



The Habibie Center



The Sasakawa Peace Foundation



Civil Liberties and Democratization in ASEAN

Challenges and Recommendations
for Indonesia, Malaysia, and Thailand



The Habibie Center

About The Habibie Center

The Habibie Center was founded by Bacharuddin Jusuf Habibie and family in 1999 as an independent, nongovernmental, non-profit organisation. The vision of The Habibie Center is to create a structurally democratic society founded on the morality and integrity of cultural and religious values.

The missions of The Habibie Center are first, to establish a structurally and culturally democratic society that recognizes, respects, and promotes human rights by undertaking study and advocacy of issues related to democratization and human rights, and second, to increase the effectiveness of the management of human resources and the spread of technology.

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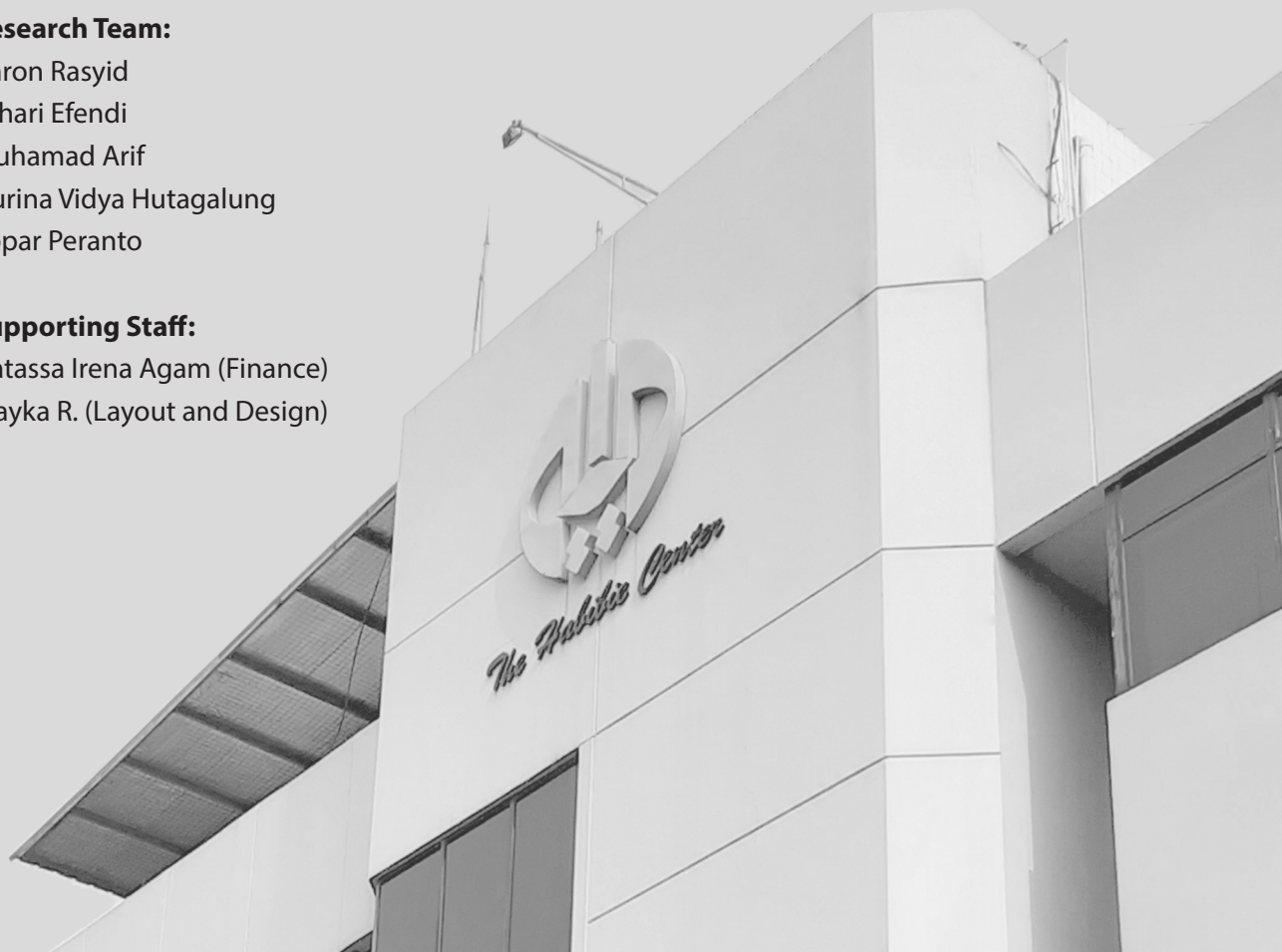
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Preface

The providence of civic spaces and ensuring fundamental rights of association, assembly, and speech are essential in a democracy. Democratic states are obligated to ensure civil liberties for its citizens to allow multiple perspectives to coexist. The importance of civil liberties is reflected by the incorporation of this issue into the Universal Declaration of Human Rights in the United Nations, strengthened by International Covenant on Civil and Political Rights. In addition, constitutions in democratic states should guarantee civil liberties. However, constitutional guarantee does not automatically push a country to ensure civil rights. Multiple obstacles are present in struggles for civil rights, which come in the forms of regulatory factors as well as violations against civil liberties in day to day life.

in contrast to the much less disputed freedom of religion and beliefs, which most countries do respect, freedom of association, assembly, and speech could be restricted. Restriction may be imposed under multiple possible considerations, such as security, public safety and morals, and general public health. It is also possible that the principles of necessity, legality, and proportionality are regarded in attempts to restrict civil liberties.

The Habibie Center views that civil liberties need to be discussed amidst the declining trend of global democracy. Therefore, in November 2019, The Habibie Center held a seminar entitled *Shrinking Civic Space and Peace Building in ASEAN: Challenge and Recommendation for Indonesia, Malaysia, and Thailand*. The seminar invited experts from said countries. The seminar was intended as a forum to allow for information-sharing and discussion about the situation of civil liberties in each country, as well as identifying recommendations for the governments and civil society organizations in providing and ensuring civil liberties in each country. Considering the importance of issues on civil liberties, the result of the seminar was supported by desk review and a focus-group discussion, which are encapsulated in this report.

The Habibie Center's research team would like to extend our gratitude to multiple parties who have contributed their inputs and comments to this report. We would also like to express our utmost gratitude to The Sasakawa Peace Foundation for their support for the seminar and throughout the writing process of this report. This report is written as The Habibie Center's contribution for the development of democracy in Indonesia and ASEAN.

Executive Summary

Freedom of association, assembly, and speech, as an important component for civil liberties, is experiencing major obstacles, as it is increasingly restricted in multiple countries, including in ASEAN member states, such as Indonesia, Malaysia, and Thailand, which become the focus of this report. Populist politics became a factor to the strengthened restrictions against civil liberties. Populist politics – which supports discrimination and rejection towards cultural, religion, political choices, and racial plurality – is gaining more traction within the last few years. Aside from populism, major increase in fake news, hoax, and hate speech on social media platforms has also disrupted national security, further justifying attempts to delimit civil liberties. These tendencies harm democratic values and its growth within the region.

Civil liberties are regarded as fundamental rights for all citizens, as stated in the Universal Declaration of Human Rights (UDHR). All countries are obliged to provide and ensure civil liberties. International Covenant on Civil and Political Rights (ICCPR) also stated that civil liberties could be impeded under multiple considerations, such as: national security, public safety and moral, and the rights of other people. Such measure should be taken with considerations on the principles of necessity, legality, and proportionality. Multiple parties have stated that violations on civil liberties characterize the demise of democracy.

Important findings from this report are:

1. Malaysia and Thailand's successes to hold peaceful elections enabled these countries to improve their performances in the Democracy Index, in which they were ranked at the 43rd and 68th positions, respectively. However, Indonesia is only able to acquire the 64th position, achieving an increase of one rank from the previous year. Indonesia used to exemplify how democratic transition could be achieved successfully, although today, the country has faced polarization among societal groups since the 2014 election.
2. A better position in the Democracy Index does not automatically translate to improvement in civil liberties. Such condition emerged as an increase in direct political participation and procedural democracy from civilians has led to better functioning governances in all three countries. However, multiple regulatory loopholes hindered civilians from taking control over the democratically elected governments, who have turned to restrictive measures towards civil liberties. In practice, constitutions which guarantee civil liberties do not fulfil their purposes.
3. This report found that Indonesia, Malaysia, and Thailand's constitutions endorse civil liberties. However, regulations under their constitutions put out a lot of restricting rules to impede civil liberties. Therefore, these countries need to formulate regulations which are harmonious with measures which could facilitate civil liberties.

4. Measures to limit civil liberties have been taken by both state and non-state actors. These measures, as demonstrated by multiple cases in all three countries, may include: (a) restrictions on freedom of association, assembly, and speech; (b) utilizing legal articles which call for coercive measures against critical activists who stood in opposition of the ruling government; (c) coercion against anti-corruption, environmental, pro-democracy, and student activists; (d) restraints on mass media and violence against journalists; (e) limitations towards activities by civil society organizations; and (f) violence against marginalized groups, such as minorities, women, and indigenous peoples.

The non-interference doctrine in ASEAN pushed its members to strengthen their respective democracies from within in order to contribute to regional-level development of democracy. However, cooperation between civil society organizations should be developed to support democracy at the regional level, especially by organizations who are situated in Indonesia, Malaysia, and Thailand.

Specific recommendations for each country:

Indonesia:

First, Indonesia needs to reform legal instruments which still impede civil liberties. It is possible by considering total revisions on the Act No. 19/2016 on EIT, the Act No. 1/1965 on Prevention of Misappropriation and/or Blasphemy against Religions, and the Act No. 16/2017 on Civil Society Organizations.

Second, the executive and legislative branches need to hold deeper discussions on the recent Draft on the Penal Code by involving representatives from civil society, media, and universities. Revisions on the Penal Code needs to be focused on articles which have served as obstacles to civil liberties, such as Article 106, 156, 156a, 160, 161, 207, and 310-321.

Third, Indonesia needs to put more effort to achieve better democracy after the existing identity-based political polarization in 2014 to 2019. Depolarization is needed through resistance against the hegemony of the ruling parties of political elites whose narratives often perpetuate social discord. Considering alternative narratives which could topple discourses pertaining to conflictual narratives is also needed. Such narratives could be developed by members of civil society or the academia, such as scholars or students; as well as supporting political elites who are in favor of pluralism and do not involve themselves in the existing contentions.

Fourth, building networks among members of civil society would facilitate a safe space for the society, as well as CSOs, to advocate against abuse of power by the government.

Fifth, a data-based research which could promote the importance of civil liberties for democracies is needed. Public research centers or CSOs need to be involved throughout the research process. The result of the research ought to be delivered to the government in the form of policy recommendations. Aside from capitalizing domestic resources, maximizing regional-level cooperation between CSOs in ASEAN to undertake joint research should also be considered. Findings from such research could serve as an important input to regulations on civil liberties in all member states of ASEAN.

Malaysia:

First, civil society networks at the national and transnational level need to be strengthened. Recent political developments in Malaysia, at least within the past decade which led to transition of power in 2018, proves that continuous pressure from the public is an effective measure to achieve political change. Furthermore, the existing momentum needs to be sustained, which could be supported by improving networks among members of civil society. Aside from

strengthening national-level networks, integration with transnational-level civil society networks is also pivotal to improve Malaysian civil society's leverage as a polity.

Second, Malaysian youth should receive better education on politics and democracy. The new amendment, which changed the voting age limit to 18 years would, allowed a considerably sizeable new group of voters. Political awareness and understanding on democracy should be incorporated into Malaysian education program to ensure a sustainable and constructive environment for political activism among Malaysian youth. Involving the youth in active and critical political contentions would increase the political costs of failing to bring about substantial changes on the government's part.

Third, understanding on the dynamics of political reform and civil liberties needs to be enhanced, as well as understanding factors which serve as opportunities and challenges to democracy through comparative studies which would pit Malaysia against other countries within the region, such as Indonesia and Thailand. This recommendation could be fulfilled by conducting joint research through networks or alliances of research centers in Malaysia, Indonesia, and Thailand. Findings from the research could be translated as materials for lessons on politics and democracy in all three countries.

Thailand:

First, the newly elected Thai government should form a political statement which declare the government's commitment for the public to ensure civic spaces. The statement is expected to emphasize the needs for spaces for civil liberties and eradicate all forms of action which could impede freedom of speech for all members of society, CSOs, and political parties.

Second, the government should also revoke or amend regulations which could potentially restrict civil liberties, such as martial law, emergency law,

Article 44, Article 112, and the Computer Crime Act. Loosely defined regulations could potentially lead to broad interpretations and provide opportunities for misuse by the ruling regime to delimit civil liberties, especially for those who are in opposition of the ruling government.

Third, international society and institutions should put greater pressure upon Thai government to ensure that civil liberties are guaranteed and protected. This recommendation is based upon the fact that Thailand, who has ratified the ICCPR, is obligated to ensure civil and political rights for all citizens.

List of Abbreviations:

1MBD	1Malaysia Development Berhad
ABC	Australian Broadcasting Corporation
AJI	Aliansi Jurnalis Indonesia/Alliance of Indonesian Journalists
ASEAN	Association of Southeast Asian Nations
AUKU	Akta Universiti dan Kolej Universiti/University and College Act
BPS	Badan Pusat Statistik/Central Bureau of Statistics
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CIJ	Centre for Independent Journalism
CSO	Civil Society Organization
EIU	The Economist Intelligent Unit
HTI	Hizbut Tahrir Indonesia
ICCPR	International Covenant on Civil and Political Rights
IRF	Islamic Renaissance Front
ETI	Electronic Information and Transaction
KPK	Komisi Pemberantasan Korupsi/Corruption Eradication Commission
MCA	Malaysia Chinese Association
NCPO	National Council for Peace and Order
NGO	Non Government Organization
OHCHR	United Nations High Commissioner for Human Rights
PAS	Partai Islam Se-Malaysia/Malaysian Islamic Party
POCA	Prevention of Crime Act
PRU	Pilihan Raya Umum/General Election
SAFEnet	Southeast Asia Freedom of Expression Network
SPRM	Suruhanjaya Pencegahan Rasuah Malaysia/Malaysia Anti-Corruption Commission
Suaram	Suara Rakyat Malaysia (an organization dedicated to human rights)
UDHR	Universal Declaration of Human Right
UNGA	United Nation of General Assembly
UMNO	United Malays National Organisation
Uni-MLC	Uni Malaysia Labour Centre
USM	Universiti Sains Malaysia
Wartani	Warta Patani/Patani News



INTRODUCTION

Photo: Pxhere

The Economist Intelligence Unit's (EIU) report on global democracy index, released on 22nd January, 2020, provided an answer to an article released last year by The Economist, inquiring whether "the retreat of global democracy" would come to a full stop in 2018 or a mere temporary halt. Such question aroused as a response to a declining trend of global democracy since the past three years. The EIU believed that the condition of global democracy was relatively stable in its 2019 report. However, the last section of the report mentioned that such stable condition might be a temporary pause to the decline of global democracy. A mere pause to democracy decline indicated that it had yet to end, as violations against civil liberties continued to occur and disrupted the presumed stabilized trend in 2019.¹ This year's report affirmed such prediction, as the declining trend of global democracy re-emerged.

The declining trend of global democracy showed that civil liberties, as one of the variables in the index, are consistently situated at the lowest rank.² A report by Civicus (December 2019) stated that a decline in freedom of association, assembly, and expression was occurring globally. The report mentioned that 40% of the world's population lived under repressive regimes. The increase percentage has doubled in comparison to the previous year (19%). The report above emphasizes that civil liberties, as one of the foundations of a democracy, are increasingly repressed.

As civil liberties enable civilians to fulfil their political rights as citizens, to associate with one another, and to communicate their opinions, the civilians are positioned as the main stakeholders whose voices will determine the directions of development and bring about changes, demand for rights, and influence important political decisions on the fulfilment of their welfare needs. The most common

benchmark for civil liberties is stated in Universal Declaration on Human Right (UDHR), released by the General Assembly of the United Nations (UNGA) on December 10, 1948 in Paris. The document contains thirty articles on fundamental rights which all governments are obligated to fulfil. Civil liberties are encompassed in the Article 19 of the declaration, stating that, "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers," and Article 20, stating that, "Section (1) Everyone has the right to freedom of peaceful assembly and association; Section (2) No one may be compelled to belong to an association."

Furthermore, civil liberties also occupy important positions in International Covenant on Civil and Political Rights (ICCPR), which was ratified as a resolution in UNGA on December 16, 1966. After it took effect in 1973, ICCPR has been ratified by 173 states worldwide.³ Articles 19 to 22 of the convention affirm universal rights of assembly, association, and expression. Such rights are not limited to anything aside from laws which correspond to national security and public safety, public order, health and general morality protection, or protection of other constituents' rights and freedom.

United Nations Office of High Commissioner for Human Rights (OHCHR) also declared that civil liberties are inseparable from peacebuilding. OHCHR stated that civil liberties and participation from civil society significantly contribute to the effectiveness of conflict prevention and fights against impunity.⁴ The Commissioner also asserted that respecting civil liberties advances social cohesion, eradication of inequality, more accountable governance, responsive public policies, a conducive environment

1 <https://www.economist.com/graphic-detail/2019/01/08/the-retreat-of-global-democracy-stopped-in-2018>. Accessed on January 8, 2020.

2 The index also included other variables, such as electoral process and pluralism, functioning of government, political participation, and political culture.

3 Included among the ratifying states are six ASEAN member states: Indonesia, Philippine, Vietnam, Cambodia, Thailand, and Laos. The other four other member states have yet to ratify the convention: Malaysia, Singapore, Brunei, and Myanmar (<https://indicators.ohchr.org/> accessed on January 21, 2020).

4 <https://www.ohchr.org/EN/AboutUs/ManagementPlan/Pages/participation.aspx>. Accessed on January 21, 2020.

for business and investment, and the empowerment of marginal and underprivileged communities.⁵

The statements above show that the providence of safe and accessible civic spaces for all citizens is obligatory for democracies. The absence of adequate civic spaces would serve as a threat for democracy and peace. Steven Levitsky and Daniel Ziblatt, scholars of political science from Harvard University, argued that limiting freedom of speech characterizes authoritarian leadership. Other characteristics include rejection of democratic mechanisms, delegitimizing political rivals, and tolerating violence.⁶ Therefore, states are obligated to provide and protect civic spaces, as well as ensuring civil liberties in assembly, association, and expression.

However, such tasks are not easy to be fulfilled. Some challenges would emerge and show that threats against civil liberties can emerge in the most democratic state. Recent trends describe how the strong nuances of populism in global politics directly point to the decline of values on democracy, equality, and civil liberties. Populism utilizes identity as a tool to separate people along differences in identity, allowing for discrimination and rejection of cultural, religious, political, and, even goes as far as, racial pluralism. The rise of populism is demonstrated by several dynamics in multiple parts of the world. Such trend is evident in the United States, a country many recognize for its openness. In the U.S., democratic values have gone downhill since Trump was elected in 2016. The case of Trump election, as observed by Levitsky and Ziblatt, demonstrated how democratic mechanisms can allow an individual, whose leadership is counterproductive to democracy, to be elected.⁷ Other examples of such trend are portrayed by the United Kingdom's exit from the European Union and the overthrow of Evo Morales as the president of Bolivia. In Asia, India's

Citizenship Amendment Act, which is deemed to benefit non-Muslim immigrants from Muslim-majority neighbouring countries, is also among such examples.⁸

In addition to populism, other significant challenge is posed by the increase of fake news, hoaxes, and hate speech distribution on social media. Claims on the need to protect the rights of specific groups of people are massively distributed to the public, along with hate speech and incitement. Dewi Fortuna Anwar⁹ asserted that in such cases, freedom of speech faced great challenges. On the one hand, it was compulsory for the government to maintain stability and security. But governments often opt for the easier choices by merely taking the security sector into consideration, while civil right of receiving accurate information is compromised.

1.1. General Description of Southeast Asia

In Southeast Asia, the EIU's Democracy Index in 2020 ranked nine member states of ASEAN under the categories of "flawed democracy," "hybrid regime," and "authoritarian,"¹⁰ as demonstrated by Table 1 which encapsulates ASEAN member states' scores in the index. The table illustrates that ASEAN member states have encountered significant challenges to improve democracy through providing space for freedom of expression and ensuring civil liberties.

In terms of democratization, ASEAN's adherence to noninterference implies that development on such issue in the region is determined by each member. However, as illustrated by the Democracy Index in 2019, none of the nine ASEAN members are considered as a full democracy. Such phenomenon implies that citizens in ASEAN have yet to enjoy adequate freedom to participate in the political life of their home countries. Henceforth, no ASEAN member can strongly advocate or act as the main

5 <https://www.ishr.ch/news/protect-civil-society-promote-peace-security-and-development-recipe-states-and-un-hrc>. Accessed on January 21, 2020.

6 <https://mediaindonesia.com/read/detail/229336-ikhtiar-terakhir-menjaga-demokrasi>. Accessed on January 8, 2020.

7 <https://www.voaindonesia.com/a/bagaimana-demokrasi-mati-/4275496.html>. Accessed on January 8, 2020.

8 <https://tirto.id/gelombang-baru-fasisme-sejarah-berulang-esMu>. Accessed on January 16, 2020.

9 Welcoming speech on *Shrinking Civic Space and Peace Building in Asean; Challenge and Recommendation for Indonesia, Malaysia and Thailand*. November 11, 2019.

10 Out of all 10 member states of ASEAN, Brunei was not included in the index.

driver to push forward democratization agenda in other member states.

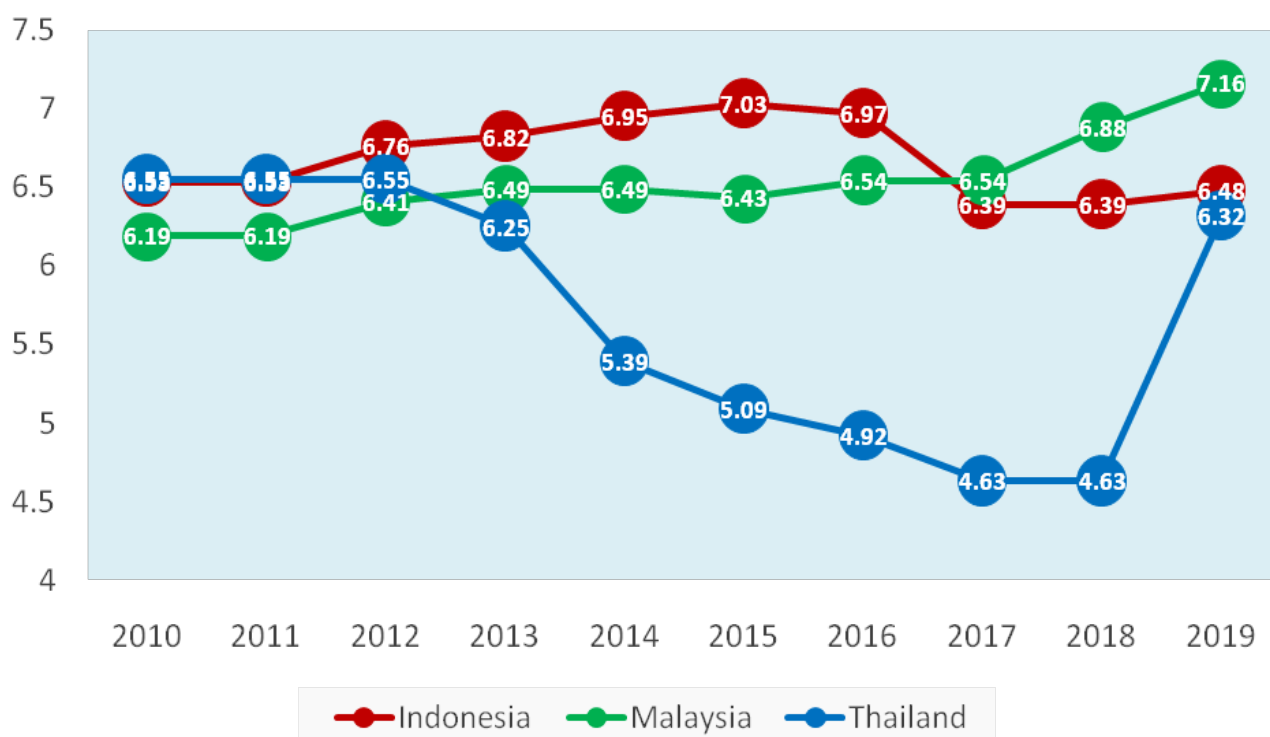
To enrich studies on how civil liberties and peacebuliding in Southeast Asia are interlinked, The Habibie Center conducted a research in three countries: Indonesia, Malaysia, and Thailand (refer to Figure 1). The aforementioned countries are chosen on the basis of three factors: (1) the population of the countries constitutes half of ASEAN's total population; (2) each country portrays their understandings of the importance of civil liberties differently; and (3) amidst the declining trend of global democracy, all the three countries show significantly positive trends in the index, especially Malaysia and Thailand. However, Indonesia was only able to increase its rank by one position up in comparison to the previous year.

Indonesia, whose history shows how pressures from civil society were able to bring about democracy by toppling its past authoritarian regime, has experienced a significant decline in the past decade. In his first term of presidency, Jokowi, whom many perceived not to be involved with Indonesia's past authoritarian regime, promised a hopeful prospect for Indonesia's democracy emerged, as reflected by Indonesia's ability to achieve its highest score in the index in 2015. However, numerous incidents pertaining to identity sentiments, especially attempts to mobilize the mass through identity politics during the governor election in Jakarta in 2017, resulted in its score plummeting in the index. Politization and mass mobilization, based upon identity politics, constantly occurred until the end of 2019.

Table 1. Democracy Index of ASEAN Member States, 2020

Rank	Country	Score	Electoral process and pluralism	Functioning of government	Political participation	Political culture	Civil liberties	Regime type
43	Malaysia	7,16	9,17	7,86	6,67	6,25	5,88	Flawed democracy
54	Philippines	6,64	9,17	5,36	7,22	4,38	7,06	Flawed democracy
64	Indonesia	6,48	7,92	7,14	6,11	5,63	5,59	Flawed democracy
68	Thailand	6,32	7,42	5,36	6,11	6,25	6,47	Flawed democracy
75	Singapore	6,02	3,92	7,86	5,00	6,25	7,06	Flawed democracy
80	Bangladesh	5,88	7,83	6,07	6,11	4,38	5,00	Hybrid regime
122	Myanmar	3,55	3,08	393	2,78	5,63	2,35	Authoritarian
124	Cambodia	3,08	0,83	4,64	3,33	5,63	3,24	Authoritarian
136	Vietnam	3,08	0,00	3,21	3,89	5,63	3,65	Authoritarian

Figure 1. Trend of Democracy Index Indonesia, Malaysia, and Thailand (2006-2019)



The 2019 general election emphasized the recurring trend of polarization among Indonesia’s society, as portrayed by the common use of “Cebong” and “Kampret” to negatively label supporters of Jokowi and Prabowo respectively. Since 2017, Indonesia’s performance in the index shows constant decrease, even surpassing its lowest score in 2006, when Indonesia had only passed the period of democratic consolidation after multiple intercommunal and separatist conflicts in several provinces ended.

In contrast to Indonesia, Malaysia is among the states which experience improvement in their democracy, especially after a peaceful regime change in 2018. The triumph of Pakatan Harapan as the opposition allowed Tun Mahathir Mohammad to be re-elected as the Prime Minister of Malaysia. Malaysia’s ability to achieve impressive leap in its democracy occurred along with a regime change. In 2019, Malaysia occupied the 43rd position in the Global Democracy Index, achieving an astounding jump of nine positions up from its previous position in 2018 (52nd). Malaysia’s current achievement is even higher than Indonesia’s accomplishment in 2015.

The last country to be observed is Thailand. Thailand is among the states which experienced a decline, from its previous position in the “flawed democracy” category as it was regarded as a “hybrid regime.” Such dramatic decline started in 2014 when the military took power after a coup against Yingluck Shinawatra, who was serving as Thailand’s Prime Minister. The coup stemmed from waves of demonstration in Thailand demanding Shinawatra to step down from his position, pressuring Thailand to declare the state of emergency. Shinawatra’s attempts to appease the tension, by recommending early election, was rejected by the opposition. The Constitutional Court of Thailand ordered Shinawatra to step down after he was pronounced guilty of abuse of power. Then, the military announced its authority to take power in Thailand. Such condition resulted in Thailand’s worsening position in the Democracy Index. However, after achieving constant decline and landed on the 106th position in 2018, Thailand was able to achieve a significant increase by occupying the 68th position in the 2019 index, an impressive increase of 38 positions up from its previous position.

Such anomalies, as portrayed by the occurring

dynamics in the countries above, need further scrutiny. In general, some arguments pointed out that improvements in democracy would lead to better fulfilment in civil rights of association, assembly, and expression. However, it is very probable that both variables did not influence each other. Such proposition is confirmed by the concurrent trend in the Democracy Index which shows that scores in the civil liberties variable are always the lowest in comparison to other variables. In other words, an increase in public participation in the case of election, for example, does not directly result in well-functioning governance and the guarantee of civil liberties.

The conditions described above demonstrate an existing contradiction between the increasingly participative civil society and the declining trend in scores of civil liberties. Such contradiction indicates that civil society does not occupy enough power to control public policies. Based upon the contradiction, this report attempts to answer whether Indonesia, Malaysia, and Thailand's improving scores in the democracy index contribute to the betterment of civil liberties and whether both factors are correlated to each other. This report will show concrete examples to answer both questions.

1.2. Methodology and Writing Structure

Data presented in this report came from two main sources: (1) the national seminar entitled "*Menciptanya Civic Space dan Pembangunan Perdamaian di ASEAN; Tantangan dan Rekomendasi untuk Indonesia, Malaysia, dan Thailand* (Shrinking Civic Space and Peacebuilding in ASEAN; Challenges and Recommendations for Indonesia, Malaysia, and Thailand)." The seminar was held on November 11, 2019 in Jakarta as a part of a series of seminars to celebrate The Habibie Center's 20th anniversary. Activists representing non-governmental organizations from all three countries were present as speakers in the seminar, and; (2) a review of numerous secondary data, such as international conventions, official government documents and reports, scientific publications, several global

democracy indexes, as well as articles from news media platforms to capture a wide depiction on the condition of civil liberties and peacebuilding in the three countries. An early draft of this report has been sent to several experts for inputs and commentaries, followed by a focus group discussion to improve the quality of the report.

This report is divided into three main sections: (1) Introduction, containing an overview of the condition of democracy in ASEAN member states and justifications of this report's focus on Indonesia, Malaysia, and Thailand as the selected cases; (2) Description on the conditions of civil liberties in the three selected countries. This section is further divided into three subsections, each is focused to each selected country. Such divide is conducted to allow for a detailed explanation on the specific conditions found in each country. Each subsection will comprise: (a) brief descriptions on the most recent trends in each country; (b) a short review on the regulatory aspect with respect to civil liberties in each country, both which ensure and limit civil liberties; (c) elaboration of concrete cases which are relevant to civil liberties; and (3) Recommendations for each country to improve democracy and ensure the freedom of civil society.



**CIVIL
LIBERTIES
IN INDONESIA,
MALAYSIA,
AND THAILAND**

Photo: RencongPost

As stated in the previous section, setting our focus the three member states of ASEAN was based upon our consideration on the need to scrutinize the dynamics which occurred in each state which, as we have established, showed considerable varieties and how they correlated with the government's obligation to ensure civil liberties. In order to provide a complete portrayal of each case, this section is divided into three subsections. Each subsection starts with an introduction, a short review on the regulatory aspect, and important cases pertaining to civil liberties in each state.

2.1. Indonesia: A Case of Withering Success in Democratic Transition

Indonesia has experienced dynamic democracy in the last two decades. In the first decade post-*Reformasi*, Indonesia was considered as a "stable democracy."¹¹ During the period, experts and international independent organizations expressed their appreciation for Indonesia's democratization process which was deemed to be safe from threats or counterproductive responses. A research conducted by Asian Barometer Survey in 2016 concluded that Indonesian citizens felt satisfied with post-New Order (*Orde Baru*) democratic system.¹² Such condition was interlinked with a strong public support for a democratic governance. In addition, post-*Reformasi* elections were conducted fairly and freely, supported with a well-organized order at the national and local levels to support the development and stability of democracy in Indonesia. Furthermore, such stable condition was also influenced by strong participation from civil society organizations (CSOs), which served as strong barriers against elite movements with anti-democracy agenda.¹³

11 Larry Diamond, "Indonesia's Place in Global Democracy", in *Problems of Democratisation in Indonesia: Elections, Institutions and Society*, edited by Edward Aspinall and Marcus Mietzner (Singapore: Institute of Southeast Asian Studies, 2010), p. 23.

12 Chu, Yun-han, Yu-Tzung Chang, Min-hua Huang, and Mark Weatherall, "Re-Assessing the Popular Foundations of Asian Democracies: Findings from Four Waves of the Asian Barometer Survey", Asian Barometer Working Paper Series, no. 120 (2016): 5-6, <http://www.asianbarometer.org/publications//b15620cf8549caa8a6cc4da5d481c42f.pdf>.

13 Eve Warburton and Edward Aspinall, "Explaining Indonesia's Democratic Regression: Structure, Agency and Popular Opinion", *Contemporary Southeast Asia: A Journal of International and Strategic*

However, the development of democracy in Indonesia has faced serious challenges for the last ten years. Experts on international politics, such as Eve Warburton and Edward Aspinall (2019), argued that Indonesia's current democracy is experiencing a "democratic regression."¹⁴ Vedi Hadiz also asserted that such tendencies are mostly influenced by competition among Indonesian oligarchs.¹⁵ The EIU's reports from the last ten years on Democracy Index confirmed the declining trend of democracy in Indonesia (Figure 2).

The figure above illustrates how Indonesia's democracy in 2017 reached rock bottom in the last 10 years. Nevertheless, Indonesia was able to achieve its highest score in 2015 in the last 10 years. This section is divided three sections: (1) Portrait of Civil Liberties in Indonesia; (2) The Decline of Civil Liberties in Indonesia; and (3) Civil Liberties in Indonesia in the Past Decade.

A Portrait of Civil Liberties in Indonesia

Based on deeper scrutiny, it is evident that the degrees of civil liberties vary between provinces in Indonesia (Figure 3). A report entitled "*Indeks Demokrasi Indonesia*" (Indonesian Democracy Index), released in 2019, revealed that Sumatera and Java received lower scores in civil liberties compared to other areas. In addition, the report showed that densely populated provinces tended to fare worse in comparison to other less populated provinces. The report also concluded that civil liberties received more threats in provinces with adequate economic infrastructure, such as West Java and Jakarta Special Capital Region (DKI Jakarta). Such condition stemmed from the heightening political tension preceding the 2019 General Election, especially in provinces with a large population of voters. *Badan Pusat Statistik* (BPS), the Central Bureau of Statistics, noted that disruptions against civil rights correlated with the

Affairs, Vol.41, Number 2 (2019): 257.

14 Ibid, 255

15 Hadiz, Vedi. R. 2017. "Indonesia's Year of Democratic Setbacks: Towards a New Phase of Deepening Illiberalism?" *Bulletin of Indonesian Economic Studies* 53 (3): 261-278.

Figure 2. Indonesian Democracy in the Last Decade

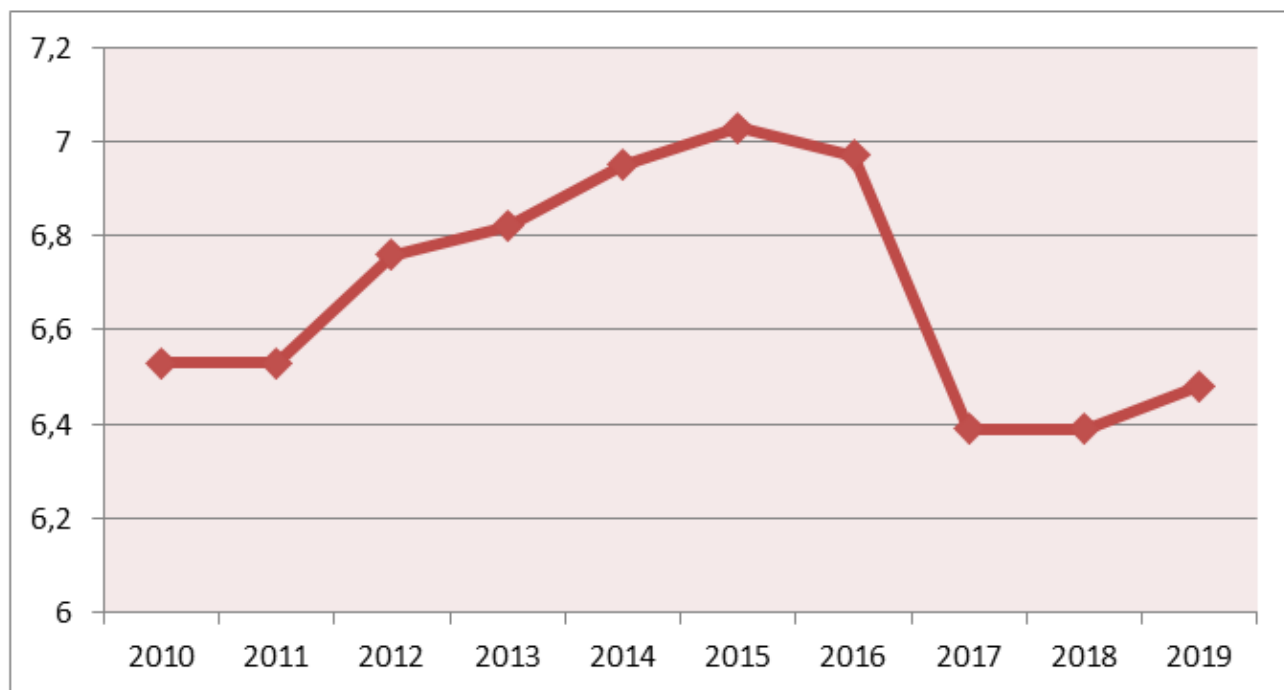
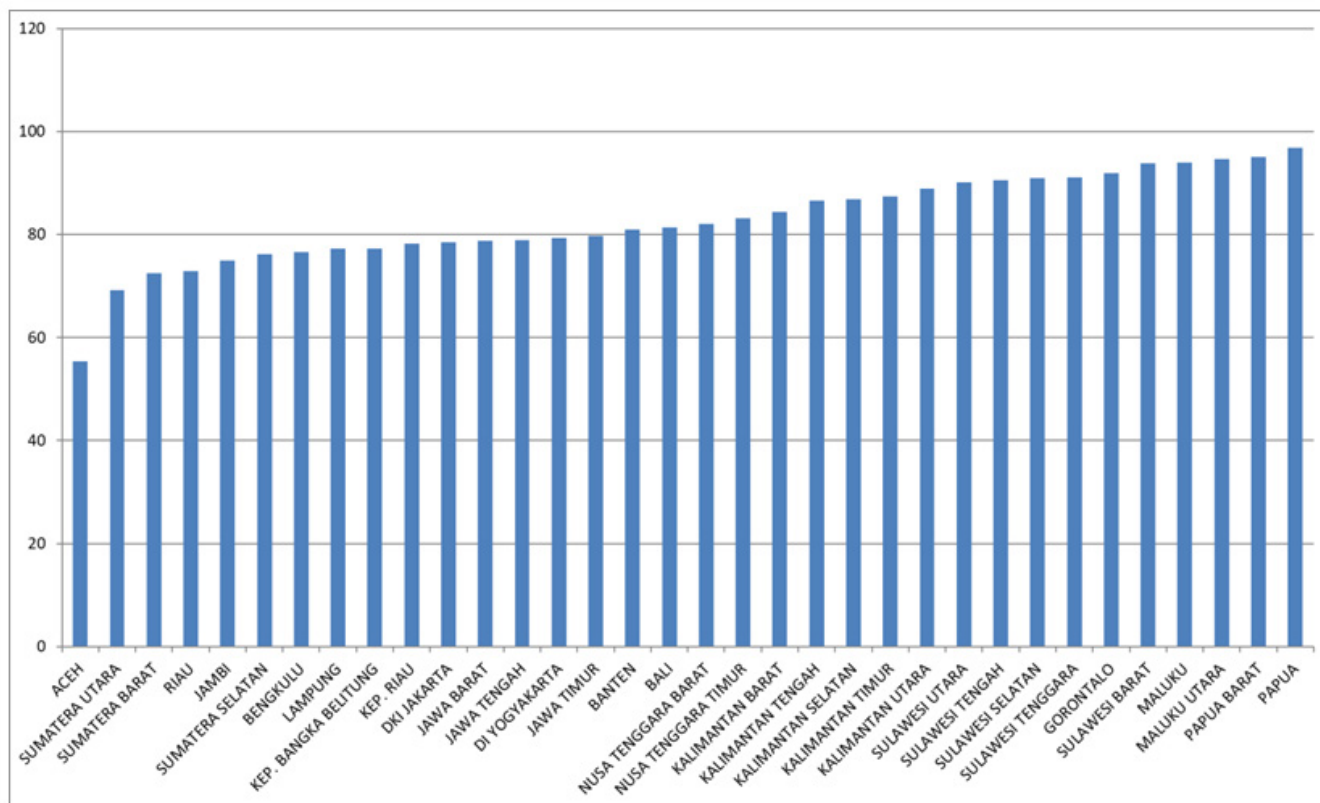


Figure 3. Provincial Civil Liberties Scores in Indonesia, 2019



lengthy process of the election.¹⁶ A similar condition had also occurred prior to the 2017 Regional Election, in which civil liberties had been disrupted.

Generally speaking, in terms of civil liberties, Aceh became the worst performing province in 2018. However, several findings on cases of violation against civil liberties in Papua in the last five years also need to be considered. In December 2018, 539 demonstrators were arrested during a peaceful demonstration in Papua and several other areas.¹⁷ The demonstration was alleged to be a commemoration of “the so-called West Papua’s National Day”. Meanwhile, officials justified the arrests by claiming that the demonstrators had committed treason against the state. Prior to this incident, in May 2015 264 people had been arrested after planning a peace demonstration to commemorate the 52nd anniversary of the handover of Papua to the Indonesian government by the United Nations.

The Decline of Civil Liberties in Indonesia

The tendencies implying the decline of democracy in Indonesia are evident. *First*, morally conservative and hypernationalist groups have gained stronger support, contributing to the growing popularity of campaign with elements of sectarian politics. *Second*, the security forces (military and police) have occupied important roles in protecting the political economic interests of the ruling regime. *Third*, persecution against minority groups has become more prevalent. *Fourth*, draconian laws against opposing groups and the civil society still exist. *Fifth*, anti-democracy ideas have gained more popularity among elites within the central area of Indonesia, which are widely popularized as a national discourse.

Such tendencies have occurred along with the disruptions against civil liberties. Civil space in Indonesia has become more limited as relevant actors, institutions, and structures experience

setbacks. Data from *Indonesian Democracy Index*, released by the BPS, revealed that civil liberties in Indonesia have declined since 2009 (Figure 4). The index from 2019 unraveled that the decline in civil liberties, especially in 2017 to 2018, was caused by threats from one group of civil society to another.¹⁸ In addition, the report also noted a decline in the attempts by civil society groups and citizens to voice out their criticism to the government. The citizens were showing fears of facing persecutions if they were to voice critical opinions in public spaces.

A survey in 2019 from *Lembaga Survei Indonesia* (the Survey Institute of Indonesia) also showed that civil liberties in Indonesia experienced a decline.¹⁹ Constituents were reluctant to have political conversations in fear of extrajudicial arrest by security forces. The other two variables considered in the survey, namely freedom of assembly and religion, also received intense scrutiny from the public, especially during Jokowi-Maruf Amin’s administration. Not only national institutions, an international independent institution, Freedom House, also reported in 2019 that among other variables, such as the fulfillment of political rights and due process of electoral politics, civil liberties became the lowest scoring variable for Indonesia.²⁰ The report stated that freedom of religion and trust upon the legal system were considered to encounter many problems and required comprehensive solutions.

Furthermore, in comparison to other ASEAN member states, the condition of civil liberties in Indonesia is deemed to be quite alarming. A report from the EIU in 2019 unraveled that Indonesia received lower scores in civil liberties compared to Singapore, Malaysia, Philippine, and Thailand.²¹ The data also demonstrated that in the last five years, Thailand received better score than Indonesia in the variable.

Three factors have caused space for civil liberties

16 <https://www.indonesia.go.id/narasi/indonesia-dalam-angka/ekonomi/makin-baik-demokrasinya-makin-tinggi-investasinya>. Accessed on February 4, 2020.

17 <https://tirto.id/tangkap-539-demonstran-aksi-damai-papua-rasisme-ala-jokowi-daQi>. Accessed on January 2, 2020.

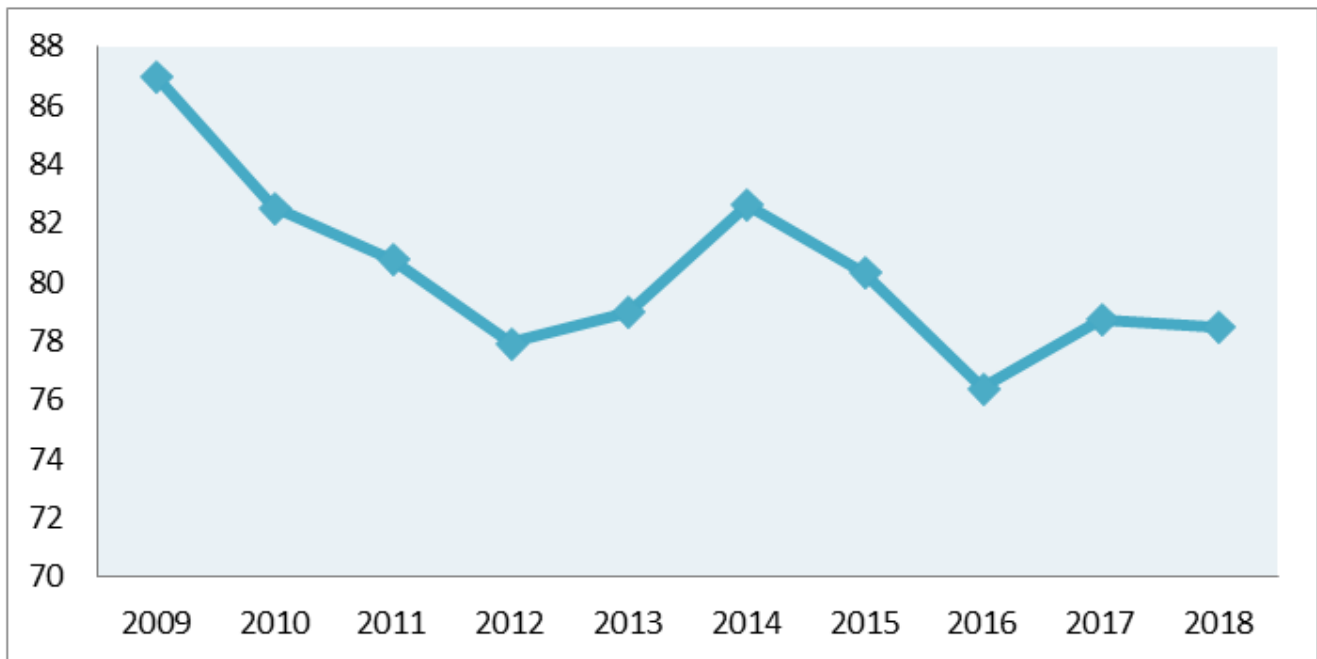
18 Indeks Demokrasi Indonesia 2019.

19 <https://nasional.republika.co.id/berita/q0f8tn415/survei-kebebasan-sipil-turun>. Accessed on December 30, 2019.

20 <https://freedomhouse.org/report/freedom-world/2019/indonesia>. Accessed on December 30, 2019.

21 The Economist Intelligence Unit, 2020.

Figure 4. Civil Liberties in Indonesia, 2009-2018



in Indonesia to be narrowing down in the past decade. *First*, the existing laws and other regulatory frameworks restrict the citizens' rights of expression and assembly. *Second*, the increasingly polarized political dynamics at the national level also contributes to the downturn of civil liberties in Indonesia. *Third*, CSOs receive less and less public trust. The coming subsections will provide more detailed descriptions on how each of the factors contributes to the narrowing down of spaces for civil liberties in Indonesia. The three factors above will be explained in the following.

Regulatory Factors

As of now, regulations on defamation are often utilized to shut down critics who are against the government and potential political rivals. Such phenomena are counterproductive with the purpose of *Reformasi*, as stated in the amendment of the 1945 Constitution, which was formulated in the 2000 Annual People's Constitutive Assembly on August 7-18, 2000. The amendment, as stated in the Article 28 F, affirms the citizens' freedom of belief, expression in accordance with each of their conscience, as well as freedom of association, assembly, and speech. Furthermore, Act

No. 9/1998 on Freedom of Speech in Public stated that the state guarantees uninterrupted freedom of speech for its citizens, which applies absolutely.

Four legal instruments stand as pivotal factors to the current declining trend of civil liberties in Indonesia, namely: (1) Act No. 19/2016 to replace Act No. 11/2008 on Electronic Information and Transaction (EIT); (2) Presidential Decree No. 1/1965 on Prevention of Misappropriation and/or Blasphemy against Religions; (3) the Penal Code, specifically Article 207 and 310 to 321 on defamation and derogatory acts against individuals, authorities, and other legal bodies, as well as Article 104 on acts of treason; and (4) Act No. 16/2017 on Civil Society Organizations. Those legal instruments inflict fears of the reemergence of the use of political power in legal mechanisms, a common practice in the New Order Era. During the New Order Era, repressive measures were highly effective to shut down critical voices using the existing regulations.

The Act on EIT has numerous been inappropriately used, as demonstrated by a widely publicized case pertaining to Prita Mulyasari. The case illustrated how the law was applied in a case which involved

private actors as opposing parties. In this case, Mulyasari voiced out her complaint against services provided by Omni International Alam Sutera Hospital. The hospital sued Mulyasari over the complaint, which led to Mulyasari's guilty verdict and being charged for damage compensation to the hospital, amounting to 204 million rupiahs (US\$21,000). Public protests emerged in response to the verdict. In 2012, the Supreme Court overturned the lower courts' verdict against Mulyasari. However, the case became a precedent to the future inappropriately uses of the Act on EIT against public protests and critiques. Another case which illustrated how the act was inappropriately used comes from 2018, in which the Supreme Court sentenced High School Teacher Baiq Nuril to six months of imprisonment and fine of 500 million rupiahs (US\$34,650) due to violation against distribution of records which contain inappropriate contents.²² In this case, Baiq Nuril was a victim to harassment by her superior. Yet, she was sentenced with the punishments due to her decision to record and publish her telephone call with her manager, in which she was sexually harassed verbally.

Data from SAFEnet (Southeast Asia Freedom of Expression Network) revealed that the Act on EIT has resulted in 381 people who were convicted by the law since its application in 2008 to October 31, 2018.²³ Most of the cases relating to the law are inappropriately used of the article on defamation, while the possibility of being cleared off any sentence was slim if the case was already processed by the existing legal mechanism. The data also unraveled that 35.92% of the cases were reported by public officials (including regional leaders, ministers, and members of the security forces), while reports from the wider public amounted to 32.24% of the total cases.²⁴ Thomas Power also concluded in his research on Indonesian domestic political dynamics

in 2019, the police forces often utilized the Act on EIT arrest antiJokowi activists, especially those who put forward a tagline called "#2019GantiPresiden."²⁵

Furthermore, another disheartening trend is reflected by the strengthened narrative against blasphemy after a case involving Basuki Tjahaja Purnama, also known as Ahok, (then the Governor of DKI Jakarta) in 2016. At that moment, Ahok's case triggered massive demonstrations to demand punishment against him for blasphemy against Islam. In 2017, Ahok was sentenced to two years of imprisonment by the Public Court of South Jakarta. The case has resulted in a dramatic increase in reports against blasphemy.²⁶ Amnesty International in Indonesia noted that 17 cases on blasphemy was reported after Ahok's case.²⁷ Cases pertaining to blasphemy were often followed by persecution against the suspects. Such cases of persecution are not limited to physical assaults, but often also occurred to the suspects' social media accounts and involved publications of the suspects' personal data. These phenomena reflected how the government's ability to ensure due process to protect freedom of opinion and religion was severely weakened.

In addition, for the last two years, the government, through the police forces, has massively utilized the article on acts of treason (such as Article 104 of the Penal Code), especially against those who are deemed to be in opposition of the government. Eggy Sudjana, a supporter of Prabowo, is currently going through legal proceedings against his past oration on "people power" as a response to the result of a quick count in the 2019 Presidential Election. Not only the opposition side of the electoral dynamics, university students from Papua also met similar situation after hoisting the Morning Star flag during a protest in front of the National Palace in Jakarta on

22 <https://www.cnnindonesia.com/nasional/20181114133306-12-346485/kronologi-kasus-baiq-nuril-bermula-dari-percakapan-telepon>. Accessed on February 4, 2020.

23 <https://nasional.okezone.com/read/2018/11/22/337/1981485/deretan-korban-uu-ite-dari-artis-hingga-guru-honorer>. Accessed on January 4, 2020.

24 <https://tirto.id/jerat-uu-ite-banyak-dipakai-oleh-pejabat-negara-c7sk>. Accessed on January 4, 2020.

25 Thomas P. Power, "Jokowi's Authoritarian Turn and Indonesia's Democratic Decline", *Bulletin of Indonesian Economic Studies* 54, no. 3 (2 September 2018): 307–38.

26 <https://safenet.or.id/2017/05/safenet-ahok-effect-persecution-undermines-freedom-of-expression/>. Accessed on January 4, 2020.

27 <https://www.idntimes.com/news/indonesia/vanny-rahman/ahok-hingga-meliana-ini-daftar-17-orang-yang-divonis-menista-agama>. Accessed on January 4, 2020.

August 28, 2019.²⁸

Furthermore, Act No. 16/2017 on Civil Society Organizations has often been utilized to limit citizens' freedom of association. The law has allowed the government to shut down organizations which are deemed to be threats to Pancasila as the state ideology. The Indonesian government, on July 19, 2017, officially revoked Hizbut Tahrir Indonesia's (HTI) status as a legal entity. The decision was understood as a positive precedent for pluralist groups. However, conservative Islamists viewed the decision as a form of oppression against the Muslim community. In addition, Marcus Mietzner argued that the Jokowi administration's choice to fight such antidemocratic movement (such as HTI) was essentially an oxymoron; as such decision was also antidemocratic in nature.²⁹

The Polarization of National Politics

Hadiz (2017) described Indonesia's current political dynamics as a domain divided into two big opposing coalitions: the nationalist and the Islamist.³⁰ Such divide stemmed from the competition between Jokowi and Prabowo in the 2014 Presidential Election. Jokowi's supporters were identified as nationalists, supported by the Indonesian Democratic Party of Struggle (*Partai Demokrasi Indonesia Perjuangan*, abbreviated as PDI-P); meanwhile, Prabowo was perceived to represent the Islamist coalition who supported conservative narratives. In the election, Jokowi and his coalition won who supported populist narratives. In his first five-year administration, political polarization persisted, as the government released numerous programs and policies which were perceived to counter pro-Islamic movements. Among those policies was the decision to dissolve HTI. In the 2019 election, national political constellation did not have much change as Jokowi and Prabowo

competed again. Political polarization between pro-Islamists and nationalists were enhanced. Such condition did not only occur among the elites but also became a common phenomenon in the grassroots level. Political polarization had led to enhanced horizontal divides, based on their choices for the elected president, even among families and friends.³¹

Murat Somer and Jennifer McCoy (2018) argued that political polarization between opposing political coalitions, which occurs asymmetrically as one bloc gains more power compared to the other, can possibly erode democratic values, especially those which support civil liberties.³² In Indonesia, the ongoing political polarization, which occurred since 2014, was a combination of the interests of national elites competing for electoral prowess and the vested religious sentiments within the society. Such polarization becomes a factor to the decline of civil liberties in Indonesia. In addition, another challenge to democracy is posed by political elites who are engaged in aggressive discourses and measures to delegitimize their rivals. Political elites often contribute more to polarization, rather than differences in policies which both blocs offer to constituents. This phenomenon has occurred for the last ten years in Indonesia.

Somer and McCoy (2018) also wrote that polarization would often be followed by attacks against the media by the ruling elites.³³ Such phenomenon lessened public trust upon the media and reliable information, as well as increasing acceptance towards limitations for freedom of speech against critics and journalist by the ruling elites' supporters. For instance, a cover which depicted Jokowi as Pinocchio by Tempo Magazine in 2019 reflected such trend. The cover was a critique against Jokowi who was seen to be contributing to policies which

28 <https://megapolitan.kompas.com/read/2019/09/20/08454981/kasus-makar-yang-ditangani-polda-metro-jaya-dari-eggi-sudjana-hingga?page=all>. Accessed on January 4, 2020.

29 Marcus Mietzner, "Fighting Illiberalism with Illiberalism: Islamist Populism and Democratic Deconsolidation in Indonesia", *Pacific Affairs* 91, no. 2 (June 2018): 261–82.

30 Hadiz, Vedi. R. 2017. "Indonesia's Year of Democratic Setbacks: Towards a New Phase of Deepening Illiberalism?" *Bulletin of Indonesian Economic Studies* 53 (3): 269

31 <https://news.detik.com/abc-australia/d-4432584/perdebatan-pilihan-politik-di-indonesia-picu-perpecahan-dalam-keluarga>. Accessed on January 5, 2020.

32 Murat Somer and Jennifer McCoy, "Toward a Theory of Pernicious Polarization and How It Harms Democracies: Comparative Evidence and Possible Remedies", *ANNALS, AAPSS*, 68, (January 2018): 257.

33 *Ibid*, 258.

weaken the position of *Komisi Pemberantasan Korupsi* or the Corruption Eradication Commission (KPK) and numerous controversial bills (such as the Draft of the Penal Code). Tempo Magazine's publication had led to systematic digital attacks arranged by the supporters of the ruling elites, such as those by buzzers. Such attacks damaged ratings for Tempo Magazine's digital application on PlayStore and AppleStore.

Furthermore, the increasingly prominent political polarization has constructed a shared perception among certain groups within the society toward the opposing groups and how their policies were threatening the nation-state. Such perception of threat resulted in counter-democratic measures by the government and their supporters (McCoy, Rahman, & Somer 2018; Svolik 2018). This was evident from the government's decision to dissolve HTI and a series of persecutions against communities who were deemed to be pro-communist. HTI and communists have been perceived as the main challenges to the nation-state, which caused anti-democratic measures from the government.

The Weakening Trust on the Roles of Civil Society Organizations (CSOs)

In the beginning of *Reformasi*, CSOs were perceived as the guards of democracy against attacks from elites who ruled during the New Order Era. Moreover, in protests and critiques against the ruling regime, CSOs often conducted collective advocacy to support civilians who faced social challenges.

Yet, public trust on CSOs or *Lembaga Swadaya Masyarakat* (LSM) in Indonesia is seen to be declining. A report by Edelman Trust Barometer in 2018 showed that trust on Indonesian CSOs had declined over the years. In 2014, the level of trust reached 73%, which downed 64% in the following year. Then, in 2016, the level of trust achieved a lower score of 57%. Although the level of trust rebound to 64% in 2017, the score was much lower than that of the private sector, media, and the government.

Such condition occurred as CSOs were increasingly

perceived as fund recipients of foreign capitals. Such narratives slowly gained traction among the wider public, which caused CSOs to be regarded as "foreign agents." This was supported by a statement by Mochammad Romahurmuziy, the Head of Commission IV in the House of Representatives of Indonesia in 2013, who inferred that programmes by CSOs came from the fund donors abroad.³⁴ In addition, critiques and protests by these organizations are perceived as anti-government and anti-development. Furthermore, activists supporting workers' rights are often identified as communists.

Additionally, the 2017 Act on Civil Society Organizations has posed great challenges for the development of civil movements. The law has limited freedom of association by only allowing organizational permits to those which are legally defined as CSOs. Such requirement does not reflect civil movements within the grassroots level, which are more fluid and unstructured. The law also allows the General Directorate of National and Political Unity to gain control over these organizations. Thus, the state has gained authority over the existence of CSOs. In the end, attempts to limit freedom of assembly and association have eradicated the people's ability to conduct check and balance to ensure a democratic government.

Civil Liberties in Indonesia in the Past Decade

The Habibie Center research team has found that several groups of citizens are vulnerable to violations against civil liberties, such as minority groups, pro-democracy activists, journalists, opposition groups, and university students. The team also found that actors who often commit these violations are security forces, civil organizations, thugs, and buzzers.

Violations against civil liberties in Indonesia, within the past decade, have come in many forms. *First*, excessive attempts of censorship. Such attempts are often conducted against groups who are in opposition of the ruling regime. In addition, massive

³⁴ <https://www.wartaekonomi.co.id/read16960/di-balik-lsm-penerima-bantuan-asing>. Accessed on January 4, 2020.

attempts at blocking access to social media occurred in May 2019 as mass protests to reject the result of presidential election took place and led to a riot. In addition, obligation to censor communist symbols during television broadcast is still in place. These instances have spurred fear over the strengthening power of censorship regime as witnessed during the New Order Era.

Second, intimidating and coercive measures against pro-democracy and anti-corruption activists. These measures are often taken by security forces and those claiming to be civil organizations. This is exemplified by the murder of an anti-corruption activist in Madura in 2015 by an unidentified shooter. This case has yet to be resolved up until now.³⁵ The police stated that the case was still undergoing investigation. Another murder case occurred on September 26, 2019, which led to the deaths of two students from Halu Oleo University during a demonstration against the weakening capability of the KPK and the Draft of the Penal Code. The deaths of the two students resulted from the violence caused by the police forces.³⁶

Third, violence against journalists. *Aliansi Jurnalis Indonesia* (AJI) or Alliance of Indonesian Journalists revealed that 2019 was the worst period of freedom of press in the past five years.³⁷ The Index of Freedom of Press noted that a series of political phenomena in 2019 (such as the presidential election) resulted in multiple threats against journalists' activities in Indonesia. In the past five years (2014-2019), a report from Reporters Without Borders stated that victims from violence against journalists amounted to 81 victims.³⁸ In 2019, reports on violence against media workers in Jakarta reached an astounding number of 15 cases, nine of which were perpetrated by the police. Journalists are not only vulnerable during their duties, but also while they serve in prison. This was evident by the death of Muhammad Yusuf, a

reporter who was arrested in South Kalimantan Province due to defamation against a local palm oil company.³⁹

Fourth, the excessive use of legal measures against opposition and minority groups. Such condition resulted in the narrowing down of space for critiques against the ruling authority as well as the dominant and majority groups, which could result in arrests and imprisonment. This tendency is prominent after an arrest against Robertus Robet, a lecturer from Universitas Negeri Jakarta, who was arrested by the National Police's Criminal Investigation Agency in March 2019.⁴⁰ Robert was arrested because he sang a commemorative song from student activists in 1998 as a slander to Indonesian military forces. Furthermore, opposition groups who stand against the government often face arrests after voicing out their criticism and protests during demonstrations or through social media activities.

In addition, minority groups often face legal charges after voicing out their views or concerns on social problems. One of such cases is the case of a blasphemy against Islam toward Meliana in July 2016. Meliana was sentenced to 18 months of imprisonment due to a violation that fits Article 156 of the Penal Code after she had requested a mosque near her house to lower the volume of its loud speaker.⁴¹ This case also resulted in a massive riot in Tanjung Balai, North Sumatera. The riot led to damages in 10 non-Islamic worship places, such as monasteries and temples. The police later reported 21 suspects who were accused of being involved in the riot.⁴²

Fifth, cyber attacks. In the past five years, cyber attacks have become a common instrument in the violation against civil liberties. Social media platforms have become more frequently used to deliver views,

35 <https://maduraindepth.com/5-tahun-kasus-penembakan-mathur-husairi-tak-tuntas-polisi-terima-kasih-sudah-mengingatkan>. Accessed on January 2, 2020.

36 <https://www.bbc.com/indonesia/indonesia-50204352>. Accessed on January 2, 2020.

37 <https://www.asumsi.co/post/kekerasan-terhadap-jurnalis-serangan-fisik-sampai-intimidasi-daring>. Accessed on January 2, 2020.

38 <https://rsf.org/en/indonesia>

39 <https://rsf.org/en/news/indonesia-urged-investigate-reporters-death-detention>. Accessed on January 3, 2020.

40 <https://nasional.kompas.com/read/2019/03/07/06120091/dosen-unj-robertus-robet-ditangkap-polisi-karena-diduga-langgar-uu-ite>. Accessed on January 3, 2020.

41 <https://news.detik.com/berita/d-4501140/jejak-meliana-dihukum-ma-18-bulan-penjara-karena-kritik-volume-azan>. Accessed on January 3, 2020.

42 <https://tirto.id/7-tersangka-kerusakan-tanjungbalai-berstatus-di-bawah-umur-bx3r>. Accessed on February 4, 2020.

critiques, and protests towards the occurring social dynamics in Indonesia. Yet, social media users in Indonesia are often personally and massively persecuted through systematic measures. The development of social media in Indonesia has led to the emergence of new actors, such as buzzers, who potentially play pivotal roles in producing narratives. These actors can also potentially commit the attacks toward social media users who are considered to have different political stances. The research team of The Habibie Center concluded that these attacks commonly come in the form of social media hacking, publication of private data or doxing, and spreading lies to social media general users.

This tendency was exemplified by a case involving a tweet by a Twitter user named Zulfikar, in which he stated his disapproval of Abdul Somad's preach in his Twitter account in 2017.⁴³ The tweet was perceived as a slander against the Islamic cleric. Intimidations were expressed through Twitter by popularizing a hashtag #BoikotTopskor, led by the Muslim Cyber Army, who were affiliated to the 212 Movement. The hashtag reached the top spot of the national trending topic list. Not long after, Zulfikar was suspended from his workplace, Topskor Newspaper.

2.2. Malaysia: The Bright Spot in Asia?

The past decade has shown political changes in Malaysia, which resulted in changes in civil liberties. Such change had its peak during Malaysia's power transition after the 2018 election, in which the Barisan Nasional coalition, for the first time in Malaysian history, failed to achieve the majority voice in the Parliament. The peaceful power transition indicated that the wider public has accepted the changing nature of Malaysian politics.

Numerous indexes by multiple independent research institutions have captured the positive changes currently occurring in Malaysia. *Democracy Index 2015*, a report released by the EIU, placed Malaysia in the 68th position, scoring 6.43 in the overall

score. From then on, as the political transition led to further changes, Malaysia has fared better in the index. In the 2018 report, Malaysia was highlighted as a "bright spot" for democracy in Asia. The report by the EIU also mentioned that Malaysia was one of the most important examples of democracy practice which highlighted how political participation from the public can be increased.

A report from Freedom House, titled *Freedom in the World*, similarly pointed out the trend above. In the 2017 report, Malaysia scored 44. At that time, Barisan Nasional coalition attempted to protect their power by taking advantage of various unfair measures, such as manipulating district-level elections, utilizing ethnocentric-nationalist narratives, pressuring the opposition by limiting freedom of speech, and criminalizing the opposing leaders. Freedom of speech was guaranteed by the constitution, although, in practice, it was greatly limited. As pressures from the opposition intensified, Malaysia scored slightly better in 2018 by scoring 45. Then, after the victory of the Pakatan Harapan coalition in the 2018 election, along with their promises to bring positive changes, Malaysia was able to score 52 in the 2019 report of *Freedom in the World*.

In comparison to Thailand and Indonesia, which this report also attempts to highlight, civil liberties in Malaysia have experienced a positive trend. Such positive progress also underlines how Malaysia stands out among other Southeast Asian states, as the concurrent changes points to Malaysia's success in democratization. However, Malaysia is still facing several problems and challenges during its occurring political reform. The previously presented indexes cannot capture the existing problems within the grassroots level. Therefore, this report attempts to explain the phenomenon in details. This section is divided into five subsections: (1) Regulatory Factors; (2) Political Changes in Malaysia; (3) Civil Liberties in Malaysia Prior to the 2018 Election; and (4) Civil Liberties Post 2018 Election.

⁴³ <https://www.bbc.com/indonesia/indonesia-42496443>. Accessed on February 4, 2020.

Regulatory Factors

Civil liberties in Malaysia are fundamentally guaranteed, as stated in *Perlembagaan Malaysia* (Malaysian Federal Constitution), although it is still very limited in practice. The constitution, among others, contained regulations on “*kebebasan diri*” or personal freedom, prohibition of slavery and forced labor; equality; freedom of movement and prohibition on exile; freedom of speech, assembly, and organization; freedom of religion; rights of education; and rights of ownership. The regulations are in line with the principles stated in the Universal Declaration of Human Rights. However, Malaysia’s uniquely diverse cultural background—consisted of a multitude of ethnicities with different cultures, religions, and languages—presented its own challenges to the dynamics of human rights in the country. Furthermore, regulatory frameworks in Malaysia allow for restrictions of movement as justified by security and safety needs.

Since 2007, Malaysian government have gradually eradicated regulations deemed to restrict civil liberties, such as the 1960 Internal Security Act (*Akta Keselamatan Dalam Negeri*), the 1933 Restricted Residence Act (*Akta kediaman Terhad*), the 1969 Emergency Public Order and Crime Prevention Ordinance (*Ordinan Darurat Ketenteraman Awam dan Pencegahan Jenayah*), and the 1959 Banishment Act (*Akta Buang Negeri*). These regulations are changed into the 2012 Security Offences (Special Measures) Act (*Akta Keselamatan (Langkah-langkah Khas)*) and the 2015 Prevention of Terrorism Act (*Akta Pencegahan Keganasan*). Furthermore, in 2015, an amendment was conducted on the 1959 Prevention of Crime Act (*Akta Pencegahan Jenayah*) or POCA, which encapsulated regulations on terrorism. POCA, previously implemented in the Peninsula area, is also currently enforced in Sabah and Sarawak states.

In addition, universities also gained more autonomy as changes have occurred with respect to academic freedom. The 1917 University and College Act (*Akta Universiti dan Kolej Universiti*), which will be discussed

in the next section, was changed by the government in 2018 to provide greater freedom for students to be involved in political activities. Universities are also allowed and more open to scrutinize activities involving political figures, even those coming from the opposition groups. Institutions supporting democratic mechanisms are also strengthened through several agenda ran by the parliament. More stakeholders are involved throughout the decision-making process of regulations.

Malaysian Parliament has also sealed the 2010 Act of Private Data Protection (*Akta Perlindungan Data Peribadi* or *Akta 709*) with the purpose of protecting personal data in commercial transactions. The act stemmed from attempts to utilize and misuse personal data by commercial entities without authorization from the data owners, potentially harming their rights over privacy.

Political Changes in Malaysia

The election in May 2018 served as a climax to the concurrent political changes in Malaysia. Pakatan Harapan, a coalition formed in 2015 as a successor to Pakatan Rakyat, succeeded in gaining the majority votes, resulting in Barisan Nasional’s six-decade domination to come to an end. Pakatan Harapan’s victory during the election was a culmination of demands for change which had emerged for a decade. In November 2007, a peaceful protest was held in Kuala Lumpur by the Coalition for Fair and Just General Election (*Gabungan Pilihanraya Bersih dan Adil*). Tens of thousands of civilians gathered in Dataran Merdeka to protest the ruling administration who was accused of having committed fraud during the election. A memorandum, delivered to Yang di-Pertuan Agong, contained four demands: (1) clearance of the list of voters; (2) use of good quality ink; (3) eradicating absentee ballot via postal vote for military and police personnel; and (4) free, just, and universal access to mass media. *Aksi Bersih 2007* (the 2007 Free Act) allowed for opposition parties to gain momentum in the 12th election in 2008 (*Pilihan Raya Umum ke-12/PRU12*) in which Barisan Nasional, for the first time, failed to secure two thirds seats as the majority in the parliament. Barisan Nasional

gained 140 seats, while the opposition parties were able to secure 82, a record which was considered as historical. In addition, the opposition gained victory in five states: Kedah, Kelantan, Pulau Pinang, Perak, and Selangor.

The changing current of the political dynamics continued until the 13th General Election in 2013. Although Barisan Nasional was still able to secure majority of the seats in the parliament (133 seats), it lost the popular vote (47.4% of total vote). On the other hand, the opposing coalition was able to occupy 50.9% of the votes.

The deteriorating level of trust upon the government, which resulted in Barisan Nasional's loss, was caused, among other factors, by the *1Malaysia Development Berhad* (1MDB) scandal. The scandal was revealed in 2015, which had caused a total of US\$ 4.5 billion financial damage to Malaysia. Prime Minister Mohammad Najib bin Tun Haji Abdul Razak allegedly embezzled a proportion of the 1MDB fund to his personal account, which amounted to US\$ 731 million, partly used for his political interests approaching the 2013 election. In addition, portions of the fund were transferred to bank accounts owned by Rosmah Mansor, Najib's wife, and Jho Low, Najib's trusted man to take control over the fund.

Allegations over Najib's involvement in the 1MDB scandal put the scandal under great public scrutiny. As he received intensified pressure from the public, Najib took multiple controversial measures to protect his power. Several public officials who delivered harsh critiques against Najib, such as the Vice Prime Minister Muhyiddin Yassin and the Minister of Rural and Regional Development Shafie Apdal, were removed from their respective positions. Abdul Gani Patail, the General Attorney who headed the investigation team, was also replaced. Najib's decisions, taken to sustain his ruling position, backfired as the wider public increased their demands for changes in Malaysia.

Finally, the 2018 General Election resulted in the historical victory of the Pakatan Harapan alliance, which succeeded to topple down Barisan Nasional's

incumbent power. Numerous political developments within the last decade, especially with regards to 1MDB, have contributed in enhancing civil liberties in Malaysia.

Civil Liberties in Malaysia Prior to the 2018 Election

• Restrictions on Freedom of Speech

As previously stated, civil liberties are fundamentally guaranteed by the constitution, despite many limitations in its practice. Before the 2018 political change in Malaysia, there were numerous cases of restrictions on freedom of speech. In these cases, the government made use of legal instruments to limit freedom of association, assembly, and speech against numerous civil society elements who were regarded as threats against the ruling power. The 1948 Sedition Act (*Akta Hasutan*) became a prominent legal instrument in the last ten years to prosecute activists, experts on politics, and non-governmental organizations that raised their voices against attempts to curb down freedom of speech.

In 2014, Prof. Madya Azmi Sharom, an academician from Universiti Malaya, was arrested under the 1948 Sedition Act after his critical commentary in an article on *Malay Mail Online*. In the article, titled "Take Perak Crisis Route for Speedy End to Selangor Impasse, Pakatan Told," Azmi gave his take on the political crisis which occurred in Selangor.⁴⁴ He argued that United Malays National Organisation's (UMNO) success to topple Pakatan Rakyat's governance in Perak, back in 2009, exemplified how the crisis in Selangor could have been solved. Prof. Sharom was cleared of all charges upon the decision of the Supreme Court (*Peguam Negara*) in 2016. In 2018, a clerk named Wan Ji Wan Hussin, was sentenced to nine months in jail under the Sedition Act, after he was indicted of defamation against the Sultan of Selangor in 2012. The High Court of Shah Alam, then, added another

44 Zurairi AR, "Take Perak Crisis Route for Speedy End to Selangor Impasse, Pakatan Told," *Malay Mail*, August 14, 2014, <https://www.malaymail.com/news/malaysia/2014/08/14/take-perak-crisis-route-for-speedy-end-to-selangor-impasse-pakatan-told/726255>.

three months to his sentence.⁴⁵ The Sedition Act was also utilized in 2009 to convict Karpal Singh, a member of the parliament, after his critiques against the Sultan of Perak's decision to inaugurate Zambry Abdul Kadir as a *Menteri Besar* (state-level head of government).

In another case, Zunar, a cartoonist, was sentenced under the Sedition Act in 2015. A comic written by Zunar was banned under the 1984 Printing Presses and Publications Act (*Akta Mesin Cetak dan Penerbitan*). In 2015, Zunar was also arrested after criticizing the court for handing sentence for Anwar Ibrahim.⁴⁶ Zunar has also been banned from travelling abroad since 2016. Other activists who have also received similar repressive measures from the government include Fahmi Reza. In 2016, Reza was sentenced to jail and fine under the 1998 Communications and Multimedia Act (*Akta Komunikasi dan Multimedia*) after he published a caricature which depicted Prime Minister Najib as a clown.

• Restrictions on Freedom of Press and Reporting

Restricting freedom of press was also a common practice to curb civil liberties in Malaysia. In December 2013, the Ministry of Home Affairs suspended publishing permit for *The Heat*, a weekly newspaper, after it reported PM Najib's extravagant spending.⁴⁷ In March 2015, the government also arrested the managers of *The Malaysian Insider*, a digital news portal, under the Sedition Act and the Communication and Multimedia Act.⁴⁸ Furthermore, in July 2015, the Ministry of Home Affairs also suspended *The Edge Weekly* and *The Edge Financial Weekly's* publishing permits after both newspapers

45 G. Prakash, "Muslim Preacher Wan Ji Bound for Prison as Judge Rejects Sedition Appeal, Ups Sentence," Malay Mail, July 9, 2019, <https://www.malaymail.com/news/malaysia/2019/07/09/muslim-preacher-wan-ji-bound-for-prison-as-judge-rejects-sedition-appeal-up/1769655>.

46 "Malaysian Cartoonist Zunar Arrested for Criticising Anwar Ibrahim Ruling," The Guardian, February 11, 2015, <https://www.theguardian.com/world/2015/feb/11/malaysian-cartoonist-zunar-arrested-for-criticising-anwar-ibrahim-ruling>.

47 Mei Mei Chu, "Home Ministry Suspends Weekly Newspaper The Heat Following Controversial Najib Report," Says, December 20, 2013, <https://says.com/my/news/home-ministry-suspends-the-heat-weekly-publication-indefinitely>.

48 Hariz Mohd, "MCMC Blocks The Malaysian Insider," New Strait Times, February 25, 2016, <https://www.nst.com.my/news/2016/02/129582/mcmc-blocks-malaysian-insider>.

published a report on the 1MDB case. Around that time, the government also blocked access to *Sarawak Report's* website due to its report on the 1MDB case.⁴⁹

Further, the government of Kelantan State, which was ruled by the Malaysian Islamic Party (PAS) coalition, issued a boycott campaign against *Utusan Malaysia* after the newspaper published a caricature which was considered to be offensive towards the Muslim community. Previously, in 2011, Malaysian Chinese Association (MCA) Party also issued a similar boycott towards *Utusan Malaysia*, as the newspaper was accused of using racial sentiments in its publications.

Similarly, in 2016, the Malaysian government ordered the Malaysian Commission of Communication and Multimedia (*Suruhanjaya Komunikasi dan Multimedia Malaysia*) to block access to *The Malaysian Insider* after the accusation of publishing false contents. In March 2016, *The Malaysian Insider* decided to halt its operations, after multiple corporations affiliated with the government which had previously booked spots for advertising in the media platform, pulled their advertisements. This brought a blow to *The Malaysian Insider's* main source of income.

Such attempts to curb down freedom of speech were also evident in measures against foreign journalists. In June 2015, Mary Ann Jolley, a journalist from *Al Jazeera*, was deported from Malaysia after conducting an investigation on the murder case of Altantuya Shaariibuu, a Mongolian woman who was allegedly affiliated to Malaysian elites.⁵⁰ In March 2016, two journalists working for *Australian Broadcasting Corporation* (ABC) were arrested after attempting to interview PM Najib who was still under suspicion of corruption. Both journalists were freed from charges and demanded to leave Malaysia.

Pressures towards the media did not only come from the government and its security forces, but also from

49 Beh Lih Yi in, "Sarawak Report Whistleblowing Website Blocked by Malaysia after PM Allegations," The Guardian, July 20, 2015, <https://www.theguardian.com/world/2015/jul/20/sarawak-report-whistleblowing-website-blocked-by-malaysia-over-pm-allegations>.

50 "Journalist Deported after Al Jazeera Docu on Altantuya," The Edge Markets, September 11, 2015, <https://www.theedgemarkets.com/article/journalist-deported-after-al-jazeera-docu-altantuya>.

multiple civil organizations which were politically affiliated with the ruling power. In February 2012, a group of members of UMNO and Perkasa, a right-wing Malay organization, attacked and caused physical damages to demonstrators and journalists during a protest against Lynas, an Australian mining company operating in Kuantan, Padang Kota Lama, Pinang Island, Malaysia. Two journalists working for a Mandarin daily newspaper, *Kwong Wah Yit Poh*, was wounded. Some reports mentioned that Perkasa members had also hurled racial slurs at demonstrators. In May 2013, two journalists from *Nanyang Siang Pau* and *Malaysiakini* became victims of a violent attack while reporting a candlelight action conducted by students of Universiti Sains Malaysia (USM) who demanded the release of Adam Adli Abdul Hamid, a student activist who had been arrested for defamation.

• Restrictions on Student Activism

Aside from the Sedition Act, the 1971 University and College Act (*Akta Universiti dan Kolej Universiti/AUKU 1971*) was often used to repress movements from the opposition. As the act allowed for considerable space for discretion, several universities applied disciplinary rules against students' activities.⁵¹ Before its amendment in 2018, AUKU 1971 prohibited the students from holding or involving themselves in political activities within the campus and joining or putting out statements which were deemed to support individuals or groups who were in opposition to the university's interests. In 2014, six students of Universiti Malaya were charged with suspension and fine after attempting to organize an activity by inviting Anwar Ibrahim.⁵² In 2016, four students from the same university received warnings and fined after their involvement in a peaceful protest against the 1MDB scandal.⁵³

51 "Malaysia: Stop Punishing Students for Speech," Human Rights Watch, February 21, 2016, <https://www.hrw.org/news/2016/02/21/malaysia-stop-punishing-students-speech>.

52 Victoria Brown, "UM Suspends, Fines Student Leaders over Anwar Event," The Star Online, December 10, 2014, <https://www.thestar.com.my/news/nation/2014/12/10/um-student-leaders-suspended>.

53 Max Walden, "Malaysia: Allowing Students to Find Voice," The Interpreter, September 24, 2018, <https://www.lowyinstitute.org/the-interpreter/malaysia-allowing-students-find-voice>.

• Restrictions towards Non-Governmental Organizations

Non-Governmental Organizations (NGOs) often become victim to repressions from the government. Suara Rakyat Malaysia (Suaram), an organization dedicated to human rights, was investigated for several times based on the accusation of receiving foreign funds. In 2012-2013, Najib ordered more than six government institutions, such as the National Bank and Malaysia Anti-Corruption Commission (*Suruhanjaya Pencegahan Rasuah Malaysia/SPRM*) to investigate Suaram.⁵⁴ Aside from Suaram, several other NGOs, such as BERSIH 2.0., Merdeka Center, Islamic Renaissance Front (IRF), and Centre for Independent Journalism (CIJ), also faced a similar problem.

• Protection of Minority Rights

Malaysia also faced great challenges in minority rights protection. Violence against *Orang Asli* (indigenous people), with regards to land rights and ownership, as well as forestry activities, has long been a continuous phenomenon in Malaysia. Massive deforestation threatens *Orang Asli's* life and rights of sustaining the lifestyle they inherit from their ancestors. Corporations, including those without permit from the government, often utilized violence against *Orang Asli* when considered to disrupt the corporations' operations.

In 2016, several cases of threats and violence against *Orang Asli* by the police forces, *Jabatan Perhutanan* (the Forestry Department), and corporations were reported in Pos Simpor, Pos Kuala Bering, Pos Gop, Ps Simpup, Kampung Gawin, and Kampung Bering in Gua Musang, Kelantan. In 2017, border markers, previously installed by *Orang Asli* in Simpang Petei, Gua Musang, were destroyed by personnel from *Jabatan Perhutanan* (Office of Forestry Department) of Kelantan. Such occurrence happened along with the arrests of five activists.

54 Kua Kia Soong, "Instant Karma for Najib's Harassment of Suaram," Malaysiakini, September 29, 2015, <https://www.malaysiakini.com/news/313823>.

In 2010, 50 members of *Perkasa* protested in front of *Dewan Perhimpunan Cina Kuala Lumpur Selangor* (the Kuala Lumpur and Selangor Chinese Assembly Hall) to reject the arrival of Namawee, a singer, in the country. Namawee is a rapper of Chinese descent, whose works were controversial for the message of non-conforming to moral standards. Posters with his picture were burned in the protest.

• Violence in Horizontal Conflicts

Aside from vertical conflicts, use of threat and coercive means were also common in horizontal conflicts. Before the political change in 2018, pro-government groups, known as *Kumpulan Baju Merah* or *Gabungan NGO Gerakan Merah Malaysia*, often conducted retaliatory protests to counter campaigns by the Coalition for Clean and Fair Elections (BERSIH). The retaliatory actions were often provocative and involved physical violence. *Kumpulan Baju Merah* often intentionally planned their protests in the same location and time period with the ones planned by BERSIH. In addition, the group also protested in front of *Malaysiakini's* building and conduct provocative demonstrations in Kerajaan Negeri Selangor's government complex, which were occupied by the opposition at that time.

• Violence against Women

Malaysia faced major obstacles to achieve gender equality. The Malaysian Government was adamant on resisting several articles from the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), including those pertaining to rights in marriage and custody. Instead of reforming its development paradigm to be more accommodative for women's needs, Malaysia's approach to development still positions women on the sideline.⁵⁵ Although significant improvements have been made in the past decades in terms of female labour, most women still work as "unskilled labour" and "semi-skilled labour."⁵⁶ In the *Global Gender Gap Index 2020*,

released by World Economic Forum, Malaysia was ranked 104th out of 153 countries, positioned as the second worst of ASEAN member states on the issue.

Women are also still vulnerable to violence. In 2015, a journalist from BFM, Aisyah Tajudin, received threats of sexual harassment and murder after she published a video in which she inquired whether the application of the *hudud* law in Kelantan would be able to solve economic problems in the state.

In Malaysia, women's roles in multiple sectors were still restricted by several discriminative regulations. The Employment Act (*Akta Kerja*), even after being revised, still contained multiple problematic articles, including the absence of an independent institution to facilitate complaints from labours and obligation for corporates to provide compensations for victims of sexual violence in the workplace.⁵⁷ In 2017, several workers working in the hospitality industry delivered their complaint to *Majlis Rangkaian Kesatuan Sekerja Antarabangsa Malaysia* (Uni-MLC/Uni Malaysia Labour Centre) on restrictions to wear headscarf in numerous hotels.

Civil Liberties Post 2018 Election

Waves of protests, demanding changes and reformation, allowed for a breath of change within Malaysia's political landscape, as the Pakatan Harapan coalition succeeded to beat Barisan Nasional in the 2018 Election. Once assuming power, Pakatan Harapan took several measures to fulfill its promises for political changes. In addition, the government took measures to improve space for civil liberties, further improving public perception on democracy and civil liberties in Malaysia.

Pakatan Harapan's 464-initiative manifesto included, among others, demands for the abolition of the 1948 Sedition Act, freedom of press, eradicating Prime Minister's power, and enhancing bureaucratic boundaries between the executive branch and the judiciary branch.⁵⁸ In May 2019, the government

55 Beng Hui Tan and Cecilia Ng, "Filling in the Gaps: The Pursuit of Gender Equality in Malaysia," in *Routledge Handbook of Contemporary Malaysia*, ed. Meredith L. Weiss (New York: Routledge, 2015), 348.

56 Refer to Tan and Ng, "Filling in the Gaps: The Pursuit of Gender

Equality in Malaysia."

57 Tan and Ng, 353.

58 "Civil Liberties in Malaysia: Spare Change," *The Economist*, July

claimed that 40% of the initiatives in the Manifesto were completed. Soon after the election was concluded, Prime Minister Mahathir Mohammad appointed a new attorney general, Tommy Thomas, to replace Mohamed Amandi who had freed Najib Razak of all charges in 2016. Thomas became the first non-Malay and non-Muslim figure to be appointed as an attorney general. Aside from Thomas, Mahathir also appointed another new attorney general, Datuk Tengku Maimun Tuan Mat, who became the first female selected for the position. Thomas and Tengku Maimun's appointments represented the government's gesture to be more open to diversity and gender equality.

Malaysia has also achieved considerable changes to its regulatory frameworks. In October 2019, the Parliament decided to abolish the Anti-Fake News Act (*Akta Antiberita Tidak Benar*). The voting to eradicate the act had previously been done in 2018, resulting in the same decision. However, the decision was blocked by the Senate, which was then still dominated by Barisan Nasional. The second vote was able to pull through as the Malaysian constitution ruled out the possibility for the Senate to reject the same voting result from the Parliament for the second time. In December 2018, the Parliament agreed upon amending AUKU 1971, the 1996 Private Higher Education Institution Act (*Akta Institusi Pendidikan Tinggi Swasta*), and the 1975 Educational Institutions (Discipline) Act (*Akta Institusi-Institusi Pelajaran (Tatatertib)*). The amendment allowed for more space for student's involvement in political activities within their campuses. In addition, all forms of disciplinary penalty were nullified after the amendment was passed. The government also stated its commitment to fully repeal AUKU 1971 in 2020.

The Pakatan Harapan-led government also met their promises to pass an amendment on an act on voting age, which succeeded to lower voting age from 21 to 18. No less than 7.8 million new voters will be included in the next election after the amendment was passed. The amendment was expected to

improve political activism among Malaysian youth. Likewise, the emergence of a new group of voters, with its significant amount, was envisioned to push the government to consider the interests of the youth throughout decision-making process.

Notwithstanding all the achievements above, the Malaysian government still faces many fundamental obstacles in order to fully realize its desire for political changes. It is worth noting that the post-2018 election government is not the first one to voice out their commitment for reform and changes. In 2003, as he replaced Mahathir Mohamad's position as the Prime Minister, Abdullah Badawi repeatedly stated his commitment to promote human rights and democracy. A similar commitment was also made by Najib Razak who replaced Badawi in 2009. Amidst pressure for reform and the declining public support for Barisan Nasional, Najib instead paid lip service to the demand to lessen public pressure against the government. However, both Prime Ministers failed to bring about substantial change to ensure civil liberties in Malaysia.

Considering its historical precedence and contemporary socio-political situation, Malaysia is still walking on a long, hard path toward a complete reform, especially with regards to civil liberties. Cheah Book Kheng, in one of his works on human rights history in Malaysia, described the development of human rights and civil liberties in Malaysia as a path in which it "takes a step forward, two steps backward."⁵⁹ Liu argued that the existing condition was caused by the government's resistance to fully accept the principles of universality and individuality as two important aspects of human rights.⁶⁰ Similar to other Asian countries, discourses on human rights in Malaysia were often linked to narratives on "political stability," "national security," and "economic development." Universality in human rights, which

59 See Cheah Boon Kheng, "From End of Slavery to the ISA: Human Rights History in Malaysia," in *Reinventing Malaysia: Reflections on Its Past and Future*, ed. Jomo Kwame Sundaram (Bangi: UKM Press, 2001).

60 See John Liu, "Civil Liberties in Contemporary Malaysia: Progress, Retrogression and the Resurgence of 'Asian Values,'" in *Routledge Handbook of Contemporary Malaysia*, ed. Weiss, Meredith L., Routledge Handbooks (New York: Routledge, 2015), 290–301.

20, 2019.

emphasizes individuality, is often regarded as not suitable to Asia's unique trait, which rests upon collectivity and community.⁶¹ Therefore, privacy right has not been recognized under Malaysia's judicial system.

Long before the 2018 election, collective approach to human rights and civil liberties was used by the ruling regime to maintain their dominance. Malaysian Federal Constitution places individual right as a subordinate to concerns on social stability, security, and public order, enabling spaces for the government to restrict fundamental rights over such concerns. The chances for any significant change on this approach, which is deeply embedded within the government, are slim.

Further, the government has yet to show any desire to change some other acts which have been utilized to restrict civil liberties, especially the Sedition Act. This can be seen in several cases built upon such acts. In September 2019, an activist named Khalid Ismath was arrested due to his tweet to Permaisuri Agung, which was alleged as an act of sedition. Previously in March 2019, the owner of a Facebook account called "Ayea Yea" had been sentenced to ten years and ten months in jail due to his post which was considered offensive to Islam and the Prophet Muhammad. In addition, the 1998 Communication and Multimedia Act and the 1972 Official Secrets Act (*Akta Rahsia Resmi*) have not been changed.

2.3. Thailand: Stagnation in Civil Liberties Amidst Improvement in Democracy Index

Introduction

Thailand experienced a better situation with its democracy in 2019, in comparison to the previous years. The data from the EIU's Democracy Index showed how Thailand was able to achieve a considerable improvement to its democracy, in

which they climbed up from the 106th position in 2018 to the 68th in 2019, an impressive 38-position jump. Furthermore, Thailand's achievement, among the 167 surveyed countries, was noted as one of the best improvements within the rank.⁶²

The 2019 election contributed to Thailand's incredible performance in the index. One of the greatest moments for democracy in 2019 occurred during Thailand's election in March 2019, which became their first election since the military junta assumed power in 2014. The election also signified the end of the military junta's government, replaced by a civil government as a result of the election. Seventy-seven parties took part in the election, including two major parties who had traditionally occupied leading positions, namely *Pheu Thai* Party that supported PM Yingluck Shinawatra in 2014 and Democratic Party as the opposition. The election was also enlivened by several new parties, such as *Palang Pracharath* Party, which dedicated their support for junta leaders, as well as Future Forward Party, dominated by the progressive youth led by Thanathorn Juangroongruangkit.

It is worth noting that the government formed under the 2019 election was the same government that led the previous non-democratic government. The selected prime minister was Prayuth Chan-ocha, who was a leader figure in the junta. Moreover, most of the leaders within the bureaucratic structure did not change, as shown by how the Deputy Prime Minister was also the vice leader of the junta. Therefore, no changes were made to the figures who assumed leadership before and after election. What happened was, quoting a Thai human rights activist, merely a change of "costume," from one of junta leader to that of a leader in the civilian government.⁶³

The election, which brought a procedural change towards democracy, has yet to realize any meaningful change to the fulfilment and protection of civil

61 About the debates on Asian values and human rights, see Michael Jacobsen and Ole Bruun, eds., *Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia* (London: Curzon Press, 2000); Damien Kingsbury and Leena Avonius, eds., *Human Rights in Asia: A Reassessment of the Asian Values Debate*, 1st ed (New York: Palgrave Macmillan, 2008).

62 The Economist, Intelligence Unit, *Democracy Index 2019*, A year Democratic Setback and Popular protest,

63 Interview with a Thai human rights activist, December 25, 2019.

liberties within the society, for democracy activists, the media, and NGOs, according to one human rights activist from Thailand. Several practices to repress civil liberties, such as freedom of speech, persist. Such trend was demonstrated by the arrest of one media reporter who was accused of opposing the ruling government in Southern Thailand. Several activists who demonstrated during the rule of military junta also had to undergo investigations. Another activist from Southern Thailand, who attended a demonstration in Bangkok to resist the junta, also had to undergo investigation.⁶⁴ A report from Amnesty International in 2019 mentioned that practices to repress civil liberties in Thailand included arresting activists, scholars, politicians from the opposing parties, and human rights activists, who voiced different and opposing opinions from the government and the monarch.⁶⁵

This section briefly discusses the situation of civil liberties in Thailand as a fundamental aspect of democracy. This section will be elaborated in three subsections: (1) A Brief History of Democracy in Thailand; (2) A Review of Regulatory Factors on Civil Liberties in Thailand; (3) Regulations to the Activities of Civil Society Organizations (CSOs) and Non-Governmental Organization (NGOs); and (4) A Review on Civil Liberties During and After the Ruling of Military Junta.

A Brief History of Democracy in Thailand

The current dynamics of democracy in Thailand is connected to its long history of democracy. Thailand's long struggle for democracy started in 1932 with the Siamese Revolution. A small group of military leaders conducted a coup and overthrown the ruling king who ruled under an absolute monarchy system. The aftermath of the revolution became the starting point of constitutional monarch in Thailand, replacing its previous absolutist ruling. The revolution also marked as the starting point of Thailand's road to

becoming a modern democratic state. Thereafter, Thailand experienced many political dynamics and reforms, as depicted by Thailand's frequent attempt to change its constitution. Thailand has changed its constitution 16 times from the revolution in 1932 to 2002.⁶⁶

Thailand's practicing democracy as a modern state, up until now, has experienced many changes on who occupied the ruling position, which were both results from the election and the ruling of the junta. Such trend describes how Thailand's path towards a democratic constitutional monarch has met many obstacles and fluctuations. The democratically formed governments have always been disrupted by the military that form their own government through military coup. Since 1947 Thai government has been dominated by military leaders and alternately few democratic civilian rulings.⁶⁷ Military coup has been a frequent occurrence in Thailand, which also serves as a unique characteristic to Thailand's path towards democracy. Since the Siamese Revolution in 1932, Thailand has experienced approximately 11 military coups.

The last military coup was led by General Prayuth Chan-ocha against Prime Minister Yingluck Shinawatra on May 22, 2014. Shinawatra was elected in 2011 and 2014, representing *Pheu Thai* Party. Throughout his administration, many demonstrations occurred to resist his leadership. These demonstrations were led by former Deputy Prime Minister of the previous ruling government, Shutep Thaugsuban of Democratic Party, who opposed Shinawatra's administration. At that time, waves of demonstration, both to oppose and support Shinawatra, occurred for months. In response to these demonstrations, in February 2014, PM Shinawatra decided to hold an early election, which resulted in her second victory. However, the result of the election was boycotted by Democratic Party, who then proceeded to file a lawsuit to the

64 Interview with a Thai human rights activist, December 25, 2019.

65 Amnesty International: Thailand 2019, <https://www.amnesty.org/en/countries/asia-and-the-pacific/thailand/report-thailand/>

66 McCargo, Duncan; *Reforming Thai Politic*, COopenhagen, NIAS Press, 2002.

67 Vandewalle, Laurence; *Thailand in 2016: Restoring democracy or Reversing it?* Directorate-General for External Policies, Policy Department, European Parliament. April 2016.

Constitution Court. The lawsuit demanded for nullification of Shinawatra's victory as the election was not held in several regions. Democratic Party's demand was fulfilled and the Constitution Court decided to call off the result of the election. A series of demonstrations from both the supporting and opposing groups of PM Shinawatra continued. To end the continuous political standoffs, the military leaders seized power by forming the National Council for Peace and Order (NCPO). The council marked the beginning of the military junta's ruling under the leadership of General Prayuth Chan-ocha. The junta's ruling ended with an election, taking place in March 2019 and marking Thailand's return to democracy.

A Review of Regulatory Factors on Civil Liberties in Thailand

The Siamese Revolution changed Thailand's government system, from its previous absolute monarchy to constitutional monarchy. The basis of Thailand's legal system no longer rested upon the king's power, as it changed into the constitution or *Rattham Manun* in Thai. Since the first constitution was formulated, *Rattham Manun* has experienced many changes, although it has constantly included regulations on civil liberties. Positioned as the highest reference for Thailand's regulatory frameworks, *Rattham Manun* included regulations on civil liberties which showed the state's good will to ensure civil liberties for its citizens.

The last change to constitution prior to the military coup in 2014 was made in 2007. The constitution was revised by the junta through a referendum in 2016, in which civilians were given the choice to accept or reject the new constitution. The draft of the new constitution received harsh criticism from many political parties in Thailand, pro-democracy activists, and the international society. One of the critiques was directed to the absence of space and open forums for civilians to discuss and deliver their opinions on the draft. The junta-led government even threatened to punish those who campaign against the draft with a sentence of up to 10 years in jail. Therefore, the possibility of the draft to pass through the referendum

was almost certain. Khunying Sudarat, the leader of *Pheu Thai* Party as the opposition, argued that the draft would delimit civilians' political rights. Out of the 750 parliament and senate members who had the power to vote for the prime minister, 250 senate members were selected by the junta leaders.⁶⁸ The other 500 seats were filled in by the electoral process. This hampered the winning party's ability to win the position of the prime minister as the military had the biggest possibility to elect a prime minister from their own because they had already secured 250 votes from the senates.

In 2016 Thailand introduced its new 20th constitution.⁶⁹ Although it was primarily formed by the junta, the constitution contained articles which ensure civil rights, such as rights of assembly, expression, and religion.⁷⁰ The constitution does not encompass any regulation which can possibly restrict civil rights. A prominent restriction is only evident in articles on election, which was proven to delimit competition from other parties and for the civilians to truly vote based upon their own choices, especially when more than 33% of the seats in the parliament are already reserved for the military.

Clearly defined regulations on civil rights within the constitution, as the most fundamental legal document in Thailand, should ensure civil liberties as the constitution becomes the main reference for other legal documents. Thailand's regulatory framework also encompasses *Prarat cha bangat*, which acts as a legal act which refers to the constitution. Aside from its own constitution, *Prarat cha bangat* also refers to international covenant which Thailand ratifies, such as Thailand's ratification of ICCPR in October 1996.⁷¹ Therefore, its formulation process of regulations and ratification processes of international covenants allows Thailand to provide acceptable space for civil

68 <https://www.merdeka.com/dunia/junta-militer-thailand-gelar-referendum-uud-ingin-terus-berkuasa.html>

69 <https://www.cnnindonesia.com/internasional/20160806151340-106-149648/konstitusi-rancangan-militer-dalam-referendum-thailand>

70 Interview with staff from Muslim Attorney Center, Yalla, December 26, 2019.

71 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=172&Lang=EN

liberties in each level of its regulatory framework.

At one level below legal acts, Thailand also adheres to *Prara cha kam noat* or government ordinance. Another source of regulation also includes *Prara Cha Kuisdi ka* or technical regulations formulated by the parliament. There are also a few other regulations subordinate to those two frameworks, which contain even more specified regulations. At this level, regulation-making process is even more sensitive to the existing temporal and situational contexts.

The regulations below the constitution are supposed to provide detailed explanations on how civil rights are guaranteed under the constitution. In addition, regulations under the constitution should be more specific in nature. However, a human rights activist from Southern Thailand argued that these needs for specifications and details often entail possibilities for restrictions on civil rights, which have previously been guaranteed under the constitution. Such trend is evident in the tendency of many rules under the constitution to provide more opportunities for restrictions against civil rights.⁷²

Regulations to the Activities of Non-Governmental Organization (NGOs)

Although the constitution ensures and protects civil rights, which should also be delivered through other more specific legal frameworks, the Thai government still upholds several regulations that strictly regulate and restrict civil liberties. One of such regulations is Thailand's martial law. The martial law has existed for 106 years and has yet to be revoked. While Thailand does not apply the law indefinitely, martial law is often used to justify coups by junta leaders and the military. Such practice was evident in the 2014 coup, in which the military junta took power and applied martial law in all parts of Thailand. The law allowed the military junta to curb down civil liberties in the name of emergency and national interests.

Martial law were previously applied in Southern

Thailand (also called Pattani by its local people) when the area was struck by conflict. This was illustrated by the application of the law in 2004 during an intense armed conflict between the government forces and the separatist group. The law has since been applied and continued to take effect although the military junta revoked the law in other areas in 2015.

The martial law has allowed the government to conduct frisks, arrests, and detention against those who are deemed to be in opposition of the government, in this case insurgence group in Pattani). The law also enables military personnel to detain an individual for seven days without due process. Its application in Pattani does not only permit detentions by the military, but also by the police forces as stated by one human rights activist from the region.⁷³ Detention is usually conducted in military facilities unlike that in civilian prisons for most criminal cases.

Article 44 of the temporary constitution under the military junta should also be considered to have a potential to violate civil liberties. Article 44 is a regulation which allows the King to assume the power of the legislative (parliament), judiciary (courts), and executive (government) branches. The article is almost similar with martial law, although they differ in who has the authority to enforce the law. While authority, under martial law, rests upon the military, Article 44 places authority upon the King. Yet, in practice, the article still enables the junta leaders to assume power.

The military junta also replaced the enforcement of martial law with Article 44 in all parts of Thailand, except for Pattani which was regarded as a conflict hotspot in April 2015. Its replacement implies that martial law is still imposed in Pattani. Article 44 allows the military junta to conduct any sort of action, especially that which can potentially restrict and violate civil liberties in order to secure national interests.

⁷² Interview with a Thai human rights lawyer, December 26, 2019.

⁷³ Interview with a human rights activist from Pattani, December 26, 2019.

Article 112 also poses as a great threat to civil liberties. The article is also known for its regulation on *lese majeste* or defamation against the king. The article states that offences against the king's dignity are charged with imprisonment for three to fifteen years. The ruling government obtains the capability to interpret what is regarded as defamation against the king according to their own accord. The ruling junta that took power in 2014 used the article as a means to silence critics of the military regime.⁷⁴

In addition, the Computer Crime Act also serves as an obstacle to freedom of speech. The act was implemented in 2007 and revised through an amendment in 2016. A report from Human Rights Watch in 2019 stated that the act is an example of regulations which inhibits freedom of speech. The act provides a great and broad authority for the government to conduct surveillance and censorship on the internet and social media platforms against critiques against the government.⁷⁵ The regulation targets those who have opposing opinions from the government and are actively voicing out their opinions on the internet and through social media platforms. Individuals who conduct such activities could be detained under the act and sentenced to five years in prison.

The military junta often arrests critical individuals who actively express their commentaries and critiques towards the government on social media. Such activities are often regarded as attempts of defamation against the monarch. Thus, such cases demonstrated the extraordinary authority that Article 112 and the Computer Crime Act imply and how they could pose as a threat to civil liberties, especially with regards to freedom of expression and speech. Interpretations on these regulations are very biased and fluid which run the risks of producing a definition of criminal act to meet the interests of the ruling elites. Therefore, these regulations are often

utilized to weaken political rivals and shut down critics.

Thailand would also enforce emergency law, which is often used to legitimize attempts to restrain civil liberties. The law is specifically applied during times of emergency, for a specific time span, and is not imposed continuously. Thailand limits the implementation of the emergency law for as long as three months, in which it needs to be preceded by a declaration from the government. Similar with its martial law, Thailand's emergency law also provides legitimacy for security forces, both the military and the police, to conduct frisk, arrest, and detention for seven days without undergoing due process. The law even enables prolonged detention until 28 days although the detention period cannot surpass 30 days. Since 2005, emergency law has only been imposed in Pattani, as a conflict zone, which includes the Provinces of Pattani, Yala, and Naratiwat, as well as certain parts of Songkhla. Although the law can only be implemented for a maximum of three months, it is possible to extend its implementation. This justified the decision to renew the imposition of emergency law in Pattani in every three months under an ordinance from the government.

A Review on Civil Liberties During and After the Ruling of Military Junta

Throughout the past decade, the military coup in 2014 was a root cause to the decline of democracy and the narrowing down of space for civil liberties in Thailand. Under the rule of the junta, space for democracy in Thailand has been confined. The ruling junta has imposed martial law; restrictions on assembly, detention and imprisonment of those who are in opposition of the ruling government; and control over the media and internet, including social media platforms in all parts of Thailand.⁷⁶

Public activities attended by a large number of people are difficult to arrange as the government

74 Vandewalle, Laurence; Thailand in 2016: Restoring democracy or Reversing it? Directorate-General for External Policies, Policy Department, European Parliament. April 2016.

75 <https://www.hrw.org/report/2019/10/24/speak-out-dangerous/criminalization-peaceful-expression-thailand>

76 Vandewalle, Laurence; Thailand in 2016: Restoring democracy or Reversing it? Directorate-General for External Policies, Policy Department, European Parliament. April 2016.

prohibits group meetings of more than five people. Violation against this prohibition can lead to one year of imprisonment. The EIU's report on Democracy Index in 2014 stated that the junta's ruling resulted in Thailand's plummeting from its previous 72nd position in 2013 to the 93rd position out of 167 countries. Consequentially, Thailand was classified as a hybrid regime with its biased, incomplete, and defective democracy.⁷⁷ Such classification places Thailand at only one level above those classified as authoritarian regimes.

Further, the quality of Thailand's democracy has worsened as the junta's rule went on. Such trend was confirmed by Thailand's performance in the EIU's reports on Democracy Index in 2015 to 2017. Although the junta government nullified the martial law in 2015 along with NCPO's decision to conduct an election, Thailand still did not make any improvement to its democracy. Many restrictions are still in place. Consequentially, Thailand's position within the rank dropped to the 100th position in 2016 and 107th position in 2017, having very little difference in score from Iraq and Nigeria. Thailand was positioned within the bottom line of those categorized as hybrid regimes, indicating that it was close to the scores of those categorized as authoritarian regimes. Thailand was even ranked 121st under the category of freedom for media, meaning that it was classified as unfree.⁷⁸

Thailand's performance as a democratic country did not change much in 2018. The military junta still enforced some restrictions and limitations, such as on freedom of assembly, with looser application in comparison to the situation in 2014. Repression against the media persisted, even more so on social media platforms. Data from the 2018 Democracy Index noted that Thailand was only able to raise its position by one level up from its previous 106th position.⁷⁹

77 Levitsky, Steven and Way, Lucan A; *Competitive Authoritarianism, Hybrid Regimes After The Cold War*, Cambridge University Press, 2010.

78 The Economist Intelligence Unit (EIU), *Democracy Index 2015,2016,2017*

79 The Economist Intelligence Unit (EIU), *Democracy Index 2018*

The election in 2019 succeeded in improving Thailand's democracy although the improvement was less than the expectation. The election emphasized power transition from military ruling to democratically the elected civilian government. Thailand's prime minister was selected from the election, replacing the previous one from the military. Furthermore, the election made improvements on space for democracy as demonstrated by the emergence of new parties and civil liberties during campaigns for the election. As shown by the 2019 Democracy Index, Thailand's 2019 election boosted its performance as a democratic country.⁸⁰

Polities in Thailand have witnessed a lot of cases which exemplified restrictions on civil liberties, both prior to and after the 2019 election. These cases include (1) restrictions on freedom of assembly and speech; and (2) threats and disruptions to journalists and their activities.

• Freedom of Assembly and Speech

The current situation of civil liberties, which include freedom of expression and speech, was generally similar to that during the military coup. CSOs, human rights and democracy activist groups, as well as citizens are not allowed to express their opinions on certain issues. Such situation was exhibited by the government's decision to ban a running event held by supporters of Future Forward Party in Bangkok. The event organizer was also not allowed to put out any statement nor to inform the media on the government's ban. Thus, the current constitution still inherited some regulations which were imposed during military junta's rule, such as using law as an instrument to restrict activities in opposition to the government, to ban on demonstrations, and to limit expressing opinions.

All forms of public activities, forums, or campaigns classified as contradictory to the government are banned. Violations against the ban could lead to punishments. One human rights activist from

80 The Economist Intelligence Unit (EIU), *Democracy Index 2019*

Thailand stated that the punishments, aside from those based on Thailand's legal frameworks, could also be extrajudicial because certain people utilized violent means and threats.⁸¹ Such practices were also mentioned in reports from Amnesty International, released in April and July 2019, which unraveled violent treatments against Anurak Jeantawanich, a Thai pro-democracy activist. The activist had previously received prohibitions from the ruling junta and security forces to not express his political opinion and activities. His choice to not adhere to the prohibitions led to a violent attack by unidentified perpetrators. Another example came from the case of Ekachai Hongkangwan, another activist who faced physical assault and had his car burned down. Hongkangwan had previously participated in peaceful demonstrations and had actively spoken out his criticism against the conduct and the committee of the election. His critiques resulted in multiple violent threats and nine physical assaults. Although all those assault cases were reported to the police, none of the perpetrators or those who are guilty of setting his car on fire was arrested. These examples have pushed many activists from CSOs and the members of the society to not express opinions to contradict the government as the risks of arrest and punishment are high.⁸²

The elected government from the election in March 2019 still employs coercive means through prosecution against cases of repression on freedom of speech, a method which shows how the elected government is a mere continuation to the junta government. Such tendency is not only highlighted by some figures who still assume the same positions prior to and after the election, but also by their similar use of force to restrain civil liberties. One recent example was reported by International Federation for Human Rights, pertaining to a peaceful demonstration at the Democracy Monument in February 2018 by Sirawit

Seritiwat, Nattha Mahatthana, Chonticha Jaengrew, Karn Phongprapaphan, and Sukrit Piansuwan. These activists demanded for the junta leaders in NCOP to conduct the election before 2018.⁸³ The demonstration led to their arrests. The case still underwent investigation until September 2019, at which point the election already took place and a new government was elected. Despite the court's decision to clear them of all charges, attempts to ensure that they underwent a judiciary process reflected the government's intention to delimit civil liberties, especially freedom of assembly and speech.

After the 2019 election, the elected government does not provide a free cyber space and social media environment. Social media and the internet, which often act as a platform to express one's thoughts, are under surveillance. The government enforced the Computer Crime Act to convict those who state their opposing opinions and criticism towards the government on the internet and social media. For example, Amnesty International reported that the act was applied against Thanathorn Juangroongruangkit, a leading figure in Future Forward Party. He had to go through a judiciary process after he broadcast on Facebook a posting about a demonstration, which was also attended by student activists, to criticize the government..⁸⁴

• Freedom of Press and Reporting

The military junta placed tight scrutiny upon mainstream media platforms. The ruling junta wished for a supportive environment from the media, who was also expected to resonate the government's agenda. Therefore, the military junta released the Junta Decree 11/2014 which prevented the media from conducting interviews with former public officers, scholars, and NGOs that could potentially perpetuate conflict and confusion among the public. The military junta also expected the

81 Interview with a human rights activist from Pattani, December 25, 2019.

82 <https://www.amnesty.org/en/documents/asa39/0634/2019/en/> and <https://www.amnesty.org/download/Documents/ASA3901892019ENGLISH.PDF>

83 <https://www.fidh.org/en/issues/human-rights-defenders/thailand-acquittal-of-6-defenders-for-their-involvement-in-a-peaceful>


84 <https://www.amnesty.org/download/Documents/ASA3901892019ENGLISH.PDF>

media to only publish news that were favorable to the military junta, which resulted in the Junta Decree 18/2014 on public and private media platforms to broadcast news which are released by the junta government and to ban news which were not in favor of the government. Consequentially, a report from International Federation for Human Rights showed that throughout the junta's ruling, 14 TV cable channels and 3.000 radio communities had their permits revoked. These media would only be allowed to resume their broadcasting activities if they no longer broadcast political issues.

The military junta also exercised tight control towards reporters and media crews. Journalist activities were disrupted as they received frequent threats. One of the most common forms of these threats include disruptions by forming blockades while the media crews were reporting. The most severe punishment would come in the forms of arrest and extrajudicial detention. Among these cases include the detention of a reporting activist, Pravit Rojanaphruk, in a military camp, as it was allegedly criticizing the military junta in the media.⁸⁵ After the 2019 election, media crews still meet major obstacles, for example the arrests and detention against the media workers of WARTANI, a local news platform in the Yalla Province. These detentions were allegedly related to their publications which did not meet the elite's desire. Although the detention only lasted for one night, such occurrence caused disturbance to journalists and disruptions to their activities.⁸⁶

85 FIDH report, Under Siege; Violations of Civil and Political Rights Under Thailand's Military Junta. March 2017.

86 Interview with a Thai journalist, December 25, 2019.

A person's hands are shown holding a dark-colored folder or envelope over a desk. The desk is cluttered with various items including a laptop, a spiral notebook, a calculator, and several sheets of paper. The entire scene is overlaid with a semi-transparent teal filter. The text 'CONCLUSION AND RECOMMENDATIONS' is centered in white, bold, uppercase letters. Below the text is a solid teal horizontal bar.

CONCLUSION AND RECOMMENDATIONS

Photo: Pxhere

Three points become the highlight of the conclusion section of this report. *First*, Indonesia, Malaysia, and Thailand's performances in the Democracy Index are experiencing improvements with varying characters. Mass identity-based mobilisation in Indonesia's regional and presidential elections has caused major disruptions to its democracy. These disruptions generated intolerance, stigmatization, and persecutions among different groups within the society. Such condition also resulted in Indonesia's declining performance as a democracy.

Malaysia's improvement as a democracy is demonstrated by its ability to carry out political transition under a peaceful condition. Malaysia's capability to improve its democracy has continuously occurred since the last election in 2018. Lastly, Thailand's democracy experienced massive boost when the government under military junta's leadership was replaced by a democratically elected one. Malaysia and Thailand's successes to hold peaceful elections explained their impressive development in this year's Democracy Index.

Second, the three countries were able to improve their conducts of procedural democracy, as well as achieving better turnout on the election and political participation from their citizens, which can potentially result in the improvement in the quality of governance. Therefore, it is expected that higher participation from the citizens will translate to better functioning governance with the ability to provide civic space and ensure the citizen's rights of association, assembly, and expression. However, it is important to note that better performances in the Democracy Index will not automatically ensure civil liberties in each country. Many obstacles were evident, as demonstrated by the existing loopholes in each country's regulatory frameworks, which hamper the civil society to exert control or influence over the government. As a result, the government formulates policies which do not reflect the interest of the civilians, such as those which could inhibit civil liberties.

Third, contradicting regulations serve as important factors to the restrictions on civil liberties, such as the existence of frameworks which, on one hand, ensure civil liberties, but on the other hand, also contain regulations which can eliminate civil liberties. Therefore, the government only provides rhetorical guarantees on civil rights while in practice still violate the promise to silence pro-democratic activists.

Aside from those points of conclusion, ASEAN's adherence to non-interference pushed all members to maximize internal or domestic capitals to strengthen their respective democracy in order to attain stronger democracy within the region. However, it is also possible to achieve better democracy through cooperative means, especially among CSOs in ASEAN in order to facilitate better learning process among all member states. In sum, this report highlights the importance of forming an interorganizational network or cooperation to provide a better environment for democracy in ASEAN, especially in Indonesia, Malaysia, and Thailand.

Considering the varying conditions of democracy and civil liberties in Indonesia, Malaysia, and Thailand, specific recommendations for each country are provided as follows.

Indonesia:

First, Indonesia needs to reform its legal instruments which still impede civil liberties. Total revisions are needed on the Act No. 19/2016 on EIT, the Act No. 1/1965 on Prevention of Misappropriation and/or Blasphemy against Religions, and the Act No. 16/2017 on Civil Society Organizations.

Second, the executive and legislative branches need to engage in more in-depth discussions on the recent Draft on the Penal Code by involving representatives from civil society, media, and universities. Revisions on the Penal Code needs to focus on articles which have served as obstacles to civil liberties, such as Article 106, 156, 156a, 160, 161, 207, and 310-321.

Third, Indonesia needs to put more efforts to achieve better democracy after the existing identity-based political polarization from 2014 to 2019. Depolarization is needed through resistance against the hegemony of the ruling parties of political elites whose narratives often perpetuate social discord. Creating alternative narratives against divisive ones is also needed. Such narratives could be developed by members of civil society or the academia, such as scholars or students, political elites who support pluralism and do not involve in the existing political contentions.

Fourth, building networks among members of civil society can facilitate a safe space for the society, as well as CSOs, to advocate measures to resist abuse of power by the government.

Fifth, data-based research to promote the importance of civil liberties for democracies should be initiated. Public research centers or CSOs need to be involved in the research process. The result of the research ought to be delivered to the government in the form of policy recommendations. Aside from capitalizing domestic resources, maximizing regional-level cooperation between CSOs in ASEAN to undertake joint research should also be considered. Findings from such research can serve as an important input to the improvement of regulations on civil liberties in all member states of ASEAN.

Malaysia:

First, civil society networks at the national and transnational level need to be strengthened. Recent political development in Malaysia, at least within the past decade which led to transition of power in 2018, proves that continuous pressure from the public is an effective measure to achieve political change. Furthermore, the existing momentum needs to be sustained, which can be supported by improving networks among members of the civil society. Aside from strengthening national-level networks, integration with transnational-level civil society networks is also pivotal to improve Malaysian civil society's leverage as a polity.

Second, Malaysian youth should receive better education on politics and democracy. The new amendment, which changed the voting age limit to 18 years would, allowed a considerably sizeable new group of voters. Political awareness and understanding on democracy should be incorporated into Malaysian educational program to ensure a sustainable and constructive environment for political activism among Malaysian youth. Involving the youth in active and critical political contentions can increase the political costs of failure to bring about substantial changes on the government's part.

Third, understanding on the dynamics of political reform and civil liberties needs to be enhanced. In addition, understanding on factors which serve as opportunities and challenges to democracy is also needed through comparative studies. These studies can cover the comparison of the practice of democracy between Malaysia and other countries in the region, such as Indonesia and Thailand. This recommendation can be realized through joint research among networks or alliances of research centres in Malaysia, Indonesia, and Thailand. Findings from the research can be translated as materials for lessons on politics and democracy not only in Malaysia, but also Indonesia and Thailand.

Thailand:

First, the newly elected Thai government should form a political statement which declares the government's commitment to the public to ensure civic space. The statement is expected to emphasize the needs for space for civil liberties and eradicate all forms of action which can impede freedom of speech for all members of society, CSOs, and political parties.

Second, the government should also revoke or amend regulations which can potentially restrict civil liberties, such as martial law, emergency law, Article 44, Article 112, and the Computer Crime Act. Loosely defined regulations might lead to broad interpretations and provide opportunities for misuse by the ruling regime to delimit civil liberties,

especially toward the opposition of the ruling government.

Third, international society and institutions should put greater pressure upon Thai government to ensure that civil liberties are guaranteed and protected as Thailand has ratified the ICCPR.

Bibliography

- AR, Zurairi. "Take Perak Crisis Route for Speedy End to Selangor Impasse, Pakatan Told." *Malay Mail*, August 14, 2014. <https://www.malaymail.com/news/malaysia/2014/08/14/take-perak-crisis-route-for-speedy-end-to-selangor-impasse-pakatan-told/726255>.
- Brown, Victoria. "UM Suspends, Fines Student Leaders over Anwar Event." *The Star Online*, December 10, 2014. <https://www.thestar.com.my/news/nation/2014/12/10/um-student-leaders-suspended>.
- Chu, Mei Mei. "Home Ministry Suspends Weekly Newspaper The Heat Following Controversial Najib Report." *Says*, December 20, 2013. <https://says.com/my/news/home-ministry-suspends-the-heat-weekly-publication-indefinitely>.
- Chu, Yun-han, Yu-Tzung Chang, Min-hua Huang, and Mark Weatherall; Re-Assessing the Popular Foundations of Asian Democracies: Findings from Four Waves of the Asian Barometer Survey, *Asian Barometer Working Paper Series*, no. 120, 2016. <http://www.asianbarometer.org/publications/b15620cf8549caa8a6cc4da5d481c42f.pdf>.
- Diamond, Larry; "Indonesia's Place in Global Democracy"; in *Problems of Democratisation in Indonesia: Elections, Institutions and Society*, edited by Edward Aspinall and Marcus Mietzner. Singapore: Institute of Southeast Asian Studies, 2010.
- FIDH report, *Under Siege: Violations of Civil and Political Rights Under Thailand's Military Junta*. March 2017.
- Hadiz, Vedi. R.; *Indonesia's Year of Democratic Setbacks: Towards a New Phase of Deepening Illiberalism?* *Bulletin of Indonesian Economic Studies*, 2017.
- Human Rights Watch. "Malaysia: Stop Punishing Students for Speech," February 21, 2016. <https://www.hrw.org/news/2016/02/21/malaysia-stop-punishing-students-speech>.
- Jacobsen, Michael, and Ole Bruun, eds. *Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia*. London: Curzon Press, 2000.
- Kingsbury, Damien, and Leena Avonius, eds. *Human Rights in Asia: A Reassessment of the Asian Values Debate*. 1st ed. New York: Palgrave Macmillan, 2008.
- Levitsky, Steven and Way, Lucan A; *Competitive Authoritarianism, Hybrid Regimes after the Cold War*, Cambridge University Press, 2010.
- Liu, John. "Civil Liberties in Contemporary Malaysia: Progress, Retrogression and the Resurgence of Asian Values." In *Routledge Handbook of Contemporary Malaysia*, 290–301. Routledge Handbooks. New York: Routledge, 2015. McCargo, Duncan; *Reforming Thai Politic*, Copenhagen, NIAS Press, 2002.
- Mietzner, Marcus; *Fighting Illiberalism with Illiberalism: Islamist Populism and Democratic Deconsolidation in Indonesia*, *Pacific Affairs* 91, No. 2, (2018).
- Mohd, Hariz. "MCMC Blocks The Malaysian Insider." *New Strait Times*, February 25, 2016. <https://www.nst.com.my/news/2016/02/129582/mcmc-blocks-malaysian-insider>.
- Power, Thomas; *Jokowi's Authoritarian Turn and Indonesia's Democratic Decline*, *Bulletin of Indonesian Economic Studies* 54, No. 3, 2018.
- Prakash, G. "Muslim Preacher Wan Ji Bound for Prison as Judge Rejects Sedition Appeal, Ups Sentence." *Malay Mail*, July 9, 2019. <https://www.malaymail.com/news/malaysia/2019/07/09/muslim-preacher-wan-ji-bound-for-prison-as-judge-rejects-sedition-appeal-up/1769655>.
- Somer, Murat and Jennifer McCoy; *Toward a Theory of Pernicious Polarization and How It Harms Democracies: Comparative Evidence and Possible Remedies*, *ANNALS, AAPSS*, 68, 2018.
- Soong, Kua Kia. "Instant Karma for Najib's Harassment of Suaram." *Malaysiakini*, September 29, 2015. <https://www.malaysiakini.com/news/313823>.
- Tan, Beng Hui, and Cecilia Ng. "Filling in the Gaps: The Pursuit of Gender Equality in Malaysia." In *Routledge Handbook of Contemporary Malaysia*, edited by Meredith L. Weiss, 347–60. New York: Routledge, 2015.
- The Economist. "Civil Liberties in Malaysia: Spare Change." July 20, 2019.
- The Edge Markets. "Journalist Deported after Al Jazeera Docu on Altantuya," September 11, 2015. <https://www.theedgemarkets.com/Artikel/journalist-deported-after-al-jazeera-docu-altantuya>.
- The Guardian. "Malaysian Cartoonist Zunar Arrested for Criticising Anwar Ibrahim Ruling," February 11, 2015. <https://www.theguardian.com/world/2015/feb/11/malaysian-cartoonist-zunar-arrested-for-criticising-anwar-ibrahim-ruling>.
- Vandewalle, Laurence; *Thailand in 2016: Restoring Democracy or Reversing it?* Directorate-General for External Policies, Policy Department, European Parliament. April 2016.
- Walden, Max. "Malaysia: Allowing Students to Find Voice." *The Interpreter*, September 24, 2018. <https://www.lowyinstitute.org/the-interpreter/malaysia-allowing-students-find-voice>.
- Warburton, Eve and Edward Aspinall; *Explaining Indonesia's Democratic Regression: Structure, Agency and Popular Opinion*, *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, Vol.41 Number 2, 2019.
- Yi in, Beh Lih. "Sarawak Report Whistleblowing Website Blocked by Malaysia after PM Allegations." *The Guardian*, July 20, 2015. <https://www.theguardian.com/world/2015/jul/20/sarawak-report-whistleblowing-website-blocked-by-malaysia-over-pm-allegations>.



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