



30th TALKING ASEAN

The Role of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in Promoting Human Rights in ASEAN: Past Achievements and Future Challenges

The Habibie Center, Jakarta
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INTRODUCTION

JAKARTA – On Thursday, 21 January 2016, The Habibie Center hosted its 30th Talking ASEAN public dialogue entitled, **“The Role of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in Promoting Human Rights in ASEAN: Past Achievements and Future Challenges”** at The Habibie Center Building in Jakarta. This edition of Talking ASEAN was moderated by A. Ibrahim Almuttaqi (Head, ASEAN Studies Program, The Habibie Center) and featured an expert panel made up of Rafendi Djamin (Representative of Indonesia to the ASEAN Intergovernmental Commission of Human Rights), Prof. Aleksius Jemadu (Dean, Faculty of Social and Political Sciences, Pelita Harapan University) and Daniel Awigra (Program Manager ASEAN Human Rights Working Group).

The objectives of this Talking ASEAN were to: (a) discuss the current progress of AICHR in promoting and protecting human rights; (b) address issues that may have hindered AICHR in its functions; and (c) give recommendation for policy makers to strengthen the effectiveness of AICHR.

This discussion report summarizes the key points of each speaker, as well as the question and answer session that followed.

SPEAKERS' PRESENTATION

Rafendi Djamin



Rafendi Djamin - Representative of Indonesia to the ASEAN Intergovernmental Commission of Human Rights

Mr. Rafendi Djamin started his presentation by looking back at the beginning of his appointment as Indonesian representative to AICHR. He stated it was a brave decision from Indonesia in 2009 to trust an NGO activist who was always very vocal against the government's human rights policy to represent the state's interest in the regional human rights commission. He explained that his selection initially began with an open selection process that drew upon a diverse pool of background, including civil society. Mr. Djamin was elected twice and therefore has served two terms as Indonesian representative for AICHR.

Mr. Djamin saw that Indonesia's move in adopting such a selection mechanism was to set a precedent for fellow ASEAN member states in the nine other countries in the hope they would also follow a similar approach in selecting their AICHR representatives. Unfortunately, six years on there are only two countries with an open process of selection and appointment. As an optimist, Mr. Djamin did not see this as a failure and believed that it would take time for an open process of selection to become a norm across the ten ASEAN member states.

He then continued by doing some overview of the milestones of the human rights mechanism in ASEAN. It began in 1993 with the commitment from five member states to establish a regional human rights mechanism. The different background of each member states, however, stunted the development of AICHR. Ultimately, with the help of Track-II diplomacy and think-tank groups in the creation of ASEAN Charter and AICHR, the development of a human rights mechanism finally managed to make some progress. This included the creation of two major commissions, one in the women and children sector (ACWC) and the other one covering general human rights issues (AICHR).

On the next part of his presentation, Mr Djamin presented how AICHR has achieved some notable changes through its mandates. For the past 6 years, AICHR has successfully delivered a set of instruments that is universally accepted by ASEAN member states. AICHR is also able to engage in a series of dialogues and consultations with national, regional and international institutions. Through its mandate and function, AICHR has the capability to obtain information and discuss or conduct thematic

SPEAKERS' PRESENTATION

— Rafendi Djamin —

studies on CSR, migrations, Rohingyas and Sambath cases. Mr. Djamin saw this as a major achievement in which AICHR can discuss about these issues informally.

Lastly, Mr. Djamin foresaw some future challenges in AICHR development. First, the new batch of AICHR representatives will bring new struggle to ensure the continuation of AICHR. He explained that seven of the ten AICHR representatives would be replaced this year. The new AICHR representatives would need to discover the appropriate level of comfort in arguing with other representatives and bring this intense relation to a certain consensus. Pushing the envelope is Indonesia's role, argued Mr. Djamin. He also suggested that AICHR's protection mandates needed to be revisited by reviewing the

ToR. Finally, in relevance to the ASEAN Community 2025, AICHR needs to find sustainable modality to the emerging human rights challenge.

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- Rafendi Djamin -

SPEAKERS' PRESENTATION

— Prof. Aleksius Jemadu —



Prof. Aleksius Jemadu - Dean, Faculty of Social and Political Sciences, Pelita Harapan University

Prof. Jemadu began by outlining his main argument. He believed that fundamental changes in the Southeast Asia human rights regime had to first be initiated at the state level before taking it to the regional arena.

He also highlighted that the word ‘Intergovernmental’ in AICHR means that the Commission is only the extension of the state’s power. Therefore, it has neither an independent stance nor initiative in promoting and protecting human rights. Not to mention its consensus nature without any rule-based law enforcement in dealing with the issue.

Prof. Jemadu further noticed that one of the major roadblocks for AICHR in conducting its role is the ongoing process of state-making within ASEAN. In this sense, most—if not all ASEAN member states—are still creating institutions in order to cast an effective control over their citizens. The changing atmosphere in Myanmar was claimed as the evidence of ASEAN’s soft approach in dealing with issues through a consultative way. However, Prof. Jemadu took issues with this claim pointing to alternative narratives that mentioned such changes occurred because of the internal awareness coming from Myanmar’s elite. In this sense, it further confirmed that genuine change can only come from the state itself.

Some skeptical opinion even expressed the view that AICHR itself may stand as the major hindrance to carrying out the promotion and protection of human rights, especially in democratic countries, like Indonesia. The rise of activism and the growing number of transnational networks of NGOs is also crucial in balancing the states’ role, so that they do not monopolize the public sphere.

At the end of his presentation, Prof. Jemadu concluded that although AICHR constitutes a growing awareness about the importance of human rights as a common goal, it still depends on the willingness and the capacity of each state to accomplish it. He also believed that there is not much we can expect from AICHR, because the real change should take place at the state level. Last, he also emphasized that transnational activism by civil society groups should be maintained to challenge the domination of the states in the promotion and protection of human rights.

“Fundamental changes in the Southeast Asia human rights regime had to first be initiated at the state level before taking it to the regional arena...there is not much we can expect from AICHR, because the real change should take place at the state level.”

- Prof. Aleksius Jemadu -

SPEAKERS' PRESENTATION

— Daniel Awigra



Daniel Awigra - Program Manager ASEAN Human Rights Working Group

Representing an Indonesian-based human rights NGO, Daniel Awigra started off with some major assessments towards the AICHR. Based on the mandate, he saw that AICHR had succeeded in implementing 12 out of 14 of them. However, those mandates still seem incapable to respond to some human rights issues.

From the aspect of capacity, Mr. Awigra noticed a possible threat since the majority of AICHR representatives are senior officials and diplomats without any background or sufficient knowledge about human rights issues, except the representatives of Indonesia, Thailand and the Philippines.

Independency wise, Mr. Awigra also questioned whether the representatives are the extension of states' interest or whether they were genuinely interested in promoting and protecting human rights in the region. In terms of AICHR's ability to engage with stakeholders, he noticed an increase in intensity and substantial manner. Meanwhile, Mr. Awigra also raised an important question whether this type of human right regime that AICHR has created will bring any behavioral change at the state level.

He went on to describe how civil society has certain ideals on how AICHR should be in the future. First, they hope that AICHR could depart from its non-

independent nature to be more independent by looking at Indonesia as a role model. Civil society also wished for more human rights expertise in the representatives' composition. Other things that this group would like to see is more mandate on protection, more open and transparent body, more active and responsive AICHR as well as a comprehensive remedy mechanism from the institution.

Mr. Awigra further elaborated a few things on why he considered the development of AICHR as not being enough. First, AICHR itself is characterized as a fundamentally intergovernmental, consultative and political body. Second, AICHR's Terms of Reference only serves as the basic norm establishing the AICHR's legal power and personality. Third, each national governments hold different views on human rights. These states would like to see how this human rights cooperation will be beneficial for them. Fourth, AICHR stands in the arena in which trust deficit is apparent among the members, and therefore creates 'unintended consequences', a situation where inter-arching cooperation will not help solve human rights issue, instead it will block such discussion to emerge.

Lastly, Mr. Awigra saw that the new Lao Chairmanship would be a major challenge for AICHR's progress as this particular country has different ways to address human rights issues. In the Indonesian context, it was also apparent that there was less political will from the current administration to discuss about it.

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- Daniel Awigra -

Q&A SESSION



A. Ibrahim Almuttaqi - Head of the ASEAN Studies Program, The Habibie Center

Rafendi Djamin

An informal meeting means simply that the meetings is unrecorded. The parties involved are only the country representatives and civil societies are not included. A normal AICHR meeting is already a closed one; therefore the informal one is even more secretive. Does it bring any direct impact? No, but it resonates a major shift that there is finally a process taking place within ASEAN. Process is the progress.

In response to the second comment, many chapters on ASEAN Human Rights Declaration are referring to the principle of the Vienna Declaration and the Universal Declaration of Human Rights. However, the critics emerged on how the formulation of AICHR is violating the Universal Declaration of Human Rights because of AICHR's particularistic nature. Not to mention a few of the head of states' statement that undermines and dilutes the existence of the Declaration.

We also need to remember that some representatives are not human rights persons. This whole AICHR development is a learning process for these representatives as they are forced to deal with uncomfortable issues.

AICHR has engaged many dialogue partners, such as the European Union, the United States of America and Japan in many human rights cooperation in the form of funding and collaboration. Switzerland is also one of AICHR's development partners.

Prof. Aleksius Jemadu

The Universal Declaration of Human Rights serves as a reminder that the state is not an end to itself. States consult the people on what kind of life they want in order to create a modern state.

On the technology and human rights matter, state should adapt and adjust to the current development. It all comes back to how the state is going to accommodate this whole progress of technology. As we can witness from the Arab

Comment No.1

A lot of AICHR meeting has been done through informal setting. How does this mechanism work and how is civil society involved in this? Also how should the civil society emerge in this kind of state? What kind of human rights issue that has to be put first?

Comment No.2

Despite the ASEAN nature of consensus, it is impossible for the member states to arrive at the same standard. How does the Universal Declaration of Human Rights apply to ASEAN's particularity? Also, how does AICHR interact with other entities in the issue of human rights?

Comment No.3

First, all the explanations mention that individuals need civil society, international organizations or states to defend their rights. But, how about the role of each individual in upholding their own rights? Second, in this globalized world, electronic device is like an extension of our life. How is this situation going to affect human rights protection?

Q&A SESSION

Spring, media and technology can facilitate the rise of the people.

The position of each individual in upholding their own human rights also depends on how the state looks at us as a human being. Does the state perceive us merely as an object? In a democratic state, the individuals are given dignity and welcomed fully as human beings. The state serves the right of these individuals. Transnational advocacy networks also provide an arena of discourse contestation as well as an alternate narrative in questioning the individuals' position in this debate of human rights.

Daniel Awigra

I think all issues are important and they have to be equally prioritized. But one thing that needs further attention is the issue of migrant workers with the urgency of providing a better protection for them. It is a cross-border issue and there have been many conventions but not a single legally-binding document produced.

On the subject of information and technology, the use of both instruments has to be based on ethics. Media holds significant roles on how they frame the way people think.





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