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Indonesia's anti-pornography bill: A Case study of decision making in the Indonesian Parliament (DPR)

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Executive Summary

The question is as old as the nation: What role is Islam supposed to play in society and, more importantly, in governing Muslim Indonesia. While having a paramount Muslim majority, the country is, after all, a multi-cultural and multi-religious country. Its Muslim majority traditionally embraces values of tolerance and understanding towards those who practice another faith.

The authors of Indonesia's constitution saw this as a constitutive principle of the Indonesian society as well as a prerequisite for the unity of the nation. They intended to protect the legitimate interests of all faiths through article 29 of the constitution which stipulates that "the state guarantees the freedom of all residents to embrace their own religion and to worship according to the own religion and beliefs".

The draft legislation on the control of pornography in Indonesia that became known as the RUU APP¹ generated more controversy and public mobilisation than any other legislation deliberated in the DPR in the post-New Order era. The bill was not contentious because of its intention to restrict pornography but mainly because one of the drafts introduced the concept of *pornoaksi*, "porno-

¹ Rencana Undang-Undang Anti Pornografi dan Pornoaksi (Bill on Anti-Pornography and Pornographic Acts)

actions" or "pornographic acts". This meant that as well as banning the production, sale and viewing of pornographic material, the bill would ban a vast range of other activities in public places which it deemed would "exploit sexuality".² These included "showing sensual parts of the body", "erotic dancing or swaying", being "naked in public", "kissing on the lips in public" and a whole range of other body movements and displays considered to be of a sexual nature.³

The bill set off a bitter public debate. Its supporters, particularly Islamic modernist groups such as Majelis Ulama Indonesia (MUI) and Muhammadiyah and individuals from a range of parties in the DPR, considered that the bill was vital to combat the spread of pornography and acts which were undermining the country's morals, particularly under Western influence. Its opponents represented a spectrum of movements, ranging from secularist parties and groups, women's groups, cultural and artistic associations and representatives of ethnic and religious minorities, all of whom attacked the bill as an effort by a minority current in Indonesian society to impose its interpretation of religiously sanctioned behaviour on the rest of the country (Djakse 2006), particularly on women (Sari 2006). The issue divided the Islamic community, with the Liberal Islamic Network (JIL) opposed to the bill and Nahdlatul Ulama (NU) figures taking contrary positions. Both sides in the controversy organised mass rallies throughout the country and it even ignited rhetoric from places such as Bali, with its Hindu population, about succession from Indonesia.⁴

The controversy touched on matters which went to the heart of the implicit compact between the various religious, ethnic, regional and cultural streams in Indonesia. The RUU APP was a clear example of the potential of the DPR to raise issues and introduce new elements of debate into Indonesian politics that had largely been suppressed under the New Order. In this case the DPR became a forum for a particular stream (*aliran*) of Islamic opinion that did not necessarily accept the interpretation of Pancasila as an official inclusive ideology that came to predominate under the New Order. Basic issues about the secular basis of the Indonesian state⁵, largely considered to have been resolved since the 1960s, re-emerged through the medium of parliament. In 2000 there had been an attempt in the MPR to reintroduce the "Jakarta Charter" into the 1945 Constitution, which would have obliged Muslims to observe the tenets of the faith into which they were born and which, arguably, would have opened up the floodgates of a stream of *sharia*-based legislation (Wahid 2007). With the failure of this attempt, many Indonesian secularists saw the anti-pornography bill as a second attempt to introduce similar measures under a different guise (Allen 2007).

Similar matters came to the surface at the regional level at around the same time. Debate on the anti-pornography bill merged into the intense controversy stirred up by *sharia*-influenced regulations on public behaviour that were introduced by some local governments following the devolution of powers to the regions. Various governors, district heads and mayors had introduced regulations on gambling, alcohol, prostitution, the wearing of Islamic clothing, reading of the Koran

² *RUU Tentang Anti Pornografi dan Pornoaksi*, Article 1 (2) (Draft of 2004).

³ Articles 25-33.

⁴ "Tensi Tinggi Di Antara Pasa Lonjong", *Tempo*, 26 March 2006, pp.87-90.

⁵ It should be noted that the use of the term "secularism" is often avoided even by those who accept the notion of a clear separation between religion and the state. This is partly because the version of secularism most influential in post-independence Indonesia has been based on the idea that the state should promote religious observance, but without the promotion of one particular brand of religion. This is in contrast to the more strongly non-religious conception of the state that was, for example, articulated in post-independence India. In India, the dominant (though far from uncontested) interpretation of secularism suggested that the state should not promote *any* religion while in Indonesia the suggestion was that the state should promote *all* religions, but do so equally.

and the conduct of women in public (Salim 2007, Bush 2008). One women's group opposed to the bill claimed that the regulations were a "copy-paste" from the RUU APP (Widyawati 2006:19). While the connection between the regulations and the anti-pornography bill may not have been as direct as this activist's polemical assertion would suggest, the first official version of the bill appeared in 2003, the year that, according to Bush (2008:5), the enactment of religious-influenced regulations reached their peak.

This paper is an examination of the RUU APP as a case study of how decisions are made in the DPR in circumstances where deep differences of opinion are at stake and where public interest in the outcome of the decision is intense. It uses the example of the RUU APP to indicate that there are a number of unique features about decision-making in the DPR that led the parliament into producing a bill that stirred up such deep emotions. The paper concludes that there are a number of serious flaws in the way business is conducted in the various bodies of the DPR and in the interaction between the members of these bodies and the party organisations from which they come.

The origins of RUU APP

The RUU APP has gone through a complex series of changes and amendments, with various versions of the bill, both official and unofficial, having been under debate for six years. The origins of the bill are difficult to determine precisely, a fact that has been noted by other writers researching the background to the bill (Allen 2007, Braun 2008, McGibbon 2006). Few of the leading actors in the controversy appear to have a clear idea of its genesis and, in fact, give contradictory accounts of how the proposal originated.

The debate on morality and pornography

The context of the bill was a perception that the increased freedom of the post-Soeharto era had led to an explosion of pornography and overt sexuality in the media, entertainment and advertising. The lifting of the draconian restrictions on the media under the New Order had allowed the proliferation of new tabloid publications, while new media such as VCDs/DVDs and the internet had made explicitly sexual material available in an unprecedented way. A number of controversies played a role in generating fears in some sections of the community that public morality was on the decline. First there was the phenomenon of the wildly popular *dangdut* performer, Inul Daratista, with her erotically-charged dancing style, who had both adulation and condemnation heaped on her. Then came the publication of the Indonesian version of the US magazine *Playboy* in January 2006. This was a local edition whose content was much less sexually explicit than many home-grown magazines, but it was attacked as being a spearhead of foreign moral degeneracy, a "global trademark of pornography" as it was dubbed by Hasyim Muzadi, the chairman of NU.

There were in fact a number of uncoordinated initiatives to produce a legislative response to the situation, even before a bill was sponsored within the DPR. During the Habibie administration, the Ministry of Women's Empowerment had made moves to draft a regulation on pornography. Similar moves were initiated by the Ministry of Religion under the Wahid administration, particularly as a result of pressure from MUI. There were a number of proposed drafts composed from 1998 onwards, with possibly the earliest coming from the former Minister for Women's Empowerment, Mur

Pratomo.⁶ A bill was drafted independently by staff of the Faculty of Law at the University of Indonesia. It was this bill that appears to have found its way to DPR Commission VII (the committee responsible for religion and women's affairs) through informal connections and which formed a basis for the initial text of the bill.⁷ The text was also influenced by a draft produced within the Ministry of Religion. This was not an official government document, but was sent directly to Commission VII, rather than through the Speaker of the DPR as would have been the case if it represented a formal stance by the government.⁸

From pornography to "pornoaksi"

In August 2003, twenty-four DPR Members "from various *Fraksi*"⁹ (party caucuses) in Commission VII submitted a proposal for a bill on anti-pornography to the Legislation Council of the DPR (*Baleg*), which in turn agreed to take responsibility for its further drafting and to sponsor it as a DPR Initiative bill. The draft bill was then submitted to the Consultative Council (*Bamus*) of the DPR which is made up of the Speaker and Deputy Speakers and the leaders of the *Fraksi* and Commissions. All parties, through their *Fraksi* leaders, agreed to schedule a discussion on the draft at a subsequent plenary session. At the plenary in September 2003 all *Fraksi* again agreed to accept the bill and to form a Special Committee (*Pansus*) of 50 members to conduct deliberations on the bill and finalise the draft. This draft made no mention of the concept of *pornoaksi* and concentrated on creating sanctions against the production, reproduction, sale and viewing of pornography. At this stage, a fact-finding tour through various parts of Indonesia by DPR Members and staff to gauge community views elicited little reaction from the public. The bill in its first form appears to have been regarded as uncontroversial.¹⁰

During subsequent discussions within *Baleg* and the *Pansus*, however, the suggestion arose that the bill was "not sufficiently comprehensive", in the words of the Chair of *Baleg* and PPP member, Zain Badjeber.¹¹ The initial idea was to create another bill to ban what was seen as the wider problem of *pornoaksi*, a concept which had first been introduced to the world in a fatwa issued the Indonesian Ulama Council (MUI) in 2001.¹² The idea came about as a result of lobbying from a range of Islamic organisations, especially MUI, and from leading figures from the Islamic community who had connections with some of the members of *Baleg* active around the bill, particularly those from PPP. It was later decided to incorporate the *pornoaksi* concept into a single and greatly expanded bill which was made public, at least to the extent that it was forwarded to the DPR Leadership (Chair and Vice-Chairs) in February 2004.

The new bill, however, was not widely distributed outside the DPR and received little public attention. It languished for want of sufficiently strong backing from powerful figures in the DPR. As the elections of 2004 approached the attention of most DPR Members was directed towards lobbying within their parties in order to gain a place on the electoral ticket. One of the most important reasons for the failure of the bill to proceed much further before the 2004 elections was,

⁶ Interview with leading member of DPR Special Committee (*Pansus*) RUU APP, February 2008.

⁷ Interview with an adviser to the Ministry of Women's Empowerment, February 2008.

⁸ Interview with DPR staff member, February 2008. See also McGibbon (2006), p.335.

⁹ *Hukumonline* archive, 31 December 2003. (www.hukumonline.or.id)

¹⁰ Interview with DPR staff member, January 2008.

¹¹ "RUU Anti....." *Hukumonline*, 8 March 2004.

¹² *Fatwa MUI tentang Pornografi dan Pornoaksi*, as published by *Hukumonline*, 25 November 2003. The word "pornoaksi" did not exist in the Indonesian language before this period.

as an initiative of the DPR, it still required the agreement of executive government to proceed to serious discussion.

Because then President Megawati's administration did not name a counterpart Minister to discuss the bill with the DPR and failed to send the appropriate documentation in the form of an Presidential Mandate (*Ampres*) during 2003 and 2004, the bill could not become a priority for discussion. In the absence of any key champion within the DPR who could put pressure on the government to respond to the parliament's request for the naming of a government representative to join the deliberations on the bill, it was added to the growing backlog of legislation in the DPR. While the backlog was becoming the target of repeated criticism and indeed derision from elements of the media, the DPR appeared unable to make serious progress in clearing the accumulated bills and the RUU APP did not loom in anyone's attention as being of any particular importance.

The RUU APP is revived

In April 2004 legislative elections were held and in October a new DPR was sworn in. In January 2005, a joint meeting of DPR and Government representatives drew up the National Legislation Program (*Prolegnas*) for the new parliament. Of 55 bills in *Prolegnas*, 22 were left over from the old DPR, including the RUU APP.¹³ Once again, however, there was little sign that the RUU APP had powerful promoters in the DPR. During the first part of 2005 the bill made little or no headway through the processes of the parliament.

Then in September 2005, the matter once again came onto the agenda of a plenary session. Members of Commission VIII (the committee for religious and women's affairs in the new DPR) sent the draft to *Baleg* who agreed to submit the bill to *Bamus* for inclusion in a plenary discussion. The proposal received the consent of all party leaders in *Bamus* which then scheduled it for a plenary, at which all *Fraksi* agreed to form a Special Committee (*Pansus*) to deliberate on the bill. A *Pansus* of 50 Members was created under the Chairmanship of Balkan Kaplale, a representative from the Democrat Party, the party of President Susilo Bambang Yudhyono, with Vice Chairs from PDIP, Golkar, PPP and PKS.

When the draft bill was behind the walls of the DPR Secretariat building in Senayan, accessible only to those with personal contacts amongst the staff, it did not create any kind of stir. But in October 2005 the *Pansus* began to hold public hearings (*rapat dengar pendapat umum*) about the bill. And it was from this time onwards that the RUU APP really became an explosive public issue. As a wider cross section of opinion had the opportunity to read the bill and began to realise its implications, there was an outpouring of divisive debate and public mobilisation that appears to have surprised many members of the *Pansus*.¹⁴ There was a wave of public demonstrations by both opponents and supporters that reached its peak in the middle of 2006. Despite a community response that seemed to indicate that the bill needed serious reconsideration, the Chair of the *Pansus* declared that the bill would be passed by June 2006. The urgings of the MUI that the DPR should keep to such a schedule suggested to some that the Chair was working closely with one stream of opinion while purporting to speak for the *Pansus* as a whole. Other members of the *Pansus*, especially from PDIP, came out in bitter public criticism of the Chair. From this point onwards PDIP boycotted any further meetings of the *Pansus*.

¹³ "Puluhan RUU Masuk Prioritas Prolegnas 2005", *Hukumonline*, 31 January 2005.

¹⁴ Interviews with *Pansus* members, November 2007 & February 2008.

The work of the Pansus slowed to a halt by mid-2006 because so many members were not attending meetings. Public debate died down somewhat and the issue ceased to dominate the political scene. In subsequent months the *Pansus* members who supported the bill retreated from their original position and began to negotiate the removal of the controversial clauses of the bill related to *pornoaksi*. It was perhaps significant that President Susilo Bambang Yudhono, who had previously avoided taking any particular public position on the bill, used his Pancasila Day address to appeal for a reaffirmation of respect for diversity as "the fundamental basis of our national life".¹⁵ Redrafting of the bill began in August and a new version was completed by September. During September and October, media reports were appearing with stories that there were two or more competing drafts of the bill, with the provisions related to *pornoaksi* either removed or heavily amended. This period was characterised by a great deal of confusion, when journalists and those lobbying around the bill found it very difficult to obtain consistent and reliable information.

But by the end of the year it was clear that the *pornoaksi* sections of the bill had largely been removed, although the term was still used without explanation in a number of places in the text. Many critics of the bill maintained their opposition on the grounds that the text used an unclear and unenforceable definition of pornography and failed to deal with issues such as the protection of children. But with the focus shifted to control of pornography and away from measures that appeared designed to enforce a particular view of acceptable moral behaviour, the stridency of the previous year disappeared from public debate.

It was clear from media reports (and confirmed in interviews conducted by the author) that both the proponents and opponents of the bill in the *Pansus* were taken aback by the level and intensity of public reaction and by the potential for serious political and social division that had been revealed. There can be little doubt that it was the pressure of public opinion that saw the text of the bill fundamentally changed. The removal of the chapters related to *pornoaksi* made it possible for the parties in the *Pansus* who opposed the original draft to accept the possibility that the bill might be passed and to rejoin official deliberations. By January 2007 the *Pansus* had revealed the new amended version of the bill to the public.

Despite, or perhaps because of, the calming down of political tensions over the bill, the government did not finally announce its decision to officially join the deliberations on the bill until September 2007. When the President formally indicated the government's agreement to begin discussions on the bill, with the sending of a Presidential Letter (*Surat Presiden*) to the DPR in September 2007, there was a greatly increased possibility that the RUU APP might be passed. He named four Ministers to be counterparts in the discussions with the DPR: the Ministers for Religion, Law & Human Rights, Empowerment of Women and Communications & Information, with the Minister for Religion to take the lead role.

At the time of writing, the four ministries are preparing their respective List of Issues (*Daftar Inventaris Masalah – DIMs*). DIMs are a list of matters that either the government or parliamentary side in the deliberations on a bill wish to have raised in the *Pansus*. A government inter-departmental committee has been established to coordinate the production of the DIMs by the four Ministries. When the government's DIMs are drafted they will form the basis for the discussion between the government and the *Pansus* in the DPR. When agreement is reached over each of the

¹⁵ *Tempo*, 5–11 June 2006. Cited by Rod McGibbon, "Indonesian Politics in 2006: Stability, Compromise and Shifting Contests over Ideology", *Bulletin of Indonesian Economic Studies*, 42, 3, 2006, p.336.

issues in the DIMs the bill will be able to be passed onto a plenary session of the DPR for final approval, a step which is almost always a matter of ceremony only. Unless significant priority is given to the bill, it seems unlikely that it will be passed before the elections of 2009.

The Pornography Bill and the DPR

It is important to understand that the RUU APP was an initiative from within the DPR, rather than coming from an executive government agency such as a Ministry or the President him/herself. Under the New Order, all legislation was initiated by executive government and rubber-stamped by the DPR. No bills at all were drafted by the parliament during the Soeharto regime. During the interim regime of President Habibie, the still-unelected DPR struggled to draft just three bills, as part of its efforts to assert its legitimacy in the post-Soeharto period. Even after the free elections of 1999 and the swearing in of the democratically elected assembly of 1999-2004 and constitutional amendments to increase the legislative authority of the parliament, the DPR was able to initiate only a small number of bills and few of these were actually passed. Almost all of the bills passed by the 1999-2004 DPR were government bills.

The RUU APP was therefore initiated in the context of a parliament that was still operating under the shadow of the dominance of executive government inherited from the New Order.¹⁶ The majority of DPR Members elected in 1999 entered parliament for the first time and very few of them were re-elected in 2004. The chamber was full of inexperienced Members and the DPR as institution, especially the Secretariat, was still largely unreformed as it entered into an era of democratic politics and a potentially greatly increased role for the parliament in the formation of policy. There is some debate about whether the absolute amount of financial resources provided for the running of the DPR is sufficient (NDI 2006), but there can little doubt that the funds are poorly managed and that human resources to support the functions of the DPR remain seriously undeveloped (Sherlock 2003, 2006).

The politics of Islam and secularism in the DPR

The commonly expressed view in the media and amongst most activists opposing the bill was that it had been initiated by Islamic parties, especially PKS, but also PPP and PBB. This seemed to fit with the reputation of PKS as both well-organised and aggressive in its campaign to spread a strict or even extremist version of *santri* or modernist Islam across Indonesian society and politics. The organisational acumen of the PKS has become legendary amongst rival parties. And the initial drafts of the bill do appear to have been heavily influenced by MUI through its connections with PPP in the 1999-2004 DPR. Therefore the easy conclusion was that the bill was a push by Islamist forces inside and outside the DPR, led by PKS. This idea became accepted as a fact with its repetition and recycling in the media.

The reality, however, appears to be more complex and interesting. An examination of such documentary evidence as can be obtained from the DPR and interviews with participants and close

¹⁶ For a fuller analysis of the 1999-2004 DPR see Sherlock (2003). For a study of later developments, particularly the relations between the DPR and executive government following the direct election of the President in 2004 see Sherlock (2007).

observers of events indicate that, while PKS members of the *Pansus* generally supported the bill (including the sections on *pornoaksi*) PKS as a party was not particularly responsible for the key decision to revive the bill in mid-2005. In June 2005, twenty-nine Members of Commission VIII signed the documentation necessary to have the bill passed to a plenary session to formalise its status as a DPR Initiative Bill and to create the *Pansus*. The twenty-nine Members (roughly half of the Commission) included representatives from all major *Fraksi*, with the largest number coming from Golkar (8 signatories) and PDIP (5 signatories) (Braun 2008: 161).

The most consistently enthusiastic supporters of the bill in the *Pansus* seem to have come from Golkar and the Democrat Party. As mentioned above, the Chair of the *Pansus* was from the Democrat Party. Organisations lobbying the *Pansus* repeatedly observed that while Golkar and Democrat members often did not welcome approaches from outside groups or were even hostile to them, PKS members generally showed themselves to be receptive to ideas and arguments about the contents of the bill.¹⁷ One women's organisation complained that the Democrat Chair of the *Pansus* was publicly antagonistic to female opponents of the bill during DPR consultation sessions, while warmly welcoming male representatives of Islamic organisations clad in Islamic dress (Widyawati 2006: 23-25).

Although PDIP became identified as the most vocal opponent of the bill during the heated atmosphere of debate in 2006, the party's Members in Commission VIII and in the *Pansus* did not prevent the bill from becoming an official initiative of the DPR. A PDIP spokesperson, Tukidjo, expressed opposition to the bill at the time of the formation of the *Pansus* in September 2005, not because of the *pornoaksi* provisions that were soon to become so contentious, but because the problem of pornography was already dealt with in a range of other laws and in the Criminal Code. He also argued that the bill did not deal with the problem from the perspective of the victimisation of women and that its definitions of pornography and *pornoaksi* were problematic.¹⁸ But as a *Fraksi*, PDIP supported the bill at all the procedural stages of its passage through the DPR.

Non-Islamic parties such as Golkar were at least as much behind the push for RUU APP as were Islamic parties. Serious opposition from PDIP did not emerge until the bill became the centre of public controversy in 2006. The promotion of issues usually associated with Islamist forces by parties with a more secular image should not be surprising. In fact it is a repetition of the circumstances behind the creation of sharia-influenced regulations in provinces and districts throughout the country. In many cases, the regulations were passed by governments and regional assemblies controlled by Golkar or PDIP, whether in coalition with Islamic or non-Islamic parties (Bush 2008:7). The well-known (or notorious) regulation against prostitution and alcohol in the city of Tangerang abutting on the Special Region of Jakarta (DKI Jakarta) was sponsored by a Golkar mayor.

The actions of Golkar and Democrat members of the DPR over RUU APP can be seen as an example of a wider phenomenon that emerged throughout Indonesia from around the beginning of the decade. There was a perceived rise in the strength of political Islam in the context of a spread of electoral politics to the regions, first with the election of provincial and district assemblies (DPR-D) and then with the election of Governors and District Heads (*Bupati*). Weak regional assemblies and governments with little policy-making capacity, struggling to establish authority and legitimacy,

¹⁷ Interviews with media and women's organisations, November 2007 and February 2008.

¹⁸ "Fraksi PDIP Belum Menyetujui RUU Anti Pornografi dan Pornoaksi", *Hukumonline*, 13 September 2005. "DPR Bentuk Pansus RUU Anti Pornografi dan Pornoaksi", *Hukumonline*, 28 September 2005.

were tempted to seek easy popularity by promoting themselves as defenders of morality and religion. Such regulations were also much easier to pass than complex legislation relating to health, education and economic management and they might remedy growing public perceptions about incapacity to produce legislation.

Secular forces within regional institutions, under pressure (whether real or imagined) from assertive Islamists, saw this as taking the initiative against their opponents by occupying their traditional political territory. In the English-speaking world this would be seen as a tactic to respond to "wedging", where an opponent was pushing issues that might divide one's own constituency. Bush (2008) shows that these regulations were particularly prevalent in areas where Islamist politics have historically been strong (especially areas with a background in the Islamist separatist movement, *Darul Islam*) and concludes that parties such as Golkar felt "the need to 'prove' their Islamic credentials" (Bush 2008:12). Of course Islamic parties and organisations were part of the wave of sharia-influenced regulation-making, but their prominence and vocalness tended to obscure the fact that other elements in the equation were also involved. Golkar in particular has been attempting to strengthen its relationship with Islamic organisations in recent years, a trend that arguably has increased with the assumption of party leadership by Yusuf Kalla.

In the case of the RUU APP at the national level, there was a feeling in the DPR that it needed to respond to the general atmosphere of debate about laxness in morality and weak control of media content. There were indications that executive government wanted some action, with at least two government ministries discussing the need for regulation and having drafted unofficial bills on pornography. At the highest level of government, President Yudhyono expressed concern about standards of behaviour by media figures and the public in general, particularly women. In May 2005, the Coordinating Minister for Social Welfare, the PKB leader Alwi Shihab, launched a government initiative establishing the Indonesian Committee to Eradicate Pornography and Pornoaksi (KIP3), a body which remained largely incipient but which was a clear signal of thinking in some parts of Cabinet.

In the context of implicit pressure from executive government for a legislative response and the wider background of relentless media criticism of the DPR's poor record of lawmaking ever since 1999, the revival of the RUU APP in 2005 was an attractive option.¹⁹ For the members of Commission VIII the bill provided a ready-made opportunity in the form of a bill that was already drafted and which would represent legislative intervention in a policy issue that was capturing increasing public attention. For members of Golkar and the Democrat Party, it opened up the chance to build bridges to Islamic organisations, strengthen their profile within the *santri* religious community and take over new ground from their Islamic party competitors.

Decision-making and party discipline in the DPR

When attempting to analyse the strategies of political parties in Indonesia, it should be emphasised that coordination between the party organisations and the members in the DPR *Fraksi* and Commissions is often poor. Decision-making within in the DPR is rarely consistent or predictable. In most parliaments the strongest predictor of a Member's voting record is his/her party, but this does

¹⁹ See for example "House ends tenure with pathetic record", Jakarta Post, 1 October 2004. "DPR has not passed a single law in nearly a year", Jakarta Post, 15 June 2005.

not always apply in the DPR. Party discipline is weak and, together with the dearth of developed party policies, the result is that many Members tend to follow a line set by their Commission. Commission solidarity is often stronger than party identification. Commissions sometimes disagree with each other across party lines and Members can be ignorant or uninterested about the work of fellow party members in other Commissions (Sherlock 2003).²⁰ This is compounded by the fact that when differences of opinion do arise within a Commissions or *Pansus*, party allegiances frequently have no bearing on the disagreement. Even if a party has adopted an official position, it is not uncommon to witness Members advocating arguments at public hearings that are completely at variance with stated party policy and to be evidently unconcerned that this would result in disciplinary action.

Thus the initiative to sponsor the RUU APP by Commission VII in 2003 or by its successor, Commission VIII in 2004 was not a centrally coordinated decision. It was, to a considerable extent, an initiative of individual members that was not necessarily in accord with all party leaders. This is particularly the case with Balkan Kaplale, the Chair of the *Pansus*, whose strident personal advocacy of the bill caused him to be increasingly viewed as a maverick by other *Pansus* members and even by members of his own party inside and outside the *Pansus*. Golkar members in the *Pansus* also took contrary positions on different aspects of the bill, particularly over the *pornoaksi* sections and the question of whether they should be considered separately from the rest of the bill. A leader of an organisation lobbying the DPR over the bill complained that even members of the PKS, despite their reputation for discipline, were often inconsistent in what they said, "similar to the ambivalent viewpoints of other major parties such as Golkar and PDI-P".²¹

A key feature of the complexity of decision-making in the DPR is that the weakness of party discipline in the parliament is something of a paradox. While Indonesia political parties are hierarchical and centralised, they rarely exercise effective control over their Members in the DPR in terms of policy. Power in most parties is focused on the Central Party Board (*Dewan Pusat Partai - DPP*) in Jakarta, and leaders are very intolerant of dissenters within the ranks. Capturing the central leadership tends to be a "winner takes all" contest. And this top-heavy structure has been entrenched in both the law on political parties and on elections. The law on parties provides that parties must be national (not regional) parties with a central board located in Jakarta. The various electoral laws state that candidates for both parliamentary and presidential elections must be nominated by political parties and the party list system in the parliamentary elections ensures that only candidates that are high on the party list are likely to be elected. Finally, the legislative provision for the "recall" of Members of the DPR gives party leaders the ultimate power over their members in parliament. The law provides that the party, not the member, holds the seat in the DPR and individual members can be removed from the DPR on the order of the party leadership.

The power of "recall", however, is not exercised in order to ensure that party policy is followed and that members vote along party lines. It has only ever been used in cases where Members have publicly embarrassed the party leaders or have fallen out of favour in an internal factional feud. Cases where a member has embarrassed the party have not been over policy differences but over personal behaviour. A Golkar member was recalled (although he actually resigned before the measure could be implemented) because a mobile phone video of his extra-marital affair was made public, a PAN member was recalled because of his involvement in overseas travel that became the

²⁰ DPR Members' business cards usually identify their Commission rather than their party.

²¹ Ratna Sarumpaet of the Unity in Diversity Alliance, as quoted in "Alliance fails to coax PKS on porn bill", *Jakarta Post*, 8 July 2006.

object of media criticism, the PBB Vice Speaker was removed from parliament because he took a second wife and a Democrat member was recalled because of allegations of corrupt behaviour in haj catering contracts. In the case of internal party disputes, one leading PKB member lost his seat because he supported the losing side in a struggle over control of the central party board and a PDIP member was recalled because she stood in a provincial gubernatorial election on a ticket with a PKS candidate (Djadijono 2007: 189).

The record of party leaders (whether in the party organisation or parliamentary wing) suggests that they are interested in wielding power over their members but are only incidentally interested in pursuing consistent party policy. Discipline is very weak when it comes to decisions to be made about parliamentary work. The occasions when fairly clear party lines have been drawn have usually been over passing single-issue controversies that involve government actions, including the reduction of fuel subsidies, the import of foreign rice or Indonesia's support for UN sanctions against Iran. When it comes to the complex policy debate that can arise during deliberations on the content of a bill, it is more difficult to see consistency amongst party members. There is rarely evidence of ongoing consultation between party leaders (including in Cabinet) and *Fraksi* leaders inside the DPR, between the party machine and leading members in a Commission or *Pansus* or with individual party members in a Commission or *Pansus*. This, of course, varies from party to party (with PKS having the reputation for the strongest discipline), but the problem is a general feature of the DPR.

The effect of "consensus" decision-making

One of the key features of decision-making in the DPR that stands out from democratic parliaments throughout the world is the system of "consensus" (*mufakat*). Although decision-making by majority vote is usually considered to be a fundamental principle of democracy, votes are very rarely taken in the DPR. The *mufakat* system is putatively derived from Javanese traditions, became a central rationale for "guided" democracy, as distinct from majoritarian democracy, under the rule of President Soekarno and continued as one of the political instruments and ideological justifications for the authoritarian regime of President Soeharto. Despite the fact that *mufakat* was one of the main ways in which the rubber-stamp DPR was made to give docile agreement to every act of the President during the New Order, the DPR has retained this procedure in the era of democracy. The political effect of this system has been discussed more fully elsewhere (Datta 2002, Sherlock 2003).

In the case of the RUU APP, the operational effect of *mufakat* is quite clear. In practice, *mufakat* does not depend on each and every one of the Members of the DPR giving their individual explicit agreement to every decision. The procedure is actually based on an implicit vote by *Fraksi*, that is a decision is said to have been made if no single *Fraksi* raises any objection. Each *Fraksi* effectively has a veto and if no veto is exercised then it is assumed that all *Fraksi* agree. But as the example of RUU APP shows, such agreement is actually very weak and is often repudiated at a later stage. As one PDIP member of the *Pansus* observed when explaining why the party's members signed the documentation to make the RUU APP an initiative of the DPR, the members "probably did not bother to know what they were signing" (quoted by Braun 2008: 161). *Mufakat* has the effect of creating moral pressure to give consent, one result of which is that *Fraksi* often agree to things that they may later object to when the implications of the agreement become clear. This is not regarded as a neglect of good procedure, but according to DPR Members it is "normal practice" (quoted by Braun 2008: 161).

Thus a party such as PDIP could officially support drafts of the RUU APP on numerous occasions when the bill was passing through the various organs of the DPR, but then later reject the bill as deeply repugnant. But this did not apply only to that party. The observation that most DPR Members (whether in Commission VII/VIII, the *Pansus* or the plenary) probably did not even read the bill when they made decisions about its passage through the DPR was made to the author on numerous occasions by well-informed individuals, both inside and outside the DPR. The bill simply joined the backlog of other legislation that was accumulating unpassed in the chamber.

This goes a long way to explaining why the RUU APP could lie unnoticed in the DPR from the days of the Habibie administration until 2005 and then seem to appear (*muncu*) suddenly onto the public stage and generate such hostility and division. Having been drafted without widespread public consultation, the bill reflected just a partial view of community opinions on the issue of pornography and was then used to introduce a wider range of strictures on public behaviour that were acceptable to only a minority current in Indonesian society. Even preliminary consultations with stakeholders and sources of expert opinion at an early stage of drafting would have quickly revealed the deep problems with the bill. Had wider public input been received during the initial conceptual stage, it might have been possible to avoid the consternation and panic that seemed to grip some parts of the country, particularly in places such as Bali and Papua, on the appearance of a draft that seemed to be on the verge of being made law.

Mufakat also has a mutually reinforcing relationship with the problem of weak party discipline. Because *mufakat* is essentially a system of vote by *Fraksi*, it deprives individual Members of the right to vote and to have their individual agreement or dissent recorded. The only people who actually get to vote are *Fraksi* leaders, especially if the decision is a publicly controversial one. The leaders go into closed "lobbying" meetings and reach agreement without observers or minute-takers. In these circumstances, it really does not matter if individual party members speak in an ill-disciplined way in meetings and advocate positions that reveal that they neither understand their own parties' policy nor know basic facts about the issues at hand. If the decision is politically important the *Fraksi* leaders decide and, according to the theory of *mufakat*, the fact that their members do not dissent means that they agree.

This exacerbates the difficulty for external organisations attempting to be involved in DPR deliberations. Not only is it difficult to obtain reliable information about where the various parties stand, it is also difficult to know if the arguments made by the community organisations are actually reaching the ears of the real decision-makers. We have already noted that groups involved in the RUU APP debate complained that it was very difficult to get a clear impression from the parties about their respective positions on the bill because the line coming from members of the same party were contradictory.

Party leaders see little need to enforce discipline in relation to party policy. So long as members stay loyal to the current leadership and do not allow their personal affairs to embarrass the party, they are largely free to act as they wish in DPR proceedings. It is significant that in the very few cases where votes have been taken in a plenary session because *mufakat* has broken down, (such as on the reduction in fuel subsidies and the import of rice) the absence of a record of party discipline has meant that party leaders have not been able to enforce a party position and their members have either voted against the party line or have absented themselves from the chamber. Votes do tend to take place more often in very small working group meetings where the final details of the wording of draft legislation might take place. This is probably because such meetings are attended

by the members who are actually seriously working on the bill rather than simply attending for the sake of form.

Institutional incapacity and legislative drafting

These problems relate, of course, to a broader range of institutional weaknesses in the DPR. Because the RUU APP was an initiative of the DPR, all the policy and technical issues involved in drafting were the responsibility of the parliament alone. Had it been a government initiative, much of the preliminary work would have been done outside the DPR, leaving the parliament the job of reviewing and responding to a developed draft. The legal drafting capacity of the DPR, however, remains weak and much of the policy input tends to come from outside sources and is adopted by the Commission or *Pansus* without it being subjected to wider scrutiny. As mentioned above, the content of the initial drafts of the RUU APP came from within government ministries, but only in an unofficial form that did not represent the views of government as a whole.

Even the problem of weak drafting capacity and lack of policy expertise would not be such a problem if the DPR were generally a more open and transparent institution. Even if the DPR had not itself initiated consultation at the conceptual stage of the bill, the parliament would have received widespread outside input if the proposal for a bill on pornography was widely known. But the bill remained a closed issue for most of the community because DPR documentation can only be obtained by those with special access and contacts within the institution.

Thus the effects of *mufakat* came together with broader problems of lack of institutional capacity in the DPR to produce a bill that was potentially dangerous to the very fabric of the Indonesian polity. The RUU APP reached a stage in the processes of deliberation in the DPR that it arguably should never have reached. An ill-considered bill that was still in need of basic conceptual analysis came to sudden public view because of the pressures placed on Members to express perfunctory agreement with an initiative which they had not considered in a serious way.

The importance of early and complete public consultation

We have argued above that an interaction between practices instilled by the culture of *mufakat* and the weak drafting and policy support in the DPR led to the RUU APP reaching the stage of being accepted as an official DPR Initiative bill before sufficient public consultation had taken place. This conclusion is worth reiterating because it is one of the key observations that can be made about what the RUU APP revealed about decision-making in the DPR.

The experience of the RUU APP showed that consultation with stakeholders and the public as a whole not only needs to occur but should take a number of different forms at different stages of the development of a draft bill. The initial conceptual stage of development needs input from the key players, from expert opinion and from international experience. The RUU APP revealed the danger of the wholesale adoption of a bill based on the viewpoint of only a few stakeholders, even if the intention was to seek community views in later consultations. There needed to be input not just from a couple of religious organisations, but from the spectrum of religious and non-religious opinion on social and moral issues and on law enforcement in relation to such issues. Other critical views would include stakeholders in the media, from writers and artists and others involved in the

production of entertainment. In particular in a country as diverse as Indonesia, it would always seem advisable to consider if there was any particular regional implications of a bill.

Once input has been received at an early stage and a draft prepared, legislation can be made available to the public with some confidence that major interest groups are both aware of the bill and have had their perspective on the issue considered. This is not to say that all interests will be satisfied but rather that the bill is unlikely to be inadvertently offensive to any major point of view. General public consultation can then take place in a more informed environment, with the DPR committee leading the discussion more aware of the issues and interests at stake.

Along with the desirability of phased consultations, the RUU APP revealed the continuing problem of lack of general public knowledge about the processes and procedures of the DPR. The DPR remains an opaque institution where the most important decisions are still made behind closed doors and basic information and documentation is extremely hard to obtain without special privileged access. Information in the DPR is still regarded as a commodity to be hoarded and traded rather than to be provided as a service which the public has the right to expect. As well as being a violation of democratic principles, the story of the RUU APP shows that institutional non-transparency can be politically dangerous and potentially damaging to social cohesion.

Prolegnas and the heritage of unfinished business

It has already been mentioned above that the RUU APP was an inheritance from the old DPR of 1999–2004. The new DPR elected in 2004 was composed of 73 per cent new Members joining parliament for the first time under a reformed election system and with a new constitutional relationship with the now directly-elected President (Sherlock 2004). Yet despite the formation of a new government under an amended constitution and great changes to the parliament, the new DPR began its life burdened with a backlog of unfinished business from the old chamber. Nearly half of the new legislative program (*Prolegnas*) consisted of bills that the previous DPR had failed to pass.

This practice of taking over a large part of the legislative program of an old government and an old parliament forms an important part of the problematic background of the RUU APP. The decision to hand the unfinished bills on to the new DPR was made at a joint Government–DPR meeting at the end of January 2005, with the Government represented by the Minister of Law and Human Rights and the DPR represented by *Baleg*. It seems unlikely that one government ministry and one organ of the DPR could have given fresh and detailed consideration of the complexities of 22 bills in the short time available. Despite the critical importance of *Prolegnas* as an agenda for government (both the executive and legislative branches), it was barely considered by the Cabinet as a whole.

The idea of *Prolegnas* as a planning tool, introduced in Law 24/2004 on the making of laws, was that it would be a process by which executive government and the parliament would consult on the agenda of proposed bills and give priorities for law-making in the upcoming period. In practice, however, *Prolegnas* has become a "laundry list" of bills with no indication of relative priority or importance. In the case of a bill such as the RUU APP, inherited from the old DPR, *Prolegnas* gives no explanation about whether the bill would be given low priority because it had not been drafted by the current DPR or whether it needed high priority because it was part of an apparent log-jam of unpassed bills.

One result of this practice is that the parliament is swamped by an unrealistically large number of bills that recent history has repeatedly shown it is unable to pass. The DPR itself gives ammunition to the constant critics in the media and NGOs who charge members of parliament with being lazy and incompetent. This promotes the tendency to rush to be seen making progress on a particular bill when pressure from the government and interest groups mounts on a particular issue. Against the backdrop of the rising concerns from some quarters about media content and public standards, the new and inexperienced DPR pushed ahead with the RUU APP, a bill that was not really of its own making and which required major rethinking before it could be presented as an official draft of the DPR. But with the DPR's dearth of policy support and legislative drafting capacity, combined with its lack of transparency and public information, it failed to do the necessary preparatory work and produced a document that generated a storm of controversy and verbal conflict that even threatened the political fabric of the country.

Conclusion

The controversy on the RUU APP will probably come to be seen as a significant event in Indonesia's post-New Order political history. It showed the deep differences between attitudes to what is acceptable public conduct amongst the diverse groups that make up Indonesian culture in the context of changing mores and foreign influences. Certain aspects of the bill were seen to attack the implicit compact between the various cultural, religious and regional communities that make up the Indonesian state.

This paper has argued that the events surrounding the drafting of the RUU APP were more the result of a series of ill-considered moves than a deliberate strategy by any party or parties, whether parliamentary or extra-parliamentary. The origins of the bill were obscure and remain ill-understood by many of its proponents and critics. It lay largely ignored in the offices of the DPR Secretariat for a number of years before it was put into the public domain by a rather amorphous grouping of individuals within one Commission of the DPR. This grouping, and the *Pansus* that was made responsible for the bill, was something of a microcosm of the various currents of opinion in the DPR. But the debate within the *Pansus* was a complex interplay of interests, with longer term ideological tendencies contending with immediate calculations of partisan gain. Like the wave of sharia-influenced regional regulations, the RUU APP controversy was not a simple battle of secularism versus religious politics. Nevertheless, the bill showed that the interaction and contention between the various secular and religious streams (*aliran*) of thought in Indonesian society remain an established fact of Indonesian politics, even though their form has changed over time.

The fact that the DPR proposed a piece of legislation with the capacity to generate such political heat, including rhetoric about the very unity of the state, highlights certain issues and problems about decision-making processes within Indonesia's parliament. First of all, it shows that party discipline over policy matters in the DPR is very weak and that this results in very unclear lines of debate and a lack of predictability in members' behaviour. The DPR as an institution is marked by a lack of coordination, not only between Commissions and other internal bodies of the parliament but also between party leaders and individual members in the course of their work within *Fraksi* and Commissions. It was very unclear where the various parties actually stood on the RUU APP, making it very difficult for the public to be involved in the debate.

The RUU APP revealed that consensus decision-making (*mufakat*) means parties often give their assent to certain proposals without really understanding or committing themselves. This allowed a flawed piece of legislation to proceed through the stages of deliberation within the DPR before it was really in a fit state to do so. And because *mufakat* is in reality a system of vote by *Fraksi* leaders, it both disempowers individual members and reinforces their lack of policy discipline. The quality of members' information and understanding on the issues before them remains low because their vote is ultimately unimportant in the final decision-making forums of the closed-door lobbying meetings.

The major deficiencies with the text of the RUU APP attested to the institutional weakness of the DPR in terms of legislative drafting and policy input. Because there is little in-house capacity, the DPR tends to seek outside assistance for both policy content and the text of the bill decides to initiate its own draft bill. While this practice should not be problematic in principle, it is potentially dangerous if the outside advice is too narrowly sourced and is not subject to wider input from a range of stakeholders. And because strategic planning and prioritisation of legislation does not take place, (even though this should happen in the *Prolegnas* process), individual Commissions will often seize upon and promote a piece of draft legislation before it is fully developed. If the proceedings of the DPR were more open and accountable to the outside world, a much more comprehensive spectrum of community opinion could have fed into the drafting of the RUU APP at a much earlier stage. The example of the RUU APP underscored the critical importance of early and complete public consultation on proposed legislation.

Finally, the DPR's experience with this contentious bill raises serious questions about the practice of wholesale adoption of leftover legislation from preceding parliaments. The *Prolegnas* has the potential to be a useful planning tool for the DPR and to help improve the quality of draft bills. But it should only include a total number of bills that it is realistic to expect the DPR to pass and which are seriously considered and prioritised before they are added to the list. In the absence of such planning the DPR is likely to sail unwittingly into the storms of potentially damaging controversies again in the future.

Impressum

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