


¹Abubakar Eby Hara

¹University of Jember - International
Relations, Jember, Indonesia.
(eby-hara.fisip@unej.ac.id)

 ORCID ID:
orcid.org/0000-0002-0952-0198

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The struggle to uphold a regional human rights regime: the winding role of ASEAN Intergovernmental Commission on Human Rights (AICHR)

DOI: <http://dx.doi.org/10.1590/0034-7329201900111>

Rev. Bras. Polít. Int., 62(1): e011, 2019

Abstract

This paper examines the ASEAN Intergovernmental Commission on Human Rights' (AICHR) role in upholding human rights by using the perspective of the human rights regime theory. In this perspective, AICHR is still behind other regional human rights bodies, such as the Inter-American Commission on Human Rights (IACHR). The AICHR has passed the declaratory regime, but has not been in the stages of implementation or enforcement regime. Efforts from human rights proponents are expected to elevate the role of the AICHR.

Keywords: ASEAN; AICHR; IACHR; civil society organization; regime theory.

Received: March 5, 2019

Accepted: June 7, 2019

Introduction

With the founding of the ASEAN Intergovernmental Commission on Human Right (AICHR) and its operation during the last ten years, the question lingers as to what extent this body can continue to work. It has been criticized as nothing less than a tool of ASEAN, a façade for member states to justify their new duty to set human rights on the regional agenda. It has not worked effectively to guard human rights in the region as had been expected by many people, including Civil Society Organizations (CSOs). Many human rights issues in Southeast Asia have not been resolved, and it has even been argued that abuses have increased and worsened (Welsh 2017; Supriadi and Benedict 2018).

The call for a stronger AICHR is quite reasonable, given that the human rights issues in Southeast Asia are severe enough to warrant action. However, it is unlikely that the AICHR, in its current form, will fill this role. The difficulty for ASEAN

to implement human rights at the regional level is not surprising, since this organization consists of member states with many types of political systems, ranging from authoritarian to democratic ones. Moreover, ASEAN's fundamental principles of non-intervention, respect for sovereignty, and consensus in decision making have prevented the AICHR from functioning adequately. This situation created difficulty in reaching agreements on the establishment of the AICHR, and when the consensus was achieved, the Commission was given weak authority in implementing human rights.

Given this situation, it seems easier to blame ASEAN members for their failure to create a healthy and functioning human rights body, than to highlight the constructive efforts of the human rights stakeholders, such as CSOs, activists, and government officials who have taken to support the AICHR. This paper, therefore, attempts to see the role, contribution, and development of AICHR amid the challenge of human rights enforcement in this region, especially when compared to regional human rights commissions in other areas, such as in America. I argue that the AICHR must be perceived as a series of continuing efforts of human rights actors to form a human rights regime in Southeast Asia, which consists of stages, mentioned by Donnelly (1986) as declaratory, promotional, implementation and enforcement regimes.

In this framework, the AICHR is currently still in the "promotional" stage of human rights development. It has passed the declaratory human rights regime, in the sense of having declared the adoption of universal human rights conventions, and began entering the stage of the promotional regime, though not yet moving towards the implementation of a human rights regime. Compared to other regional human rights regimes such as in European Union (EU), the Organization of American States (OAS) and the African Union (AU), the human rights regime in ASEAN is still frail and far behind, but there have been efforts to take it to the next level.

By understanding the AICHR in stages, its progress can be more easily measurable, and efforts to move to a higher level of human rights regime can be identified. Advance to the next stage is indeed debatable, but as will be elaborated, the efforts of human rights proponents and their interactions in transnational networks of regional and global human rights, give hope that the issue of human rights in ASEAN will continue to be debated and encouraged. This debate, in turn, may bring changes in the ASEAN human rights regime. This paper is divided into three sections. First, it discusses the need to study the AICHR in the context of the human rights regime theory. Second, it looks at the evolution of the ASEAN human rights regime. Third, it discusses the challenges and the condition that may bring the AICHR to move forward.

Human rights: a regime analysis

Some papers have reviewed the development of the AICHR, but they mostly highlighted its the weaknesses, without looking at the possibility of progress. Articles from Follesdal (2013) and Bui (2016), for example, highlighted the weakness of mandates given to the AICHR, which have

implications on its ability to carry out its duties. Another article is from Orosa (2012), which argued that the AICHR functions mainly to strengthen the legitimacy of ASEAN, which for some time after the Cold War has lost its relevance. Generally, these writings are not sensitive to the ASEAN context and measure the progress of the AICHR by emphasizing the need to create an enforcing institution to uphold human rights as an instant solution. This is, of course, also a hope for the future of the AICHR, but steps are needed to get there. Other works, written by Bunnag (2012) and even Davies (2013), looked at the dynamics of the institutional building, but they did not insert this in a long-term context of regime change.

Meanwhile, Saul et al. (2010) criticized the use of Asian values, which had been overstated by ASEAN leaders, to avoid the need to strengthen human rights in their region since, in the case of other areas, human rights can fit local culture, values, and needs. This paper is interesting, especially in the context of ASEAN resistance to Western human rights pressures in the 1990s. However, nowadays, Asian values are not used to face criticism of the human rights practices in ASEAN. One exception is probably Petcharamesree's article (2013), which attempted to see the formalization of human rights - such as the formation of the AICHR, the ASEAN Human Rights Declaration, and the ASEAN Convention on Women and Children - as part of the ASEAN Human Rights architecture. However, she did not develop her argument further as part of the progress in ASEAN human rights regime.

In short, the abovementioned views have some limitations in elaborating the formation and development of AICHR. As will be explained in the following section on the evolution of the ASEAN human rights regime, the progress of human rights in the context of ASEAN is plodding because ASEAN countries still strongly emphasize the principle of sovereignty and non-intervention. Given this condition, it is appropriate to see the development of the AICHR in stages of progress, from one level to another. Human rights regime theory, which contains the stages of human rights regimes, serves this purpose. This theory is quite relevant and straightforward because it can clearly describe the traits and steps taken in the development of the human rights regime.

Regime theory also corresponds to the ideal definition of a successful Human Rights Commission (HRC). Following a definition of HRC, a successful regional HRC can perform two main functions, namely to promote and protect human rights. Its tasks include writing reports, providing opinions and advancing suggestions on human rights promotion, protection, and violations to governments and the public in general. It may also conduct investigations into alleged human right abuses, and ask the responsible government to take the necessary actions to stop the violations (Evans 2004, 715). It also needs to report on the overall situation of human rights in one country. The government can appoint commissioners, but they must reflect plurality, professionalism, and independence in carrying out their duties (Evans 2004, 716). In human rights regime theory, this situation corresponds to the highest stage of the regime development, namely the enforcement regime. In the enforcement regime, human rights have not only been institutionalized but also enforced in the community (Donnelly 1986, 603).

Before further elaborating how regime theory can contribute to the analysis of the AICHR, it is essential to define what international regime is. According to Krasner, “(i)nternational regimes are defined as principles, norms, rules and decision-making procedures around which actor expectations converge in a given issue-area” (Krasner 1982). The regime can be in the form of formal organization or just broad agreement among states, such as environmental regime and trade regime. The areas can be global and regional. Regimes “are more specialized arrangements that pertain to well-defined activities, resources, or geographical areas and often involve only some subset of the members of international society” (Young 1989, 13).

Building on the definitions above, Donnelly (1986) classified four types of international human rights regime, namely: declaratory, promotional, implementation and enforcement regimes. A Declaratory regime is the weakest among those four types, since it does not have a strong and binding system endorsing authoritative international norms. The next is the promotional regime, which adopts international standards as guidelines. The guidelines, according to Donnelly, can “range from strong, explicit, detailed rules to vague statements of amorphous collective aspirations.” It engages in activities such as information exchange, promotion, and technical assistance, and has attempted to develop certain monitoring principles (Donnelly 1986, 605).

The level above the promotional regime is the implementation regime, which has “international standards with self-selected national exemptions: generally binding rules that nonetheless permit individual states to ‘opt out’.” Its activities include monitoring and policy coordination. Finally, the strongest among these regimes is the enforcement regime, which has “(a)uthoritative international norms: binding international standards, generally accepted as such by states” (Donnelly 1986, 603). It is relatively institutionalized and has effective decision making, strong enforcement powers, and monitoring mechanisms. Under this last type of regime, independent investigations and trials on human rights abuses can take place.

How regimes change

The next theoretical issue to discuss regarding AICHR is how human rights regimes progress. The types outlined above clearly illustrate different human rights regimes. The models can be used to compare types of human rights regimes implemented in Europe, South America, and Africa with that of Southeast Asia. However, regime theory itself cannot properly explain how the regime formed, developed, and changed. In other words, how norms, principles, and the decision making of a regime has strengthened and changed requires further explanation.

In promoting a regime, at least at the initial stage, a group of people consisting of transnational CSOs and activists must exist to introduce new ideas. These groups are norm entrepreneurs (Finnemore and Sikkink 1998) that influence the socialization of human rights in a region (Risse and Sikkink 1999). In particular, in the ‘spiral model’ of human rights diffusion, pressure from both international and domestic networks can cause a country to adopt

human rights principles and to codify them within the state's laws (Risse and Sikink 1999). They are proponents of international norms and human rights activists, at both national and international levels. The influence of these activists increases when they form global networks and organizations. Jetschke argued that these transnational networks are essential in prompting oppressive regimes to make changes, though the success of this pressure also depends on the regime's vulnerability to external pressure (Jetschke 1999, 134-135). In discussing the AICHR, the role of these groups is vital because their activities are extensive and not limited to the ASEAN region. Some of them play a critical role and continue to fight for human rights globally. In such circumstances, the AICHR is in the context of local and international human rights networks, and discussion on the position and role of the AICHR cannot, therefore, be fanned out from such a space (Davies 2017). In this case, the part played by the AICHR remains central, but it must be placed in the process of human rights enforcement discourses in the national, regional, and global levels (Davies 2017).

At the foundation of the AICHR, the roles of the activists, academics, and NGOs can also be equated to the roles of what Haas called the epistemic community. According to him, an epistemic community is a "network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area" (Haas 1992, 1-2). Those in an epistemic community analyze social problems related to human welfare – human rights abuses - and develop strategies to overcome them. Because of their expertise, at a basic level, the epistemic community can directly influence decision makers to produce policies. It can be a pathway where ideas and information are transmitted and diffused from society to government and from one government to another (Haas 1992, 27).

Donnelly's type of regime, the role of transnational human rights networks and Haas' epistemic community are flexible enough to examine the likely advancement of an ASEAN human rights regime from one level to another. The type of regime that best describes the AICHR now is a promotional regime. It qualifies as a promotional regime because it has moved beyond a purely declaratory one, in which ASEAN members formally recognized and included human rights as norms in its Charter. It has also started to promote human rights through the AICHR. However, it cannot be grouped at a higher level - implementation regime - because it has not properly implemented the international human rights norms. Universal human rights standards have been respected, but they have not become a strong guideline from which decisions regarding human rights abuses are made.

Method

This paper attempts to trace the origin, formation process and development of the AICHR, including the evolving pros and cons, from various available literature and studies, including documents, reports on ASEAN and AICHR meetings, and news from the mass

media. This research was strengthened by several interviews with human rights activists and participation in several international seminars concerning the protection of human rights, involving human rights activists in ASEAN. Interviews were also conducted with actors engaged in AICHR activities to determine the progress and obstacles of the implementation of AICHR programs, and with human rights activists who are outside the AICHR, but critical of the organization's development.

The evolution of ASEAN's human rights regime

It can be said that ASEAN still lags behind other HRC in regional organizations, such as the OAS, AU and EU. Besides being older than ASEAN, these regional organizations are more intrepid in giving authority to their HRCs. For example, the OAS declared the Inter-American Commission on Human Rights (IACHR) in 1959, only twelve years after it was formed in Bogota, in 1948. The human rights regime in this region can be categorized as somewhere between implementation and enforcement. It has norms and regulations as well as an institution to observe and defend human rights (Organization of American States 2009). OAS already established an American Court where individuals can report human rights violations committed by their countries (Dulitzky 2011). IACHR condemns the violation of human rights, the sub-standard conditions of migrant workers and openly publishes reports on violence against Lesbian, Gay, Bisexual, Trans, and Intersex Persons which occurred in its member states. However, it does not yet match the complete definition of an enforcement regime since, to a certain degree, it depends on the United States' (US) support (Donnelly 1986, 624-625). Because there have still been many cases of human rights abuse taking place in its member states, and because some Latin American countries still strongly embrace their right to absolute sovereignty, operations at the IACHR continue to be hindered in practice (Forsythe 1991, 66).

As the IACHR, the AICHR has declared support for international norms. In addition to support for the UN Charter and the Universal Declaration of Human Rights (UDHR), ASEAN also signed the Vienna and the Bangkok Declarations in 1993. It also supported the UN Declaration on the Right to Development, and declared the ASEAN Charter in 1997. Although there has always been an emphasis on the principles of upholding human rights by considering the social and historical conditions, ASEAN accepts the general principles of human rights. As an elementary principle, about the accepted norms, ASEAN, therefore, is not much different from other HRC.

However, it might take AICHR some years to move from declaratory to promotional and implementation regimes. In examining why ASEAN is relatively slow in its progress, the context of the regime within which the Commission has developed is essential. As will be explored, there has been a distinctly different situation governing how ASEAN evolved as a human rights regime compared to the IACHR. First, in contrast with the IACHR, human rights were not initially

promoted and used as the basis for cooperation when ASEAN was set up in 1967. In its formative years, the organization did not pay attention to human rights issues. ASEAN Treaty of Amity and Cooperation (TAC), declared in 1976, strongly emphasized the principles of non-intervention, sovereignty and non-violent solution in its region (Hara 2018, 51).

Attention to the human rights issues started in the 1980s, mainly because many Western states switched their focus from Cold War issues to human rights abuse and lack of democracy in many countries, including the ASEAN states. This situation gave rise to strong reactions among ASEAN states, some of whom claimed, among other things, that they had a different approach to human rights, based on their own culture and values, which were often referred to as Asian values. Despite this war of words, some ASEAN states, such as Malaysia, Thailand, Indonesia, and the Philippines, set up the National Human Rights Commission (NHRC) to respond to the universal appeal on human rights.

The next phase of the evolution of an ASEAN human rights regime emerged after the financial crisis in 1998. It is still underway, and has coincided with a move toward democratic governments in some countries in the region. Asian values had been relatively forgotten in this phase, partly because these countries faced a financial crisis which had also often been seen as failure of the concept of Asian values, but also because some ASEAN countries have turned into fully democratic systems. These newly democratic states, particularly Indonesia, attempted to promote human rights and democracy in ASEAN. Indonesia also supported the ASEAN reform by developing the idea of a people-centered ASEAN, ASEAN Charter, and ASEAN HRC (Sani and Hara 2013). This period could, therefore, be seen as the initial steps toward a promotional type of human rights regime in the region.

The other difference between ASEAN and the IACHR does not only relate to the reactions against the Western approach on human rights, but also to the differences among members of ASEAN in regard to human rights. This indeed emerged from the different political systems adopted by members of ASEAN. Some have described them as differences between liberal and non-liberal members. The ASEAN Four, namely the Philippines, Thailand, Malaysia, and Indonesia represented the liberal group, and the non-liberal states were represented by Cambodia, Myanmar, Laos and Vietnam (CMLV) (Acharya 2001). The latter still emphasized absolute state sovereignty, the non-intervention principle, and were reluctant to allow human rights to be discussed on a regional level (Pisanò 2014). In the formation of the ASEAN HRC, the CMLV states did not support the centrality of human rights, whereas the progressive group supported a strong AICHR with powers to monitor, to find facts and to make an annual report of human rights records in ASEAN members (Bahrawi 2008). Two other ASEAN countries, Singapore and Brunei, stood somewhere between these two groups, and acted as mediators attempting to bridge the gap (Bahrawi 2008).

Finally, when it came to the ultimate decision, the AICHR ended up only promoting human rights, without the power to investigate. In its Terms of Reference (ToR), it does not have the function to blame or to name and shame the members that violate human rights, which is seen as against the ASEAN way (Petcharamesree 2013). It does not have a regional court as it is usually

the case for a HRC. The representatives of AIHRC are neither pluralistic nor independent, but appointed by their states. Since they have to “respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN member state” (ToR paragraph 2.1, let. a) and the “non-interference in the internal affairs of ASEAN member states” (ToR paragraph 2.1, let. b) (Association of Southeast Asian Nations 2009), it is tough for them to investigate violations of individual human rights in one member country.

The last aspect of the human rights regime in ASEAN is its historical and politico-security context. OAS states had certainly experienced conflict among themselves, but hegemonic liberal ideologies are accepted in the region, which made it possible for a relatively smooth process in the formation of the HRC. ASEAN was dominated by a combination of different political systems, various cultural and moral constructs and different reactions to dealing with human rights. There have been human rights abuses in Cambodia during Pol Pot in the early 1970s and Myanmar during the current military regime, as well as discrimination against minorities in Thailand, the Philippines, Indonesia, and Malaysia. Some of the CMLV states had a negative perception of human rights. This was a sensitive issue that caused a sense of inferiority when other countries talked about human rights, and blamed human rights problems on them.¹

Despite these differences, however, it did not seem as though the founding members wanted to pursue the idea of a healthy human rights commission. All ASEAN states have baggage with regards to human rights violations, including Indonesia, which is considered the most democratic state in ASEAN. Indonesia still faces the impunity of certain military leaders with regards to the killing of human right activists such as Munir, and the disappearance of student leaders after the fall of Suharto. Not to mention the events of 1965-66 (Hara 2018, 54). It also has problems with the handling of human rights in Papua. Indonesia indeed attempts to uphold human rights and democracy as part of its new identity, but there have been some domestic obstacles, such as the unwillingness of the military to implement human rights entirely.

Other ASEAN states also faced some unsettled human rights issues. Singapore and Malaysia still have strong laws that limit freedom, such as ISA (Internal Security Act) and Societies Act. Although Malaysia has replaced ISA with Security Offences (Special Measures) Act 2012, the function is similar. The new Act aimed to protect the state from political instability, but it can be used to detain opposition leaders criticizing the government. Singapore has clearly stated that ASEAN agreements would be measured on whether they were in line with its law or not. According to Raymond Lim, former Singaporean Second Foreign Minister, the ASEAN human rights body should be agreed upon by all members, and should be ‘consultative rather than prescriptive’ (Durbach et al. 2009).

Given this situation, it is hard to go along with the idea of a strong HRC in ASEAN. This is also shown by the lack of support for the Representatives’ activities. Representatives are appointed by the government, and except for Indonesia, Thailand, and Malaysia, which conduct

¹ Interview with Dinna Wisnu, former Indonesia representative to the AICHR, on 15 April 2016.

open and competitive recruitment (Asian Forum for Human Rights and Development 2019), all other representatives are selected by their governments, and they must maintain their loyalty to them. Moreover, ASEAN countries are still reluctant to create jurisprudence relating to human rights. In this regard, the signing of international conventions should facilitate the establishment of common platforms in facing human rights abuse.

Challenges and the way forward

So far, the AICHR still runs with all its limitations. Three aspects must be highlighted. The first is the continued enthusiasm of representatives to meet the desire of people amid the limitations of the facilities. Although it is limited to promotional and educational programs, AICHR has performed its activist role to socialize human rights. The second is the support and criticism of transnational CSOs both in a regional and global context. They are not apathetic, but continue to maintain the dialogue with and criticize the AICHR. The third is that the existence of the AICHR was quite welcomed in society, which is evident by some reports of human rights abuse sent to this institution. All of these will be described below.

First, in line with Donnelly's definition of the promotional regime, ASEAN leaders gave authority to AICHR representatives only to share information, to promote and to cooperate with other government sectors to promote human rights (Donnelly 1986, 605). Despite this limitation, the AICHR tasks are recognized as quite strategic and essential. AICHR can be a new venue where ASEAN members can discuss human rights beyond their national borders. Indonesian human rights activist Rafendy Djamin and the current Indonesian representative to the AICHR Yuyun Wahyuningrum see the organization as promising, and expect that it will continually improve both its mandate and actions.² Petchamesree, a former Thailand representative at AICHR said that in the long run, ASEAN might redesign the AICHR's current ToR with the participation of all human rights stakeholders (Petchamesree 2013). Wahyuningrum mentioned that the AICHR could be developed to ensure that governments do their duty to protect people's rights. For Djamin, the AICHR is an excellent step taken by ASEAN to increase people's awareness of their rights together with other institutions, such as NHRC and CSOs.³

By promoting rights in this fashion, ASEAN people were expected to understand the importance of human rights for their countries, and civil society groups can cooperate to build a community that can creatively support the development of the AICHR. It has run some informative programs about the Rights of People with Disabilities, Corporate Social Responsibility, and campaigns against Trafficking in Persons, especially Women and Children. People may not know

² Interview Durian ASEAN radio with Yuyun Wahyuningrum – on AICHR Revisited: Can ASEAN handle Human Rights? <https://www.youtube.com/watch?v=hUQg7SI0sFk> accessed 26 February 2016. RSISNTU Singapore interview with Mr Rafendi Djamin. See <https://www.youtube.com/watch?v=bdBgnkk3evg> accessed on 26 February 2016.

³ Ibid.

their rights in regard to their states, since they are more often told by their governments about their obligations than their rights as citizens. The program is carried out in various activities such as meetings, training, seminars, studies, youth debate and video making competitions on human rights, as well as the exchange of experiences with various human rights groups. Awareness of rights, according to Rafendy, is part of the protection, because people and officials will know what kind of human rights protection they have.⁴ In particular, people in CMLV countries who had experienced gross human rights violation and have not enjoyed the benefit of human rights, need these activities.⁵

In addition to designing instruments to implement the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP), the AICHR also discussed legal instruments for environmental and climate change, rights of persons with disabilities, and fishermen's protection. Some activities, such as mainstreaming the rights to health, food, juvenile justice, rights of migrant workers, economic empowerment of women, education, employment, and equal standing before law and policy-making for all, have been conducted. Each member of ASEAN was entrusted with the task of conducting studies on these issues whose results would be reported at the ASEAN meetings. Singapore, for example, was responsible for conducting studies on the issues of corporate social responsibility and human rights that had been resolved and presented at the ASEAN Foreign Minister's meeting in 2014. Meanwhile, reviews on issues of migration and human rights were submitted to Indonesia. The study of the mechanism of AICHR relations with various civil society groups was examined by Thailand and the Philippines. The Philippines was also the leading promoter of the issue of trafficking in persons, maternal death, and women's rights. It held a dialogue forum on the UN Convention on the Rights of the Child and its Related Instruments on October 2018, in Manila. Laos was expected to disseminate information about peace rights through seminars and workshops. Workshop on Thematic Study on the Right to Peace was later conducted in Vientiane, Laos on 7 December 2018. Vietnam was tasked with designing the best ways and practices for effective Reporting Obligations on human rights issues (Wahyuningrum 2014). As per its mandate, AICHR also undertook a study of women affected by the disaster, which was completed in July 2018 ("AICHR Thematic Study: Women in Natural Disasters: Indicative Findings in Unraveling Gender in Institutional Responses." 2018). The AICHR has also coordinated relief assistance for Myanmar to provide humanitarian aid to all displaced persons.

In the global context, AICHR continues to be in interaction with international society regarding the implementation of human rights. In addition to the role played in educating and promoting human rights in the region (Davies 2017), the AICHR plays a role in helping the Universal Periodic Review (UPR) process conducted by the UN Human Rights Council towards ASEAN countries that have signed several UN conventions ("AICHR Workshop on the Sharing of

⁴ Ibid.

⁵ Interview with Dinna Wisnu, former Indonesia representative to AICHR, on 15 April 2016.

Experiences on Universal Periodic Review Process among ASEAN Member States.” 2014). These countries need to report on the implementation of the conventions and discuss recommendations for suggested improvements (Wahyuningrum 2014). AICHR also conducts regular meetings with the EU. The meetings, among others, addressed the implementation of basic freedom and the issue of cooperation in overcoming various problems, such as migrant rights, gender equality, children’s rights, and trafficking in persons (“Press Release: 2nd ASEAN-EU Policy Dialogue on Human Rights, 29 November 2017, Bohol, the Philippines.” 2017). In short, the interaction with the international environment about human rights has become more active with the presence of the AICHR.

The presence of the AICHR pushes ASEAN member countries aware of the need to be more active to discuss and enforce human rights. Even countries that have been seen as not enthusiastic about addressing the issue of human rights, such as Laos, because of its turn as the Chair of ASEAN in 2015, also acted as the Chair of the AICHR, and handled human rights issues that stood out and became international highlights. For example, the Lao government must answer media questions and activists’ scrutiny about the loss of Laos human rights activist, Sombath Somphone. The country in turn to chair ASEAN must also host ASEAN meetings with ASEAN dialogue partner countries, which often discuss political issues and human rights (Wahyuningrum 2014). Therefore, the establishment of the AICHR has enabled debate, dialogue, and discussion of human rights in ASEAN at various levels domestically, regionally, and internationally. In other words, the AICHR has become a new platform for civil society and NGOs to monitor, advise, and criticize human rights violations (Wahyuningrum 2014).

Among current representatives of the AICHR, there has been enthusiasm to bring this body to a higher level. Despite their limitation in terms of funding, facilities, and authority granted by their government, the representatives can learn from each other the best practices to promote human rights. According to Dinna Wisnu, it was previously difficult to involve all AICHR representatives to design programs, since they depend upon government instructions, but now, through discussions and meetings, they started planning and working with various sectors of government to promote human rights.⁶ The current Indonesian representative at the AICHR, Wahyuningrum, plays an active role in spreading the purpose of human rights and providing support to uphold human rights through various dialogues, seminars and workshops on multiple issues, such as handling terrorism by respecting human rights, women’s empowerment, migrant workers’ rights, and access to justice in ASEAN (“ASEAN Intergovernmental Commission on Human Rights.” 2019). ASEAN representatives to AICHR also agree to propose more power to the AICHR ToR, although this has been rejected in previous ASEAN Ministerial Meetings.

Second, the support of the AICHR epistemic community continues, even though they are often in the form of constructive criticism. Those in the epistemic community include the ASEAN

⁶ Interview with Dinna Wisnu, former Indonesian representative to AICHR, on 15 April 2016.

Human Rights Working Group (AHRWG), which consists of lawyers, academics, NGOs and parliamentary human rights committees from each ASEAN country, and human rights proponents in Southeast Asia. It is a coalition of Human Rights Working Groups (WG) from each ASEAN country which mainly worked between 1993 to 2009, even though they also continue to carry out various activities to date (Working-Group for an ASEAN Human Rights Mechanism 2019). The WG members from each ASEAN country were not directly involved in government. Those involved in these WG in 1993-1995 were Marzuki Darusman (Indonesia), Vitit Muntarbhorn (Thailand), Kek Galabru (Cambodia), Dato Param Cumaraswamy (Malaysia), Wigberto Tañada (the Philippines), Braema Mathiapparanam (Singapore) and Charnchao Chaiyanukij (Thailand – who also holds a position as the Chairman of ASEAN HRWG). As Haas said about epistemic community (Haas 1992), WG roles were to funnel knowledge and expertise into the formation of AICHR through various seminars, workshop and roundtable meetings (Wahyuningrum 2014). AHRWG also collaborated with the ASEAN Institutes of Strategic and International Studies Colloquium on Human Rights (AICOHR) in various dialogues and seminars. Because of their expertise, AHRWG supplied ideas, drafted the ASEAN Charter, submitted the draft to and conducted a discussion with ASEAN ministers in the framework of establishing the mechanism of ASEAN human rights. The group also supported the establishment of the Eminent Persons Group (EPG) by ASEAN leaders in 2005, consisting of former senior and influential officials from each ASEAN country such as S. Jayakumar (Singapore), Ali Alatas (Indonesia), Tun Musa Hitam (Malaysia) and Fidel V. Ramos (Philippines).

AHRWG also provided views and proposals to the ASEAN-formed High-Level Task Force (HLTF) formed to follow up on the EPG recommendations (Working-Group for an ASEAN Human Rights Mechanism 2019). The HLTF members consist of active senior officials from the foreign ministries of each ASEAN country, established in 2007 to draft the ASEAN Charter. The AHRWG initially drafted the establishment of a strong and independent regional human rights body with the power to investigate and accept individual petitions. It also proposed that the body have the power to report and to make recommendations to the state of actions needed to deal with human rights abuses (Association of Southeast Asian Nations 2000). AICHR also collaborates with CSOs that have a relationship status in Consultative Relationships such as the Child Rights Coalition Asia, MARUAH (ASEAN Human Rights Mechanism Working Group, Singapore), the Association of Indonesian Disabled Persons, Save the Children Philippines, the Vietnam Peace and Development Foundation in 2016. The CSOs work together, and each year change through a selection process made by the AICHR. Although not all the recommendations from CSO were accommodated, the AHRWG has been recognized as part of ASEAN's mechanisms and contributed with essential ideas to the formation and development of AICHR.

In addition to AHRWG, there are other CSOs that are critical of the AICHR. Since the beginning, they have been involved in promoting human rights and criticizing ASEAN governments for human rights abuses. For example, Indonesian CSO KontraS opposed the AICHR and criticized

its weakness. Kontras' leader Haris Azhar showed his pessimism and disappointment by stating that another thirty years would be needed for the AICHR to function correctly.⁷ Instead of joining the lobby to the ASEAN government, Kontras, along with other human rights groups, joined the Asian Forum for Human Rights and Development (Forum-Asia), where they fostered solidarity among NGOs to protest human rights abuses by ASEAN states. They decided to become opposition, outside the ASEAN government circle.

In one of their reports, Forum-Asia and the Solidarity for Asian People's Advocacy – Task Force on ASEAN and Human Rights (SAPA TFAHR), which is a coalition of the leading human rights NGOs in all ASEAN states - launched their reports on the performance of the AICHR up to 2014. They were very disappointed with the AICHR's performance and recommended that ASEAN provide a stronger mandate so the AICHR can perform its role in protecting human rights (Asian Forum for Human Rights and Development 2014). In addition to this, the Thai Civil Society Network on ASEAN, which consisted of 20 human rights activist groups, also expressed a critical view of the AICHR's TOR in 2014, and demanded that the AICHR change it to be more progressive. These networks, along with other organizations such Suara Rakyat Malaysia (SUARAM), and the Child Rights Coalition Asia (CRC Asia) demanded ASEAN strengthen the mandate of the AICHR to protect human rights and include the powers of investigation and to compile human rights reports of each ASEAN member and, moreover, to uphold international human rights standards. They also wanted members of the AICHR to be elected independently, and asked the AICHR to consult civil society groups (Asian Forum for Human Rights and Development 2014).

The role of the CSOs which stand outside ASEAN is very strategic. They continually attempt to strengthen their position vis-à-vis ASEAN. There is the ASEAN People's Forum, and it is also always garnering international support. Before the US-ASEAN summit in Sunnylands in February 2016, for example, ten ASEAN human rights activists visited the US to meet government officials represented by Susan Rice, the US National Security Advisor, and present their statement regarding the worsening human rights situation in ASEAN. This effort aimed to make sure that human rights became part of the agenda in the summit. Although human rights per se was not a dominant issue, it was a topic that was mentioned by President Barack Obama in his final speech. He said that the US is committed to supporting citizens and civil society in their efforts to achieve freedom of speech, assembly, and press ("Remarks by President Obama at U.S.-ASEAN Press Conference." 2016b). Respect for human rights was also included in one item in the joint statement of US-ASEAN Leaders' Special Summit ("Joint Statement of the U.S.-ASEAN Special Leaders' Summit: Sunnylands Declaration." 2016).

Finally, the last thing that should be appreciated during its ten years of existence is that the AICHR has been welcomed quite enthusiastically in the ASEAN community. Many cases have been reported to the AICHR, although only one or two cases have been followed up. In

⁷ Interview with Harris Azhar on 10 February, 2016.

more recent cases, some CSOs requested the AICHR's attention on human rights violations in Laos, the Philippines, Malaysia, and Indonesia. The AICHR had become a new hope for relatives of victims to gain justice when their cases were silenced by their government. In Laos, CSOs activists pushed the government to explain the disappearance of Lao civil society activist Sombath Somphone. The Forum-Asia demanded the AICHR take moral responsibility to work with the Laos government to investigate (Asian Forum for Human Rights and Development 2015).

Even individuals started demanding the AICHR use its power to monitor human rights. A Filipino lawyer, Harry Roque, sent a petition to the AICHR asking it to look into the Maguindanao massacre in 2009, after he received a report from the Committee to Protect Journalists (CPJ), a USA based civil rights group (Orosa 2012). The relatives of victims in Maguindanao province also demanded the perpetrators of the killing be brought to justice. Yasmin Indonesian Christian Church also reported the prohibition to establish a church in Bogor, West Java, Indonesia in July 2016. To follow up this report, Indonesian representative to the AICHR met the Mayor of Bogor in order to find solutions for these problems ("AICHR Sees Lack of Goodwill to End Dispute." 2016). Although this report and others have not been successfully resolved, in general, AICHR could be a place for individuals in ASEAN to report the matter that cannot be solved at the national level.

The Malaysian government was also reported to the AICHR by civil rights groups from Malaysia, the Philippines, and Indonesia because of its poor treatment of the 'Bersih' demonstrators asking the government to practice clean elections and clean government (Orosa 2012, 81). Indonesia-based human rights organization KontraS criticized the enforcement of martial law by Thailand's military government in 2014. AICHR also received two requests for opinions from community groups about HIV/AIDS testing for migrant workers and the need to discuss human rights curricula at universities. These reporting groups made use of the AICHR mandate in article 4.7 'to provide advisory services and technical assistance on human rights matters to ASEAN sectoral bodies upon request' (Wahyuningrum 2014). These cases are just a few examples to which the AICHR must pay attention, and reflect growing problems of human rights that cannot be solved by the individual states. The dynamics of change in the region increasingly requires ASEAN and the AICHR to demonstrate their genuine concerns on human rights issues. To be certain, given the emergence of the multiple forms of expression and the role of the epistemic community, various CSO will continue to send letters containing complaints of human rights abuses from numerous groups and people to AICHR.

In its development, most of these reports were not discussed because ASEAN does not have the authority to discuss specific human rights issues in a country, including reports on AIDS/HIV. According to Wahyuningrum, there have been many letters sent, as mentioned above, but only a few were discussed by AICHR, although it issued no statement.⁸ For example,

⁸ See interview Durian ASEAN with Yuyun Wahyuningrum <https://www.thefreelibrary.com/Thailand+calls+for+'flexible+engagement'+in+ASEAN-a050189293>

AICHR, in March 2013, held a retreat to discuss the disappearance of human rights activist Sombath Somphone from Laos, and the continuation of the Rohingya crisis in Myanmar, despite not issuing any statements.

Those developments illustrate that authoritarian leaders within ASEAN can no longer exercise control over the society as fully as was the case in the past. The need to support stability for economic development cannot be used as a justification to curtail freedom and human rights. The presence of the AICHR, with all its limitations, gives a new platform for the promotion of human rights to all ASEAN, including countries that still adhere to authoritarian systems. They cannot avoid discussion and debate about human rights issues because of the presence of the AICHR in ASEAN.

The role of an open generation of ASEAN leaders, such as the late Surin Pitsuwan, Anwar Ibrahim, Fidel Ramos, BJ Habibie, Lee Hsien Long, Haasan Wirajuda, and Susilo Bambang Yudhoyono, has enabled the current ASEAN transformation process, which allowed for the ASEAN Charter and a more rule-based organization. They were concerned with changing ASEAN into a more open and democratic organization. These leaders had attempted to renew ASEAN's spirit of cooperation by introducing concepts such as flexible engagement and constructive intervention to break the strict – and limiting, as far as human rights practices are concerned – ASEAN non-intervention principle.⁹

These leaders are aware of the fact that ASEAN needs to 'reinvent' itself to show its relevance as a regional grouping (Acharya 2001, 207-208). For a long time, the organization was seen as an elite group, giving no direct benefit to the people. In response to this criticism, ASEAN leaders attempt to reorient the organization from elite to people-centered, and set up long-term goals, such as the creation of the ASEAN Community. The formation of the AICHR is part of this new spirit, which shows the significance of ASEAN to the public. As Villanueva and Manalo say, the establishment of a human rights system is itself a breakthrough that challenges the principle of sovereignty and non-intervention on an ongoing basis, as attention to individual rights is formally introduced (2017, 95).

Conclusion

Changes in the AICHR, from promotional to the institutional implementation regime are difficult to happen because the ASEAN countries are still reluctant to give extensive powers to the AICHR. However, looking at its dynamics and practices, the step forward toward the implementation regime is underway, with various activities carried out. There has been ongoing interaction between ASEAN and various international organizations, such as the UN and the EU,

⁹ Former Malaysian Deputy Prime Minister Anwar Ibrahim proposed a bold idea of constructive intervention, asking ASEAN to be proactive in promoting stability in Southeast Asia, and took more responsibility for the fate of ASEAN members. 'Activist ASEAN?' <http://edition.cnn.com/ASIANOW/asiaweek/97/0801/ed1.html> accessed on 10 January, 2017.

regarding human rights issues. We really cannot state explicitly that this type of regime transition has taken place in full because the process is gradual. The involvement of the AICHR in helping ASEAN countries which undergo the UPR by the UN, for example, has more or less indicated that ASEAN has begun to enter the implementation regime.

In the future, there will be more involvement and increasing demands from both ASEAN and outside parties to ensure that the AICHR enters the implementation stage of the HR regime. Especially individuals and groups who are victim of human rights violations from various ASEAN countries continue to report their cases to the Commission, even if only one or two are discussed or acted upon. The AICHR continues the efforts to mainstreaming and introducing people's rights by cooperating with governments. Although AICHR has to face the reality that the advance of human rights has not become the primary concern of ASEAN leaders, ASEAN leaders cannot disregard the international environment, which is often beyond their control.

Acknowledgements

The author would like to thank Fulbright U.S.-ASEAN Visiting Scholar Fellowship and ASEAN Studies Initiative, SIS, American University for the support to complete this paper. I am grateful to Dr. Pek Koon Heng and Dr. Vibhanshu Shekhar for giving me input on an earlier draft of this paper. Special thanks go to Mr. Grayson J. Lloyd for his comments on many stages of the completion of this paper.

References

- Acharya, A. *Constructing a security community in Southeast Asia : ASEAN and the problem of regional order*. London: Routledge, 2001.
- “AICHR sees lack of goodwill to end dispute.” *The Jakarta Post*. August 29, 2016. <https://www.thejakartapost.com/news/2016/08/29/aichr-sees-lack-goodwill-end-dispute.html>
- “AICHR thematic study: women in natural disasters: indicative findings in unraveling gender in institutional responses.” *AICHR*, July 9, 2018. <https://aichr.org/news/aichr-thematic-study-women-in-natural-disasters-indicative-findings-in-unraveling-gender-in-institutional-responses-2/>
- “AICHR workshop on the sharing of experiences on universal periodic review process among ASEAN member states.” *AICHR*, September 20, 2014. <https://aichr.org/news/aichr-workshop-on-the-sharing-of-experiences-on-universal-periodic-review-process-among-asean-member-states/>

- “ASEAN Intergovernmental Commission on Human Rights.” *AICHR*, 2019. https://aichr.org/?fbclid=IwAR24uOpA_tcPf4uaHe8s7A-y8MpUE9M8S3-M2AM3biCDt69Mk6qfm0aCyFw
- Asian Forum for Human Rights and Development - Forum-Asia. *The Future of Human Rights in ASEAN Public Call for Independence and Protection Mandates By the Solidarity for Asian People's Advocacy Task Force on ASEAN and Human Rights (SAPA TFAHR)*. Jakarta: Asian Forum for Human Rights and Development, 2014. www.forum-asia.org
- Asian Forum for Human Rights and Development - Forum-Asia. “Three Years since Disappearance of Sombath, Laos Fails to Initiate Credible Investigations: Forum - Asia Press Release.” *Human Right in Asean*, December 15, 2015. <https://humanrightsinasean.info/campaign/three-years-disappearance-sombath-laos-fails-initiate-credible-investigations-forum-asia?width=720&height=640>
- Asian Forum for Human Rights and Development - Forum-Asia. “Representatives.” *Human Rights in Asean*, 2019. <https://humanrightsinasean.info/asean-intergovernmental-commission-human-rights/representatives.html>.
- Association of Southeast Asian Nations – ASEAN. *Agreement on the Establishment of the ASEAN Human Rights Commission*. Jakarta: ASEAN, 2000. <http://www.aseanhrmech.org/downloads/draft-agreement.pdf>
- Association of Southeast Asian Nations – ASEAN. *Asean Intergovernmental Commission On Human Rights (Terms of Reference) One Vision, One Identity, One Community*. Jakarta: ASEAN, 2009. <https://www.asean.org/storage/images/archive/publications/TOR-of-AICHR.pdf>
- Bahrawi, N. “Prof Tommy Koh highlights ASEAN’s human rights divide.” *Maruah Singapore*, June 13, 2008. <https://maruah.org/2008/06/14/prof-tommy-koh-highlights-aseans-human-rights-divide/>
- Bui, H. “The ASEAN human rights system: a critical analysis.” *Asian Journal of Comparative Law* 11, no. 1 (2016): 111–140. doi: <https://doi.org/10.1017/asjcl.2016.9>
- Bunnag, Y. *An evaluation of ASEAN’s progress in regional community building*. London: University of London, 2012.
- Davies, M. “The ASEAN synthesis: human rights, non-intervention, and the ASEAN human rights declaration.” *Georgetown Journal of International Affairs* 14, no. 2 (2013): 51–58.
- Davies, M. “Important but de-centred: ASEAN’s role in the southeast Asian Human Rights space.” *TRaNS: Trans -Regional and National Studies of Southeast Asia* 5, no. 1 (2017): 99–119. <https://doi.org/10.1017/trn.2016.27>
- Donnelly, J. “International Human Rights: a regime analysis.” *International Organization* 40, no. 3 (1986): 599–642. <https://doi.org/10.1017/S0020818300027296>
- Dulitzky, A. “The inter-american Human Rights system fifty years later: times for changes.” *Quebec Journal of International Law*, no. spe (2011).

- Durbach, A., C. Renshaw, and A. C. Byrnes. “‘A tongue but no teeth?’ the emergence of a regional Human Rights mechanism in the Asia-Pacific.” *Sydney Law Review* 31, no. 2 (2009): 211–38.
- Evans, C. “Human Rights commissions and religious conflict in the Asia-Pacific Region.” *International and Comparative Law Quarterly* 53, no. 3 (2004): 713–729. doi: <https://doi.org/10.1093/iclq/53.3.713>.
- Finnemore, M., and K. Sikkink. “International Norm Dynamics and Political Change.” *International Organization* 52, no. 4 (1998): 887–917.
- Follesdal, A. “The Human Rights declaration of the Association of Southeast Asian Nations: a principle of subsidiarity to the rescue?” *University of Oslo Faculty of Law Research Paper*, no. 2013–39 (2013).
- Forsythe, D. “Human Rights, the United States and the Organization of American States.” *Human Rights Quarterly* 13, no. 1 (1991): 66–98. doi: <https://doi.org/10.2307/762458>.
- Haas, P. M. “Introduction: epistemic communities and international policy coordination.” *International Organization* 46, no. 1 (1992): 1–35.
- Hara, A. E. “The concerns and sustainability of ASEAN intergovernmental commission on Human Rights (AICHR).” In *Sustainable Future for Human Security*, edited by B. McLellan, 49–59. Singapore: Springer, 2018.
- Jetschke, A. “Linking the Unlinkable? International Norms and Nationalism in Indonesia and the Philippines.” In *The Power of Human Rights: International Norms and Domestic Change*, edited by T. Risse, S. C. Ropp, and K. Sikkink, 134–171. Cambridge: Cambridge University Press, 1999.
- “Joint Statement of the U.S.-ASEAN Special Leaders’ Summit: Sunnylands Declaration.” *Whitehouse.Gov*, February 15-16, 2016. <https://obamawhitehouse.archives.gov/the-press-office/2016/02/16/joint-statement-us-asean-special-leaders-summit-sunnylands-declaration>
- Krasner, S. D. “Structural causes and regime consequences: regimes as intervening variables.” *International Organization* 36, no. 2 (1982): 185–205.
- Organization of American States – OAS. “Organization of American States: Democracy for Peace, Security, and Development.” Washington, DC: OAS, 2009. <http://www.oas.org/en/iachr/>
- Orosa, T. J. “ASEAN Integration in Human Rights: Problems and Prospects for Legalization and Institutionalization.” *Asian Regional Integration Review* 4, (2012): 66–88.
- Petcharamesree, S. “The ASEAN Human Rights architecture: Its development and challenges.” *The Equal Rights Review* 11, no. 1 (2013): 46–60. doi: <https://doi.org/10.1017/asjcl.2016.9>
- Pisanò, A. “Human Rights and Sovereignty in the ASEAN Path Towards a Human Rights Declaration.” *Human Rights Review* 15, no. 4 (2014): 391–411. doi: <https://doi.org/10.1007/s12142-014-0313-7>

- “Press release: 2nd ASEAN-EU policy dialogue on human rights 29 November 2017, Bohol, the Philippines.” *AICHR*, November 29, 2017. <https://aichr.org/news/press-release-2nd-asean-eu-policy-dialogue-on-human-rights-29-november-2017-bohol-the-philippines/>
- Risse, T., and K. Sikkink. “The socialization of international Human Rights norms into domestic practices: introduction.” In *The Power of Human Rights: International Norms and Domestic Change*, edited by T. Risse, S. C Ropp, and K. Sikkink, 1–38. Cambridge: Cambridge University, 1999.
- Sani, M. A. M., and A. E. Hara. “ASEAN Paradigm Shift from a State to People-Oriented Organization: A Neo-Communitarian Perspective.” *Japanese Journal of Political Science* 14, no. 3 (2013). doi: <https://doi.org/10.1017/S1468109913000157>
- Saul, B., J. F. Mowbray, and I. Baghoomians. “Resistance to Regional Human Rights Cooperation in the Asia-Pacific: Demythologising Regional Exceptionalism by Learning from the Americas, Europe, and Africa.” *Sydney Law School Research Paper*, no. 10.107 (2010).
- Supriadi, I., and J. Benedict. “Human Rights at Risk for ASEAN Citizens.” *The Jakarta Post*, April 26, 2018. <https://www.thejakartapost.com/academia/2018/04/26/human-rights-at-risk-for-asean-citizens.html>
- “Remarks by President Obama at U.S.-ASEAN Press Conference.” *Whitehouse.Gov*, February 16, 2016. <https://obamawhitehouse.archives.gov/the-press-office/2016/02/16/remarks-president-obama-us-asean-press-conference>
- Villanueva, K. H. R., and R. G. Manalo. “ASEAN Consensus: The Intangible Heritage of Southeast Asian Diplomacy.” In *ASEAN@50 Building ASEAN Community: Political–Security and Socio-Cultural Reflections Vol. 4*, edited by A. Baviera, and L. Maramis. Jakarta: Economic Research Institute for ASEAN and East Asia, 2017.
- Wahyuningrum, Y. *The ASEAN Intergovernmental Commission on Human Rights: Origins, Evolution and the Way Forward International IDEA*. New York, NY: International Institute for Democracy and Electoral Assistance, 2014. www.idea.int.
- Welsh, B. “Tough Year for Human Rights in Southeast Asia - New Mandala.” *New Mandala*, January 10, 2017. <https://www.newmandala.org/tough-year-human-rights-southeast-asia/>
- Working-Group for an ASEAN Human Rights Mechanism. *About Us*. Manila: Aseanhrmech, 2019. <https://www.aseanhrmech.org/aboutus.html>
- Young, O. R.. *International Cooperation : Building Regimes for Natural Resources and the Environment*. Ithaca, NY: Cornell University, 1989.