

QUOTA LAW'S FOR WOMEN IN POLITICS: IMPLEMENTATION IN INDONESIA

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ABSTRACT

In 2003 the issue regarding women's participation in politics specifically in the legislative about to start to be regulated in the act about political parties and legislative general elections which is adopting the affirmative action principle the determination of the quota of 30% for women. Affirmative action as temporary special measure for woman in political area has regulated on Act of Political Party (UU Nomor 31 Tahun 2002) and Act of Parliament Election (UU Nomor 12 Tahun 2003), it is then regulated further and revised on Act Number 2 Year 2008 and Act Number 2 Year 2011 on Political Party and Act Number 10 Year 2008 and Act Number 8 Year 2012 on Parliament Election. Those regulation on affirmative action for woman are considered as a "new stuff" in Indonesia that especially regulating about the gender equality on recruitment of the political party and its management which include the 30% woman representation on legislative candidate selection, it is also regulate that political party have to included at least one woman in every three candidate of preliminary legislative (zipper system).

Women quota is a system which its main purpose is to set percentage minimum representation for men and women, to ensure a balance through the presence of men and women in politics. The fundamental reason on the application of the quota system is to address the inequality issue caused by law and culture in the community. Ever since, the implementation of 30% of women's quota in the fields of politics generating 11.3% representation of women in the general elections in 2004, and 2009 general elections produced 18.04% representation of women in parliament (DPR), 16.0% representation of women in provincial parliaments (DPRD province), and 12.0% representation of women in regency/city parliaments (DPRD kabupaten/kota). The general elections in April 2014 produced 17.80 % representation of women in parliament (DPR). These research using qualitative method by using legal and previous election document as primary resources accompanied by some empirical cultural data.

Political parties as the main stakeholders that related to the woman participation should have a clear agendas to achieve the ideal condition of woman representation in political field from the level of caderization, recruitment, political education for woman, that have a clear impact both on the quality and quantity on the woman politician. The Maximalization of the supra structure and infrastructure institution, and even the grass-root political movement and woman movement from NGO's. Eventough patriarchal culture is still give an impact to the stakeholders such as political party and the voters include women itself become the main factor in the optimalization of woman participation number in Indonesia.

Key words: women's quota, legislative, Indonesia

1. Introduction

Since the rise of women movement after long-silence from 1965-1970, Woman right discourse has entered a new agenda: to set their aspiration not only in grass-root movement, but also on public-policy political area. But since the patriarch gene has deeply rooted in Indonesian's culture, how this goal should be achieved? Still long way to go to reach the answers, but at least, the legal set of affirmative action start from 2003 should be examined, how those special measure has its impact toward woman empowerment on political area, toward annihilation of sexual inequality.

Human rights issues has been seen as serious discourse since the establishment of Indonesian Constitution¹. The memory of the debates is well preserved on large historical meeting at *Dokuritu Zyumbi Tyoosakai* or Institute Investigator for Efforts Preparation of Indonesian Independence (known as BPUPKI in Indonesian) on July 15 1945. The meeting was fiercely talking about the concept of human right principle in 1945 Constitution.²

The result of the debates can be seen on the Preamble of the Constitution, especially on the 4th paragraph:

"That verily independence is the right of all nations and therefore the occupation in the world should be abolished because it is not in accordance with the spirit of humanity and spirit of justice".

¹ Satya Arinanto, *HAM dalam Transisi Politik di Indonesia*, 3rd Prints, (New York: Center for the Study of Constitutional Law, Faculty of Law, University of Indonesia 2008), pp. 8.

² On that council, future president Soekarno on his speech was defending not only that human rights principles must be written in Constitution but also contain the spirit of independence based on communal spirit and his rejection toward liberalism "Gentlemen! What we want to achieve is social justice! What grondwet used and written about freedom of speech, freedom to gather, if sociale rechtvaardigheid itself does not exist? What is the used of such grondwet if it cannot fulfill stomach of he starving people? Grondwet which contains "droit de l'homme et du citoyen" cannot eliminate starvation of the poor who about to die. If we rely serious building a country based on the spirit of communalities, principles of helping each other, gotong royong dan social justice, so get each thoughts of individualism and liberalism away,". Later on, Soekarno despite his well-known love affair also have a significant influence towards women rights, he wrote *Sarinah*, a book inspired by his maid. *Sarinah* contain Soekarno's view about marriage, women right to education, women and family economical analysis etc. This book, maybe the first book in Indonesia that talk about emancipation. Under his government, Indonesia also ratified the 1969 UN Woman Political Rights Convention. Also under his government, women debates among groups (Gerwani, Perwari, Wanita Katolik, Fathayat, etc) is such a common things. At that time, the first decade of new born state were rise within the women issues debates which soon disappear during Soekarno aftermath on 1965 and transition of power which bring Soeharto with his military-represif government take order until 1998. See Saskia E. Weiringa. *Sexual Stander and tge 1965/66 Mass Killings in Indonesia : Political and Methodological Considerations*. Journal of Contamporary Asia. Routledge, New York & London

It is further stated that:

“[...] The structure of Republic of Indonesia is composed by people sovereign which is based on the Belief in God Almighty, just and civilized humanity, the unity of Indonesia, Democracy guided by wisdom in a consultative/representative and realization of social justice for all Indonesian people”.

However, despite human rights itself has become serious issue since the birth of the republic, the development of woman rights discourse in particular begun on 1984, it seems took decades for the issues of women rights to find its momentum to enter the legal discourse. It can't be denied tough, that human rights and recent wave of globalization brings woman rights an entrance door, through human right principles, such as individual liberties, inalienably equality, states responsibility, etc also brings the consciousness toward women liberty, women equality, women position in culture.³ The entrance momentum to legal discourse started when General Assembly United Nations adopt the Article 2 UDHR to a historical 1984 woman convention as Convention Elimination and Discrimination Against Woman (Cedaw).

Indonesia then follow with half-heartedly⁴ ratified the Cedaw convention by the Act no.7 1984⁵, asserts that all human beings are born free has inherent dignity and equal rights. According to newly-ratified Cedaw, the state must guarantee equal rights for men and women in the fields of economic social cultural civil and political and in other fields. This warranty is about to set out legally in legislation enacted real and most importantly the rights and equality between men and women, at least as it says on the ratified act. The hope at that time were not only the de-jure or formal but also the de-facto access, not just formal equality but also substantive equality and real. Yet although the convention was being ratified, in fact there is no significant policies to improve the woman condition.⁶ It took another decades for women rights discourse alongside with human rights discourse once again found it momentum to rise, when Soeharto reach the most vulnerable point after three decades of othoritarianship on 1998. Also in the same year, after Soehato resignation, under President Habibie, the National Women Committee (Komnas Perempuan) were established⁷ and in November, MPR XVII/MPR/1998 on Human Rights were legalized. Soon, other significant result on Post-Soeharto regime can also be seen under President Abdurrahman Wahid, a well-known muslim person who introducing the spirit of pluralism in Indonesia. Under his influence, he insist the gender mainstreaming policies on all government institution and soon, the first women president, Megawati Soekarno Putri elected. Under those two president tough there were some policies based on women interest, it were not followed by significant increasing number of women representation on DPR.

Also during the atmosphere of transition of power, there were rapid changes on the Indonesian constitution. Only during 1998 until 2002, the constitution amended by four time. One of the main aspect on its amended constitution was the adoption of human right principle. Beyond all criticism, however it is also praised that on the adoption of human right principles, which special measure included in it, Article 28 H Verse 2 on second amendment Constitution give a clear path for women movement to pushing affirmative action agenda. However, it was on the 2004 general election, the principles were implemented.

Based on Cedaw ratification, Indonesia⁸ shall take appropriate measures including making laws in all areas particular in the political social economic and cultural development and to ensure the advancement of women with all the goals ensure that they carry out and enjoy human rights and fundamental freedoms on the basis of equality with men. Furthermore the state is also

³ Following Andrew Flanagan's argument on Andrew Flanagan. *Human Rights, Confronting Myths and Misunderstanding*. Human Rights Centre, University of Essex, UK Edward Elgar Publishing inc. 2009. P 15 he said that ...*"Within the theory of human rights the ideals of individual liberty and equality effectively complement one another. However, the two ideals have separate historical development and separate conceptual structures. Equality has become predominantly understood as non discrimination, so that all individuals are accorded an equal moral legal standing within the principal legal and political institution of modern states. From a human rights perspective, individuals claim to equal standing is not based upon merit or accomplishment: we do not earn our equality: we process it inalienably. No should any individual standing be determined by features such as race, gender, ethnicity, physical capabilities, religious or ideological commitments. While a commitment to securing human rights does not, necessarily, require political authorities being "blind" to such distinction, it does require the eradication of disadvantage and discrimination on these grounds. The ideal of equality is central to many modern society"*

⁴ It can be said Half-heartedly ratified because Indonesia reserve the convention clause, rejecting the international responsibility on the development of women right. Tough the convention contain the spirit of ICCPR and ICESCR, which contain general regulation about the rights of man, the two conventions were ratified on 2005.

⁵ State Gazette of RI 1984 no. 29, Supplement of State Gazette of RI no. 3277

⁶ It can be understood that during the New Order regime, almost all other discoursed which considered opposing the government view will quickly be silenced, ban, or stigmatized as the new form of communist party. The emerge of Kalyanamitra in Yogyakarta, and LBH Apik in Jakarta could not escape from the same intimidation, the two new Women NGO movement being accused as Gerwani, women organization that blamed for murdering generals. New Regime was display Gerwani as "whore organization" with no morality, killing generals by cutting off their penises and chop off their eyes on 1965 tragedies. The inappropriate death of Marsinah, woman-labour-activist during early 1990s also signify how the New Order regime react against "subversive conduct". Other example can be seen on New Order Regime's Kartini interpretation, Indonesian women pioneer that writing about women's public-private live. Under New Order depicting Kartini with sense of obedience against cultural value.

⁷ The main background behind the establishment of National Woman Commission was to investigate mass rape toward Chinese ethnicity in Jakarta during 1998 riot, unresolved case which strongly indicate the military were involved. Tough the main purpose were not accomplished yet, the human rights momentum which also bring women right discourse into public debate demand the commission to exist further on. National Women Commission then consistently become the main agent to campaigning the affirmative action principles till today.

⁸See also explanation, the Law Decree, 7 1984, on the Ratification of CEDAW.

obliged to make regulations and take special measures while aimed at accelerating equality "de facto" between men and women including problems of women's involvement in politics as defined in Article 7 of CEDAW which has ratified by Indonesia through the Act no.7 1984, the state Party shall take appropriate measures to eliminate discrimination against women in political and public life in the country specifically guarantees women on an equal basis with men which include the right to:

- a. To vote in all general elections and public opinion polls and can be elected for all the agencies based on general elections.
- b. To participate in the formulation of government policy and implementation holds a position in the government and perform all public functions at all levels.
- c. To participate in non-governmental organizations and associations dealing with the public and political life of the country.⁹

Article 4 paragraph (1) CEDAW is also closely linked to the implementation of Article 7 which provides that:

- (1) *Preparation of regulations and implement temporary special measures by the participating countries aimed at accelerating equality de facto between men and women¹⁰ are not considered to be discrimination as defined in the present Convention and the same did not have to carry the consequences of maintaining the norms that is not the same or separate regulations and actions must be stopped if the goal of equality of opportunity and treatment has been achieved.*

By implementing affirmation principle, it indicating the progress of law's function on social engineering by intervene the social imbalance between the sexes by giving special treatment.¹¹ It also mean that state accommodating issues of gender inequality which is caused by the patriarchal culture the idea of law itself has long inspired countries in the world to organize and maintain arrangements and relations between the countries with citizens.

Following argument of Irish Marion Young, such women or ethnic minorities are currently under-represented in positions that determine in society by explicitly considering the special character gender or ethnicity which has been the basis of discrimination. Such as women or ethnic minority which is currently under-represented in positions that determined in the community by explicitly considering the special character (gender or ethnicity) which has been the basis of discrimination. Implementation of affirmative action politics not necessarily related to the quota although it is often interpreted as affirmative action puts more emphasis on the opportunity and the importance of qualifications as a basis for granting the opportunity for certain groups.¹² However, although she agreed upon special measure in inclusive democracy, she rejected special form of measure, such a reserved seat. To move from inequality to equality on modern inclusive democracy, for her, the only reasonable way is a party quota.

Quotas are often interpreted as the imposition of the amount or presentation for certain groups of women in this regard. Quota on the other hand defined as a system which is at the core of a set percentage minimum representation for both men and women which aims to ensure a balance is reached the existence of men and women in politics and in decision-making positions while the application of the fundamental reasons quota system is due to the problem of discrimination which is caused by the law and culture in the community.¹³ Yet on the more practical manner, the implementation is not that simple. This problem will be explained on the next section

Before further exploration, it is needed to examine the position of Affirmative action according to Indonesian Legal Scholar. Two names emerges here; Jimly Asshiddiqie, the former leader and the judge of first period Constitution Court (Mahkamah Konstitusi) and Satjipto Rahardjo, a legal scholar, Professor with mixed common-civil law perspective, also known as sociology of law theorist. At least, those two names will provide rough picture on legal-epistemology justification toward affirmative action in Indonesia legal systems based on two different perspectives.

Jimly argue that Indonesia view on the right of citizen has a very important sense the system of law and government existing human rights principles applicable to every individual even in addition to the guarantee of human rights every citizen also given guarantee of constitutional rights in the Constitution of 1945¹⁴. Furthermore he said that the protection and fulfillment of citizens' constitutional rights must be carried out according to the conditions as diverse citizens because the reality of Indonesian society showed no differences in ability to access the protection and fulfillment of rights granted by the state. Differences in the ability are not the will of its own or a group but because of the social structure that developed tended to marginalize. In line with a given specificity or specific virtues the opposite sides causing the state's obligation to fulfill the special rights¹⁵. The provision is said to be "equal protection" but in development this principle recognizes there are exceptions such as "affirmative action" i.e. positive discrimination. Special treatment in the form of positive discrimination is considered acceptable as long as intended to achieve equality and justice as stipulated in the Constitution either through general principles¹⁶

⁹See also UNIFEM, Analysis of Substantive Rights and Obligations in Gender Equality Draft Laws and Laws in 2009, pp. 92

¹⁰Read Explanation of Article 4 (1), Law, 7 1984, on the Ratification of CEDAW.

¹¹ Catharine Mackinnon. *Difference and Dominance: on Sex Discrimination* on Catharine Mackinnon. *Feminism Unmodified, Discourse on Life and Law*. Cambridge University Press. 1987 p. 33 Mackinnon said that there are two different approach on sexual difference policies; gender neutralities (sameness) and gender difference.

¹² Irish Marion Young. *Inclusion and Democracy*. Oxford University Press. New York. 2000 p.144

¹³ *ibid.* P 150

¹⁴ Jimly Asshiddiqie, *Menuju Negara Hukum yang Demokratis*, Sekretariat-General and Registrar of the Constitutional Court 2008, pp. 558.

¹⁵ Jimly Asshiddiqie, *ibid.*, pp. 564.

¹⁶ For example in Article 11, paragraph (1), letter e, the Act no. 2 2011 about the amendment of the Act no. 2 2008 about political parties.

or by specifying a certain quota¹⁷. The affirmative action in positive law is possible according to the interpretation of Constitution itself on Article 27 and Article 28:

Article 27I:

All citizens are equal before the law and government and shall abide by the law and the government with no exception.

3rd Paragraph Article 28D says that:

Every citizen has equal right and opportunity before the government.

2nd Paragraph Article 28H states that:

Every person shall have the ease and special treatment to obtain the same opportunities and benefits in order to achieve equality and justice.

The appearing of progressive legal theory which is initiated by Satjipto Rahardjo,¹⁸ also caused concerning legal-teleological problems. Progressive law as the theory he introduce turning the purpose of “positive” law upside down, by repositioning human and its subjectivity as the anchor point. Base on this perspective, then it can be understood the existence of special measure as we call it affirmative action, especially on the third world countries in organizing things necessary by a particular group which is difficult to get justice, at this point, women. So, to say progressive legal theory constructed with 2 background is¹⁹:

- a. Law based on emancipation and care with fair community perspective.
- b. Desire to encourage social justice by rejecting status quo such as domination on law.

In addition, the related arrangements and the establishment of new law according Rahardjo²⁰ is that the establishment of the law is and how to choose an activity that would be used in order to achieve certain social objectives and society. Thus if there are several people in the new development which is supported by concrete facts the state and affected stakeholders want to encourage the birth of new legislation which is based on the desire toward social goals desired community.²¹

The importance of those two Indonesian Legal theorists which mentioned above and its relation with affirmative action is crucial here: the former based on the legal-structural perspective and the later, viewing affirmative action in more sociological manner.

Social injustice and its correlation with the need of affirmative action then on this context of the article is about women, as the group that requiring treatment and special concern from the country. Without any special treatment, women will not be able to access protection and fulfillment of constitutional rights because of the differences and distinctions which are generated and perpetuated by the patriarchal structure of society. Protection and fulfillment of constitutional rights without any special treatment it will tend to defend discrimination against women and is not able to achieve justice.

So, it can be concluded that theoretically, those two legal perspective which followed by most of Indonesian legal scholar and practitioner have a positive justification on affirmative action and women quota. Then, at this point two definitions on affirmative action and quota should first be

The purpose of affirmative action in fact not just set a certain percentage but has two objectives namely positive impact in order to a better understanding the institution as well as eliminate various forms of racism and sexism in the workplace and that the institution able to prevent it from occurring bias (bias) gender and ethnicity. Affirmative action is temporary if the goals and objectives to achieve equality have been achieved or protected groups have been integrated then affirmative action is no longer needed. Affirmative action gradually will ensure that women are institutional decision-makers those who are truly qualified for the job. All policy is a strategic step toward established “critical period” so effectively women are able to influence the political decision making process. To address the gap (gender gap) which occurs in the case of political representation with the rationale that the quota policy is often set together with affirmative action.

In Indonesia the existence of affirmative action in the form of quotas concerning women and politics for the first time regulate in the Act no.31 2002²² on political parties imposed since December 27, 2002 and the Act no.12 2003²³ on general election for members of parliament (DPR), regional council (DPD), and regional parliaments (DPRD) of province/regency/city which is introduced on March 11, 2003.

Complete formulation of affirmative action provisions is in Article 65 paragraph (1) the Act no. 12 2003 is: Every political party may nominate candidates for general election participants’ member of provincial and regency/city parliaments for each electoral regency taking into account the representation of women at least 30%. Covenants contained in two laws considered to be the initial step arrangements related to gender equity in recruitment and management of political parties and a quota of 30% women’s representation in the nomination of members of the legislature so that it can be said is a progressive step in constitutional related to an increase in women’s participation in politics.

¹⁷ For example Article 55, the Act no. 8 2012 about the general election members of parliament, Regional Council and Regional parliament, that the list of prospective candidates as referred to in Article 53 contain at least 30 % (thirty percent) of women's representation.

¹⁸ See Suteki in *Satjipto Rahardjo, dan Hukum Progresif, Urgensi dan Kritik*, Epistema Institute 2011, pp. 34.

¹⁹ Satjipto Rahardjo, *Arsenal Hukum Progresif, Jurnal Hukum Progresif*, Volume 3 No. 1 April 2007, Doctoral Program of Legal Studies, University of Diponegoro in Semarang, pp. 1

²⁰ Satjipto Rahardjo, *Hukum dan Perubahan Sosial: Suatu Tinjauan Teoritis serta Pengalaman Pengalaman di Indonesia*, Gentha Publishing in 2009, pp 37

²¹ Jimly Asshiddiqie, *ibid*, pp. 564

²² State Gazette of RI 2002 no.138, Supplementary of State Gazette no. 4251

²³ State Gazette of RI 2003 no.37, Supplementary of State Gazette no. 4277

This provision of the Act no.2 2008²⁴ and the Act no.2 2011²⁵ about political parties and the Act no.10 2008²⁶ and the Act no.8 2012²⁷ about general election for members of parliament (DPR), regional council (DPD), and regional parliaments (DPRD). In the law parties are required to put 30% of women in a submission to the legislative candidates. Moreover in the law there must at least one party to include women in every 3 candidates Legislature (zipper system).²⁸ In Indonesia the development of the problem as well as the implementation of the participation of women in politics or affirmative action by 30% growing in the direction of how to meet the quota and how women can be and are able to use the provided quota as we know, sociologically speaking, facing many barriers such as cultural prohibition on woman's public participation and whether men including political parties "willing" give it a chance?

2. Why women should get involved in the political field specifically in the legislature (representative)?

Affirmative action policies have been implemented in many countries namely in Europe, Africa, Asia and Latin America. The UN, as reported by the UN Secretary general, dated January 19, 2000, said that countries that implement affirmative action with quota system show significant progress in the representation of women in decision-making institutions whether at national and local level. In the political parties it also help transforming political agenda towards more sensitive to women's needs.²⁹

Representation of women actually is more than just a mere symbolic representation, women's substantive presentation according to Hanna Pitkin has the meaning of standing "on behalf of" and "acting for" women simultaneously. There are key indicators that can be used to see the women representation³⁰ such as election process and women representation on strategic institution which have strong influence on woman policies.

However, tough affirmative action has been included implicitly on black-letter law, it still left many problems on its implementation and community perspective on women public life, this problem as Midgley said that Problems of participation in politics connoted as "*the direct involvement of ordinary people in local affairs or direct involvement of citizens in local affairs*". Community participation also means that there is always in local affairs on the participation as a necessary prerequisite for strengthening governance movement which encourages the existence of legal framework which encourages local governments to acknowledge the existence of groups of citizens and encouraging involvement in the governance (read: political) process³¹. Additionally almost all states require the creation of a positive relationship between politicians and civil society and sharing among women in various fields to form a strategy. The obstacle on community participation is that on one side, the sense of belonging between government and its community is dependent on how the relation is going, but on the other side, those sense of belonging itself also depend on participation of all members of the society without an exception. Nevertheless, within public life, it also contain societal structure of domination, which on this context is problem of Indonesian women's public life. Prohibition of women's public life can found almost in all region in Indonesia whether paternal, parental and even maternal community system. West Sumatera for example, province known with maternal Minangkabau Adat Community never met the 30% quota.

In comparison, six countries in Northern Europe namely Sweden, Denmark, Finland, Norway, Netherlands and Iceland successfully set proportion of the membership in the parliament of Commons which is more than 30% of its members are women. Efforts are taken to implement the quota to boost the representation of women through institutional decision makers³². In comparison, South Africa in 1994 is ranked 141 in the IPU (Inter-Parliamentary Union) and in 2000 is ranked 9, the policies adopted the ruling African National Congress to implement 30% quota policy for women candidates and the results of current the 29.8% of the seats in the lower parliament held by women.³³

International data of 10 countries in the world which have high levels of women representation by 30% or more in the parliament namely Rwanda: the parliament and the Senate 56.5% 34% Sweden (46.4%) South Africa: parliament 44.5% Senate 29.6% Cuba 43.2% Iceland 42.9% Netherlands: parliament and the Senate 40.7% 34.7% Finland 40% Norway (39.6%); Belgium: parliament 39.3% the Senate 42.5% and Mozambique (39.2%).³⁴ Women representation data in national parliaments worldwide from the International parliamentarian Union (IPU) dated January 31 2006 shows Indonesia occupied the 89th place out of 186 countries in the world far below Afghanistan: 27.3% (no. 24); Vietnam: 27.3% (no. 24); Timor-Leste: 25.3% (no. 28); Pakistan: 21.3% (no. 41); China: 20.3% (no. 48); Singapore: 16% (no. 66) Philippines: 15.3% (no. 67). Meanwhile under the Asian countries of Indonesia, Thailand among others 10.8% (no. 93); Malaysia: 9.1% (no. 103); Japan: 9.0% (no. 104); India: 8.3% (no. 108).³⁵

²⁴ State Gazette of RI 2008 no. 2, Supplementary of State Gazette no. 4801

²⁵ State Gazette of RI 2011 no. 8, Supplementary of State Gazette no. 5189

²⁶ State Gazette of RI 2008 no. 51, Supplementary of State Gazette no. 4836

²⁷ State Gazette of RI 2012 no. 117, Supplementary of State Gazette no. 5316

²⁸ Read Ani Soetjipto, *Politik Harapan: Perjalanan Politik Women Indonesia, Pasca Reformasi*, pp. 89.

²⁹ National Network, Mahardhika Women, Feminism Changing Society, Kalyanamitra and National Network, Women Mahardhika, Jakarta 2006, pp. 8.

³⁰ See Georgia Duerst Lahti, dan Rita Mae Kelly, *Gender Power, Leadership and Governance*, The University of Michigan Press, pp. 2995

³¹ Ben Reilly, *Reformasi Pemilu di Indonesia: Sejumlah Pemikiran*, Almanac of Indonesian political parties, SMK Gafika Mardi Yuana, Bogor, pp. 18

³² Rashila Ramli, Elisa Tita Lubi and Nurgul Djanaeva, *Strategies for Women's Political Participation in Political Processes*, Asia Pacific Forum on Women, Law and Development (APWLD) 2005, pp. 153

³³ *Ibid*, pp. 236

³⁴ *Parliamentarian Union (IPU)* on January 31 2006, pp. 18

³⁵ Kementerian Pemberdayaan Women, dan Perlindungan Anak, *Ketimpangan Gender dalam Pencapaian Kualitas Hidup Manusia di Indonesia* in 2009, pp. 43

In Indonesia, the efforts to increase women's participation in politics specifically in the legislature in substance is there with adopted principles of affirmative action with quotas³⁶ in regulation meaning setting legislation regulation related the participation of women has been accommodated in the act about political parties and general elections as mentioned above. However, Indonesian wind of change on women quota have not accomplished yet. Regulation after another shows it deadlock to fulfill the quota, parallel with the increasing number of violence against women year after year. Section below will show the quota implementations based on past experience.

3. Implementation of the quota of 30% women in the legislative (representative)

Affirmative action is applied 2 times i.e. on 2004 general parliament election which resulted in the representation of women at 11.3% and the in 2009 general election after the Constitutional Court (MK)'s decision, related most votes generating 18.04% representation of women's representation in parliament of provincial by 16.0% (DPRD province) and regency/city by 12.0% (DPRD kabupaten/kota). In 2009 the general elections³⁷ there are 10% of the 490 regencies/cities do not have the representation of women in parliament while the. In comparison, on 1999 general elections while Indonesia has not yet entered a principle of affirmative action, the percentage of women stood at 9%. The general elections in 2009 produced 18.04% of women in parliament.

Following Krook, it is seems true that quota system does not have a single uniform effects in terms of promoting women. It is strongly depend on its time and space context. The factors that influence each other of political representation of women in the region among others:

- a. Women Mobilize for quotas to increase of women's representation
- b. Political Elites recognize the strategic advantages for pursuing quotas.
- c. Quotas are consistent existing emerging notions of equality and representation.
- d. Quotas are supported by international norms and are spread through transnational sharing.³⁸

Motivations for quota reform held inter alia³⁹:

- a. Principal Stands basing on the principle of gender quotas
- b. Considerations to adopt the electoral quota for general election win votes.
- c. Empty Gesture: pragmatic political elite leaving the issue of gender quotas as long as it did not impact any of their positions.
- d. Promotion of other political ends: the political elites provide political space for women by appointing women to their interests. The purpose is to maintain the status quo and power.
- e. Extension of representational guarantees: On the one hand this motivation found gender quotas is necessary to open democracy but on the other hand this argument can be used also to resist gender quotas arguing that gender categories are not relevant the identity of the other group such as ethnicity race culture etc.
- f. International pressure: often political leaders in a State adopted gender quotas due to the international pressure in order to maintain the legitimacy of power.
- g. Transnational sharing where events in one country may be motivated to perform similar movements in other countries.

Based on past experience, Indonesian political choice is to incorporate the principles of affirmative action in the form of quotas. Some considerations chose provisions to include a quota of 30% in the package is a political act:

- a. In general, the quota is defined as a system which is at the core set a minimum percentage of representation for men and women which aim to ensure a balance is reached the existence of men and women in politics and in decision-making positions. Thus the fundamental reason for the application of the quota system is due to problems caused by inequality by law and culture in the community.
- b. Quotas do not just set a certain percentage but has 2 goals namely the giver of positive impact to the institution in order to better understand as well as eliminating various forms of racism and sexism in the workplace and that the institution is able to prevent any prejudice (bias) and gender ethnicity.
- c. Quotas intended that all existing policies into strategic move toward established critical period thus effectively women (certain groups) is able to influence the political decision making process.

The Impact of affirmative policies is the increasing number of women candidates for the legislative (parliament) on 2004 and 2009 general elections can be seen in the table below:

Table 1
The prospective comparison for women members of parliament
in the general elections in 2004 and 2009

Legend	General election in 2004	General election in 2009
Sum of member Women candidates for parliament,	2,507	3,910
Percentage of member Women candidates for parliament,	33%	34.7%
Sum of Elected women member candidates for parliament,	61	103

³⁶ Affirmative action is also interpreted as an important tool, to retain 30 % (thirty percent) See Deviyanti Dwiningsih in Vina Salviana DS, Toward Gender Equality, parliament members, Yogyakarta, Student Reader 2006, pp. 43

³⁷ Direktorat Jenderal HAM, Kementerian Hukum dan HAM, *Pedoman Pemenuhan Hak Asasi Women 2011*, pp. 118

³⁸ *Ibid*, pp. 386

³⁹ *Loc. cit.*

Percentage of Elected women member candidates for parliament,	11.09%	17.86%
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Sources: Puskapol FISIP UI 2010

From the table above it appears that the number of women candidates for the parliament has increased from the in 2004 general election to the in 2009 general election. In addition, the number of elected women also gain increasing number. Furthermore the number of women elected to the parliament in the, general elections in 2009 contributed more by the three major parties Indonesia namely PD, PG, and PDIP.

Based on the table above, it appears that the involvement of women in political life at least since affirmative action the parliament and the parliament general election in 2004 applied can be said have some positive impact although the percentage of their representation in the national legislature and provincial regency and the city has not reach with the provisions of 30% as set out in the political acts package. This is because although there are a variety of women’s movement Indonesia but there are still gaps in terms of participation and representation of women in formal political structures which caused a patriarchal culture. When viewed backward (before there is affirmative the determination of quotas legislative general election in 2004) yet women are represented equally at the national level legislatures since 1955 only 5.9% of the seats in parliament. Although there has been an increasing trend in terms of representation of women since 1971 there are some exceptions including the 1977 general election when the number of women elected to decline from 7.8% to 6.3%. When compared to the prior general election (1971) and again decreased again the, general elections of 1999 to 9% when compared to prior general elections by 10.8% in 1997. Nevertheless, an increasing number on women’s representation in the parliament the last two general elections 11.8% in 2004 and 18% in the 2009 general elections is significant.

From this condition, several steps by stakeholders is needed, the most important and practical step is obligation for the party to reach 30% quota for women in the list of candidates. This is along with the existing provisions the Act no. 10 2008 on the general election. Article 53 of this act requires political parties to nominate at least 30% of women in the list of candidates is open in the, general elections in 2009 and in the format of 1 in 3 (of 3 legislative candidates have 1 women). In connection with the zipper system (1 must propose women candidates among the 3 candidates for the parliament). Women’s participation in the, general elections in 2009 increased when compared to prior general elections women’s participation can be seen from the number of women who became a candidate member of the parliament as well as the increased desirability of women as members of parliament. Electoral Commission step by issuing these regulations in accordance with the act of politics to achieve gender equality in political life as shown in the table below:

Table 5

The prospective comparison data for legislative women of nine major political parties in the parliament in the general elections in 2009

Political Parties	Total of electoral regions	The spread of Quote’s 30% in all electoral regions		Total of candidates	Comparison between Women dan Men candidates	
		Electoral regions with 30% Women	Percentage		Men	Women
PD	77	47	61.04%	666	444 (66.67%)	222 (33.33%)
PG	77	38	49.35%	639	447 (69.95%)	192 (30.05%)
PDIP	77	73	94.81%	628	409 (65.13%)	219 (34.87%)
PKS	77	76	98.70%	579	364 (62.87%)	215 (37.13%)
PAN	77	38	49.35%	592	413 (69.76%)	179 (30.24%)
PPP	77	32	41.56%	469	341 (72.71%)	128 (27.29%)
PKB	77	50	64.94%	392	258 (65.82%)	134 (34.18%)
Gerindra	77	33	30.00%	386	275 (71.24%)	111 (28.76%)
Hanura	77	37	32.46%	599	413 (68.95%)	186 (31.05%)
Total				4,950	3,364	1,586

Source of Puskapol FISIP UI 2010

The Electoral Commission based on data existing in the table above, the majority of political parties which gained seats in the parliament and meet the threshold of parliament has submitted 30% of women in the list of candidates for parliament: Nasdem, PDIP, PKB, PD, Hanura, PAN and PG. There are two political parties which do not meet the quota of 30% i.e. PPP and Gerindra. Total candidates proposed by political parties as many as 4950 candidates which consists of 3364 men candidates and women candidates in 1586.

Legislative candidates for members of the parliament proposed by political parties' participants in 2014 general election are total 6,641 candidates. After verification the Electoral Commission set the fixed list of candidates (DCT) which amounts to 6,607 nominees which consists of women candidates in 2467 and amounted to 4140 men candidates. In addition the data below shows 12 political parties have met the 30% of women in the 2014 legislative candidacy

Table 6

The list of prospective comparison of women legislature which are proposed by political parties in the general election in 2014

No.	Political Parties	Total of electoral regions	Electoral regions with 30% Women	Legislature candidates		Total of candidates
				Women	Men	
1.	Nasdem	77	77	226 (40.5%)	333 (59.5%)	559 (100%)
2.	PKB	77	77	210 (37.6%)	348 (62.4%)	558 (100%)
3.	PKS	77	77	191 (38.8%)	301 (61.2%)	492 (100%)
4.	PDI P	77	77	200 (35.71%)	360 (64.29%)	560 (100%)
5.	PG	77	77	202 (36.07%)	358 (63.93%)	560 (100%)
6.	Gerindra	77	77	203 (36.45%)	354 (63.55%)	557 (100%)
7.	PD	77	77	205 (36.60%)	355 (63.40%)	560 (100%)
8.	PAN	77	77	208 (37.14%)	352 (62.86%)	560 (100%)
9.	PPP	77	77	214 (39.1%)	334 (60.9%)	548 (100%)
10.	Hanura	77	77	203 (36.37%)	355 (63.63%)	558 (100%)
11.	PBB	77	77	205 (36.87%)	351 (63.13%)	556 (100%)
12.	PKPI	77	77	200 (37.10%)	339 (62.90%)	539 (100%)
Total				2467 (37.34%)	4140 (62.66%)	6607 (100%)

Source: Data compiled from Electoral Commission (KPU) in 2013

Based on the data above, on the 2014 general parliament elections, the candidates fixed list (DCT)'s verification and determination by the Electoral Commission women candidates or candidates in 2467 candidates or 37.34% from the total 6607 candidates. The entire political party general election participants meet the quota of 30% women's representation in the list of candidates in all constituencies which are available in accordance with the existing provisions in the act about legislative general elections.

In 2014, the success of Fulfilling 30% women quota by political parties electoral participants throughout the constituency caused by stakeholders, in this case the Electoral Commission, carry packages political act which contained provisions on the "affirmation" firmly inflexible like the general elections in 2004 and 2009. Affirmation provisions contained in the Act no.8 2012 confirmed by Electoral Commission Regulation no. 7 2013 which states that requirement if political party nomination must meet the representation of women at least 30% in all electoral regencies. Additionally general election Supervisory Board also has the same policy with the Electoral Commission interpreting policy affirmations the general election act. However, the optimism on 2014 parliamentary general election by its increasing number of women candidates then becomes tragic when Election Commission announced the result. Tough three on four most elected candidates were women, the overall women representation drop to 14% or just 79 from 560 seats.

4. Facing the New Challenge (Instead of Conclusion)

In Indonesia, the implementation of affirmative action with specific quotas has existed since the set of Act no. 31 2002 about political parties and Act no. 12 2003 about general election of members for the parliament and the provincial/ regency/city parliaments. Despite the provisions regulating the quota of 30% for women in the legislature, but it does not ensure increased representation of women in legislative bodies. This is due in fulfillment of the quota not an easy thing because the major obstacle is the culture of patriarchy that still intertwined in stakeholders related to women's participation in politics. More over in the legislative provisions there are no clear sanctions. Existing sanctions sanction is moral and not tough sanctions which can urge the fulfillment of the quota.

It is evident in Article 57 and Article 58 of the act about legislative general elections on verification administrative requirements prospective candidates. Elections before 2014 was providing almost no legal impact at all, if parties does not meet the women representation quotas, then Electoral Commissions of provincial and regency/city will only give the opportunity for political parties to get the list fixed and let it go by asking them to give written reasons. The experience from 2014 when Electoral Commission using strict law interpretation to ban the political parties which does not meet the quota was clearly give a valuable lesson. However as Mackinnon argue, the system that recognize women voice will only become a myth if not walking hand by hand with women strengthening in cultural area.

References

- A.V.Dicey (1957). *Introduction to the Study of Law of the Constitution*. London: Mac Migan, LTD, ,
 Abdul Bari Azed dan Makmur Amir (2006). *Pemilu dan Parpol di Indonesia*. Jakarta Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia
 Agnes Widanti (2005). *Hukum Yang Berkeadilan Gender*. Jakarta: Kompas,.
 Andrew Fagan, (2009). *Human Rights (Confronting Myths and Misunderstandings*. Cheltenham, UK, Northampton, MA, USA: Human Rights Centre, University of Essex, UK, Edward Elgar Publishing.Inc,
 Ben Reilly, without published year. *Reformasi Pemilu di Indonesia: Sejumlah Pemikiran*, Almanak Parpol Indonesia, Bogor :SMK Gafika Mardi Yuana.

- Catharine Mackinnon (1987). *Feminism Unmodified, Discourse on Life and Law*. Cambridge: Harvard University Press.
- Irish Marion Young, (2000). *Inclusion and Democracy*. New York: Oxford University Press,
- Jimly Asshiddiqie, (2008). *Menuju Negara Hukum yang Demokratis*, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi,
- Julius Stahl dalam Jimly Assiddiqie, *Menuju Negara Hukum yang Demokratis*, Bhuana Ilmu Populer, 2009
- Padmo Wahyono, (1977) *Ilmu Negara Suatu Sistematis dan Penjelasan 14 Teori Ilmu Hukum dari Jellinek*, Melati Study Group, Jakarta,
- Rashila Ramli, Elisa Tita Lubi and Nurgul Djanaeva, *Strategies for Women's Political Participation in Political Processes*, Asia Pacific Forum on Women, Law and Development (APWLD),
- Saskia E. Weiringa. *Sexual Slander and tge 1965/66 Mass Killings in Indonesia : Political and Methodological Considerations*. Journal of Contemporary Asia. Routledge, New York & London
- Satjipto Rahardjo, Arsenal Hukum Progresif, *Jurnal Hukum Progresif*, Volume 3 No.1 April 2007, Program Doktor Ilmu Hukum Universitas Diponegoro Semarang
- Satjipto Rahardjo (2009). *Hukum dan Perubahan Sosial: Suatu Tinjauan Teoritis Serta Pengalaman di Indonesia*. Yogyakarta : Gentha Publishing,
- Satya Arinanto (2008). *HAM dalam Transisi Politik Di Indonesia*, Cet ke-3, Jakarta: Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia,
- Susan H. Williams (2009). "Equality, Representation, and Challenge to Hierarchy: Justifying Electoral Quotas for Women", dalam Susan H. Williams (ed.), *Constituting Equality: Gender Equality and Comparative Constitutional Law*, New York: Cambridge University Press,
- UUD 1945 (Indonesian Constitution of 1945)
- ActNo.7 1984 tentang Pengesahan Konvensi Mengenai Penghapusan Segala Bentuk Diskriminasi Terhadap Perempuan (Convention on the Elimination of All Form of Discrimination against Women) atau CEDAW
- ActNo.31 2002, ActNo.2 2008 and No.2 2011 tentang Partai Politik.
- Act No.12 2003, Act No.10 2008 and ActNo.8 2012 tentang Pemilu Anggota DPR, DPD dan DPRD.