

## **The Evolving Nature of ASEAN's Human Rights Perspective: Vision and Practice**

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### **Abstract**

The matter of human rights was not a priority topic in the Association of Southeast Asian Nations (ASEAN) regionalism in the 20th century. However, human rights have become an important issue of cooperation in the ASEAN regionalism in the 21st century. From this point of view, this article analyzes the motivations that guide ASEAN cooperation regarding human rights, the historical development of the cooperation process and the problems faced by cooperation in the field of human rights in practice. The article's main argument is that while ASEAN has strengthened collaboration in human rights in theory in the 21st century, it has not developed a similar behavior in practice, and there is an imbalance between the theory and practice in cooperation concerning human rights. This study shows that ASEAN's traditional method of collaboration based on consensus-based decision-making and non-binding institutions has caused to a decrease in the effectiveness of cooperation over human rights and means that ASEAN is unable to reply effectively to human rights violations.

### **Keywords**

ASEAN, ASEAN Charter, ASEAN Human Rights Declaration (AHRD), ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), and ASEAN Intergovernmental Commission on Human Rights (AICHR).

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## ASEAN'ın İnsan Hakları Perspektifinin Dönüşen Niteliği: Vizyon ve Uygulama\*

### Özet

Güneydoğu Asya Uluslar Birliği (ASEAN) bölgeselleşmesinde 20. yüzyılda ikincil bir gündem maddesi olarak kabul edilen insan hakları 21. yüzyıla gelindiğinde önemli bir iş birliği konusu haline gelmiştir. Bu noktadan hareketle bu makalenin amacı, ASEAN'ın insan hakları alanındaki iş birliğine yön veren motivasyonları, iş birliği sürecinin tarihsel gelişimini ve insan hakları alanındaki iş birliğinin uygulamada karşılaştığı sorunları analiz etmektir. Makalenin temel argümanı, ASEAN'ın 21. yüzyılda teoride insan hakları alanında güçlü bir iş birliği vizyonu ortaya koymasına rağmen pratikte benzer yönde bir davranış geliştirmede ve insan hakları alanındaki iş birliğinde teori ve pratik arasında bir dengesizliğin olduğu yönündedir. Çalışma, ASEAN'ın bağlayıcı olmayan kurumlara ve uzlaşıya dayalı karar almaya dayanan geleneksel iş birliği yönteminin insan hakları alanındaki iş birliğinin etkinliğinin azalmasına yol açtığını ve ASEAN'ın insan hakları ihlalleri karşısında güçlü bir cevap verememesine neden olduğunu göstermiştir.

### Anahtar Kelimeler

ASEAN, ASEAN Tüzüğü, ASEAN İnsan Hakları Deklarasyonu (AHRD), ASEAN Hükümetler Arası İnsan Hakları Komisyonu (AICHR), ASEAN Kadın ve Çocuk Haklarının Geliştirilmesi ve Korunması Komisyonu (ACWC).

### Introduction

In after the initial years following the establishment of the Association of Southeast Asian Nations (shortly, ASEAN), its primary goal was to ensure peace, stability and economic collaboration in Southeast Asia. Naturally, human rights were not a priority area of collaboration for ASEAN at a time when the Southeast Asian states had just gained their independence and its focus was rather centered on economic development. However, in the early post-Cold War period, that is, in the 1990s, in parallel with the fact that human rights began to take important place on the agenda in international politics, the ASEAN states<sup>1</sup> also reluctantly began to address human rights. Nevertheless, during this period, the will to

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\* This article was produced from the author's doctoral thesis titled "ASEAN Regional Order in the context of the English School Theory (1967-2015)", which he prepared at the Department of Political Science at the International Islamic University of Malaysia in 2021.

1 Throughout the study, the terms ASEAN states, ASEAN members, member states, and ASEAN countries have been used interchangeably to convey the same meaning.

cooperate in human rights was rather limited as ASEAN states perceived human rights as an instrument reflecting the superiority of the West and wished to rather emphasize Asian values (Mohamad, 2002: 236). Therefore, in the 20th century, ASEAN's primary focus on economic development and the perception of human rights as a tool of Western domination led to human rights being seen as of secondary importance by governments in the regional cooperation agenda.

By the 2000s, ASEAN demonstrated a comprehensive and strong will for further cooperation regarding human rights. With the ASEAN Charter announced in 2007, human rights have become an important issue in the ASEAN regional cooperation, and the ASEAN Charter has shaped the basic parameters of ASEAN cooperation on human rights. Following the ASEAN Charter, with the ASEAN Intergovernmental Commission on Human Rights (AICHR), ASEAN Human Rights Declaration (AHRD) and ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), ASEAN has furthered its collaboration on human rights. The AICHR is designed as a solidarity organ on an institutional basis in human rights; the AHRD has defined what rights ASEAN's human rights cooperation covers, and the ACWC aims to improve the rights of children and women. Based on this point, the main research question that this study seeks to answer is *how* and *why* human rights, which was a secondary agenda item in the 20th century, have become a significant topic of cooperation in ASEAN regionalism in the 21st century. In other words, the main aim of this study is to analyze the dynamics shaping ASEAN collaboration in the field of human rights from the past to the present. The study also examines the fundamental characteristics of ASEAN's vision adopted regarding human rights and explores the challenges encountered by ASEAN cooperation in the practical implementation of human rights.

Although the ASEAN states have developed a remarkable cooperation discourse on human rights within the organizational framework, they have yet to take concrete steps to improve and strengthen human rights in regional cooperation in practice. From this point of view, this study argues that the ASEAN states' willingness to cooperate on human rights does not match their actual behavior. In other words, the situation in theory and practice in ASEAN cooperation in human rights differs. This study suggests that the difference between theory and practice is due to ASEAN's approach, which values flexible cooperation, consensus decision-making, and non-binding methods in human rights collaboration. For instance, the AICHR's limited institutional structure and its dependence on member states have reduced its practical effectiveness.

This study adopts the qualitative analysis method and will discuss the historical development and current status of ASEAN's human rights vision within the framework of the cause-effect relationship. In this general framework,

first, this study will expose the factors and the general approach that shaped ASEAN's perspective on human rights in the 20th century. Then, this study will examine the regional and international dynamics that have led ASEAN to strengthen cooperation in human rights in the 21st century. In the subsequent section, this study will analyze the content and key features of the AICHR, AHRD, and ACWC—the pivotal components of the ASEAN human rights system. Later, this study will investigate the problems faced by ASEAN cooperation in the field of human rights in practice. The author used primary sources such as ASEAN documents and reliable secondary sources such as academic publications in the article.

### **Human Rights in ASEAN Regionalism in the 20th Century**

Founded on August 8, 1967, by Malaysia, Thailand, Singapore, the Philippines, and Indonesia, ASEAN did not prioritize human rights in its early years and throughout the Cold War era. The reason for not prioritizing human rights was that, in this early period, ASEAN's most fundamental founding objective was to accelerate economic growth and ensure regional peace and stability (Tobing, 2019: 5). Thus, during the Cold War period, none of the articles in the Bangkok Declaration and other ASEAN regulations referred to human rights.

Human rights in ASEAN regionalism were first brought to the agenda in the joint statement published after the 24th ASEAN Foreign Ministers Meeting held in 1991 (ASEAN, 1991). The reason being that during the post-Cold War era, the issue of human rights was raised intensively in the international community, especially by the Western countries. Although the issue of human rights came to the fore, some member states saw the discourse over human rights as an issue that would harm ASEAN cooperation. For example, some ASEAN member states, such as Singapore and Malaysia, feared that some Western states may manipulate the issue of human rights as a tool for intervention (ASEAN, 1991; Wahyuningrum, 2021: 159). Malaysia, in particular, led by Mahathir Mohamad, who developed a more critical attitude than Singapore, believed the discourse surrounding human rights could negatively affect the ASEAN member states. First, according to Mahathir, the human rights discourse had the potential to be used by Western countries as a benchmark for the advancement of relations between ASEAN countries and Western states. From Mahathir's perspective, Western countries could postpone cooperation in trade, investment and development assistance by claiming that the ASEAN states had a poor outlook on human rights. Second, from Mahathir's point of view, discourse concerning human rights or various attempts to establish human rights may lead to violations of the sovereignty of ASEAN countries.

The reservations of Malaysia, led by Mahathir, led to the adoption of different perspective regarding human rights in terms of content and practice in the joint statement issued after the ASEAN meeting held in 1992. The Joint Declaration in 1992 specified that human rights could be restated within each country's unique culture and socio-economic conditions. The declaration expressed that implementing human rights at the national level will be within the authority and responsibility of each state (ASEAN, 1992). Therefore, ASEAN sought to develop its unique perspective on human rights, which is universally accepted and does not stipulate any conditions for its implementation. The main idea behind this approach was that political leaders especially Lee Kuan Yew and Mahathir advocated a vision in the form of Asian values. Asian values emphasize Southeast Asia as possessing unique historical, economic, socio-cultural and political characteristics. Therefore, other international actors are expected to respect Southeast Asia's socio-economic and political dynamics. The Asian values approach dictates that economic development should be given priority in low-income societies and that economy and social rights can take precedence over civil and political rights (Henders, 2022). Hence, this approach sees no harm in limiting human rights in certain situations, such as to ensure economic development, and, thus, rejects the Western insistence that human rights should be a priority under all circumstances.

ASEAN, in a joint statement in 1993, expressed its welcome to the views put forward at the World Conference on Human Rights held in Vienna in June 1993 and set out its commitment to respect human rights (ASEAN, 1993). In this declaration, ASEAN stated that in matters related to human rights, the international community should respect the principles of sovereignty, non-interference in the internal affairs of other states, non-use of force, and the peaceful settlement of disputes. More importantly, in this declaration, ASEAN emphasized two fundamental points: (i) the avoidance of politicizing the support and protection of human rights, and (ii) refraining from using human rights as a condition for development assistance and economic cooperation.

In the second half of the 1990s, ASEAN faced significant problems, such as the 1998-1999 Asian Economic Crisis, East Timor and Regional Haze (Nandyatama, 2019: 235). In addition, the membership of Cambodia, Laos, Myanmar, and Vietnam into ASEAN was one of the most important agenda items for regional cooperation. For this reason, when ASEAN dealt with multidimensional problems in the economic and political spheres, ASEAN countries showed no strong will to further strengthen cooperation in human rights.

Based on these points, the following can be said about ASEAN's human rights perspective during the Cold War period and the early post-Cold War period:

- (i) The member states had the primary responsibility for protecting and promoting human rights in ASEAN regionalism. This caused member states to manage the process in human rights within the framework of their perceptions and priorities. For example, member states tended to prioritize economic rights over political rights because they gave greater importance to economic development.
- (ii) The member states' emphasis on the economic and socio-cultural conditions of Southeast Asia within the framework of Asian values has brought the characteristics of the region to the forefront in cooperation on human rights.
- (iii) Some member states, such as Malaysia, saw the debate surrounding human rights as an issue that served the interests of Western states. This led to norms such as non-interference in internal affairs and respect for sovereignty gaining a more important place in the face of human rights and in matters related to human rights.

### **Human Rights in ASEAN Regionalism in the 21st Century**

This section will analyze the motivations driving ASEAN cooperation in human rights in the 21st century, the key features of collaboration and the situation in practice.

#### **Background**

An important dynamic that led ASEAN to take specific initiatives concerning human rights was the will of the member states to strengthen ASEAN cooperation. In the 1990s, ASEAN was ineffective in tackling regional problems such as the East Timor dispute, Regional Haze and the Asian Economic Crisis (Wahyuningrum, 2021: 160). Particularly in the second half of the 1990s, there were severe and intense human rights violations in East Timor, and Indonesia was subjected to various criticisms for these violations. The events in East Timor led to international intervention, and non-regional actors such as the United Nations and Australia, rather than ASEAN, were influential in deescalating the violence. In short, the East Timor crisis resulted in a certain decline in ASEAN's prestige and regional role. The East Timor crisis and other problems experienced during this period led to criticism that ASEAN lost its effectiveness in solving regional issues. Therefore, the member states saw the need to recreate ASEAN into a more reliable body and one that could act more

powerfully in regional politics; ASEAN cooperation in human rights, as in many other areas, should be expressed within the framework of a new vision.

One of the most critical factors that led ASEAN to want to strengthen cooperation in human rights was the criticism from Western states and unions, such as the USA and EU, towards ASEAN on its human rights record. In particular, Western countries loudly expressed their criticisms about the general circumstances of human rights in Myanmar. More importantly, Western countries stated that free trade agreements could be suspended in practice. Therefore, criticism of the nature of human rights in Southeast Asia, especially the situation in Myanmar, led to a wider discussion regarding the legitimacy and effectiveness of ASEAN (Straits Times, 21 January 2007). Ciorciari (2012: 709) states that in this period, ASEAN was more concerned with protecting its reputation than any fears it had over Western warnings that relations in the commercial sphere would deteriorate. However, in this period, the benefits of commercial links with the Western world were believed to be as important as preserving ASEAN's legitimacy. Commercial ties are essential for ASEAN because ASEAN aimed to integrate into the global economy within the framework of the economic community goal in the post-2003 period (Durmaz, 2023: 763-764). Consequently, the damage to economic relations with the West would have reduced positive economic outputs for ASEAN. The ASEAN countries knew that the existing economic ties and diplomatic channels with the West would be damaged if they did not act on the topic of human rights (Kipgen, 2012: 108). In addition, ASEAN's failure to show any will on human rights could have led to a continuation of the debate concerning the legitimacy of ASEAN. For all these reasons, according to the member states, to prevent criticism from some of the Western states and strengthen the legitimacy of ASEAN, ASEAN had to put forward a significant initiative on the topic of human rights (Straits Times, 21 January 2007; Jakarta Post, 9 October 2007; Poole, 2015: 373).

Non-state actors such as national elites and civil society were also influential in the process leading to ASEAN's strengthening of cooperation on human rights. In the 4th Unofficial Summit held in Singapore in November 2000, the ASEAN Eminent Persons Group argued that ASEAN regional cooperation should address not only states but also the business world, civil society, and the public (Collins, 2008: 316). On November 10, 2006, the solidarity group suggested, during their meeting with Philippine President Fidel Ramos, the participation of the Non-Governmental Organizations (NGOs) in ASEAN decision-making processes and the need to enhance ASEAN cooperation on human rights (Collins, 2008: 323). At the same time, the national elites in Indonesia, the Philippines and Thailand advocated strengthening democratic norms (Nair, 2011: 261-262). Similarly, in Southeast Asian politics, there was an expectation that ASEAN would develop a more solution-oriented approach to

human rights violations in Myanmar (Jakarta Post, 21 November 2007; Kun, 2009: 25; Collins, 2019: 375). In parallel with these developments and expectations in national and regional politics, ASEAN realized it needed to take concrete steps in the sphere of human rights.

### **Human Rights in the ASEAN Charter**

The ASEAN Charter emphasizes protecting and promoting fundamental freedoms and human rights. Article 1(7) of the ASEAN Charter states “*to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN*”. Article 1(7) and similar articles of the ASEAN Charter have brought two valuable, constructive changes to ASEAN cooperation: First, ASEAN has put forward an approach to developing political values (Hassan, 2015: 315). ASEAN has developed a new perspective on regional cooperation, generally evaluated regarding economic relations and security concerns. Expressions of the strengthening of democracy and the protection and promotion of human rights are significant examples of the transformation of ASEAN collaboration (Caballero-Anthony, 2014: 576). Second, including some points regarding human rights in the ASEAN Charter meant that human rights were part of the ASEAN regionalism in the 21st century. The mentioning of human rights in the ASEAN Charter implies that a regional cooperation conjuncture had been established in which issues related to human rights will be raised on ASEAN platforms, meetings and summits (Giorciori, 2012: 695-725). Even though the ASEAN Charter attaches great importance to democracy and human rights, the state-centered approach in these areas is emphasized as follows: “...with due regard to the rights and responsibilities of the Member States of ASEAN”. This statement demonstrates that the member states are the decisive actors in implementing cooperation on the subject of human rights (Sukma, 2015: 416).

Simon (2008: 274-275) states that the ASEAN Charter constitutes a compromise between the traditional principles of ASEAN and human rights, good governance and democracy. The reason for this is that while the ASEAN Charter addresses issues such as good governance, human rights and democracy, it does not disregard the existence of ASEAN principles such as respect for the sovereignty, territorial integrity of the member states, and non-interference in the internal affairs of other states (Woon, 2016: 60-61). However, instead of creating a consensus, the ASEAN Charter makes traditional ASEAN principles dominant in the cooperation process related to human rights. In the ASEAN Charter, it is stated that ASEAN will adhere to the following principles:



- (i) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN member states.
- (ii) renunciation of aggression and of the threat or use of force.
- (iii) reliance on peaceful settlement of disputes.
- (iv) non-interference in the internal affairs of ASEAN member states.

Therefore, with reference to the rights and responsibilities of states, it can be said that the ASEAN Charter gives priority to the sensitivities of member states (respect for independence and sovereignty) over human rights (or human security) (Collins, 2008: 326-327).

Apart from Article 1(7) of the ASEAN Charter, Article 14 of the Charter stipulates the establishment of a human rights body. This human rights body will operate within the terms of reference to be established by the ASEAN Foreign Ministers meeting (ASEAN, 2007: 19). The terms of reference defined the role of the AICHR as “to promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities” (ASEAN, 2009: 4). This point illustrated that in the 21st century, as in the 20th century, ASEAN states continue to emphasize the regional dynamics and socio-cultural differences of Southeast Asia.

Wu (2016: 282-283) states that ASEAN refers to the mechanism of human rights as the “ASEAN human rights body” and uses neutral tongue and that the language selection defines the form of the mechanism. However, the ASEAN human rights body will be guided by the ASEAN principles and the ASEAN way, as in many areas related to ASEAN cooperation. The AICHR is under the influence of the consultation and consensus-based decision-making process of the ASEAN way. Therefore, the ASEAN Charter refers to the rules to be followed by the ASEAN human rights body as “terms of reference” rather than “rules of procedure” and that these terms of reference will be determined at the ASEAN foreign ministers meeting (Wu, 2016: 283). These statements in the ASEAN Charter indicated that the AICHR does not have independent authority. Therefore, the AICHR is unable to make its own assessment or make its own judgment independently of the member states.

The ASEAN Charter expresses that the ASEAN Foundation, established to increase ASEAN awareness among Southeast Asian people, is permitted to closely cooperate with NGOs (ASEAN, 2007: 19). This statement of the ASEAN Charter summarizes ASEAN’s view on civil society, including NGOs. If member states permit it, NGOs can participate in ASEAN cooperation (Sukma, 2015: 416). This suggests that the ASEAN Charter does not provide a significant role for NGOs by defining ASEAN institutions as state-based.

### **Human Rights Regulations: AICHR, AHRD and ACWC**

In adherence to the ASEAN Charter, ASEAN has intensified its attention and discourse on human rights through the ensuing three developments:

- (i) the formation of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in October 2009,
- (ii) the creation of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) in April 2010,
- (iii) and the adoption of the ASEAN Human Rights Declaration (AHRD) in November 2012.

The AICHR, AHRD and ACWC can be defined as the essential regulations developed by ASEAN in the field of human rights within the Southeast Asian regional system (Davies, 2013: 51). The AICHR has provided a structural quality to ASEAN's human rights perspective, the AHRD has drawn the normative framework for the human rights vision for ASEAN, and the ACWC has focused on advancing the rights of children and women (Clarke, 2015: 286). The perspectives that ASEAN countries have articulated in the field of human rights through AICHR, AHRD, and ACWC, have been an expression of the strengthening of ASEAN cooperation within a normative framework. This section will review the key features of the AICHR, AHRD and ACWC.

### **ASEAN Intergovernmental Commission on Human Rights (AICHR)**

The AICHR has demonstrated that ASEAN views human rights not only as a discourse but also as a field of cooperation to be implemented (Yukawa, 2018: 309). When evaluated in terms of authority, it can be said that the AICHR functioned as an advisory and incentive mechanism (ASEAN, 2009: 6). Some of the tasks of the AICHR include promoting the ratification of international human rights treaties by countries, providing advisory services to sectoral bodies and engaging dialogues with relevant stakeholders on human rights (ASEAN, 2009: 6-7). However, the AICHR does not have a primary task that can directly affect the process, such as the authority to discuss human rights issues related to member states, evaluate individual complaints, conduct visits to monitor the process, and conduct investigations into allegations of human rights violations.

The critical point is that the mandate definition stipulates that the AICHR can get knowledge from ASEAN countries on promoting human rights (ASEAN, 2009: 7). Nevertheless, it is unclear for what purpose the AICHR seeks to provide information from member states. It is uncertain whether the AICHR's information collection will provide it with the opportunity to investigate human rights violations and develop a monitoring mechanism. More importantly, while

the mandate states that only the AICHR can receive information, the same mandate does not contain a provision requiring member states to provide information to the AICHR (Phan, 2019: 919).

AICHR’s primary mission is to create awareness of human rights, and it aims to encourage member states to act (such as signing and ratifying international human rights documents) on human rights within the framework of ASEAN cooperation (ASEAN, 2009: 3-4). Therefore, with AICHR, ASEAN has adopted a discourse that aims to develop or improve human rights rather than protect them. The reason is that some member states believe that radical changes in a political conjuncture where there is no consensus on cooperation in human rights would risk damaging inter-state collaboration. According to Tommy Koh, who was in charge throughout the preparation of the ASEAN Charter, the Philippines, Malaysia, Thailand, and Indonesia supported the development of a vision concerning human rights, while later members – Cambodia, Laos, Myanmar, and Vietnam- did not have a positive stance on the subject of human rights (Koh, 2009; Jakarta Globe, 3 August 2011; Ciorciari, 2012: 711). In the ongoing process, Thailand, the Philippines, Malaysia, and Indonesia believed that a protective discourse on human rights rather than promoting it would alienate the VLCM (Vietnam, Laos, Cambodia, Myanmar) from the process and harm ASEAN cooperation (Jakarta Post, 15 June 2007). ASEAN has introduced an approach to motivate collaboration rather than a protective perspective in the AICHR to prevent the deterioration of stability and harmony among member states.

The AICHR has adopted consensus-based decision-making, an essential principle of the ASEAN way. It is envisaged that the AICHR would act if all representatives<sup>2</sup> agree on the matter. Moreover, when any ASEAN country starts to act contrary to the most fundamental values in a human rights issue, the AICHR does not have a coercive capacity to deter that member state (ASEAN, 2009; Jakarta Globe, 3 August 2011). However, the AICHR has been more active in project-based and thematic areas, such as disability rights, than in political areas because AICHR’s activities in these fields did not directly criticize issues that fall within the sovereignty of member states (Collins, 2019: 378-379). For example, during activities aimed at improving the rights of people with disabilities, the slogan ‘access to justice for all’ introduced the topic of justice (Collins, 2019: 383). Consequently, when examined in the context of ASEAN cooperation, specific activities of the AICHR have the potential to bring up other critical areas in ASEAN cooperation.

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2 Member states appoint AICHR representatives, who may consist of current or former government officials. These representatives are elected for a maximum of two terms, each lasting three years. For more information, see AICHR’s official website, <https://aichr.org/key-documents/>.

It can be said that the most prominent field of work in the first decade of the AICHR was activities aimed at improving the rights of persons with disabilities, children and women (Phan, 2019: 923). For instance, the AICHR organized conferences, seminars and workshops with various stakeholders of society, such as media organizations, academics and NGOs, to raise awareness and encourage broad discussions on the rights of women, children and persons with disabilities. In addition, the AICHR advises different ASEAN sectors on women's and children's rights issues and conducts cross-sectoral consultations (Phan, 2019: 923-924). All these activities demonstrate that the AICHR has developed a more proactive attitude towards the rights of children and women. The reason for this proactive attitude was that member states did not create an oppositional attitude toward children's and women's rights, and therefore, the AICHR could move in the direction it wanted in a limited capacity in improving children's and women's rights.

#### **ASEAN Human Rights Declaration (AHRD)**

The AHRD can be defined as a strong reflection of the ASEAN countries' cooperative will concerning human rights. Therefore, the adoption of the AHRD by the ASEAN countries is a concrete statement that the ASEAN states will no longer be able to claim that human rights are imposed by Western countries (Wu, 2016: 285). At the same time, the AHRD has reaffirmed the commitment of ASEAN member states to international human rights documents such as the Universal Declaration of Human Rights (Tobing, 2019: 9-10).

The significance of AHRD lies in its being the first time civil, political, economic, social and cultural rights are explicitly stated in ASEAN regionalism. The AHRD encompasses three generations of human rights:

- (i) Civil and political rights,
- (ii) Economic, social and cultural rights,
- (iii) Rights to peace and sustainable development.

Therefore, the list of human rights recognized by the AHRD is quite extensive. In other words, with AHRD, ASEAN has outlined human rights across a wide range, from political rights to cultural rights and from economic rights to third-generation rights. The AHRD has strengthened the perspective on human rights advocated by ASEAN through the ASEAN Charter and AICHR in terms of form and content (Natalegawa, 2018: 210).

The AHRD attaches great importance to solidarity rights, such as the right to safe, clean and sustainable development and peace (Renshaw, 2013: 573-574). This emerged from the transboundary pollution problem, such as the regional

haze, faced by ASEAN in the 1990s generated public awareness of the importance of sustainable development. At the same time, there was an awareness that states should make a collective effort to solve transboundary pollution problems (Wu, 2016: 287). For this reason, the AHRD states that the right to development must be fulfilled for the developmental and environmental needs of present and future generations to be met fairly (ASEAN, 2013: 10-11). In addition, since ensuring peace and security is one of the dynamics that led to the formation of ASEAN’s existence, the right to peace has been included as a central element in the AHRD (ASEAN, 2013: 11).

The AHRD emphasizes that economic-cultural rights and civil-political rights are interdependent and interrelated. The AHRD evaluates human rights within the framework of a regional and national context, considering political-economic and socio-cultural characteristics (ASEAN, 2013: 4-5). Concerning content, Article 7 of AHRD states that “... the realization of human rights must be considered in the regional and national context...”. The AHRD’s reference to cultural relativity and the geographical dimension led to criticism that it undermines the universality of human rights. The United States has expressed concern that ASEAN undermines universal human rights and values by promoting cultural relativism in human rights (U.S. Department of State, 20 November 2012; Yates, 2019: 244). Another notable criticism is that a restriction on human rights within the national context may adversely affect the implementation of universal human rights in the Southeast Asian regional system (Wu, 2016: 286).

On the other hand, regarding human rights, the emphasis that ASEAN placed on the national and regional context with AHRD reflected member states’ sensitivities and visions rather than an erosion of universal human rights (Narine, 2018: 56). The emphasis on national and regional values did not mean that ASEAN completely disregarded universal human rights values, as AHRD included many norms found in international human rights documents, including respect for individual human rights (Bangkok Post, 18 November 2012; Clarke, 2015: 286). The AHRD demonstrated that ASEAN member states developed a comprehensive perspective on human rights by considering both universal human rights and national and regional values. The broad view in the AHRD has helped ASEAN largely nullify Western states’ criticisms that ASEAN disregards universal human rights.

### **ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)**

In addition to AICHR and AHRD, the ACWC, established in April 2010, was a significant component of the ASEAN human rights system. Compared to AICHR, ACWC had the authority to encourage the implementation of relevant laws and propose policies and programs for protecting the rights of children and women (ASEAN, 2010: 2-8). The reason for ACWC's stronger protective capacity compared to the earlier AICHR was that children's and women's rights were considered secondary issues to the political rights of member states (Ciorciari, 2012: 721). Furthermore, ACWC's relatively influential position on children's and women's rights was a concrete example that ASEAN countries could agree on specific basic human rights standards and that this would not pose a problem in the relationship between human rights and member states' sovereignty sensitivities.

### **Problems in Practice**

The problems faced by ASEAN cooperation in human rights field can be listed as follows:

- (i) The style of cooperation based on consensus, non-interference, and non-binding mechanisms in the field of human rights
- (ii) The absence of a sanction mechanism
- (iii) Inability of ASEAN states to internalize human rights
- (iv) Limited role of NGOs
- (v) Coordination problem among ASEAN human rights commissions

First, the ASEAN way, which prioritizes consensus, non-intervention, and non-binding mechanisms, was not an appropriate method for cooperation on the subject of human rights (Jakarta Post, 28 February 2009; Bangkok Post, 18 May 2010). Since there was no consensus among AICHR members, the AICHR could not develop a deterrent action against actors who violated human rights (Straits Times, 2 January 2016; Collins, 2019: 377-378). For example, in late 2009, 56 people were killed in Maguindanao, the Philippines, including the families of local political opposition candidates and journalists. The victims' families later asked AICHR for help in receiving compensation from the Philippine government. However, the Philippine government insisted it was a domestic issue, and a consensus could not be reached in the AICHR. For this reason, the AICHR failed to demonstrate an active presence in meeting people's demands for accountability. Indonesian representative Rafendi Djamin stated that the AICHR

was ineffective due to the inability of the member states to reach a consensus (Ciorciari, 2012: 719-720).

The reason why ASEAN has been unable to develop a concrete and solution-focused approach to the Rohingya issue is its adoption of the principle of decision-making based on consensus. It is not possible for other ASEAN members to reach an agreement with Myanmar on the Rohingya issue at the ASEAN Summit meeting in which Myanmar also participates (Limsiritong, 2017: 77). Simply put, Myanmar's negative stance as a party to the Rohingya issue prevents ASEAN from taking action due to the inability to reach a consensus. Thus, while consensus-based decision-making encouraged the need to find a solution that was acceptable for everyone, it led to a decrease in the effectiveness of ASEAN and its failure to take concrete steps in the face of the Rohingya issue.

Within the framework of the ASEAN way, the ASEAN countries tackle regional issues via confidential meetings in order to negate public criticism. This feature of the ASEAN way allows member states to discuss regional political issues behind closed doors as they wish. Nonetheless, this political elite-oriented process, shaped from the point of view of decision-makers, limits a more comprehensive effort, such as considering the demands and expectations of societies on issues such as human rights (Nandyatama, 2019: 238-239). This perspective is apparent in ASEAN's approach toward the Rohingya issue. ASEAN chose to address the refugee crisis arising from the Rohingya issue by holding closed meetings with the Myanmar government. ASEAN's preference for closed-door meetings with the Myanmar government has prevented any comprehensive efforts in which societies and specifically those within the societies that were affected by the refugee crisis can express their views.

Second, there was no clause in the ASEAN Charter that would make ASEAN more effective in the field of human rights in the regional system. The most apparent example of this was the method of implementation based on diplomacy rather than sanctions. Hassan (2015: 315) argued that diplomacy helped maintain harmony and mutual trust among ASEAN countries. However, despite ASEAN's diplomatic calls for the Myanmar government to release Aung San Suu Kyi and other political leaders, the Myanmar military leadership rejected both demands, and the ASEAN initiative failed (Kipgen, 2012: 108). As seen in the Myanmar example, the lack of a sanctions mechanism in the ASEAN Charter was a significant weakness in cases where there was no positive response to the ASEAN initiative (Sukma, 2015: 416).

Third, ASEAN countries have not been able to adopt human rights-compliant behaviors or put forward human rights-compliant actions (Poole, 2015: 360-361, 368; Yukuwa, 2018: 309). There have been problems related to freedom of expression and press and child rights in ASEAN countries such as

the Philippines, Indonesia, Vietnam, and Cambodia. In Myanmar, there have been human rights violations such as forced labor, rape, torture, extrajudicial killings, and more than 2000 political prisoners (Kipgen, 2012: 103). Since 2012, Buddhist nationalists in Myanmar have systematically subjected the Rohingya people to violence. Similarly, the military staged a coup against the democratically elected government in Thailand in 2014 (Roberts, 2012: 152). In the face of such violations of democracy and human rights, the flexible cooperation style of the ASEAN way prioritizing non-interference prevented other members from taking effective action and even developing a strong discourse against a member like Myanmar, which violated the values and human rights proclaimed in the ASEAN Charter (Jakarta Post, 18 June 2015). These events have shown that a member-state cooperative vision based on political issues, such as the aims of strengthening democracy and good governance set out in the ASEAN Charter and the human rights perspective outlined in the AICHR and AHRD, has not been strongly implemented. Consequently, ASEAN cooperation has failed to achieve any significant success in practice on issues and matters related to democratization and human rights.

There have been differences among member states in terms of improving and protecting human rights. While some ASEAN countries were more eager and quicker to adopt and implement human rights laws, others have been reluctant and slower in implementing those (Pitsuwan and Yoon, 2016: 57). Kipgen (2012: 104-105) pointed out that the governments of Brunei, Vietnam, Laos, Myanmar, and Singapore have not showed significant progress towards human rights in their respective countries, whereas Thailand, the Philippines, Malaysia, Cambodia, and Indonesia have recorded reasonably positive developments. The most important example is that Indonesia, the Philippines, Thailand, and Malaysia loudly voice in their criticisms towards Myanmar's human rights violations. Some ASEAN states that were slower and more reluctant to cooperate in the field of human rights saw improving human rights levels in the region not as an intellectual commitment to make inter-state cooperation more effective but as a tactical move to appease the outside world (Poole, 2015: 373-374). This suggests that some member states had no real willingness to cooperate on the subject of human rights.

A remarkable example of ASEAN states' failure to internalize human rights was the characteristics of the Human Rights Commission. Although AICHR was a significant human rights commission, its institutional structure was weak due to the lack of a secretariat, the absence of an independent investigative authority, and the appointment of representatives by governments (Giorciari, 2012: 714). This institutional weakness of the AICHR resulted from a conscious choice by ASEAN member states, who thought that an effective AICHR would interfere in matters within ASEAN's sovereignty. According to ASEAN states, AICHR's



intervention on an issue concerning the national sovereignty of ASEAN states could damage the member states' position as the primary and central actor in regional cooperation.

Fourth, although it was stated that NGOs would be involved in the ASEAN cooperation process, in practice, the primary, decisive, and entirely directing actors have been member states rather than individuals or NGOs. Even though the ASEAN Charter and AICHR emphasize the need for member states to improve dialogue and consultation with NGOs on human rights issues, states with authoritarian leaders limited the role of NGOs even more compared to the relatively democratic members of ASEAN. This demonstrated that, despite the ASEAN Charter and AICHR, member states provided only a limited space and role for civil society participation. The reason being that member states were reluctant to consider the input or suggestions of civil society on human rights-related issues in Southeast Asian politics (Asplund, 2014: 197-198).

Fifth, there were occasional coordination problems between AICHR and ACWC, the ASEAN commissions in human rights. Typically, the ACWC, which focuses specifically on dealing with children's and women's rights, was supposed to cooperate with the AICHR, which has a general mandate on human rights. However, the AICHR and ACWC could not come together until AICHR's seventh meeting in December 2011. Although both commissions showed a common willingness to cooperate at this meeting, there was insufficient clarity on how this cooperation would be realized (Giorciari, 2012: 722). This ambiguity was also present in the relationship between AICHR and AHRD. Though Article 39 of the AHRD stated that member states would share a common interest in the development and protection of human rights and fundamental freedoms through cooperation with national, regional, and international organizations, there was no clear explanation in the AICHR how this cooperation and common perspective would be manifest (ASEAN, 2013: 12).

## **Conclusion**

In the 21st century, ASEAN has comprehensively included human rights in its regionalism agenda, both as a vision of collaboration and as an area of cooperation to be put into practice. ASEAN's view of human rights has shifted from being seen as a Western tool for political dominance to an issue that can be addressed through regional cooperation. This study has shown that three aspects have played a driving role in the transformation of ASEAN's perception of human rights and its efforts to strengthen cooperation: (i) the idea that ASEAN cooperation needed a new framework due to ASEAN's ineffectiveness in regional issues during the 1990s; (ii) increased Western pressure on ASEAN

regarding Myanmar; (iii) the advocacy of civil society and national elites for ASEAN to take steps on human rights. As a result of these dynamics, ASEAN has strengthened regional cooperation on human rights across a broad spectrum, from political and cultural rights to social and economic rights. Moreover, ASEAN has given a legal, institutional, and normative dimension to collaboration in the field of human rights with the ASEAN Charter, AICHR, AHRD, and ACWC.

ASEAN's fundamental perspective on human rights has been mainly towards developing and promoting human rights. For this reason, ASEAN countries have designed the ASEAN Human Rights Commission to promote and develop human rights. In addition, with regard to human rights, ASEAN has shown a more active view and put forward a stronger approach in the field of children's and women's rights when compared to political rights. The reason why ASEAN puts less emphasis on political rights is that ASEAN member states read political rights in connection with their national sovereignty and think that actions taken in the field of political rights will harm their sovereignty.

It can be said that the ASEAN human rights system is positioned between universalism and regionalism/relativism. In the 20th century, while ASEAN was adopting some documents on human rights, it emphasized the need to consider each country's unique socio-economic conditions. The motivation behind this approach was the Asian values perspective, which prioritized economic development and the belief that social and economic rights should take precedence over political and civil rights. Similarly, in the 21st century, while the ASEAN human rights declaration demonstrates the commitment to universal rights in theory, it has emphasized that the socio-economic dynamics of Southeast Asia should not be ignored in practice. In other words, ASEAN has aimed to consider universal human rights while not disregarding regional dynamics. Consequently, the search for a balance between universalism and regionalism/relativism shows that the ASEAN human rights system is trying to develop a perspective that can be called a middle way or a third way.

The AICHR, AHRD and ACWC were formed to reflect the general nature of ASEAN regionalism. Therefore, the ASEAN way, the cooperation method of ASEAN regionalism, has become prominent in human rights cooperation. The ASEAN way envisages consensus-based decision-making and legally non-binding agreements. Because of ASEAN's method of collaboration based on consensus-based decision-making, ASEAN has been unable to publicly denounce clear human rights violations such as the Rohingya issue and the killing of people in Maguindanao. However, it can be said that even though the ASEAN human rights regulations/formations, like AICHR, have some shortcomings, they have provided a constructive basis for the further development of

cooperation in the field of human rights in Southeast Asian politics in the long term.

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