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Constructing an Inadequate Human Rights Regime: Indonesia and the Deliberate Weakening of the ASEAN Intergovernmental Commission on Human Rights Authority

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Abstract

The establishment of the ASEAN Intergovernmental Commission on Human Rights in 2019 provided hopes for the advancement of human rights in Southeast Asia. As a region that puts forward the notions of consensus and non-sovereignty, concluding regional human rights norms is seen as a first step in solidifying human rights protection in the region. Unfortunately, since its establishment, the commission has failed to fulfill the expectations to implement protection-based regional norms in Southeast Asia, measured by their failure to effectively respond to systemic human rights abuses in the region. This article employs the Neoliberal Institutionalists' view of Hegemonic Stability Theory (specifically to Robert Keohane) in analyzing how regional hegemons such as Indonesia, have deliberately directed the establishment of a weak human rights regime, in the form of the ASEAN Intergovernmental Commission on Human Rights, which is proven by; (1) The Commission's deficiencies in human rights protection, and (2) Indonesia's lack of political will in solidifying human rights regimes in Southeast Asia.

Keywords: AICHR, ASEAN, Indonesia, Foreign Policy, Regionalism

1. Introduction

The ASEAN Intergovernmental Commission on Human Rights (AICHR) was established in 2009, as a response to the growing human rights oppressions that occurred in Southeast Asia. With cases varying from the ethnic oppression of the Rohingya people in Myanmar, suppression of the Papuan demand over independence, to the extrajudicial killings that have taken place in the Philippines, there has never been a more urgent time for Southeast Asian states to embrace a human rights regime (DAVIES, 2012; Regilme, 2018). With hopes of mainstreaming human rights protection policies in Southeast Asian states, AICHR since its establishment focuses on the mandate

of promoting and protecting human rights. Regional cooperation thus is emphasized among Southeast Asian states, to establish a peaceful region free of human rights abuses (Bangun, 2018; Limsiritong, 2018).

After running a decade, the hope for a strong human rights regime has not been fulfilled. Human rights oppressions have continued to take place in Southeast Asia, with close to no response from commissions such as AICHR (Olivia, 2014a; Hara, 2019b). This article will not argue about the deficiencies of the AICHR as a human rights regime that has evolved in the region, considering the extensive list of literature on the topic. However, it will focus on the argument on how Southeast Asian states are not ready in facing a drastic change in the way they handle cases related to human rights abuses and oppressions (Putra, 2015; Andika Putra, 2019). The issues circulated around the AICHR can be constituted to the lack of willingness of state actors in the region, to maximize the role of AICHR in responding to human rights oppressions. Despite the implementation of the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration in 2012, this is a region that has consistently shown systemic human rights abuses, despite the ongoing implementation of a vast number of regional and global human rights norms.

Furthermore, it will focus on how the authority of the AICHR is highly determined by the choices of the regional hegemonic powers as members of ASEAN. Indonesia, known as a 'natural leader' of ASEAN, has been known by how they have embraced a leadership role in the regional organization. Throughout the years, past presidencies from Soeharto, all the way to the current presidency of Joko Widodo, have shown strong gestures of leadership in developing and constructing new institutions and norms to be adopted in ASEAN. During the Cold War, under the leadership of Soeharto, Indonesia was able to exert its influence and have ASEAN implement key peaceful norms in the region, which include the Zone of Peace, Freedom, and Neutrality (ZOPFAN), and the Treaty of Amity and Cooperation (TAC), two International law instruments that ensure a region of neutrality in the region during great power political rivalries. In contemporary times, Indonesia has also been well known as an architect of constructing key institutions such as the ASEAN Political-Security Community, as well as AICHR. Having embraced this leadership role in constructing norms and institutions in ASEAN, we must thus show certain focus to Indonesia in understanding the weak authority that has been implemented by AICHR in the mandate of promoting and protecting human rights. This article will employ the *Hegemonic Stability Theory* in understanding Indonesia's foreign policy actions to construct an inadequate human rights regime for the Southeast Asian region.

2. Theoretical Framework

This section of the article will be structured based on the following; (1) relevant literature in the discourse of AICHR's performances in the mandates of human rights protection and promotion, and (2) employment of Robert Keohane's view of Neoliberal Institutionalism-based hegemonic stability theory in evaluating Indonesia's foreign policy towards the AICHR. First of all, it is critical to understand the current body of literature available related to the AICHR's performance.

Based on the discourse, exists an extensive amount of literature that correlates directly to AICHR's failure in undergoing the mandate of human rights protection. Not many studies have focused on AICHR's mandate of human rights promotion, as the success of human rights promotional mandates can be achieved with a relatively less effort in comparison to human rights protection functions. Hara (2017, 2019a) and Olivia (2014) points this issue out in their published article, which focused on the inability of the AICHR to respond to human rights oppressions in the region of Southeast Asia, due to the lack of clear protection mandates given to the commission.

Furthermore, the employment of Robert Keohane's neoliberal institutionalist view of hegemonic stability theory is argued in this article, able to provide shed to understand Indonesia's contemporary role in deliberately establish a weak human rights commission in Southeast Asia. This view positions how hegemony (defined as possible actors inside or outside the regional setting of a regional organization) will direct institutions to favor their country (Keohane, 1984). Therefore, the act of cooperation that exists in an international organization represents cooperation and mutual interests among the actors. But it also highlights that the presence of self-interests during the cooperation is something that is inevitable and bound to exist in any regional or international cooperation, in an organizational setting. This provides a great basis for analysis in understanding Indonesia's role in the AICHR.

As one of the leaders of ASEAN, and one of the countries that provided the ground basis of the commission's establishment in 2009, we can understand how it is in the direct interest of Indonesia to establish a human rights regime that is based on function deficient, due to several national interest-based considerations.

3. Results and Discussion

3.1. Understanding the Deficiencies of the AICHR

AICHR holds the mandate of promoting and protecting human rights in Southeast Asia. A vital element of the commission also consists of the facilitation of regional cooperation among member states of Southeast Asia, with respect to the betterment of human rights in the region. As seen in the current status quo, Southeast Asia is not a region that has a clear human rights record among its member states. For several countries, the human rights violations have reached a pivotal point, with characteristics of being mass in scale and systemic in nature. As seen in the context of Myanmar, in which a systemic human rights violations aimed towards the minorities of Rohingya, have led to hundreds and thousands of individuals forced to flee neighboring states in Brunei, India, Indonesia, and other states in Southeast Asian and South Asian regions (Arendshorst, 2009; BUI, 2016). Furthermore, the extrajudicial killings currently taking place as a form of Duterte's 'war on drugs' have contributed to the killings of hundreds and thousands of innocent individuals in the Philippines. Human rights are a sensitive issue in Southeast Asia. And considering the implementation of norms such as the 'ASEAN Way,' it is difficult to see Southeast Asian states concluding a single framework or norm, that can guide national policymakers in Southeast Asia to abide by human rights norms, especially those adopted from the west. In understanding the points of AICHR's deficiencies, we need to pay close attention to the AICHR's Term of References, which defines the functions and purposes of the commission (Bangun, 2018; Limsiritong, 2018).

The AICHR acts as a consultative inter-governmental body, with the mandates of promoting and protecting human rights. It is worthy to highlight that one of AICHR's most notable successes include the adoption of the 'ASEAN Human Rights Declaration' in 2012, which disseminates the Southeast Asian's definition of human rights in the region (Olivia, 2014a; Hara, 2019c). Although seen as a major breakthrough for a region that has throughout the years consisted of diversified government and political systems, it is not without its critics. Many western observers have highlighted how the declaration fails to align itself with the defined global human rights norms, such as those concluded in the 1948 Universal Declaration of Human Rights. But this article will not argue whether it has successfully established a human rights declaration in Southeast Asia or not, as this example is merely to point out the significance of the AICHR's role in establishing a declaration (Olivia, 2014b).

A major defining point that leads to conclusions of AICHR's deficiencies as a regional norm in the field of human rights is its weak protection mandate. As pointed in the introduction section of this article, Southeast Asia consists of government leaders that have proven to conduct violations of human rights to minors of their countries. But specifically to the point of the AICHR's mandates, it can be seen that the AICHR clearly has not defined an equal authority between protection and promotion of human rights. Based on its Terms of Reference, the promotional mandates of the AICHR include mandates of public awareness, capacity building, encouragement to ratify human rights instruments, advance dialogues and consultation, and attain information on human rights conditions in member states in Southeast Asia.

Meanwhile, the protection mandate of the AICHR is not decisive. It is not mandated that contain points of clear instructions and implementation of the protection of human rights. Many points must be re-interpreted to be included in the realm of human rights protection. Therefore, it could be stated that the aspect of human rights protection is purely on the basis of by providing proper information and socialization, with hopes of national policymakers of Southeast Asian states to develop human rights protection platforms for their people, not directly through the AICHR. As many provided the opinion in regards to the AICHR, it must be noted that the AICHR is only a commission, not a judicial body, nor an enforcement institution that can by force implement the protection mandates of the Terms of References. But the use of 'protection' as a key terminology in the Terms of References document has led many stipulations and hopes of a more coercive response in addressing human rights violations in Southeast Asia.

In a general context, the deficiencies of the AICHR is due to the well-known 'ASEAN Way,' which includes a three norm explanation of International Relations of ASEAN. They include; (1) consensus, (2) non-interference, and (3) high regard over sovereignty (Drajat, 2018). Despite the successful establishment of a human rights commission in Southeast Asia, the presence of the ASEAN Way has led Southeast Asian states to defer from being too assertive in interfering in human rights cases of member states. It is worth noting in addition to this, that Southeast Asian states have been eagerly willing to contribute to the integration of Southeast Asia through ASEAN, as there is a high respect over sovereignty. In comparison to the developing norm in global politics, human security fails to overlap state sovereignty in the International relations of Southeast Asia. In other regions, human security has developed becoming a major norm that must be respected, leading state actors to intervene in others, if the notion of human security is not heavily regarded by national leaders of a state. This has been apparent in the Middle East and Africa, in which autocratic leaders have been taken down one by one, due to their opposition to human security.

3.2. Indonesia's Deliberate Weakening of Human Rights Norms in Southeast Asia

In considering Indonesia's position in Southeast Asia, it is a well-known fact that Indonesia has asserted itself as a regional hegemon. Indonesia was one of the founders of ASEAN in 1967 and has continued to play a pivotal role in developing regional norms and institutions for ASEAN. Based on its historical track record, Indonesia though has not always been a peaceful actor in the Southeast Asian region. During Soekarno's rule in the mid 20th century, we can witness the presence of belligerent foreign policy aimed at Malaysia, leading to a non-cooperative region. But since the presidency of Soeharto, the 'New World Order Government' positioned Indonesia's leadership role in ASEAN and the establishment of regional norms in Southeast Asia. Since the 1970s, Indonesia through the leadership of Soeharto led the establishment of key regional norms including the 'Asian Zone of Peace, Freedom and Neutrality' (ZOPFAN) in 1971, and 'Treaty of Amity and Cooperation' (TAC) in 1976. In both regional law instruments, Soeharto led the norms of peace and neutrality in the conduct of the international relations of Southeast Asia (Putra, 2019). Any external state that is willing to conduct relations with Southeast Asia must first bind themselves with such norms, as well as ratify the regional instruments (specifically to TAC) (Putra, 2015).

Indonesia's leadership role in ASEAN has only accelerated to greater heights since Soeharto's rule. As we can see especially during the presidency of SBY, Indonesia embraced the role of conflict management among ASEAN member states, and became an architecture of ASEAN institutions and norms. For example, during the presidency terms of SBY, Indonesia was able to lead the formation of the ASEAN Political and Security Community 2015 and ASEAN Intergovernmental Commission on Human Rights in 2009 (Darwis, Putra and Cangara, 2020).

The AICHR is a unique case, considering Indonesia's human rights track record. In numerous occasion, Indonesia has been the center of attention with the various human rights abuses that have taken place in the country. In contemporary times, it was evident in the conflicts in most Western and Eastern areas of Indonesia (Aceh and Papua), with critics emerging over the violent nature of the government in responding to the demand over independence (Kusuma, 2018). Until 2020, the issue of Papua is still relevant, with many states in the Pacific stating of the crimes against humanity that Indonesia has conducted towards the ethnic minority. This issue is critical to consider in overall analyzing Indonesia's preferences in determining how a human rights commission should operate in the Southeast Asian region.

Out of the other Southeast Asian states, Indonesia is considered as a state with a mature democratic system. Despite having several flaws in the conduct of general elections, and several political human rights oppressions in the past, in comparison to its neighboring states, Indonesia has been able to successfully transition itself from autocratic system to one that holds a president chosen by the people of Indonesia. This transitional phase has been also a success for some, but majorly, Southeast Asian states are not able as of now, to implement a successful democratic transition.

Despite having a successful democratic transition, the issue of human rights is something that is not reached a global human rights norms standard. Several issues of human rights can be highlighted below; (1) lack of protection for all minor religious groups to practice their religion (especially based on society's 'Muslim majority' perspective that can be coercive in several instances), (2) political rights are protected but oppressed in face of oligarchy, (3) human rights oppressions for groups of ethnic groups that demand independence, and (4) sacrificing human rights in face of infrastructural development of Indonesia. One issue that has caught the most international attention is Indonesia's response towards OPM (Papuan Independence Organization) through the use of terror. Besides the presence of the Indonesian military in the region, Indonesia has even categorized some individuals as 'terrorists' through the Indonesian Detachment 88 (Indonesia's anti-terror special unit). Labeling the freedom fighters as terrorists will lead to possible human rights abuses and the absence of judicial mechanisms for those suspected of terrorists. The onslaught has caught the attention of many states in the Pacific, that feel a certain level of 'Pacific' solidarity with the Papuan ethnicity.

The human rights track record of Indonesia is what led to the establishment of a regional human rights regime that is deficient in its functionality. As a state that has successfully transitioned to a democratic state, it was imperative for Indonesia to lead Southeast Asia to a more democratic region, despite the diversity of governmental systems adopted. Indonesia had to establish a human rights commission to individually show their willingness to guide Southeast Asia in the context of human rights promotion and protection. But, as Indonesia still faces possible issues of human rights oppressions, it was also imperative for Indonesia to not establish a regional human rights commission that will put the state in jeopardy, considering the alleged human rights oppressions that have been relevant in the country for so many decades. That argument explains why the AICHR is heavy in the mandate of promotion as the mandate of promotion does not interfere with state sovereignty. Meanwhile, the mandate of protection is not prioritized, as Indonesia itself, as the regional hegemon of Southeast Asia, is willing to include that as a mandate, despite lacking this aspect in reality.

Conclusion

In conclusion, the AICHR is considered one of the major progress in Southeast Asian regional integration of human rights norms. In a region where human rights oppression is daily, with many flaws in municipal laws related to human rights, it was time for the regional norm to help direct human rights protection. The AICHR provided the basis of human rights promotion and protection in Southeast Asia. The protection mandate under the AICHR though has been greeted with many criticisms, considering their lack of ability to actually protecting citizens from human rights oppressions that systematically occur in the majority of countries in Southeast Asia. This article highlights Indonesia, as a regional hegemon and a natural leader and architecture of regional norms in Southeast Asia. Under the lens of Neoliberal Institutionalism's perspective of hegemonic stability theory, this study argues how Indonesia deliberately directed the formation of a weak regional human rights commission based on two major considerations. The first consideration is the need to establish a regional human rights regime that focuses on human rights protection, due to its successful democratic transition in the early 21st century. Furthermore, the second consideration is that Indonesia needed to weaken the protection mandate with hopes of protecting itself from possible judicial mechanisms being implemented in response to a number of human rights oppressions that have occurred in present times in Indonesia, especially in face of the Papuan independence movement.

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