

BUILDING A MORE 'PEOPLE-ORIENTED' HUMAN RIGHTS INSTITUTION IN ASEAN: CHALLENGES AND PROSPECTS

POLICY BRIEF - ASEAN STUDIES CENTER UGM

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.

This brief aims to provide an assessment of current institutional design in Human Rights. According to several authors, ASEAN Human Rights Institutions has proven to be ineffective and elitist (see Li, 2010; Clarke, 2012; Ruland, 2014). However, as stated in the ASEAN Charter, it is important for ASEAN to create a more people-oriented institutions, particularly Human Rights institution that will shape ASEAN Political Security Community in the future. This brief aims to assess and furthermore propose a policy prospect to build a more 'people-centered' and 'people-oriented' institution in Human Rights issues.

THE DEVELOPMENT OF HUMAN RIGHTS INSTITUTION IN ASEAN

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).



Picture 1: 6th Meeting of AICHR

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 (Rafendi Djamin, interview, 2014). 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 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 showed 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. This process 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 to engage and communicate their aspirations. Afterwards, each governments appointed a representative for the Commission, which are politically appointed in accordance to “each state’s national law” (Rafendi Djamin, interview, 2014).



Picture 2: ASEAN Civil Society Conference

The most important task for AICHR was to design an unique ASEAN Human Rights Declaration. AICHR has been working on this issue since its establishment, which was resulted in a draft that was discussed at the 2012 ASEAN Summit. However, the declaration was responded by disappointments from many Human Rights NGOs who were actively involved in the processes, because the Declaration contained several controversial points that was accused by NGOs and think tanks as 'return to particularism' (Eko Riyadi, interview, 2014). Several articles in the Declaration stated that Human Rights regulations in ASEAN shall follow and must not be contradictory with 'national' and 'domestic' regulations. This declaration thus reflects State's interest to preserve its hegemonic power over ASEAN and marked a 'state-centric' nature of Human Rights institutionalization in the region.

The institutionalization process is about to continue in 2014. According to previous ToR, after five years the ToR of AICHR shall be reviewed by all representatives. Several NGOs are proposing a more participatory approach to review the ToR, while state representatives seems to discuss the review in a close forum. With the review of the ToR, the

institutionalisation of Human Rights in ASEAN is about to enter a new phase.

PROBLEMS IN ASEAN HUMAN RIGHTS INSTITUTION

The development of Human Rights institution as has been explained before has marked a new phase for ASEAN institutionalisation processes. The establishment of AICHR as well as the ASEAN Human Rights Declaration is can be seen as a momentum to build a people-oriented institution in ASEAN. However, we also note several problems within the institutionalisation processes, namely:

AICHR and ASEAN Secretariat's Lack of Authority

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. 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 States. Many ASEAN member states do not believe with democracy as well as Human Rights and even see them as threat for national sovereignty (Wahyuningrum, interview, 2014). Thus, it is 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.

Controversial Human Rights Declaration

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. This declaration was accused by Human Rights Activist as 'legitimizing Human Rights violation by the state'. (Haris Azhar, interview, 2014). This declaration contains controversial points that were rejected by Human Rights activist, including “the enjoyment of human rights and



Picture 3: Special Meeting of AICHR 2014

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), thus containing “particularism” in Human Rights studies (Eko Riyadi, interview, 2014). Civil society alliances have denounced the adoption of the Declaration and stating that the Declaration “falls far below international standards” (HRW, 2012). 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.

Limited Space for Stakeholder's Participation

The abovementioned explanations have shown us that in the realm of ASEAN member states, specifically, 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 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 (Rafendi Djamin, interview, 2014).

However, due to the consensus decision-making process in ASEAN, the final decision had 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 has to provide an open channel for its citizen, especially under its domestic law, such as freedom information act.

POLICY PROSPECTS

Those problems indicate that ASEAN Human Rights institution shall be reformed in order to build a people-oriented ASEAN. The review of Terms of Reference (ToR) of ASEAN Intergovernmental Commission of Human Rights, which will be taken place this year can be a good momentum to rebuild the institutional design of AICHR and other institutional mechanism in ASEAN related to Human Rights. There are three policy that shall be undertaken in order to construct a more people-oriented Human Rights in ASEAN.



Picture 4: Signing Ceremony of ASEAN Human Rights Declaration

First, widening Participation from Diverse Range of Stakeholders. Since 2007, there have been attempts from Civil Society Organisations to participate and articulate their interests in ASEAN. In order to build a 'people-oriented' Human Rights institution, AICHR

has to consider those attempts and accommodate their demands in a formal consultation processes. It is important for AICHR to make a map of stakeholders who are able to participate and conduct a regular consultation in order to acknowledge their interests in the decision-making processes in the Commission.

Second, institutionalising consultation process in ASEAN. according to ASEAN Charter and the ToR of AICHR, decision-making in the AICHR shall be based on consultation and consensus in accordance with Article 20 of the ASEAN Charter. The consultation mechanism in AICHR, so far, does not reach many stakeholders involved in regionalism processes and is not formal. It is important for AICHR to hold a public consultation processes that involve diverse range of stakeholders from NGOs, Think-Tank Organisations, academics, and ordinary people who concern with Human Rights issue.

Third, strengthening the role of Human Rights Resource Center for ASEAN. Since 2011, ASEAN has established an institution that serve as a knowledge hub and support for AICHR, namely the Human Rights Resource Center for ASEAN. This institution consists of several research institutions concerned with Human Rights. However, the role of HRRCA is limited and is not visible in the Human Rights institutional product such as the ASEAN Human Rights Declaration. It is important for AICHR to strengthen the role of HRRCA in investigating issues and deliberate their knowledge product to the public, so that their functions can be widely acknowledged by the people of ASEAN.

Policy Brief ini disusun oleh peneliti Dr. Bevaola Kusumasari, Atin Prabandari, MA (IR), Randy Wirasta Nandyatama, M. Sc., Longgina Novadona Bayo, MA dan Ahmad Rizky M. Umar, S. IP.