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UNIVERSITAS GADJAH MADA

# **CHALLENGING STATE HEGEMONY: ASEAN, HUMAN RIGHTS ADVOCACY, AND NON-GOVERNMENT ORGANISATIONS IN INDONESIA**

**WORKING PAPER NO. 2 - OCTOBER 2014**

# CHALLENGING STATE HEGEMONY: ASEAN, HUMAN RIGHTS ADVOCACY, AND NON-GOVERNMENT ORGANISATIONS IN INDONESIA

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# The Politics of Non-Government Organisations Involvement in ASEAN: An Indonesian Perspective\*

## Introduction

Recent developments in Southeast Asian integration processes have embraced a new term: ASEAN Community. Since the second ASEAN Summit in Bali, September 2003, all ASEAN member states have agreed to establish a regional community in the region by 2015. This political initiative was followed by series of talks and negotiations that led to the signature of ASEAN Community Blueprint (2007) and subsequently the ASEAN Charter (2009), as well as the the establishment of many regional institutions, such as the ASEAN Intergovernmental Commission of Human Rights (AICHR) and several Ministerial Meetings. These developments marked the transformation of regionalism in Southeast Asia.

Interestingly, the transformation of regionalism in Southeast Asia does not occur merely in the level of state. Since the early 2000s, there have been attempts from non-government organisations (NGOs) to participate in the regionalism processes (Chandra, 2009; Gerrard, 2014).<sup>1</sup> Started with ASEAN People's Assembly, which was jointly initiated by think-tank organisations under ASEAN-ISIS, several non-government organisations (NGOs) was then introduced the ASEAN Civil Society Conference/ASEAN People's Forum (ACSC/APF), which was designed to accommodate NGOs' interests and push it to wider regional level. Solidarity for Asian People's Advocacy (SAPA) was the most prominent organisation involving in the establishment of conference, which

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\* This paper is prepared for the 1<sup>st</sup> International Conference on ASEAN Studies, Universitas Gadjah Mada, 1-2 October 2014. The authors are thankful to Anggar Shandy Perdana for his assistance and the Faculty of Social and Political Sciences for providing financial supports for this research.

<sup>1</sup> This paper will use the term 'non-government organisations' (abbreviated as NGOs) rather than 'civil society organisations'. Following Gerard Clarke's conceptualisation, NGOs are defined as "private, non-profit, professional organisations with a distinctive legal character, concerned with public welfare goals". On the other hand, civil society will be used in this paper in Gramscian terms, that is "a set of institutions through which society organised and represented itself autonomously from the state", hence broader than NGOs. This paper will extend the analysis of "civil society" in the regional level. See Gerard Clarke, *The Politics of NGOs in Southeast Asia: Participation and Protest in the Philippines* (London: Routledge, 1998), see also Martin Shaw, "Civil Society" in Lester Kurtz (ed.) *Encyclopaedia of Violence, Peace and Conflict* (San Diego: Academic Press, 1999).

afterwards conducted annually by alliance of NGOs in Southeast Asia (Gerrard, 2014). This 'society-based' form of regionalism also enrich the dynamics of integration and regionalism processes in Southeast Asia.

The development of ASEAN as a new type of 'regional governance' and the rise of people's participation regarding the regionalism process has raised some questions among ASEAN researchers: what does these phenomenon imply to ASEAN's future, particularly after the ASEAN Community established by 2015? To what extent can ASEAN accommodate the rising demands from non-government organisations into its formal decision-making processes? Is the rising NGO's participation in the regional level a prospect for the establishment of 'participatory regionalism' in Southeast Asia? (Acharya, 2004). These questions remain unanswered by mainstream perspectives in ASEAN Studies, particularly those perspectives who place the State as the only actor in Southeast Asian regionalism (see, for example, Leifer, 1989). While traditional realist approach seems to perceive ASEAN only as an arena to achieve peace and stability in the region, and therefore neglecting the role of non-state actors in the regionalism process, the liberals have been exaggeratingly locating ASEAN in the global economic transformation, thus put too much emphasis on economic liberalisation and regional market establishment.<sup>2</sup> Both of these perspectives has been limited in explaining why and how Non-Government Organisations attempt to participate in ASEAN, as well as to what extent ASEAN can accomodate their interests in its formal institutional spaces.

Therefore, it is important to analyse NGOs involvement in a more critical perspective. This paper is attempting to understand how Indonesian NGOs advocate their interests within ASEAN institutional structure and to what extent ASEAN fit for their purposes. This paper argues that recent developments in ASEAN institutional formation and the rise of civil society in the region portrays what Antonio Gramsci called as 'war of position' (Gramsci, 1971). On one hand, it is true that ASEAN is still dominated by the States, since it was originally designed as a forum for States who aimed to seek peace and stability during the Cold War era (Severino, 2010). However, on the other hand, the transformation of regionalism in Southeast Asia, which makes the cooperation goes

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<sup>2</sup> Discussions on theoretical perspectives on Southeast Asian regionalism, see Luqman-nul Hakim, *ASEAN: Konstruksi Regionalisme di Asia Tenggara* (Yogyakarta: Gadjah Mada University Press, forthcoming), Kelly Gerard, *ASEAN's Engagement of Civil Society* (Basingstoke: Palgrave, 2014), Amitav Acharya, *Constructing a Security Community in Southeast Asia* (London and New York: Routledge, 2003).

wider, has also contributed to the establishment of 'political space'. The creation of some regional institutions after the enactment of ASEAN Charter (2007) has been enabling non-state actors to engage in the regional processes (Keating, 2003). The establishment of the 'political space', which goes hand-in-hand with the transformation of ASEAN institutions and mechanisms subsequently transforms ASEAN as a site for 'contestation of interests' in Southeast Asia (Gerard, 2014). Therefore, it is arguably that the growing NGOs' involvement in ASEAN reflects the constitution of 'civil society' in the region that attempts to redefine regionalism in Southeast Asia. challenge the 'political society' in the region.

This paper will explain the dynamics of NGOs' involvement in ASEAN by taking a case study on Indonesian NGOs who are advocating Human Rights issues in the region. The discussion will be divided into three parts. The first part will frame a theoretical foundation to explain NGOs involvement in Southeast Asia. The second part will map the 'structure of space' in ASEAN since the initiation of ASEAN Community. The third part will analyse how Indonesian NGOs take part in the regionalism process with a particular focus on Human Rights issue.

## Theorising Non-Government Organisations' Involvement in ASEAN: A Gramscian Perspective

This paper intends to explain how and under what circumstances NGOs can involve in ASEAN. It is important to first understand the 'nature' of regionalism in Southeast Asia by tracing back the historical trajectory of ASEAN. Dates back to 1967, the birth of ASEAN cannot be separated from two historical contexts. *First*, the rising tension of the Cold War that had been in climax in decade of 1970s. Southeast Asia used to be an ideological battlefield between the US and The Soviet Union that was taken place in several Southeast Asian states. There had been several political turmoils that involved external forces, such as the independence Singapore, the Vietnam War, and Indonesia-Malaysia Confrontation. The Cold War background had made the internal situation in the region very vulnerable to open conflict. Against this backdrop, several Southeast Asian leaders were agreed to maintain Southeast Asia as a 'neutral' zone and avoid vulnerability of becoming 'thetrum politicum' between major political forces in world politics (Severino, 2010).

*Second*, there had been a tendency from Southeast Asian leaders to transform the conflict vulnerability into economic cooperation in ASEAN. Since 1970s, ASEAN member states have agreed to establish ASEAN Industrial Project (1971) as well as other investment projects that were aimed to create ‘fortress’ in the region (Hakim, *forthcoming*). Since that era, international relations in Southeast Asia has been marked by economic cooperations and it has gone further after five Southeast Asian states included in the ASEAN membership. It is important to understand the Southeast Asian relations, after its establishment, as an arena for state to cooperate and negotiate its ‘national interests’ (Acharya and Stubbs, 2006).

It is clear that the early establishment of ASEAN was predominantly based on preserving state’s interest and, therefore, maintaining peace and stability on that basis. State-centrism has thus been a nature in ASEAN’s institutional design and is preserved until present (Acharya and Stubbs, 2006; see also Beeson, 2009). This “state-centrist” nature constitutes a form of “political society” in Southeast Asia, which, in Gramscian sense, organises and coordinates political functions throughout the social formation of ASEAN regionalism. The “political society”, according to Gramsci, is a network of coercive apparatuses which are built upon political and legal institutional control (Thomas, 2009; see also Femia, 2000). The term “political society” is not similar to the State” –or in this case, “regional governance”— but instead forms one of the most fundamental aspect of the state: discipline and coercion.

According to Gramsci, the State is formed by entire apparatus, that combines both discipline and consent, in order to fully control the society (Gramsci, 1971).<sup>3</sup> In this sense, the ASEAN member states serve as part of “political society” who control the region by creating some sorts of “shared norms” that bound together all ASEAN Member States into a particular rules and procedures: the so-called “ASEAN Way” (Aggarjawal, 2010; see Acharya, 2004). On the other words, the making of ASEAN can be perceived as a mean to control the region in order to bring peace and stability based on state-defined interests. However, it should also be noted that to occupy the whole State, discipline *an sich* is not

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<sup>3</sup> This paper distinguishes the term “State as concept and “state as political entity”. The former is concept of State in Gramscian sense, that is, the entire apparatus of society and the *locus* of power in which both domination and hegemony takes place, while the latter is the nation-state who were traditionally served as main actor in International Relations. In this paper, the State as Concept refers to ASEAN and the latter refers to the nation-state in Southeast Asia. See Antonio Gramsci, *Selected Prison Notebooks* (New York: Penguin Books), translated to Bahasa Indonesia by Pustaka Pelajar.

necessarily adequate. Rather than only disciplining subjects through forces and coercion, one should also gain consent from the others –on the other words, it is called as “hegemony”. Accordingly, the role of “civil society” is important for a political forces who aims to construct political power in order to form hegemony, by gaining consent from all elements in the society and therefore cultivating power over society.

Gramsci defined “civil society” as “a set of institutions through which society organised and represented itself autonomously from the state” (Shaw, 1999). On the other words, civil society sought to challenge dominant social forces by demanding an alternative to the existing social order (Gramsci cited in Shaw, 1999). In the context ASEAN, the role of NGOs in promoting norms in the regionalism process can be the best example of how “civil society” operates in the state. Since its early engagement, NGOS have been critical to the existing order in ASEAN, by organising several forums and protests in order to negotiate their interests to ASEAN (Gerard, 2014). Working outside ASEAN, NGOs were trying to set agenda and challenge state dominations in ASEAN (Chandra, 2009).

The result of this contestation of interest is the so-called “war of position”, where each society try to contest their interests in its very articulation. NGOs critical stances to ASEAN and state leaders reflects the “war of position” between the NGOs as “civil society” and the state as “political society” to define ASEAN based on their own interests. Gramsci distinguished “war of positions” and “war of manoeuvre”. According to Gramsci, war of manoeuvre is a condition where there is a frontal, striking attack that makes the two armies (Gramsci made an analogy with military war) faced each other in the battlefield. In contrast, war of position refers to a condition where the army choose to strengthen fortresses rather than facing the enemy directly, resulting the strategy to be more diverse.

Within this perspective, this paper posits ASEAN as an arena for the contestation of interests between the “political society” and the “civil society”. The result of the contestation of interests is the establishment of hegemony. This paper, following Gramscian conception of hegemony, argues that in order to build hegemony, one has to get consent from the other and thus establishing a political order. In the context of Human Rights, it is arguably that the the establishment of Human Rights institution in ASEAN reflects the contestation of interests between social forces who tries to define ASEAN. There is a contention between the “status-quo” forces who want to preserve state-

centrist regionalism instead of widen participation from civil society and the “reformist” who aims to construct a more people-centered ASEAN (see Collins, 2008; Acharya, 2003; Ruland, 2013).

In fact, the ASEAN Charter has asserted that ASEAN should build a Human Rights Commission that comprises representatives from all ASEAN Member states (ASEAN Charter, 2007; see also Li, 2011). However, the establishment of Human Rights Commission is not without contention. There were many political forces who are attempting to install hegemony in this newly-established commission, including the “democratic” NGOs and government representatives who aim to build an universal meaning of Human Rights and the “authoritarian” government along with its government-organised NGOs (GONGOs) who aim to tighten state control over ASEAN (Gerard, 2014). Struggle between the “Status-Quo” and “Reformist” forces, in the case of Human Rights issue, has been shaped the institutionalisation process. Both of those social forces were trying to stipulate ASEAN by taking control the institutional structures in ASEAN.

Therefore, in order to make sense of the contestation of interests in ASEAN, this paper will analyse two variables. *First*, this paper aims to analyse the structure of space that has been constructed in ASEAN Human Rights institutions that enables all social forces to compete inside. Taking from Jayasuriya and Rodan’s idea on the modes of participation of Southeast Asian NGOs, the notion “spaces” is deemed important to identify the degree of NGOs’ ability in influencing regional institutions and the regional institution’s progress in widening NGOs’ participation, as well as to sense the debate and contestation between social forces in the region (Jayasuriya and Rodan, 2007). However, the “space” here is not entirely neutral. The “political space”, according to Keating (2003) is by nature contingent and is always filled by contestation among social forces (see also Gerard, 2014). In order to understand the development of ASEAN, one shall look at the institutional structures which shape the inclusion and exclusion of individuals and groups in the political process. This framework, indeed, acknowledges that institution structures the form of politics can take, making particulars form of participations acceptable and other not, but it also affirms that the spaces are much more flexible as the NGOs can also define created spaces and determine what takes place (see Jayasuriya and Rodan, 2007; Gerard, 2014).



*Second*, this paper will also analyse how Indonesian NGOs' attempts to negotiate their interests in Human Rights issues. as explained comprehensively by Gerard (2014), There are three mode of participation of NGOs in ASEAN: participation in the space *provided* by ASEAN, participations in the space *recognised* by ASEAN, and participations in the space *created* by NGOs in order to deal with ASEAN. This paper will focus on how Indonesian NGOs participate in the space *provided* by ASEAN, namely the ASEAN Intergovernmental Commission in Human Rights and its derivative institutions. By taking into account Gramscian notion of "civil society", this paper argues that NGOs participation in ASEAN represents the contestation of "civil society" vis-a-vis "political society" to define the region.

However, since NGOs are by nature plural and multi-faceted, the contestation of interests thus not only occurs between state and NGOs, but also between state-organised or state-influenced NGOs and independent NGOs. From previous studies, it can be concluded that ASEAN has been limited in accommodating NGOs participation (see Gerard, 2014; Ruland, 2014). According to Jurgen Ruland, limited participation occurred due to regional corporatism that is embedded on the historical transformation of ASEAN that blends 'organicist' ideas with modern regional governance. In other words, there was a process of a 'constitutive localization' in ASEAN (see Ruland, 2014; Acharya, 2004). Therefore, the 'reformist' idea that aims to bring democratization to ASEAN was forced to negotiate with state-centrist regionalism. However, it is important not to blame 'state-centrist' nature in ASEAN as the only factor that prevent NGOs to participate. This paper will also take into account the dynamics of intra-NGOs competition and its contestation with the state as the major political force in ASEAN. This paper argues that the contestation of interests between NGOs and the State is not merely indicate a frontal "war of manoeuvre", but to some extent should also be understood as "war of position", a war between "reformist" and "status quo" forces in many political field, not limited to ASEAN 'formal spaces'.

In Gramscian sense, "war of position" occurs when a battlefield move into a more strategic phase that involves the participation of whole organisation in society (Gramsci, 1971). On the other words, in ASEAN context, "war of position" occurs when the space for non-state actor's involvement is opened and thus enable civil society to participate in the battlefield. The possibility of "war of position" in ASEAN has been enabled since the

enactment of ASEAN Charter that acknowledges the participation of NGOs in several parts. However, NGOs' involvement in ASEAN has also been challenged by status-quo forces, including States with authoritarian nature and its Government-Organised NGOs (GONGOs) who aims to preserve state domination in ASEAN, thus prevent NGOs to articulate their interests. Therefore, ASEAN has also served as "arena of contention" between NGOs with reformist ideas and status-quo States and GONGOs.

Given such a context, it is important to see ASEAN, more specifically the ASEAN Human Rights Commission, as the site of contention between social forces who aims to define ASEAN. The following part will analyse the political space in ASEAN which has been transformed as an arena for contestation of interests between "political society" and "civil society", with a particular focus on ASEAN Human Rights' institutions.

## ASEAN as Arena of Contentions: Regional Institutions and Spaces of Participation in ASEAN

Since the late 2007, The Association of Southeast Asian Nations (ASEAN) has embarked on a historic milestone in its journey towards establishing a more open regionalism. The process was finally advanced with the all 10 member states ratified the Charter, shifting ASEAN from such loose 'association' into a more consolidated organisation. However, the important new features of ASEAN is not only its structured organisational design, but also its fundamental commitments in opening the regional organisation for a wider non-state actors' participations and upholding the human rights norm.

Despite numerous doubts about its utility and significance for Southeast Asia, especially in the post-Cold War era (see Henderson, 1999; Acharya, 2003; Gerard, 2014), a year after the ratification of ASEAN Charter, ASEAN established the Intergovernmental Commission on Human Rights (AICHR). This is dubbed as an essential step in implementing the spirit of the newly adopted ASEAN Charter, laying the foundation for a better promotion and protection of human rights, as well as in paving the way for the development of democracy and human rights in Southeast Asia. Indeed, this spirit was also concomitant with the burgeoning rhetoric of widening participation in ASEAN, expanding the participation beyond the accreditation system, where NGOs or the network of NGOs can apply to become affiliated with the Association and accredited with

some participatory mechanisms. Specifically, ASEAN Charter reiterates the established additional opportunities for civil society involvement, and open for wider NGOs participation in the regional policy mechanisms.

However, this process was neither instant nor automatic. The development of post-cold War ASEAN was influenced by both internal and external elements. Whereas the end of Cold War posed an immediate urgency in restructuring ASEAN organisational design beyond its original mandate in stabilising the region during the Cold War era, the limited ASEAN role in helping Southeast Asian countries under economic crisis proved the incapability of the association in adapting with the new international context. On the other hand, the ASEAN also face the apparent “helplessness” in managing internal stability. Events such as the 1997 Cambodian coup exposed the association’s incapability in resolving the deteriorating political situation. It led external commentators and some of the organisation’s original members to cast doubt over ASEAN’s capability to act as regional manager (Henderson, 1999). Hence, the development of structural design of ASEAN was, then, being put to advance and strengthen ASEAN role in, as well as overcome its structural shortcomings.

The institutionalisation of Human Rights in ASEAN has been started since 1993, when ASEAN Foreign Ministers agreed to establish some sorts of “mechanism” for Human Rights in ASEAN. However, the talk was postponed due to economic and political atmosphere in the region. the discussion to establish both institution and mechanism were continued at the second ASEAN Summit in 2003, where ASEAN leaders agreed to establish an ASEAN Political and Security Community by 2015 (Clarke, 2012). Four years later, under Hua Hin Roadmap for ASEAN Community, ASEAN included the ASEAN Human Rights Body to be established in the upcoming Community. ASEAN subsequently formed a High Level Task Force to finalise the draft of the charter as well as the ‘Eminent Persons Group on the ASEAN Charter’ (EPG) which is entrusted to lay the basic guiding principles in the Charter.<sup>4</sup> This group took the chance to ponder it carefully, including in promoting the human rights norm into the proposed Charter. Through this process, the EPG hosted series of informal consultations with both at regional institution’s official

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<sup>4</sup> Interview with Rafendi Djamin, Indonesian Representative at the ASEAN Intergovernmental Commission on Human Rights (AICHR), 19 August 2014

body, namely Working Group for an ASEAN Human Right, and with SAPA Working Group as the regional CSO (See Report of the EPG, 2006; Forum-Asia, 2006; Ginbar, 2010).

This process definitely shown the growing space for NGOs, especially in the form of societal incorporation, where ASEAN started to widen its political process with the inclusion of some NGOs in the process of consultation. The development human rights issues in ASEAN has resulted in the establishment of ASEAN Intergovernmental Commission on Human Rights (AICHR). Established as a mandate of ASEAN Charter, the talks to establish the AICHR as well as drafting the Term of Reference (ToR) has been started since 2008. The establishment involved a High Level Task Force, which is politically appointed by the Government, thus closed for civil society. Afterwards, each governments appointed a representative for the Commission, which are politically appointed in accordance to “each state’s national law”.<sup>5</sup>

In 2009, the AICHR was completely established with 10 representatives from each ASEAN member states. Two of them, among all, were with NGOs background, namely Dr. Sripapha Petchamesee (Thailand) and Rafendi Djamin (Indonesia). Their appearances on many AICHR’s meetings have created dynamics in the Commission, because of their criticism to state’s domination in ASEAN. Other representatives, as admitted by Rafendi, was government-led and thus represent the “status-quo” force in ASEAN.<sup>6</sup>

Notwithstanding, the newly-established Commission was not able to engage with any Human Rights cases in the region. This limitation was occurred due to lack of authority that the Commission owns in dealing with Human Rights cases. For example, there is no discussion in the Commission regarding the newest Human Rights violation in Southeast Asia. Instead, the Commission is only able to make cooperation with other state in Human Rights issues.<sup>7</sup> It has brought criticism from NGOs who seemed to regard the Commission of “ASEAN Toothless Commission” (Clarke, 2012). Other than that, the Commission also faced the low degree of democratization in several ASEAN Member

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<sup>5</sup> Interview with Rafendi Djamin, 19 August 2014

<sup>6</sup> Interview with Rafendi Djamin, 19 August 2014

<sup>7</sup> Interview with Rafendi Djamin, , 19 August 2014.

States. Many ASEAN member states do not believe with democracy as well as Human Rights and even see them as threat for national sovereignty.<sup>8</sup>

It was evident that the nature of authoritarian regime in ASEAN Member States prevents ASEAN to discuss prominent issues in Human Rights, even weaken the Human Rights Body itself. State representatives from authoritarian regime, such as Laos, Myanmar, or Vietnam, as well as GONGOs who come from those states tried to prevent 'reformist' NGOs from occupying AICHR and advocating their stances on Human Rights. According to Rafendi Djamin, those representatives were trying to block Indonesia and Thailand's initiative to strengthen AICHR's role in investigating Human Rights issue in ASEAN. For example, when Indonesia and Thailand planned to hold meeting with NGOs representative in ASEAN, other representatives objected and instead ask, "which NGO that you mean?"<sup>9</sup> For them, Non-Government Organisations are similar to anti-state or separatist movement which are categorised as subversive movement and threat for state's sovereignty. Therefore, there has been contentions among AICHR representatives in defining ASEAN's stakeholders in Human Rights issues. States with authoritarian background tends to place state-defined national interest as their stance, while democratic states tend to perceive national interest in a more deliberative sense. This conflict arouse when ASEAN member states drafte its first Declaration of Human Rights, that was drafted under supervision of AICHR.

In the mid-2012, ASEAN Member States approved the draft of ASEAN Human Rights Declaration, which contains 40 articles. This declaration has raised criticism from many parties, particularly the NGOs, because of the 'particularist' tendency contained in the declaration, such as "the realisation of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds" (article 7). That article was also followed by several other articles which contains "in accordance with national law" (article 17, 25), thus emphasised the particularist tendency of the Declaration.<sup>10</sup> The particularist tendency

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<sup>8</sup> We can see the example: Laos, Myanmar, and Vietnam. In those states, Human Rights shall be adjusted with national law, which is controlled by authoritarian regime. Interview with Yuyun Wahyuningrum, Senior Adviser for ASEA at Human Rights Working Group Indonesia, 19 August 2014.

<sup>9</sup> Interview with Rafendi Djamin, 19 August 2014.

<sup>10</sup> Interview with Eko Riyadi, 8 September 2014. Particularism, in Human Rights studies, refers to a discourse that deny universalism and maintaining particular identity that cannot be affected by law. In Human Rights, particularism can be seen as a view that reject the Universal legal basis of Human Rights and asserts that national law should also be respected in Human Rights. For further

reflects the state hegemony who try to shape the political society in the region, as well as the transformation of Human Rights system in the region (Clarke, 2012).

The weak institutional design, state domination, and authoritarian nature in several ASEAN member states have led to several controversies surrounding the signature of ASEAN Human Rights Declaration in 2012.<sup>11</sup> It was reflecting the conflict between state and NGOs in ASEAN. This declaration was accused by Human Rights Activist as 'legitimizing Human Rights violation by the state', because it contains controversial points that were rejected by Human Rights activist, including "the enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives" (Article 6), the inclusion of term "in accordance to national law" (e.g. article 16, 17, 18), and several other points.<sup>12</sup> It is thus containing "particularism" that contradicts the Universal Declaration of Human Rights.<sup>13</sup> Civil society alliances have denounced the adoption of the Declaration and stating that the Declaration "falls far below international standards".<sup>14</sup> Thus, it is evident that ASEAN Intergovernmental Commission on Human Rights was incapable to deal with Human Rights violation in ASEAN Member States due to "the national law" in every state.

The abovementioned explanations have shown us that in the ASEAN realm, human rights issue has been an alien issue for quite long times. In fact, it is important to note that the ASEAN's attitude towards human rights has only gained pace at the turn of the twenty-first century, especially along with the growing international pressures, as well as the transformation of some its member states into democratic countries. Nevertheless, knowing that most ASEAN member states are prioritising the sense of sovereignty above all principles, human rights norm is perceived and upheld with various degrees of understanding. These diverse perceptions also affected the space created for NGOs

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explanations see Armin von Bogdandy and Sergion Dellavalle, "Universalism and Particularism as a Paradigm in International Law" *International Law & Justice Working Paper* 3 (2008).

<sup>11</sup>Interview with Rafendi Djamin, 19 August 2014.

<sup>12</sup>Interview with Haris Azhar, Director of *Komisi untuk Orang Hilang dan Tindak Kekerasan* (Kontras), 18 August 2014.

<sup>13</sup> Interview with Eko Riyadi, Director of Center for Human Rights Studies, Islamic University of Indonesia, 8 September 2014.

<sup>14</sup> See "Civil Society Denounces Adoption of Flawed ASEAN Human Rights Declaration", *Human Rights Watch*, 19 November 2012, accessed from <http://www.hrw.org/news/2012/11/19/civil-society-denounces-adoption-flawed-asean-human-rights-declaration>

participation in the international regime. Indonesian representative for AICHR, for instance, wanted a stronger role of the body; including the role to provide protection and mediate should any human rights problem occurred in Southeast Asia.<sup>15</sup> However, due to the consensus decision-making process in ASEAN, the final decision had to be the compromise of all member states' interests, although it eventually limited the function of AICHR and its channel with NGOs. Moreover, the space created for NGOs also determined by domestic aspect of each member state, as some Southeast Asian countries have to provide an open channel for its citizen, especially under its domestic law, such as freedom information act.

As a clear result ASEAN still retains its traditional nature in carefully selecting its political space for public, as well as maintain the dominance of state's influence in the regional mechanism. It is important to note, that the consensus-building mechanism remains the core foundation of ASEAN, including in seeking a compromise between the diverse perspectives and interests to respect human rights norms. The limited function of AICHR, which is focused merely on the promotion functions, reflected the limited access and impact of NGOs to its regional institution. In Gramscian sense, we can henceforth identify the contestation between "political society", which in ASEAN case includes the state who aimed to preserve their national interests in the region, with "civil society", or those who attempts to challenge state domination. By occupying regional processes in ASEAN, for example by weakening AICHR and re-introducing particularism in Human Rights Declaration, the state will be able to shape ASEAN and discipline non-state actors who also attempt to occupy the space.

Notwithstanding the fact that predominant nature of states' influence is deemed as the main hurdle in limiting its political space, the NGOs activism in ASEAN has to be taken into account as well. Since 2003, their involvement in ASEAN has emerged with various modes of participation ranging from network creation to protest coordination (Gerard, 2014). Since 2003, NGOs have demonstrated the agency in pushing regional institution as well as articulating interest, forming an alternative for political space in the region. This following part will discuss NGOs involvement in pushing Human Rights issue in ASEAN.

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<sup>15</sup> Interview with Rafendi Djamin, 19 August 2014.

## “War of Position” or “War of Manoeuvre”? Explaining Indonesian NGOs Involvement in ASEAN

This part will discuss how NGOs in Indonesia attempt to negotiate their interests within existing structure in ASEAN. As discussed before, ASEAN provided only a little space for NGOs to participate in decision-making processes. On the other words, it also means that ASEAN as a political space has been predominated by the state that historically plays significant role in ASEAN. However, to fully hegemonising ASEAN, it is important for the state to gain consent from “civil society” which, in this case, consists of NGOs who also attempt to articulate their interests in ASEAN. This leads us to another question: to what extent can the NGOs involve in ASEAN? How does NGOs negotiate with the state in order to articulate their interests in ASEAN? This paper will answer these questions by drawing an analysis over Indonesian NGOs involvement in Human Rights issue.

It is important to firstly understand the nature of Indonesia’s position in ASEAN. Since 1998, Indonesia has experienced democratisation which is maintained until present, thus making Indonesia as the biggest democratic state in ASEAN. Consequently, this position has transformed Indonesia as the “promoter” of democracy and human rights in the region, thus made Indonesia to be a leader in those issues. Democracy promotion has been made by Indonesia since 2007, when Foreign Minister Hassan Wirayudha proposed several items regarding Human Rights and Democracy to be included in the draft of ASEAN Charter. However, only the recommendation to build ASEAN Human Rights Body included in the Charter (Weatherbee, 2013). Besides that, Indonesian government has also initiated several informal meetings with NGOs to discuss the drafting of ASEAN Charter, including series of meeting in Ubud, Bali before ASEAN Charter declared in 2007.<sup>16</sup> Therefore, Indonesian government has by nature opened for NGOs in the regionalism processes in ASEAN.

Given Indonesia’s democratic nature in ASEAN, it is possible for Indonesian NGOs to articulate their interests in the regionalism processes in ASEAN. In the Human Rights issue, there are two prominent NGO groups in Indonesia who are actively involved in advocating Human Rights issues in ASEAN, namely Human Rights Working Group

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<sup>16</sup> Interview with Yuyun Wahyuningrum, 19 August 2014.



Indonesia (HRWG) Indonesia and *Komisi untuk Orang Hilang dan Tindak Kekerasan* (Kontras). Other than those NGOs, there are also several academic and think tank institutions who are actively researching and giving recommendations on Human Rights issues, namely the Human Rights Resources for ASEAN (HRRCA). This center is a network of academic institutions who have concerns on Human Rights issues and is built upon partnership with academic institutions from other ASEAN Member States.<sup>17</sup>

HRWG is a coalition of Indonesian civil society concerned with Human Rights issues in international level. Since its early establishment in 2003, it has been actively involved in many regionalism processes in ASEAN. HRWG's involvement started in 2006, when ASEAN formed High Level Task Force (HLTF) to finalise the draft of ASEAN Charter. HRWG Executive Director, Rafendi Djamin, served as the member of HLTF, representing Non-Government Organisations in the Task Force.<sup>18</sup> Rafendi's position in HLTF gave HRWG access to the drafting of Human Rights, thus enable them to negotiate Human Rights issue in ASEAN. However, as the decision was not made at HLTF, but instead at the ASEAN Summit, only the establishment of ASEAN Human Rights Body approved by the Summit. Many Indonesia's proposal, according to Weatherbee (2013), was blocked by states with authoritarian nature.

HRWG admittedly uses three strategies to involve in ASEAN. *First*, national capacity building, that not only occurs in Indonesia, but also involving NGOs from other states. *Second*, critical engagement, which occurs when Rafendi Djamin appointed as Indonesian representative for AICHR. *Third*, fighting in the political space provided by ASEAN.<sup>19</sup> To some extent, these strategy has successfully endorsed Human Rights issues in ASEAN and created "war of manoeuvre" –in Gramscian sense— with the "political society" in the region. However, in some circumstances, the state as "political society" won the battle since they have, until present, been dominating ASEAN and disciplining all of its apparatuses. To that extent, NGOs articulation in ASEAN is limited.

HRWG's involvement in advocating Human Rights issue was then continued at the establishment of ASEAN Intergovernmental Commission of Human Rights (AICHR).

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<sup>17</sup> Interview with Eko Riyadi, 8 September 2014. Detailed institutional profile of HRRCA can be seen at HRRCA Official website, <http://hrrca.org/institutional-profile>

<sup>18</sup> Interview with Yuyun Wahyuningrum, 19 August 2014. After serving as member of Task Force, Rafendi was appointed as Indonesian representative for the newly-established ASEAN Intergovernmental Commission of Human Rights (AICHR).

<sup>19</sup> Interview with Yuyun Wahyuningrum, 18 August 2014.

HRWG actively mobilised NGOs under its network to collaboratively advocate the drafting Terms of Reference (ToR) of AICHR, which was served as legal foundation of the Commission. Since the establishment of AICHR was not opened for public, HRWG monitored the drafting of ToR and the appointment of state representatives via the High Level Task Force (HLTF) that works on AICHR. HRWG used its close relations with Indonesian government, particularly the Ministry of Foreign Affairs, to obtain informations regarding the establishment of AICHR. Thereby, HRWG can maintain its leading role in disseminating information to other NGOs in Indonesia as well as in monitoring the drafting of AICHR ToR. By doing so, HRWG can successfully placed Rafendi Djamin, the Executive Director of HRWG, as Indonesian representative of AICHR. Rafendi was one of few representative who came from Non-Government Organisations, besides Thailand's Sripapha Patcharamesree, and thus representing NGOs interests in AICHR. The appointment of Rafendi Djamin as Indonesian representative in AICHR marked NGO's achievement in occupying the political space of ASEAN, which was traditionally dominated by Government representative.

Following the appointment of Rafendi Djamin, HRWG has given opportunity to direct the AICHR, with its Executive Director sit as representative of Indonesia. Having represented the state at the Commission, HRWG actively mobilised NGOs under its network to continuously control the Commission. It is admitted by Yuyun Wahyuningrum, HRWG's senior adviser on ASEAN, that her organization uses AICHR as a mean to advocating HRWG's interests. Therefore, AICHR was used as an arena to negotiate their interest in ASEAN, that is, a more just and participatory ASEAN.<sup>20</sup>

Consequently, at the Commission, HRWG has to face other representatives from states with authoritarian background as well as the so-called Government-Organised Non-Government Organisations (GONGO).<sup>21</sup> The contestation can be seen at the establishment of ASEAN Human Rights Declaration that marked the 'particularist turn' in ASEAN Human Rights Discourse. This declaration has indeed upset many NGOs, including HRWG. However, NGOs responses are varies in this issue, depends on political stances that they owned. Daniel Awigra of HRWG said,

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<sup>20</sup> Interview with Yuyun Wahyuningrum, 18 August 2014.

<sup>21</sup> For further explanations about GONGO, see Kelly Gerard, *ASEAN's Engagement of Civil Society: Regulating Dissent* (Basingstoke: Palgrave, 2014).

“we can conclude that NGOs responses to AHRD were different each other. There are some NGOs who were upset and did not want to accept the declaration at all. They released their own assessments and created people-defined AHRD. However, there are other NGOs like HRWG who were upset... but still thought that the declaration contained at least a product that can be used as legal foundation in one or two particular issue...”<sup>22</sup>

The enactment of ASEAN Human Rights Declaration has indeed reflected a “counter-attack” from the status quo forces to preserve state domination in ASEAN. In this sense, HRWG expressed a disappointment over the enactment of this declaration. However, HRWG still sees ASEAN as an important variable in advocating regional issues, despite of the controversial declaration that has been produced by AICHR. HRWG sees ASEAN Human Rights Declaration in a more positive manner, that this declaration can be reviewed in the future as the advocacy processes goes on.

Other than HRWG, there is also another Indonesian NGO who are actively involving in ASEAN regionalism but with different strategy: KontraS. Firstly built to advocate enforced disappearance issue in Indonesia, this NGO started to engage in ASEAN as the founding member of Human Rights Working Group in 2003.<sup>23</sup> However, as admitted by Haris Azhar, they were resigned from HRWG membership. KontraS was also active in several regional organisations, particularly the Forum Asia. Haris Azhar noted that,

“we were firstly approached to join the advocacy of Human Rights Commission by several fellows at SEACA (Southeast Asian Committee for Advocacy). We were approached alongside other organisations. Besides that, we have also been involved at Forum-Asia and joined the coalition since 2000s”<sup>24</sup>

KontraS’ regional advocacy is unique and different with HRWG, in the sense that they prefer using regional NGO coalition to ASEAN institutional structure. KontraS embraced the concept of “solidarity” to articulate their interests and demands. Within this concept, KontraS develops its own network with other ASEAN civil society organisations and, with that network, addressing emerging regional Human Rights issues. For example, KontraS is currently in a network with other civil society organisations under SAPA Task Force for Human Rights to advocate some regional issues,

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<sup>22</sup> Interview with Daniel Awigra, Researcher at Human Rights Working Group, 19 August 2014.

<sup>23</sup> HRWG was originally founded by several NGOs dealing with Human Rights and Development issues, such as INFID, KontraS, PBHI, and several other organisations. See <http://www.hivos.nl/dut/community/partner/50008761>

<sup>24</sup> Interview with Haris Azhar, 18 August 2014.

including the abduction of Sombat Somchai, a Lao activist who were criticising his government's stance on development and reportedly missing after the ASEAN Civil Society Conference 2014. Together with other regional NGOs, Kontras hold series of campaign and solidarity to create pressures to Laos government. This concept was also used to address other issues in ASEAN.<sup>25</sup>

In terms of strategy, rather than using lobby, Kontras chose to mix lobby to international organisation like United Nations with demonstration. For example, Kontras took lead in demonstration to criticise Indonesia's chairmanship in 2011 ASEAN Summit at Jakarta.<sup>26</sup> They also organised a demonstration to criticise the first AICHR meeting in Jakarta, which attracted Phillipino and Burmese journalists who were enthusiast in reporting the dynamics. Kontras' criticism was caused by the lack of mechanism produced by AICHR in investigating Human Rights case. For Kontras, the Human Rights Commission is useless if they have no authority in advocating Human Rights.<sup>27</sup> With this position, Kontras has been very critical to HRWG and blame HRWG for being un-critical to AICHR.<sup>28</sup> At some cases, they were disstented with HRWG in addressing several issues in ASEAN

Kontras' position reflects what Antonio Gramsci called as "war of position", that is, the establishment of fortress and indirect battlefield among society. Based on the concept of "solidarity", Kontras attempts to consolidate all element of "civil society" and challenge the political society via extra-institutional apparatuses. They do not directly confront the state in ASEAN, but instead working in grass-root level to criticise and enervate state's hegemony in ASEAN. Unlike HRWG, Kontras maintain its position as "counter-hegemony" movement and hence creating distances with institutional apparatuses in ASEAN.

Outside HRWG and Kontras, there is also another academic institutions who were advocating ASEAN but through ASEAN-led academic institution: The Human Rights Resource Center for ASEAN (HRRCA). Although most of them are academic institutions, there are a little academics who are critical with ASEAN and its institutional apparatus in Human Rights. One of them is the Center for Human Rights Studies (*Pusat Studi HAM*) of

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<sup>25</sup> Interview with Haris Azhar, 18 August 2014.

<sup>26</sup> Interview with Haris Azhar, 18 August 2014.

<sup>27</sup> Interview with Haris Azhar, 18 August 2014.

<sup>28</sup> Although it is not directly mentioned by Haris Azhar, Kontras seems to object HRWG's decision to send Rafendi Djamin as Indonesian representative of AICHR. Interview with Haris Azhar, 18 August 2014.

Islamic University of Indonesia (UII). Historically functioned as “home” for NGOs in Yogyakarta who advocates Human Rights issue, PUSHAM bring some agenda to HRRCA and another academic network of Human Rights Studies, the Southeast Asia Human Rights Network (SEAHRN). Although its role is not as much as Kontras and HRWG, PUSHAM UII were actively involved in giving recommendation the reformation of AICHR for ASEAN.<sup>29</sup> In 2011, HRRCA published a baseline study on the rule of law for Human Rights in ASEAN member states (2011), which was made as framework to draft the ASEAN Human Rights Declaration the following year.

PUSHAM UII and HRRCA’s articulations, nevertheless, were constrained by the limit of academic institution in advocating Human Rights. Unlike NGOs, who can independently articulate their interests in ASEAN, academic institutions have to adjust their program with university funding or policy. Therefore, the HRRCA can only serve as knowledge support for ASEAN without adequate criticism to transform it into other form of regionalism. Besides that, from HRWG and Kontras’ activities, it is also evident that Human Rights advocacy in Indonesia is, to some extent, “Jakarta-centrist” and “elitist”, which is unavoidably occurs due to ASEAN’s state-centrist nature. “Jakarta-centrism” made NGOs outside the Jakarta cannot be intensively involved in the advocacy processes.

The abovementioned advocacy processes conducted by PUSHAM-UII, HRWG, and Kontras reflects three distinct mode of involvement in ASEAN. *First*, intra-institutional mode that employ engagement in spaces “provided by ASEAN” (see Gerard, 2014). This approach, as employed by the Human Rights Working Group of Indonesia (HRWG) sees ASEAN as a battlefield to advocate one particular interests and hence actively engage in formal regional process. Consequently, they have to challenge other States in ASEAN, who responds with its dominative forces to defend state-centric form of regionalism in ASEAN. It hence creates dynamics in ASEAN Intergovernmental Commission of Human Rights and the drafting processes of ASEAN Human Rights Declaration.

*Second*, extra-institutional approach that aims to sees state-centrism and elitist nature as a problem in ASEAN and thus avoid using ASEAN regional mechanism as a mean of advocacy due to those problems. This approach, as evidently used by KONTRAS, were sceptical to ASEAN’s formal processes and instead employ a concept of “solidarity” to advocate regional issues, by creating regional networks and mobilise both domestic and

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<sup>29</sup> Interview with Eko Riyadi, 8 September 2014.

international supports to advocate their issues. To maximise pressures, they utilise international campaigns and networks to widespread their demands and negotiate with the State through this position. In ASEAN context, what they are doing is mobilising protests and organising demonstrations. Their effort was, to some extent, neglected by states in ASEAN, but their widespread campaigns indirectly influence decision-making processes in several states because of international pressures.

*Third*, playing a role as ‘knowledge hub’ for ASEAN institutions without directly involving in regional processes. This role is played by academic institutions who were appointed by ASEAN High Level Panel as resource center in Human Rights. In Indonesia, this role is taken by Human Rights Resource Center for ASEAN (HRRCA) which consists several prominent Indonesian Human Rights Studies Center, including PUSHAM-UII. Even though they cannot play a critical role in ASEAN, they can influence several decisions taken by AICHR or other institutions in ASEAN related to Human Rights. Their position as ‘knowledge hub’, besides providing information/database related to ASEAN, also enable the insertion of some ‘reformist’ discourse in ASEAN. However, their involvement was evidently limited only to knowledge support without any political authority to influence decision-making processes.

The three modes of advocacy in ASEAN, as expressed by Indonesian NGOs, can be seen as follow:

**Table 1 Mode of Advocacy in ASEAN:**

Institution	Approach	Strategy	State’s Response
HRWG	Intra-Institutional	Engage in ASEAN Formal Institutions	Include, with Limited Access, to AICHR Organise GONGOs to Counter HRWG-led NGO initiatives Insert State-Centric Design in Human Rights Mechanism
		Critical Engagement	
		National Capacity Building	
KONTRAS	Extra-Institutional	Solidarity	Exclude Participation from Decision-Making Proces
		Protest and Demonstration	
		Creating Regional/International Alliance	

PUSHAM- UII/HRRCA	Knowledge Hub	Research	Limit Participation in Decision-Making Processes
		Disseminating Information	

Each strategies have its strengths and weaknesses. While intra-institutional approach has successfully occupied several places in ASEAN, it is also considered elitist by other NGOs. On the other hand, extra-institutional approach has been limited in influencing decision-making processes, but they were able to gain better international support in doing advocacy. Last but not the least, knowledge hub function should also be taken into account to shape ASEAN institutional processes through providing critical knowledge.

### Conclusion

This paper has drawn analysis over NGOs involvement in advocating Human Rights issue in ASEAN. By utilising Antonio Gramsci’s conception on State and Civil Society, this paper argues that NGOs involvement in ASEAN can be explained as “Civil Society” initiative to challenge the “Political Society” in ASEAN. Historically, the “political society” in ASEAN has been established by the society of state who traditionally dominated the decision-making processes in the region. However, the rise of NGOs and their involvement in ASEAN gives another perspective on ASEAN regionalism. NGOs involvement represents “civil society” attempts to challenge state domination in ASEAN.

This paper has identified two approaches which were employed by Indonesian NGOs to involve in ASEAN. *First*, Indonesian NGOs use “war of manoeuvre” that includes advocacy within ASEAN institutional structures or spaces provided by ASEAN. This strategy is used by Human Rights Working Group (HRWG) since the drafting of ASEAN Charter and the establishment of AICHR. *Second*, Indonesian NGOs are also using “war of position”, by utilising protests, demonstrations, and extra-institutional approach to articulate their interests. Both of those strategies have their own strengths and weaknesses. On one hand, it is evident from our research that the first strategy employed by HRWG and HRRCA has made NGOs possible to occupy formal spaces in ASEAN, therefore enable direct articulation within formal ASEAN structure. However, HRWG’s articulations has also been criticised for being elitist by other NGOs and they are also

unable to address critical issues emerging in ASEAN that involves states in ASEAN. On the other hand, it is also evident that Kontras were not able to occupy the formal spaces in ASEAN and hence made them unable to participate within formal decision-making processes, but they are able to organise many NGOs from many states to raise criticism to ASEAN. These strengths and weaknesses has created dynamics in the associational life in the region.

Nevertheless, those strategies have also posed challenges because, to some extent, states were still dominant in Human Rights issue. The most prominent portrait of state domination in ASEAN Human Rights issue is the drafting and signature of controversial ASEAN Human Rights Declaration, which has been widely criticised by NGOs. Although NGOs have been represented by Rafendi Djamin in the Commission, he has been limited to negotiate NGOs interests due to other state's pressures. Moreover, there has been also dissention between Indonesian NGOs regarding strategies that can be used for advocacy. Therefore, it is important for Indonesian NGOs to rethink their strategies to advocate Human Rights issues in the upcoming ASEAN Community.



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- Eko Riyadi, *Director of Center for Human Rights Studies, Islamic University of Indonesia*

### **Documents**

- Hua-Hin Declaration on Roadmap for ASEAN Community*
- Report of Eminent Person Group on ASEAN*
- The ASEAN Charter*.
- The ASEAN Political and Security Blueprint*
- The ASEAN Human Rights Declaration*
- Terms of Reference of ASEAN Intergovernmental Commission on Human Rights on Human Rights*



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