’s plans to include torture as a crime stipulated in the Penal Code; the exploitation of natural resources; juvenile courts; protection of human rights defenders; the intention of the State to sign and ratify the Convention on enforced and involuntary disappearances; steps taken to promote the independence of the judiciary; violations committed by security forced in Timor Leste and the outcome of investigations in that regard; plans to amend the defamation laws; the arrest and detention of peaceful activists; human rights violations committed against human rights defenders; human rights violations reportedly taking place in Papua; and allegations of serious overcrowding of prisons.

A number of delegations also posed specific recommendations, some of which addressed withdrawing reservations to the Convention on the Rights of the Child; the consideration of providing additional human rights training to security forces; taking additional steps to ensure that the rights of minorities protected, especially in respect of reported abuse on non-State actors; taking further measures to address the threats on Ahmadiyah families following a fatwa banning the Ahmadiyah; and to ratify the optional protocol to the Convention against Torture.
With regard to the Special Procedures, it was recalled that Indonesia had received 11 Special Procedures of the Human Rights Council and it was the intention of the State to welcome other Special Procedures to visit the country. Concerning the situation in Papua, efforts had been taken to improve the welfare of those living on the island focused on the development of rural areas aimed at improving the quality of life of Papuans. Many human rights capacity-building projects had also been instituted. On migrant workers, it was noted that 2.5 million Indonesians were working overseas. The legal system had been strengthened with regard to the protection of all migrant workers and a special agency had been established under the president’s office which aimed to examine ways to protect foreign workers.

In response to questions asked, Indonesia noted that a number of delegations made many valuable suggestions with regard to the protection of women, the protection of children, which they appreciate and will consider seriously as they continue to make progress in these areas. The suggestion for a bilateral dialogue is appreciated and welcomed. On the situation in Papua, it considers this question as one of support to Indonesia’ efforts to improve the welfare of Papuans and the people of Indonesia. A member of the delegation, who is a representative of the local government of Papua and a Papuan himself, noted that the development process in Papua is centred around the Papuans themselves. Economic and health assistance were provided and efforts are made to combat poverty and promote employment, and achievements are made with the participation of the people. He noted that in addressing the human rights violence in Papua, many capacity-building and other programmes have been implemented throughout the region, including training for the communities to understand their rights.16

With regard to cooperation with special procedures, Indonesia had invited a number of special procedures and while it cannot confirm now which other special procedures will be invited in the future, it noted that based on previous practice, and with a spirit of maintaining a constructive dialogue and with a view to reinforcing the protection and promotion of human rights in the country, Indonesia could extend other invitations in the future. Indonesia noted the importance of the recommendation to include the definition of torture in its legislation, and indicated that it has already included it in the bill of the Criminal Code currently under review.17

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In response to questions asked, with respect to the relation with Timor Leste, Indonesia indicated that States have witnessed how their bilateral relation has progressed. They are working together with a vision of reconciliation. Most of the issues that were on the table have been resolved. The two countries through Commission Truth and Friendship (CTF) continued joint efforts to close the chapter that involves the allegation of human rights violation that occurred in 1999. They are currently waiting for the findings and recommendations of the CTF. The delegation also noted that the two leaders of the countries are committed to continuing this process, in a spirit of reconciliation and friendship. On freedom of assembly and opinion, the delegation noted that there are provisions in the law in this regard, including in the Constitution, and that Indonesia has been implementing them. With regard to judicial independence, they noted that the Constitution stipulates that the judiciary has full independence and the Government does not interfere with other bodies. The establishment of the Judicial Court was also noted. With regard to the ratification of the Optional Protocols to the Convention against Torture and CRC, the delegation noted that these ratifications are already stipulated in 2008 and 2009 by the national plan.\textsuperscript{18}

In its closing remarks, Indonesia summarized some of the major points that it had covered during the review session. Indonesia said that in recent years it has undertaken measures to protect vulnerable groups from trafficking, eradicate child labour and promote a compulsory nine-year education program. Education and employment creation combined are the most effective means to combat poverty, improve the standard of living and advance, to a greater extent, civil and political rights. Indonesia recognized that there is much to be done and there is room for improvement and therefore will be evaluating and monitoring its various commitments and obligations in order to more effectively promote human rights in Indonesia. It added that its efforts will incorporate the collaborative inputs from various stakeholders, including civil society and the National Human Rights Institutions on the ground. Indonesia said that its efforts should continue to aim at strengthening the Universal Periodic Review through constructive and interactive dialogue with various counterparts and monitor the Universal Periodic Review outcome. Indonesia reiterated its unabated commitment to the promotion and protection of human rights both in the country and at the international level.\textsuperscript{19}

At the end, the Working Group made conclusions and recommendations with the agreement of Indonesia’s delegation. The conclusions are:

\textsuperscript{18} Ibid page 15.
\textsuperscript{19} Ibid, page 16.
1. Efforts and specific measures taken to combat trafficking in persons, especially women and children, were commended. Indonesia underlines the importance of regional cooperation in this field.

2. The removal of all reservations to the Convention on the Rights of the Child was welcomed, as was the incorporation of the Convention into national legislation.

3. Enhanced engagement in a constructive dialogue with the special procedures and the benefits derived from some of their recommendations are important elements of promoting and protecting human rights.

Furthermore, the Working Group also gave recommendation which formulated during the interactive dialogue and it has been examined by Indonesia. The recommendations listed below enjoy the support of Indonesia:

1. Indonesia is commended for its efforts in the field of human rights training and education and is encouraged to continue in this regard, and to provide additional training for law enforcement officials, including prosecutors, police and judges, as well as for security forces.


3. Indonesia is commended for enabling a vibrant civil society, including with respect to those engaged in defending human rights, and is encouraged to support and protect their work, including at the provincial and local level as well as in regions with special autonomy.

4. Welcomes Indonesia’s reaffirmation of its commitment to combat impunity and encourages it to continue its efforts in this regard.

5. While acknowledging the efforts made by the Government of Indonesia, it was recommended that such efforts continue to ensure the promotion and protection of all the components of the Indonesian people.
6. The inclusion of the crime of torture in the new draft criminal code is welcomed and the Government is encouraged to finalize the draft code, taking into account comments received from relevant stakeholders.

7. Capacity-building/cooperation/sharing of best practices:
   (a) Indonesia is encouraged to consider engaging in further dialogue at the regional and international level, and share best practices, as requested by States during the interactive dialogue;
   (b) Indonesia is encouraged to identify its capacity building needs related to the Universal Periodic Review follow-up and seek regional and international cooperation in this regard, including through integration of the Universal Periodic Review recommendations, as appropriate, into its national development strategy and into its dialogue with relevant stakeholders through existing mechanisms. Such capacity-building needs could pertain, inter alia, to issues such as harmonization of local laws with national and international standards or to strengthening national human rights institutions;
   (c) It was recommended that additional capacity-building measures be taken in support of programs and projects on women and children.

The Indonesia’s UPR recommendations above have similarity with the Indonesia’s pledges and commitment. As well as the pledges and commitments, the majority of UPR recommendations are consider to the improvement of the human rights condition at national level. There is only one recommendation for international level that is encouraging Indonesia to consider engaging in further dialogue at the regional and international level and share best practices. In many aspects of the recommendation, we will recall the fact and analysis that have been explored in the pledges and commitments fulfillment part.

The first recommendation is that the Council encouraged Indonesia to continue and to provide additional training for law enforcement officials, including prosecutors, police and judges, as well as for security forces. The human rights training has already a part of the National Human Rights Action Plans 2004 – 2009 and also included in the Government Work Plan and was implemented especially by the Ministry of Law and Human Rights, National Police, Attorney General Office, Supreme Court, Judicial Commission, Human Rights Commission, Women Commission, and the Indonesian Military. The Ministry of Law and Human Rights conduct human rights training mainly for the warden and for the local public servant in order to implement the National Human Rights Action Plan to the Local Human

20 http://bataviase.co.id/detailberita-10463205.html

The other law enforcement and security force institutions also have conducted human rights training; the Attorney General Office carried out the training for the prosecutor, Supreme Court and Judicial Commission for the judges, Human Rights Commission for the local public servant and local law enforcement, Women Commission for activist of local women organizations, and the Indonesian Military for the military personnel including Special Forces. Actually, human rights’ training has been carried out by state institutions but also by the NGO’s and Civil Society many years before. The Indonesian NGO’s such as ELSAM, KONTRAS, and PBHI have run the human rights training annually for lawyers, student universities as well as human rights activists and marginalized communities.

The second recommendation is to accede several international human rights instrument, that are the Rome Statute of the International Criminal Court, the Optional Protocol to the Convention on the Rights of the Child on involvement of children in Armed Conflict, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, the Optional Protocol to the Convention against Torture, Cruel, Inhuman and Other Degrading Treatment, and International Convention on the Protection of All Persons from Enforced Disappearance. None of those international instruments have been acceded by Indonesia.

The Third recommendation is to support and protect the work of civil society that defending human rights, including at the provincial and local level as well as in regions with special autonomy. This recommendation is about the protection of human rights defender that has been elaborated in the part of the pledges and commitments fulfillment. Human Rights Defender continues to be subject to frequent threats and intimidation, particularly where activists confront local corruption or defend vulnerable religious and social groups.

The fourth recommendation is to combat impunity. It has stated in the pledges and commitments fulfillment part that impunity is the biggest problem in Indonesia. Many human rights violations have not uncovered yet and the perpetrators still untouched by the
law systems. The case of Trisakti Tragedy, Mei 1998 Riots, Talangsari, Enforced Disappearance, as well as Munir case that all of these case have not uncover yet are the evidence that the impunity is the biggest problem and the government of Indonesia do nothing to combat it.

The Fifth recommendation is to finalize the draft of criminal code that the crime of torture has accommodated in. The criminal code draft has been discussed for many years and time but not yet finished until the end of 2010 and could be changed in the next years. This draft has to be watched to make sure the existence and the formulation of the crime of torture until enacted.

The sixth recommendation is to identify capacity building needs related to the Universal Periodic Review follow-up and seek regional and international cooperation in this regard, including through integration of the Universal Periodic Review recommendations, as appropriate, into its national development strategy and into its dialogue with relevant stakeholders through existing mechanisms. Such capacity-building needs could pertain, inter alia, to issues such as harmonization of local laws with national and international standards or to strengthening national human rights institutions. The government of Indonesia through the mechanism of the national development strategy and the government work plan formulation has integrated all of the aspect of the national development, domestically and internationally, including the Universal Periodic Review. This result of the mechanism is the inclusion of the human rights issues both in the national development strategy and in the government work plan. Unfortunately, the programs that contain human rights issues were not fully implemented.

For the harmonization of local laws with national and international standards and the strengthening national human rights institutions issues, it has been describe in the pledges and commitments fulfillment part. Even though the government has invalidated 900 local laws, there are many local laws that in contradiction with national and international law. And there is not any progress neither in the strengthening national human rights institutions nor in the adding capacity building to support women and child programs and projects.

E. Role and Position in International Human Rights Issues

The main products and instruments by which UNHRC performs their basic functions are resolution and decision. Resolution and decision have contain position, statement, as well as recommendation especially for the member state of the UN and for the other organs of the United Nation, in order to promote universal respect for the protection of all human rights and fundamental freedoms, to address situations of human rights violations, and to
promote the effective coordination and the mainstreaming of human rights within the UN system.

The resolution and decision of the UNHRC is made through genuine dialog and deliberation in regularly meeting that it should be no fewer three sessions per year, and shall be able to hold special sessions at the request of a member of the Council with the support of one third of the membership. The forty-seven member stated of the Council have the same right in the meeting to make statements during the ensuing discussion, to put questions, to vote, as well as to make statements in explanation of vote. The role and position of a member state can be seen through role in sponsoring resolution or decision, statements, and vote for particular human rights issues in each session of the Council.

For Indonesia, the UNHRC meetings also serve as international forum to promote and to protect human rights through dialogue and cooperation on human rights and share best practices. The dialogues and cooperation among member states during the Council meeting is the starting point for the further dialogues and cooperation both in international and regional level, which were one of the Indonesian pledges and commitments at international level as well as one of the Indonesian UPR recommendations.

Indonesia had been a member of the Council since 2006 as initial member for one year, and re-elect in 2007 for full three years term. During that time of membership, the Council has run 14 sessions and 13 special sessions, and produced 263 resolutions and 169 decisions included 12 resolutions and 2 decisions in the special session. The number of the resolutions and decisions for each session is described by the following list.

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Indonesia had had active role in sponsoring resolutions and decisions. During the tenure in the Council, Indonesia had been as one of the state sponsor for 60 resolutions and 6 decisions. Indonesia also was state co-sponsor for 23 resolutions and 1 decision. (Annex II: list of the resolutions and decision which Indonesia was one of the state sponsor or co-sponsor).

More over, Indonesia had active role in requesting special sessions, which require request from at least one-third of the Council members, to respond a certain human rights condition. Indonesia had signed request for 8 special sessions, those are:

1. First Special Session to consider the latest escalation of the situation in the Palestinian and other occupied Arab territories.
2. Second Special Session to consider and take action on the gross human rights violations, by Israel in Lebanon, including the Qana massacre, the countrywide targeting of innocent civilians and the destruction of vital civilian infrastructure.
3. Third Special Session to consider and take action on the gross human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory, including the recent one in northern Gaza and the assault on Beit Hanoun.
4. Sixth Special Session to consider and take action on human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory, including the recent ones in occupied Gaza and the West Bank town of Nablus.
5. Seventh Special Session to consider and take action on the negative impact on the realization of the right to food of the worsening of the world food crisis, caused inter alia by soaring food prices.
6. Ninth Special Session to address the grave violations of human rights in the Occupied Palestinian Territory including the recent aggression of the occupied Gaza Strip.

7. Tenth Special Session to address the impact of the global economic and financial crises on the universal realization and effective enjoyment of human rights.

8. Twelfth Special Session on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem.

Majority of the resolutions and decisions of the UNHRC was adopted without vote (W/oV). From 263 resolutions, there are 193 resolutions that were adopted without vote, and 70 resolutions adopted with vote (WV).

In the decision, there are 161 decisions adopted without vote and 8 decisions adopted with vote.
For the resolutions that adopted with voted, the majority of Indonesia position is in favor (IF) for 64 resolutions, despite abstain (ABS) for 2 resolution, and against (AGN) for 4 resolutions. The resolutions that Indonesia vote abstain are Resolution 6/37 on Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and Resolution 10/25 on Discrimination Based on Religion or Belief and Its Impact on the Enjoyment of Economic, Social and Cultural Rights. The following resolutions are the four resolutions that Indonesia vote against:


There are only 8 decisions that were adopted with vote. Almost for all decisions Indonesia vote in favor, but 1 decision Indonesia vote abstain for Decision 10/117 on
Publication of Reports Completed by the Sub-commission on the Promotion and Protection of Human Rights.

The above descriptions show that Indonesia have played the active and significant role quantitatively, at least by sponsoring many resolutions and decisions, requesting special sessions, making statements and questions during the ensuing discussion, and also basically stand with the majority of the state members of the Council in adoption resolutions and decisions.

But to know further about the role and position of Indonesia in promotion and protection of human rights, the next passages will analyze the Indonesia’s role and position in particular issues of human rights. This analysis will find whether Indonesia had played the same role and position on all aspect of human rights or are there any differences in Indonesia’s role and position for different issues or regions.

There are two regions and several issues which will be looked. The two regions are Palestine and Myanmar. Palestine is the most concerned region by the UNHRC, many resolutions and decisions have been adopted for this region. Myanmar is the country with many human rights problems and a member of the ASEAN which Indonesia is one of the prominent countries in this organization. Several human rights issues which Indonesia’s role will be described are (1) climate change; (2) defamation of religions and freedom of religion, (3) indigenous people, (4) migrant workers, (5) terrorism, (6) UN reform specific special rapporteur, (7) human rights defenders, dan (8) extreme poverty.

Indonesia’s position on the Palestine issue is very clear, supporting two separate sovereign countries, Palestine and Israel. Indonesia urge Israel to open the border in order to let humanitarian aid enter for Palestinian people, and also urge Israel to stop all of housing developed by Israel in the region of Palestine and East Jerusalem.22

In the UNHRC forum, Indonesia had active role for the Palestine issues including Syrian Golan and East Jerusalem. UNHRC has adopted 27 resolutions and 1 decision related to the Palestine issues. Indonesia was also sign request for 5 special sessions to respond the human rights condition in Palestine. Furthermore, Indonesia had been as one of the sponsor or co-sponsor countries for 7 resolutions and 1 decision of UNHRC related to the Palestine Issues, namely:

2. Resolution 2/4 on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan (draft resolution A/HRC/2/L.12).

6. Resolution S-1/1 on Human rights situation in the Occupied Palestinian Territory (draft resolution A/HRC/S-1/L.1).
7. Resolution S-3/1 on Human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory, including the recent one in northern Gaza and the assault on Beit Hanoun (draft resolution A/HRC/S-3/L.1).

The resolutions related to Palestine issues have adopted 5 without vote and the rest adopted with vote. In all of that resolutions and decision Indonesia stand in favor position. For the Palestine issues, the Organization of the Islamic Conference (OIC) had great role and influence. There were 13 states member of UNHRC that also member of OIC, namely: Azerbaijan, Bahrain, Gabon, Indonesia, Jordan, Malaysia, Mali, Morocco, Nigeria, Pakistan, Saudi Arabia, Senegal and Tunisia. For 2007 – 2010 term, there were also 13 states member of the UNHRC that also member of OIC, namely: Azerbaijan, Djibouti, Egypt, Gabon, Indonesia, Jordan, Malaysia, Mali, Nigeria, Pakistan, Qatar, Saudi Arabia and Senegal. These countries often sponsored resolution or decision or made statement on behalf of the countries member of OIC. OIC also has the rights to attend in the UNHRC meeting as observer from intergovernmental organization. All of the OIC members in the UNHRC stand in the same position for Palestine issues. They were always in favor when had to adopt that resolutions or decisions with vote.

The position of the OIC state members is understandable not only for the reason the critical situation of human rights in Palestine, but also for reason that Palestine is a member of the OIC. The OIC state members in UNHRC also had the same position for the resolutions or decision concerning with the human rights conditions in other countries member of OIC, such as Lebanon and Sudan. In the Sudan case, There is one resolution, 11/10, which Indonesia and other members of OIC in UNHRC vote against. The resolutions concerning to the Palestine issues are very strong, for examples:

“4. Determines that all legislative and administrative measures and actions taken or to be taken by Israel, the occupying Power, that purport to alter the character and legal status of the occupied Syrian Golan are null and void, constitute a flagrant violation of international law and of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and have no legal effect;”

2. Resolution 10/19 on Human rights violations emanating from the Israeli military attacks and operations in the Occupied Palestinian Territory.

“2. Strongly condemns the Israeli military attacks and operations in the Occupied Palestinian Territory, particularly the recent ones in the occupied Gaza Strip, which have resulted in the killing and injury of thousands of Palestinian civilians, including a large number of women and children, and also condemns the firing of crude rockets on Israeli civilians;”

3. Resolution 13/8 on the grave human rights violations by Israel in the Occupied Palestinian Territory, including East Jerusalem.

“5. Demands that Israel, the occupying Power, respect the religious and cultural rights in the occupied Palestinian territories, particularly in occupied East Jerusalem, as provided for in the Universal Declaration of Human Rights, the core international human rights instruments, the Hague Conventions and the Geneva Conventions, and that it allow Palestinian citizens and worshippers unhindered access to their properties and religious sites therein;”

4. Resolution 14/1 on the grave attacks by Israeli forces against the humanitarian boat convoy.

“8. Decides to dispatch an independent, international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance;”

On the other hand, Indonesia was less active for human rights issues in Myanmar, while Indonesia is one of the prominent state members of ASEAN which Myanmar is also the member. There are 8 resolutions concerning to the human rights in Myanmar, but no one of those resolutions was either sponsored by Indonesia or by the other state members of ASEAN. Fortunately, all of the resolutions concerning to human rights in Myanmar are adopted without vote.

Indonesia was seen reluctance to have active role and clear position in Myanmar human rights issues. Indonesia and other ASEAN countries hide behind the principle on non-interference in member states of ASEAN. Even though many civil society and expert, including ex-foreign minister Hasan Wirajuda, urge Indonesia has to be more active and

23 The Jakarta Post, Jakarta | Tue, 11/16/2010.
has to leave the non-interfere principle in the case of Myanmar, Indonesia stick in the same position.

Unlike the strong position against Israel in the Palestine issues, Indonesia is very soft in the Myanmar Issue. Indonesia believes that the proper approach to solve Myanmar problem in through constructive engagement, not isolation or confrontatives approach. Indonesia concerns not only for democratization and human rights in Myanmar but also the territorial integrity. Indonesia also believes that the future of Myanmar democracy and human rights is in the own hand of the government and people of Myanmar. Indonesia support democratization in Myanmar, including the implementation of 7 steps political roadmap that has been planned by the government of Myanmar.24

Moving to the thematic human rights issues, the first issue is climate change as the most recent issue that has affected all aspects of human being. Every single country concern about climate change issue and almost all of the nations have the common understanding of the climate change impact to the human rights condition, but they have not reached yet common actions.

Indonesia is the three largest emitters of greenhouse gases in the world. This is largely due to the significant release of carbon dioxide from deforestation. Yearly emissions in Indonesia from energy, agriculture and waste all together are around 451 million tons of carbon dioxide equivalents (MtCO2e). Yet land-use change and forestry (LUCF) alone is estimated to release about 2,563 MtCO2e - mostly from deforestation, as estimated by the IPCC.25 On the other hand, Indonesia has chance to give significant contribution in climate change issues by reducing carbon emission from deforestation and forest degradation.

Indonesia has had active role in many international forums concerning to climate change. During the membership of Indonesia in UNHRC, there are two resolutions on human rights and climate change, resolution 7/23 and resolution 10/4. Indonesia was one of the state sponsors for both resolutions. Unfortunately, while the phenomenon of the climate change have already happen, such as extreme weather lead to flood, landslide, and plague in farming that endanger the fulfillment of human rights, the last resolution still in the point to discuss the relationship between climate change and human rights, as showed by the following citation from the resolution 10/4.

“1. Decides to hold a panel discussion on the relationship between climate change and human rights at its eleventh session in order to contribute to the realization

of the goals set out in the Bali Action Plan and to invite all relevant stakeholders to participate therein;

2. Requests the Office of the United Nations High Commissioner for Human Rights to prepare a summary of the panel discussion and decides to make the summary available to the Conference of the Parties to the United Nations Framework Convention on Climate Change for its consideration;

3. Welcomes the decision of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living to prepare and present a thematic report on the potential impact of climate change on the right to adequate housing, and encourages other relevant special procedure mandate holders to give consideration to the issue of climate change within their respective mandates;”

Indonesia strongly supports the international effort for mitigation and adaption of climate change. Indonesia has signed the United Nations Framework Convention on Climate Change (UNFCCC) on the June 5, 1992. On August 1, 1994, Indonesia has enacted Law 6/1994 on Ratification of UNFCCC. Indonesia also has signed Kyoto Protocol in 1998 and has ratified it in 2004. In order to properly address climate change issues, Indonesia has established the National Council on Climate Change and has formulated National Action Plan for Climate Change 2007.

At international level, Indonesia hosted two importance’s meeting in climate change. First meeting was United Nation Climate Change Conference which held in Bali, December 2007. This forum produced and adopted Bali Action Plan which contains planning for mitigation, adaptation, transfer of technologies, financing and shared vision. Second meeting was World Ocean Conference which held in Manado, 11 – 15 May 2009. This conference formulated the Manado Ocean Declaration that forms the basis for negotiations at the United Nations Framework Conference in Copenhagen at the end of 2009. As Indonesia is one of the sponsor for the resolution on HR and Climate Change, Indonesia could propose the use of human rights in the UNFCC negotiation process in Copenhagen 2009 and Cancun 2010. Indonesia should take the responsibility of using the human rights language in the climate change negotiation.

The President of the Republic of Indonesia delivered speech on climate change at global economic G8 Summit in Pittsburgh, 25 September 2009. In his speech President declare that Indonesia would reduce its carbon emissions by 26 percent in 2020. With international support, Indonesia was confident that can reduce emissions by as much as 41 percent. The facing problem is the enforcement of the policy, especially deforestation policy. For example, the government regulation concerning the usage of forest estates was enacted

in February 2009, allowing open cast mining in production forest and underground mining in both protection and production forest, the Agriculture Ministry is planning to open 1.6 million hectares of food production estates in Merauke, the Energy and Mineral Resources Ministry has also declared that Indonesia will continue to use coal as its primary source of energy for at least a few years to come, and across the country, healthy forests are being cleared for palm oil plantations.\textsuperscript{27}

Defamation religion is the next human rights issue. Unlike traditional defamation laws, which punish false statements of fact that harm individual persons, measures prohibiting the `defamation of religions' punish the peaceful criticism of ideas. At national level, defamation religion means nothing more than to criminalize any religions of believe that are declared to deviate by majority religions or believes.

In line with national freedom of religion conditions and the national legislation that criminalize any religions or beliefs based on Presidential Regulation No. 1/PNPS/1965, Indonesia had active role in the adoption of the resolution on combating defamation of religions. There are 4 specific resolutions on combating defamation of religion, Resolution 4/9, 7/19, 10/22 and 13/16. Those resolutions were sponsored by Pakistan on behalf of the OIC, which Indonesia is one of prominent members. The fourth resolutions were adopted with vote where Indonesia as well as other members of OIC in UNHRC votes in favor.

Those resolutions provide international support for domestic laws against blasphemy and "injury to religious feelings", which are often abused by governments to punish the peaceful expression of disfavored political or religious beliefs and ideas. The following citations of the declaration show that the defamation of religions has very broad interpretation that could be lead to the limitation of freedom of expression, freedom of religions and believes and freedom of organization.

"8. Urges States to take actions to prohibit the dissemination, including through political institutions and organizations, of racist and xenophobic ideas and material aimed at any religion or its followers that constitute incitement to racial and religious hatred, hostility or violence;

..."

14. Deplores the use of printed, audio-visual and electronic media, including the Internet, and of any other means to incite acts of violence, xenophobia or related intolerance and discrimination towards Islam or any religion;"

On the other hand, Indonesia as well as other members of OIC in UNHRC voted abstaining for 2 resolutions concerning discrimination based on religion or beliefs, Resolution

\textsuperscript{27} Damayanti Buchori, Indonesia at the Crossroads: Climate Change and Its Challenges, \textit{The Jakarta Post}, 03/23/2010
6/37 on Elimination of all forms of intolerance and of discrimination based on religion or belief, and Resolution 10/25 on Discrimination based on religion or belief and its impact on the enjoyment of economic, social and cultural rights. That position is in line with the Indonesia’s national regulations and practices that not yet free from discrimination based on religion, for example, discrimination to build worship houses or places which strongly should be eliminated based on the following statement from Resolution 10/25:

“9. **Urges** States:

... 

(g) To ensure, in particular, the right of all persons to worship or assemble in connection with a religion or belief and to establish and maintain places for these purposes and the right of all persons to write, issue and disseminate relevant publications in these areas;

(h) To ensure that, in accordance with appropriate national legislation and in conformity with international human rights law, the freedom of all persons and members of groups to establish and maintain religious, charitable or humanitarian institutions is fully respected and protected;”

The third issue is indigenous people. In this issue, Indonesia did not have active nor positive role and position. UNHRC, during the Indonesia membership, has adopted 4 resolutions concerning to indigenous people: Resolution 6/12 on Human rights and indigenous peoples: mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Resolution 6/16 on Informal meetings to discuss the most appropriate mechanisms to continue the work of the Working Group on Indigenous Populations, Resolution 6/36 on Expert mechanism on the rights of indigenous peoples, and Resolution 9/7 and 19/13 which both on human rights and indigenous peoples. All of those resolutions were adopted without vote.

Indonesia did not play a significant role in the adoption of those resolutions. Indonesia did not contribute as sponsor or co sponsor. Those UNHRC indigenous people’s resolutions were sponsored especially by South-American countries such as Bolivia, Brazil, Chile, Cuba, Ecuador, Panama, Peru, Uruguay and Venezuela (Bolivarian Republic of). Mexico and Nicaragua, and supported by European countries.

UNHRC’s Resolution on human rights and indigenous peoples was brought before the UN General Assembly which moved further by adopted UN Declaration on the Rights of Indigenous Peoples in its 107th meeting. Although Indonesia voted in favor for the Declaration, the delegation of Indonesia, in his statement noted that several aspects of the Declaration remained unresolved, in particular what constituted indigenous peoples. Because the Declaration used the definition contained in the International Labour Organization
Convention, according to which indigenous people were distinct from tribal people, the delegation of Indonesia believed that the Declaration did not apply in the context of Indonesia; given the fact that Indonesia’s entire population at the time of colonization remains unchanged.

In that position, Indonesia often ignores the role and rights of indigenous people for decision making process and rights for the development. For example, Indigenous peoples were never involved in the decision making process and implementation of the Reducing Emission from Deforestation and Forest Degradation Program and also never involved in the international negotiations.28

The fourth issue is human rights and migrant workers. Despite poor and weak condition at national level in protecting migrant worker, Indonesia has active role to support UNHRC resolutions concerning migrant workers. During Indonesia's membership, UNHRC was adopting 4 resolutions concerning migrant workers; all of those resolutions were adopted without vote. Indonesia had been one of the co-sponsor countries for 3 resolutions out from 4, i.e. Resolution 9/5 on Human Rights of Migrants, Resolution 11/9 on the Human Rights of Migrants in Detention Centers, and Resolution 12/6 on Human Rights of Migrants: Migration and the Human Rights of the Child.

Indonesia’s delegation also submitted a draft resolution on migrant worker protection to the UN General Assembly’s committee session last years. In the resolution, Indonesia gave much emphasis on the protection of migrant workers working in the informal sector. The draft was also contained legal protection for Indonesian female workers once an incident happens with their employers, basic salaries and the rights to take a leave. Migrant workers who failed to produce the required documents must also receive legal protection.29

Apart from the active role that had been played, Indonesia still faces many problems in protecting Indonesian migrant workers, particularly in making and implementing bilateral agreement with receiving countries. For instance, Indonesia has signed MoU with Malaysia concerning to migrant worker. Even though that MoU is a progress, Special Rapporteur on the human rights of migrants noted that the MOU with Malaysia covers procedural matters regarding recruitment, but makes little mention of employees’ rights. However, by ignoring international legal standards the MOU allows human rights violations by (i) denying Indonesian workers the right to freedom of association, as stipulated in article 20 of the Universal Declaration of Human Rights and article 22 of ICCPR; (ii) the right to freedom of

movement stated in article 13 of the Universal Declaration and article 12 ICCPR; and (iii) the right to marriage under article 16 of the Universal Declaration.\textsuperscript{30}

The fifth issue is human rights and terrorism. Terrorism issue is not only importance but also critical for Indonesia due to many terrorism incidents in Indonesia for the last ten years on one side, and on the other side there are many potencies for violating human rights in counter terrorism activities, especially when Indonesia’s police lack of professionalism.

At international level, Indonesia has interest to pay special attention in terrorism. Indonesia’s Minister of Foreign Affair said that Indonesia’s foreign policy in 2010 continue employing bilateral, regional and global efforts to overcome threat of terrorism. He said that Indonesia also continues to address the so-called conditions conducive or root causes of terrorism. Inter-faith dialogue through bilateral, regional and inter-regional cooperation will be at the forefront of Indonesia’s diplomacy. The entire spectrum of “soft power” will occupy a central place in Indonesia’s foreign policy.\textsuperscript{31}

UNHRC, during the membership of Indonesia, has adopted 4 resolutions concerning to human rights and terrorism, namely: Resolution 6/28 on Protection of human rights and fundamental freedoms while countering terrorism: mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Resolution 7/7 on Protection of human rights and fundamental freedoms while countering terrorism, Resolution 10/15 on Protection of human rights and fundamental freedoms while countering terrorism, Resolution 13/26 on Protection of human rights and fundamental freedoms while countering terrorism, and Resolution 13/26 on Protection of human rights and fundamental freedoms while countering terrorism. UNHRC also adopted Decision 2/112 on Persons deprived of liberty in the context of counter-terrorism measures.

All of those resolutions and decision were adopted without vote. The draft of those resolutions were sponsored by Mexico and supported by European countries. Indonesia did not involve in sponsoring of those human rights and terrorism, despite Indonesia need those resolutions in order to protect human rights while continue to combating terrorism.

The sixth issue is UN reform specific special rapporteur. Special rapporteurs play key role to observe the human rights protection and fulfillment and report to the Council and other UN bodies. When Indonesia was a member of UNHRC, the Council adopted 20 resolutions and 1 decision concerning to mandate of special rapporteur and system of


special procedure. Almost all of those resolutions were adopted without vote, but 1 resolution was adopted with vote, i.e. Resolution 7/36 on Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in which Indonesia voted for in favor. There are 2 resolutions out from 20, in which Indonesia had role as one of the state sponsor, those are Resolution 6/2 on Mandate of the Special Rapporteur on the right to food (draft resolution A/HRC/6/L.5/Rev.1) and Resolution 7/34 on Mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (draft resolution A/HRC/7/L.18).

In the last 10 years, Indonesia had received 5 visits of special rapporteurs or representatives. The Special Rapporteur on the right to education carried out her mission to Indonesia from 1 to 7 July 2002 at the invitation of the Government. Special Rapporteur on the independence of judges and lawyers took a mission to Indonesia, from 15 to 24 July 2002. At the invitation of the Government of Indonesia, the Special Rapporteur on the human rights of migrants visited Indonesia from 12 to 21 December 2006. The Special Representative of the Secretary-General on the situation of human rights defenders conducted a country visit to Indonesia from 5 to 12 June 2007. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment undertook a visit to Indonesia from 10 to 23 November 2007.

In the human rights defenders issue, UNHRC has adopted 2 resolutions concerning with human rights defenders, i.e. Resolution 7/8 on Mandate of the Special Rapporteur on the situation of human rights defenders; and Resolution 13/13 on Protection of human rights defenders. Both of that resolutions were adopted without vote. Resolution 7/8 was sponsored by Norway, Austria, Belgium, Brazil, Colombia, Costa Rica, Cyprus, Denmark, Estonia, Finland, France, Germany, Iceland, Israel, Italy, Japan, Netherlands, Nicaragua, Panama, Peru, Poland, Portugal, the Republic of Korea, Romania, Serbia, Slovenia, Turkey, and Uganda, and also co-sponsored by Albania, Andorra, Argentina, Armenia, Australia, Bolivia, Bulgaria, Canada, Chile, Croatia, the Czech Republic, Ecuador, Guatemala, Hungary, Latvia, Liechtenstein, Luxembourg, Mexico, Monaco, New Zealand, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, and Uruguay.

Resolution 13/13 was also sponsored by Norway. The countries which co-sponsored this resolution were Argentina, Brazil, Mexico, Paraguay, Peru, Switzerland, United States of America, Canada, Albania, Armenia, Australia, Austria, Belgium, Bolivia, Bulgaria, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Guatemala, Hungary, Iceland, Ireland, Italy, Japan, Kyrgyzstan, Latvia, Liechtenstein, Luxembourg, Netherlands, New Zealand, Nicaragua,
Poland, Portugal, Romania, Republic of Moldova, Serbia, Slovenia, Spain, Sweden, the former Yugoslav Republic of Macedonia, Timor-Leste, Ukraine, United Kingdom of Great Britain and Northern Ireland.

Even though both of resolutions concerning with human rights defenders is very important to protect human rights defenders in Indonesia, but Indonesia did not have role in sponsoring for both resolutions concerning with human rights defenders. This attitude is in line with the poor protection of human rights defenders in Indonesia.

The last issue is human rights and extreme poverty. During the Indonesia’s membership, UNHRC has adopted 4 resolutions concerning with extreme poverty: Resolution 2/2, 7/27, 8/11, all of which on Human rights and extreme poverty, and Resolution 12/19 on Draft guiding principles on extreme poverty and human rights. All of those resolutions were adopted without vote.

As a developing countries, Indonesia should be had many interests to those resolutions as basic and guidance to eliminate and eradicate poverty as part of the duty to fulfil human rights, especially social and economical rights. But Indonesia has role as sponsor country only for one resolution: Resolution 2/2 on Human rights and extreme poverty. During the Commission on Human Rights, Indonesia was one of the 10 main leading countries on the issue of human rights and extreme poverty. However, this role has not been taken during the HR Council, in which Indonesia only co-sponsor one resolution.

F. Conclusion

When Indonesia ran for re-election in to second term of UNHRC membership in 2007, Indonesia presented to the General Assembly a document of Indonesia’s voluntary pledges and commitments. There were 6 issues of pledges and commitments. Unfortunately, Indonesia has made progress only in one issue that is ratification of international instruments and the harmonization of domestic laws with international norms. From 2007 to 2010 Indonesia has ratified 5 human rights international instrument and enacted 2 laws in order to implement international law, despite Indonesia has not ratified yet several important human rights instruments such as Optional Protocol of the Convention against Torture. For the rest 5 issues, Indonesia did not make any progress, indeed in some aspects Indonesia moved backward, particularly in freedom of religions, strengthening engagement and partnership with civil society organization, and good government and the rule of law.
As a member of UN, Indonesia presented national human rights report for the sake of Universal Periodic Review. The UPR Working Group of UNHRC reviewed the report and gave recommendation to improve human rights protection. At national level, there were 6 recommendations in which Indonesia has fully filled only for one recommendation, i.e. to continue and provide additional training for law enforcement official, including prosecutors, police and judges, as well as for security forces. For the other issues, there is not progress, especially for the protection of human rights defenders and combating impunity.

When Indonesia was a member of UNHRC, Indonesia have played the active and significant role quantitatively, at least by sponsoring many resolutions and decisions, requesting special sessions, making statements and questions during the ensuing discussion, and also basically stand with the majority of the state members of the Council in adoption resolutions and decisions. But, the Indonesia’s role and position was different from one issue to the other issue. Unfortunately, for the issues that Indonesia has co-sponsored several resolutions, Indonesia never takes the lead in coordinating a resolution. Indonesia could have played important leading role in resolution on HR and extreme poverty, HR and Climate Change, or other pertinent human rights issues.

In the UNHRC forum, Indonesia had active role for the Palestine issues including Syrian Golan and East Jerusalem. Indonesia was sign request for 5 special sessions to respond the human rights condition in Palestine. Furthermore, Indonesia had been as one of the sponsor or co-sponsor countries for 7 resolutions and 1 decision of UNHRC related to the Palestine Issues. For the Palestine issues, the Organization of the Islamic Conference (OIC) had great role and influence.

On the other hand, Indonesia was less active for human rights issues in Myanmar, while Indonesia is one of the prominent state members of ASEAN which Myanmar is also the member. Indonesia was seen to be reluctance to have active role and clear position in Myanmar human rights issues.

Indonesia also has had active role in many international forums concerning to climate change. During the membership of Indonesia in UNHRC, there are two resolutions on human rights and climate change, resolution 7/23 and resolution 10/4. Indonesia was one of the state sponsors for both resolutions.

For the defamation religion issue, Indonesia had active role in the adoption of the resolution on combating defamation of religions. There are 4 specific resolutions on combating defamation of religion which sponsored by Pakistan on behalf of the OIC, which Indonesia is one of prominent members. The fourth resolutions were adopted with vote where Indonesia as well as other members of OIC in UNHRC votes in favor. Unfortunately,
those resolutions provide international support for domestic laws against blasphemy and "injury to religious feelings", which are often abused by governments to punish the peaceful expression of disfavored political or religious beliefs and ideas. On the other hand, Indonesia as well as other members of OIC in UNHRC voted abstaining for 2 resolutions concerning discrimination based on religion or beliefs. This position is in line with the Indonesia’s national regulations and practices that not yet free from discrimination based on religion.

Indonesia also has active role in human rights and migrant workers issue and UN reform specific special rapporteur issue. Despite poor and weak condition at national level in protecting migrant worker, Indonesia has active role to support UNHRC resolutions concerning migrant workers. During Indonesia’s membership, UNHRC was adopting 4 resolutions concerning migrant workers in which Indonesia had been one of the co-sponsor countries for 3 of 4 resolutions. Indonesia’s delegation also submitted a draft resolution on migrant worker protection to the UN General Assembly’s committee.

For the UN reform specific rapporteur issue, UNHRC had adopted 20 resolutions and 1 decision concerning to mandate of special rapporteur and system of special procedure. Indonesia had role as one of the state sponsor for 2 of that resolutions. In the last 10 years, Indonesia had received 5 visits of special rapporteurs or representatives.

Indonesia did not have active and positive role for the next two issues, indigenous people and terrorism. UNHRC, during the Indonesia membership, has adopted 4 resolutions concerning to indigenous people. Indonesia did not contribute as sponsor or co sponsor. Similarly, UNHRC, during the membership of Indonesia, has adopted 4 resolutions concerning to human rights and terrorism. The draft of those resolutions were sponsored by Mexico and supported by European countries. Indonesia did not involve in sponsoring of those human rights and terrorism, despite Indonesia need those resolutions in order to protect human rights while continue to combating terrorism. Indonesia also has poor role in the human rights defenders and extreme poverty issues.
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