

HUMAN RIGHTS PROTECTION IN ASEAN

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ABSTRACT

Association of Southeast Asia Nation (ASEAN) has been developing to become a regional organization and has begun to obtain recognition internationally, and by prioritizing economic growth, social progress, and cultural development in its territory, ASEAN has turned to be a strongly established organization. ASEAN has been adherent to the principles stipulated by the United Nations Charter by always attempting as much as it can a peaceful approach in dealing with any dispute occurring between its members. The international community's spotlight on human rights in ASEAN since the enactment of ASEAN Charter and its ratification by 10 ASEAN members has been the emerging enormous challenge its members face, that is, how ASEAN countries are able to give protection to all ASEAN people fairly and this as a matter of fact has constituted the biggest challenge of ASEAN in developing this regional organization. However, since the establishment of Human Rights Committee in ASEAN, there has been a positive nuance brought about to the international community because the existence of this committee has resulted in positive impact for ASEAN in promoting human rights in ASEAN.

Key words: ASEAN, human rights, international organization

INTRODUCTION

In the initial stage of its establishment in 1967, ASEAN was intended more to be a relationship oriented towards the attainment of peace and order in the Southeast Asia territory (ASEAN Declaration, Bangkok, August 8, 1967). In the changing regional and international situation, the membership of ASEAN has undergone some changes. While at its initial foundation ASEAN only consisted of 5 countries, i.e. Indonesia, Malaysia, Thailand, Singapore, and the Philippines, now it has 10 member countries with five new countries that joined in the organization later: Brunei Darussalam (1984), Vietnam (1995), Myanmar and Laos (1997), and Cambodia (1999) (Sumaryo Suryokusumo, 2007). Even though its member countries are different one from another in language, culture, religion, geography, ethnicity, and history, the relationship among the members has gradually cultivated a sense of togetherness.

The formation of ASEAN initially was not in fact aimed at creating a supranational organization with different interests among the member countries. The former late Secretary General of ASEAN, Rodolfo Severino Jr (1998), in a speech at the University of Sydney, Australia in 1998 said:

“ASEAN’s founders in 1967 intended ASEAN to be an association of all the states of Southeast Asia cooperating voluntarily for the common good, with peace and economic, social and cultural development its primary purposes. ASEAN is not and was not meant to be a supranational entity acting independently of its members. It has no regional parliament or council of ministers with law-making powers, no power of enforcement, no judicial system.”

What is stated by Severino is justified from seeing the goals of ASEAN as contained in Bangkok Declaration:

1. Accelerating economic growth, social progress, and cultural development in the region through shared endeavor in the name of equality and friendship spirit to strengthen the foundation for a community of prosperous and peaceful Southeast Asia nations;
2. Fostering regional peace and stability by respecting justice and order of law in the relationship among the nations in the region and adhering to the principles of the United Nations Charter;
3. Increasing an active and mutual-help relationship in tackling issues that become shared concerns in economic, social, technical, science and administrative affairs.
4. Assisting each other in training equipments and research in education, profession, techniques, and administration;
5. Cooperating more effectively in order to increase the utilization of their farming and industry, expanding trades and studies in international commodity issues, improving transportation and communication facilities, and increasing the living standards of their people;
6. Promoting studies on Southeast Asia;
7. Maintaining a close and beneficial relationship with various international and regional organizations that share the same goals, and to explore any possibility for mutual and close relationship among the members themselves.

The main principle of cooperation in ASEAN is equality, but it is never at the expense of sovereignty (Huala Adolf, 1990) of each of its members. The members of ASEAN still fully possess their sovereignty both inwards and outwards, while consensus and consultation, common interests, and solidarity under ASEAN spirit constitute features of this cooperation.

ASEAN is an international regional organization in the Southeast Asia's region that has fulfilled the legal criteria to being an international regional organization, that is when ASEAN Charter was ratified by all the member countries so it remained valid up to December 15, 2008. The signing of ASEAN Charter was based on two basic thoughts, namely (1) the existence of common interests; and (2) the fact that there is an interdependence among the people and member countries belonging to ASEAN under the principles of one vision, one identity, and one community, caring and sharing with each other for the sake of shared welfare (Heribertus Jaka Triana, 2014).

Since the ratification of ASEAN Charter, the mainly concerned issue has been human rights, how ASEAN gives protection to the people in the member countries of ASEAN. According to Simela Victor Muhamad, one thing unavoidable is that human rights are now an important issue in the life of the society of a nation as well as that of the international community. Human rights issue has really colored many aspects of the community politically and economically as well as socially and culturally, either in the national or global context.

Meanwhile, as is commonly known, every country nowadays is really aware of its image related with human rights protection because this also determines the dignity of the country in the international networking/relationship. This implies that human rights have become an important issue in the international relationship and therefore, cannot be ignored by every country in the world. On the other hand, in line with the democratization movement occurring in many countries worldwide, especially in ASEAN, demand for the improvement in human rights issue also comes from the internal parties and regional organizations, that is, the people themselves who are becoming more aware of their foundational rights as citizens. This paper focuses on how ASEAN provides human rights protection in its region.

RESEARCH METHODS

The method used in this study is library research by collecting data from books, articles and other resources to be analyzed. The data are analyzed qualitatively based on relevant theories and then systematically presented descriptively.

HUMAN RIGHTS PROTECTION IN ASEAN

ASEAN is an international organization based in Southeast Asia which has ten countries as its members and which intends to create stability in terms of order in its territory. Despite many similarities in terms of history, culture, goals, and so forth, yet they are far different from one another. Especially with regard to the topic under focused in this paper, it seems to be a fact that the elites which now hold power in the countries have varied orientations towards key things related to human rights issues.

The participations of ASEAN member countries in various international instruments of human rights are greatly distinct to each other. From 24 of such kinds of instruments which comprise all aspects of human right spectra, the Philippines takes part in 20 instruments, Indonesia, Singapore, and Thailand in 3 instruments, and Malaysia in 2 instruments. It is only Brunei which has no participation in any instrument, and it is the Phillipines which has an independent national monitoring unit (watch) for human rights, which is acknowledged and created due to the mandate from its own constitution (Carolina G. Hernandez, 1993). The majority of the ASEAN member countries think that promotion and implementation of human rights should be suited with the diverse historical, political, economic, social, religious, and cultural facts of the countries.

ASEAN Charter as an international agreement came into being from a series of long process of negotiation. Harmonizing and then agreeing upon interests of all ten member countries of ASEAN in a common organization that is legally binding constitutes only one of many other diplomatic attempts that had to be carried out for birth of the charter. Shared regional peace, stability, progres, and prosperity were finally things which could unite Southeast Asia countries in ASEAN (Eddy Pratomo, 2009).

In ASEAN structure, rule of law principle becomes an operational strategic foundation for the formation of its three communities—Political Security Community, Economic Community, Socio-Cultural Community—as a means towards one ASEAN community in 2015. In addition to that, the rule of law principle has also been used as the philosophical foundation for the formation of regionalization of law in human right protection affair such as Agreement on the Privileges and Immunities (API) of the ASEAN, ASEAN Regional Agreement for Disaster Management and Emergency Assistance (AADMER), and ASEAN Declaration on Human Rights (ADHR/AHRD). The rule of law in ASEAN Charter has some complex and determinant functions in the strengthening and protection of human rights, namely (1) as a foundational element for human rights protection which becomes a philosophical foundation for the adoption of universal values of human rights and particularism of common Southeast Asian values in norms and their mechanism; (2) as a justification for the formation of human right laws in the context of norms and their procedures; and (3) institutional development and strengthening of ASEAN in human right protection in Southeast Asia in accordance with the international basic conventions of human rights that have been ratified by ASEAN member countries (Heribertus Jaka Triyana; 2014).

The products of law above represent current instances of regionalization of law in Southeast Asian region related with promotion and protection of human rights based on the application of rule of law principle. They are inspired by the inter-country cooperation affair which is non politics- or non high political commitment-oriented, yet directed towards a comprehensive cooperation in prosperity and security creation (non high political commitment) in the context of rule of law strengthening in Southeast Asia.

One of the innovations contained in the articles of ASEAN Charter is pertinent to rules stipulating promotion and protection of human rights, especially the mandate for the formation of ASEAN Human Rights Body. In the charter there are some articles that give new hopes for human rights protection in ASEAN. The human right issues are for instance contained in the preamble, purposes (Article 1 sub-article (7)), principles (Article 2 sub-article (2) (i) and Article 14 that specifically deals with human rights.

In the preamble of ASEAN Charter that has been agreed upon, ASEAN member countries are Mandated to obey to the respect and protection towards human rights and fundamental freedom. This statement is explicitly elaborated in the purposes and principles of ASEAN formation, namely in Article 1 sub-article (7) and Article 2 sub-article (2) (i) that ASEAN is determined to promote the human rights protection in ASEAN. This principle implies that ASEAN must play a role in maintaining the sustainability of ASEAN region in providing promotion and protection of human rights.

Human rights protection becomes a framework and goal that is intended to be achieved by ASEAN; the goal is based on the rules of law in ASEAN Charter in which ASEAN has given a birth to the content and means of protection to human rights in context and perspective of ASEAN (Marie Pangestu, *The Future of ASEAN*, the Indonesian Quarterly, vol. XXV, No. 4, 1997, hlm. 362). Article 14 in ASEAN Charter becomes the foundation for the formation of ASEAN Human Rights Body or ASEAN Intergovernmental Commission of Human Right (AICHR). On November 18, 2012, the Declaration of ASEAN Human Rights was agreed upon by ten leaders of ASEAN member countries in an annual conference in Phnom Penh, Cambodia as part of the Preamble and Article 1 sub-article (7) of ASEAN Charter. Both rules of human protections apply in a normal state. ASEAN has also succeeded in creating ASEAN Regional Agreement for Disaster Management and Emergency Assistance (AADMER) in an emergency state (Direktorat Jenderal Kerjasama ASEAN Deplu, 2007).

The ASEAN Regional Agreement for Disaster Management and Emergency Assistance is a regional rule that unites all rules related to mitigation and management of international disaster at Southeast Asian level as a minimum standard for human rights protection and human's basic freedom. Therefore, ASEAN in fact has philosophically adopted all the existing norms and mechanism of human rights protection. ASEAN Human Rights Declaration refers to the appropriateness and precision of laws to norms and mechanism of international human rights by adding the accentuated coverage of enactment to right for peace, right for development, and mechanism of regional and international cooperation according to the content, purposes, and mechanism of ASEAN Charter (Mertokusumo, 1996).

To support those efforts, Article 14 of ASEAN Charter highlights that in order to be able to conform to the goals and principles of ASEAN Charter related with the promotion and protection of human rights and fundamental freedom, ASEAN is obliged to create ASEAN Human Rights Body whose duties are suitable with the guidelines that will be determined by the summit of ASEAN foreign ministers. Hence, the formation of the human rights body is a must that should be carried out as "a front line" in realizing the purposes and principles of ASEAN.

Rules of the protection and promotion of human rights in ASEAN are expected to emerge and correlate dynamically with the increase of community's legal expectation in Southeast Asia towards the improvement of the respect and protection of human rights in the context of rule of law (Kompas Cyber Media, www.kompas.com). The legal consequence of this is the legal enforcing power of norms and mechanism of ASEAN human rights obtains legal, social, and political justification and support (Heribertus Jaka Triyana, 2014).

CONCLUSION

ASEAN Charter has become a historical milestone in terms of regional organization in Southeast Asia, especially in the promotion and protection of human rights in ASEAN which has opened a way towards the formation of ASEAN Human Rights Body as stipulated in Article 14 of ASEAN Charter. The birth of ASEAN Charter has indeed been perceived well by the international community especially since this charter is in line with and conforms to international regulations related with the promotion and protection of human rights. Next is how ASEAN countries implement and run the rules they have agreed upon. ASEAN Charter has been ratified by all ASEAN members. Last but not least, let's hope that ASEAN will become a role model of a regional organization from Southeast Asia in terms of human rights protection to its member countries.

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