

ความท้าทายของนักปกป้องสิทธิมนุษยชนในอาเซียน

THE CHALLENGES OF HUMAN RIGHTS DEFENDERS IN ASEAN

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ABSTRACT

The aim of the study is to examine the challenges facing human rights defenders in protection of human rights in both national and regional levels of ASEAN. The study showed that the human rights defenders were in danger because of harassment, intimidation and lawsuits to stop their activities on behalf of others. It was the outcome of misconceptions and false beliefs about human rights in each ASEAN member states that tended to take values of economic growth and national security more than the ones of human rights. Since human rights defenders could not rely on the government to protect their rights because in some cases the government itself was the one who stood in the opposite side of human rights defenders. Then, the hope of human rights defenders have gone up to the international level. However, there are some challenges as well, especially in a case of the regional organization (ASEAN). The first challenge is that the ASEAN mechanism on human rights aims to promote more than protect human rights. The second one is the weakness of ASEAN human rights institutions.

Keywords : human rights, human rights defenders, ASEAN

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บทคัดย่อ

บทความนี้มีวัตถุประสงค์เพื่อศึกษาความท้าทายที่นักปกป้องสิทธิมนุษยชนต้องเผชิญในการคุ้มครองสิทธิมนุษยชนทั้งในระดับประเทศและระดับภูมิภาคที่มีองค์กรระหว่างประเทศอย่างอาเซียนเป็นองค์กรหลักในการจัดการปัญหาสิทธิมนุษยชนในภูมิภาค จากการศึกษาพบว่า นักปกป้องสิทธิมนุษยชนนั้นถูกตกเป็นเป้าสำคัญของการละเมิดสิทธิมนุษยชน เช่น การถูกรังควาญ การข่มขู่ และการถูกฟ้องร้อง เป็นต้น จากการทำหน้าที่เป็นกระบอกเสียงให้กับผู้ที่ถูกละเมิดสิทธิมนุษยชน การละเมิดต่อนักปกป้องสิทธิมนุษยชนดังกล่าวเป็นผลมาจากการที่รัฐหรือบริษัทต่างๆยังมีความเชื่อที่ไม่ถูกต้องโดยให้ความสำคัญกับการเติบโตทางเศรษฐกิจและความมั่นคงของรัฐมากกว่าเรื่องสิทธิมนุษยชน เมื่อนักปกป้องสิทธิมนุษยชนไม่สามารถพึ่งพารัฐได้เสมอไปเนื่องจากบางครั้งรัฐก็เป็นคู่ขัดแย้งเสียเอง ดังนั้นความหวังของนักปกป้องสิทธิมนุษยชนจึงมุ่งไปในระดับระหว่างประเทศ เช่น อาเซียน แต่กระนั้นก็ยังมีความท้าทายที่นักปกป้องสิทธิมนุษยชนเผชิญซึ่งมีอยู่สองประการหลัก ดังนี้ ประการที่หนึ่ง กลไกด้านสิทธิมนุษยชนของอาเซียนมุ่งส่งเสริมมากกว่าปกป้องสิทธิมนุษยชน ประการที่สอง ความอ่อนแอขององค์กรสิทธิมนุษยชนของอาเซียน

คำสำคัญ : สิทธิมนุษยชน, นักปกป้องสิทธิมนุษยชน, อาเซียน

Introduction

According to ProtectDefenders.eu found that in the year 2016 more than 425 human rights defenders worldwide have faced judicial harassment and at least 193 defenders have been charged or sentenced to prison (Asia Forum for Human Rights and Development, 2016). The year 2016 for Association of Southeast Asian Nations (ASEAN) was considered as a bad year for human rights defenders, who campaigned in various issue regarding human rights in the region. They have received death threats, forced disappearance, harassment and physical assaults, and illegal detentions.

According to Human Rights Watch senior researcher Sunai Phasuk said *“We have observed that the threat to activists was universal throughout the region. Activists in ASEAN not only faced life threats, but they were also vulnerable to legal actions by the state and the private sector...This year, we not only saw an increase of the number of cases of threats to activists, but we also saw many existing cases unsolved”* (Rujivanarom, 2016). As a matter of fact, it showed that ASEAN are still infamous by not only the increasing number of human right violation cases, but also many existing problem of ASEAN human right which can be indicated to the weakening of ASEAN to protect the human rights in the region.

The main aim of this article is to examine the challenges that facing human rights defenders in protection of human right in both national level and regional level of ASEAN. This article is divided into 3 parts: (i) the definition of Human Rights Defender, (ii) the challenges that the Human Rights Defenders face in protecting Human Right in ASEAN, and (iii) conclusion according to the data and facts presented.

I. Definition of Human Rights Defender

Most of the time when there is an attempt to promote or protect the human rights, the people or groups defending the human rights are sometimes referred to as “Activist”, “Professional”, “NGOs”, “Advocacy Groups”, “Environmentalism”, “Lawyer”, “Worker” and “Monitor”. These are some of the common terms that we often read in the books or newspapers and sometimes hear on the news. Actually, there is another term that used to describe people or groups who act to promote or protect human rights, and that is “Human rights defender”.

According to Article 1 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms which states that *“Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”* (OHCHR, 1998). It simply means that human rights defender is a term used to describe people who, individually or with others, act to promote or protect human rights. To be a human rights defender, a person can act to address any human right (or rights) on behalf of individuals or groups. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realization of economic, social and cultural rights (OHCHR, 1998). Note that the work of the Declaration on human rights defenders began in the year 1984 and ended with the adoption of the text by the General Assembly in the year 1998. The mandate to support implementation of the 1998 Declaration on human rights defenders was established in the year 2000 by the Commission on Human Rights as a special procedure.

Moreover, the support to human rights defenders is identified as a major priority of many regional organization especially the European Union (EU). EU seen the task to promote and protect human rights defenders as an external policy in the field of human right. That is why EU launched the EU Guidelines on Human Rights Defenders. According to the guideline, there are the definition of human rights defender states that *“Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental*

freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence” (European Union, 2008). It simply means that the EU provide the guideline to promote and respect the rights of human right defender that acted peacefully and recognize the critical need to protect them from attacks and threats from states and non-state actors.

From statements above, it it can be generalized that a person who concern about human rights have a right to address the concern on behalf of individuals or groups, the act of this person called human rights defender. The significant reason of human rights defender is the key agents of change in their own society and make contribution to the international community's efforts to support democracy and human rights (Bennett, 2015). However, the work of human right defender is facing with a lot of challenges particularly ASEAN member countries where criminal justice systems are vulnerable to executive interference, arbitrariness and abuse.

II. The Challenges of Human Rights Defender in ASEAN

Not only the private individuals or victims of human rights need to be protected, but also those persons who defend the human rights of others need to be protected too. The human rights defenders are in danger because they are often subjected to harassment and lawsuits to stop their activity. If we trace back to the past ten years, there are many cases of

harassment that befell the human rights defenders either by state or non-state actor, due to their activities.

For example, Andy Hall, a migrant worker rights defender, was intimidated and was sued by some of Thailand's food industries for defamation and Computer Crimes Act charges because he tried to expose the abuse of Myanmar forced labor and released a reported called “cheap has high price” (Hall & et al., 2013). In 2016, the Bangkok South Criminal Court sentenced him to three years in prison, suspended by two years, and fined him 150,000 baht. After this incident, he decided to leave the country after he had lived in Thailand for 11 years (BBC, 2016).

Sirikan Charoensiri, Thai lawyer, was charged by the Thai military authorities under the military court, and could possibly face a sentence to 15 years in prison, for defending her clients in violating a ban on “political” assembly of five or more persons though it was a peaceful protest. (Human Rights Watch, 2016).

Gloria Capitan was one of the leaders of the Coal-Free Bataan Movement and the President of United Citizens of Lucanin Association in the Philippines. She had faced a lot of intimidation and threats from representatives of the companies owning the coal facilities. After all, she has been peacefully opposing the operation and expansion of coal plants and open storage facilities (Greenpeace, 2016). Out of nowhere, she was shot dead by two unidentified men in her province on 1 July 2016.

Australian's editor Alan Morison and Thai's reporter Chutima Sidasathian of the Phuketwan News website, who have been charged of defamation and committing a computer crime by the Thai Navy, after their website quoted a Reuters news agency report that *received a Pulitzer prize*

alleging "naval forces" and immigration officials were involved in trafficking of members of the discriminated-against ethnic group (CNN, 2013). Fortunately, the year 2015, these two were found not guilty of criminal defamation for reporting that news (Holmes, 2015).

Pham Minh Hoang is a university professor and blogger and a member of the pro-democracy organization. He wrote a lot of commentaries on issues such as human rights, the environment, and corruption regarding Vietnam. In the year 2011, he was sentenced to three years' imprisonment under the Criminal Code on false charges of attempting to overthrow the government after that on 24 June 2017, he was revoked of Vietnamese citizenship and faced deportation by forced to board a flight to Paris because he has France citizenship (BBC, 2017; Aljazeera, 2017).

Sombath Somphone, who promoted civil society in Laos and awarded the Ramon Magsaysay Award for Community Leadership, was enforced disappearance in Vientiane on 12th of December 2012. The CCTV footage revealed that he was pushed away in a pickup truck stopped by uniformed police officers and then taken away in a pickup truck. The Lao Government immediately denied the accusations for his disappearance (Creak & Barney, 2012).

Naw Chit Pandaing had been a strong advocate against human right violations, and the issue regarding land and environmental right. Before she was stabbed to death on November 10th 2016, she has investigated the impacts of mining in Dawei, Myanmar (Karen news, 2016).

The names and cases mentioned above were some of the predicaments of the human rights defenders who tried to expose the

misconduct of the government, influential elite people, and giant companies who have economic and political power, were subjected to criminal lawsuits or injustices. This reality leads to the most fundamental problems which is the misunderstanding of human rights in ASEAN member states.

The lack of understanding of human right in each ASEAN member states. Most of the states or non-states, they are deluding with the false beliefs that human right is a threat to national security or business interest. They tend to see only one side of the mirror, in the side that gives more benefits or keep the state secured and to make profit from the business, with no care that someone is abusing in the other side of the mirror. As Amartya Sen has said, *"There is little general evidence that authoritarian governance and the suppression of political and civil rights are really beneficial in encouraging economic development. The statistical picture is much more complex. Systematic empirical studies give no real support to the claim that there is a conflict between political rights and economic performance"* (Sen, 1997). The misconceptions and false belief of human rights among the ASEAN member states can be overcome by interpreting the values of human rights in line with the values of economic growth and national security.

However, as it happens human rights defenders cannot depend entirely on the government to deal with the protection of human right, as in some cases, states are found to be on the opposite with human rights defenders. In result, the hope of human rights defenders to seek protection go to a broader level, regional for instances. Unfortunately, there are some challenges as well especially in case of ASEAN.

First, the ASEAN mechanism on human rights heading to promote only, not protect which make ASEAN ineffective for protection of human rights and human rights defenders, even if ASEAN have shown a good sign on improve human right by established the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009 and mechanisms bolstering in particularly rights, for example ASEAN Commission on the Rights of Women and Children (ACWC) and ASEAN Committee on Migrant Workers (ACMW).

Let's take a look at the Terms of Reference of the AICHR. Almost all of the point of reference refer to the provisions and mandate to promote human rights, but not for the protection of human rights. The only point of mandate that includes the protection of human rights is stated in the article 4(10) *"To obtain information from ASEAN Member States on the promotion and protection of human rights"* (ASEAN, 2009). Why is this article becoming so important in the protection of human rights? The answer is because of this is the channel that AICHR can obtain the information about human right violation from ASEAN member states. But, in fact, some of ASEAN member states that are part of AICHR consider this point as a form of violation to national sovereignty, therefore refuse to share or recognize any information regarding human right within their territory. In spite of the fact that this article could be one strong basis to support the AICHR gaining the information in regard to the human right violation from ASEAN member states.

In addition to that, the fruit of AICHR is also visible on the launching of the ASEAN Human Rights Declaration in 2012. It seems to be an attempt of ASEAN member states to present some opportunity and strengthen the

human rights foundation in the region. However, ASEAN Human Rights Declaration is a non-binding instrument which means it has no power to enforce any countries in ASEAN. Moreover, in the eyes of civil society in ASEAN, the ASEAN Human Rights Declaration is still considered as a “*Still Window-dressing*” (Ye, 2013). It’s simply means that it is for display only, it will never be used to protect human right and human right defenders.

The Second challenge is the weakening of ASEAN Human rights institutions. there are a lot of expectation from human right defenders for ASEAN as a regional organization to help improving human rights in the region. However, ASEAN seems to be fail in the eyes of human right defenders because of their ineffective outcome. In fact, there are reasons behind that. Let take a look to the ASEAN’s Human rights institutions, it can be found that this institution is weak. To begin with the decision-making process is based on consensus. It is very difficult to have 10 countries agreed especially in case of migrant worker. In ACMW, the representative from sending countries, for example Indonesia and the Philippines, are the ones who making demands to protect the rights of migrant worker by encouraging legally binding instrument, but for Thailand, Malaysia and Singapore, are the receiving countries which favor non-binding instrument. So, up to date, the adoption of the ASEAN instrument on the protection and promotion of the rights of migrant workers is still on the way since the declaration was launch in 2007 (Jailani, 2015). This is an example of ineffective outcome from decision-making via consensus because no country wants to lose their national interests.

Moreover, if we look into others ASEAN agreement from the past, actually the work of AICHR has been limited by the others ASEAN agreement

in particularly in the Article 2 of the Treaty of Amity and Cooperation in Southeast Asia (TAC) which concluded in the year 1976, stated that (ASEAN, 1976):

In their relations with one another, the High Contracting Parties shall be guided by the following fundamental principles:

- a. Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations;*
- b. The right of every State to lead its national existence free from external interference, subversion or coercion;*
- c. Non-interference in the internal affairs of one another;*
- d. Settlement of differences or disputes by peaceful means;*
- e. Renunciation of the threat or use of force;*
- f. Effective cooperation among themselves.*

Even if this agreement has a huge success by created flexible principle, based on discreteness, informality, consensus building, non-intervention and non-interference, for Southeast Asia states to stay together peacefully during the era of ideological conflict so called Cold War. Since then, the TAC become a fundamental principle and a norm for ASEAN states as known as ASEAN Way.

However, the Cold War have ended and the world have changed. Nowadays, in the post-cold war era, some part of TAC principles tent to be a liability for developing ASEAN as an institution especially human rights bodies in ASEAN. The TAC principles obstruct the work of ASEAN on human right that resulted as an ineffective outcome.

The other reason is the lack of coordination among ASEAN's Human rights institutions. There are 3 main ASEAN's Human rights institutions. The

first is AICHR which falls within the ASEAN Political-Security Blueprint and report to the ASEAN Foreign Minister's Meeting. The second is ACWC which falls within the ASEAN Socio-Cultural Community Blueprint and submits an annual report to the ASEAN Ministers Meeting on Social Welfare and Development. The third is ACMW which also falls within the ASEAN Socio-Cultural Community Blueprint and reports to ASEAN Labor Ministers Meeting. As seen above, they are working independently and in different pillar of ASEAN community. All ASEAN's Human rights institutions should coordinate to each other and work closely with AICHR because AICHR is the main institutions of human rights in ASEAN.

ASEAN's Human rights institutions not only lack of coordination among themselves but also, lack of coordination with civil society organizations (CSOs) which, in fact, are very enthusiastic to work with ASEAN, but ASEAN offers very limited room for CSO activities (Chu, 2016). The Guidelines on the AICHR's Relations with CSOs stated three important provisions in regard to that: First, *"AICHR shall not have consultative relationships with CSOs and institutions that do not respect the principles and purposes of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms..."*; Second, *"....To commit themselves to respect the principles contained in the ASEAN Human Rights Declaration (AHRD)"*; Third, *"Respect and comply with the national laws and regulations of the concerned ASEAN Member State where their activities/programmes take place"* (AICHR, 2015). These provisions imply that CSOs that joined in consultative relationships with AICHR can not criticize the way ASEAN worked. And, If CSOs will not comply

with these guidelines, AICHR can suspend consultative relationships with that CSOs.

III. Conclusion

It can be concluded that there are many challenges that the human right defenders face in ASEAN with their rights to do the activity, range from domestic level for being targeted for harassment and faced serious threats by state and non-state actors, to regional level which is ineffective for protection of human rights and human rights defenders by the weakening of ASEAN human rights institutions. According to the challenges above, it makes a suggestion that ASEAN member states should take human rights more seriously, consider the value of human dignity to be equal to the value of economic growth and prove that this region is a true society of “sharing and caring” especially for those people who are weak and voiceless, as embedded in ASEAN vision. The last but not least, as a citizen of ASEAN, it is incumbent on all decent people to protect those who protect human rights.

Bibliography

AICHR. (2015). Guidelines on the AICHR's Relations with Civil Society

Organisations. Retrieved April 1, 2017 from:

http://aichr.org/?dl_name=Guidelines_On_The_AICHRS_Relations_With_CSOS.pdf

Al Jazeera. (2017). “Vietnam exiles dissident after revoking his citizenship”.

Retrieved April 2, 2017 from:

<http://www.aljazeera.com/news/2017/06/vietnam-exiles-dissident-revoking-citizenship-170625150005282.html>

- ASEAN. (1976). "Treaty of Amity and Cooperation in Southeast Asia Indonesia, 24 February 1976". Retrieved June 1, 2017 from: <http://asean.org/treaty-amity-cooperation-southeast-asia-indonesia-24-february-1976/>
- ASEAN. (2009). *Terms of Reference of ASEAN Intergovernmental Commission on Human Rights*. Jakarta: ASEAN Secretariat.
- Asia Forum for Human Rights and Development. (2013). Civil Society Organisations demand meaningful engagement with ASEAN human rights bodies. Retrieved April 1, 2017 from: <https://www.forum-asia.org/?p=16420>
- Asia Forum for Human Rights and Development. (2016). ProtectDefenders.eu: Human Rights Defenders are not criminals. Retrieved May 1, 2017 from: <https://www.forum-asia.org/?p=21935>
- BBC. (2016). Andy Hall: Thai court finds UK activist guilty of defamation. Retrieved April 1, 2017 from: <http://www.bbc.com/news/world-asia-37415590>
- BBC. (2017). "Vietnam blogger Pham Minh Hoang deported to France". Retrieved April 1, 2017 from: <http://www.bbc.com/news/world-asia-40398096>
- Bennett K., Ingleton D., Nah A. & Savage J. (2015). Critical perspectives on the security and protection of human rights defenders, *The International Journal of Human Rights*, 19(7), pp. 883-895.
- Bennett, K. (2015). European Union Guidelines on Human Rights Defenders: a review of policy and practice towards effective implementation, *The International Journal of Human Rights*, 19(7), pp.908-934.

- Chu, Ta-Wei. (2016). Human Insecurities in Southeast Asia: Impediments to Achieving a People-Oriented ASEAN, in Carnegie P. J., King V. T. & Ibrahim Z. (eds), *Human Insecurities in Southeast Asia*. Singapore: Springer, pp.157-172.
- CNN. (2013). "Thai navy sues Phuketwan journalists over Rohingya trafficking report". Retrieved April 1, 2017 from: <http://edition.cnn.com/2013/12/22/world/asia/thailand-media-defamation/index.html>
- Creak S.& Barney K. (2012). Distressing developments in Laos. Retrieved April 1, 2017 from: <http://www.newmandala.org/distressing-developments-in-laos/>
- European Union. (2008). European Union Guidelines on Human Rights Defenders. Retrieved April 1, 2017 from: <https://www.consilium.europa.eu/>
- Greenpeace. (2016). "Greenpeace statement on the murder of Gloria Capitan, anti-coal activist in Bataan". Retrieved June 1, 2017 from: <http://www.greenpeace.org/seasia/ph/press/releases/Greenpeace-statement-on-the-murder-of-Gloria-Capitan-anti-coal-activist-inBataan/>
- Hall, Andy. (2012). Migrant Workers and Social Protection in ASEAN: Moving Towards a Regional Standard?, *Journal of Population and Social Studies*, 21(1), pp.12-38
- Hall, Andy & et al. (2013). Cheap has high price: Responsibility problems relating to international private label products and food production in Thailand, *Finnwatch*. Retrieved April 1, 2017 from: https://www.finnwatch.org/images/cheap%20has%20a%20high%20price_exec%20summary_final.pdf

- Holmes, O. (2015). "Australian and Thai journalists found not guilty of defaming Thai navy", *The Guardian*. Retrieved April 1, 2017 from: <https://www.theguardian.com/world/2015/sep/01/australian-and-thai-journalists-found-not-guilty-of-defaming-thai-navy>
- Human Rights Watch. (2016). Thailand: Immediately Drop Sedition Case Against Human Rights Lawyer. Retrieved April 1, 2017 from: <https://www.hrw.org/news/2016/10/03/thailand-immediately-drop-sedition-case-against-human-rights-lawyer>
- Jailani, A. (2015). The Need for an ASEAN Treaty on Migrant Workers. Retrieved April 1, 2017 from: <http://thediplomat.com/2015/01/the-need-for-an-asean-treaty-on-migrant-workers/>
- Karen News. (2016). Community groups demand justice for murdered Karen women activist and her killer caught. Retrieved April 1, 2017 from: <http://karennews.org/2016/11/community-groups-demand-justice-for-murdered-karen-women-activist-and-her-killer-caught.html/>
- OHCHR. (1998). Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Retrieved April 1, 2017 from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx>
- Patel, C. (2017). Time for ASEAN to Take Human Rights Seriously, *The Diplomat*. Retrieved April 1, 2017 from: <http://thediplomat.com/2017/02/time-for-asean-to-take-human-rights-seriously/>

- Pearson, R. & Kusakabe, K. (2012). Who cares? Gender, Reproduction, and Care Chains of Burmese Migrant Workers in Thailand, *Feminist Economics*, 18(2), pp.149–175
- Rujivanarom, P. (2016). Bad year for human rights activists in Asean, *The Nation*. Retrieved April 1, 2017 from:
<http://www.nationmultimedia.com/news/national/30303183>
- Sen, Amartya. (1997). “Human Rights and Asian Values” Sixteenth Morgenthau Memorial Lecture on Ethics & Foreign Policy at the Carnegie Council on Ethics and International Affairs [HTTP]. Retrieved April 1, 2017 from
<http://afloweroutofstone.tumblr.com/post/126888618412/human-rights-and-asian-values-amartya-sen>
- Ye, Shiwei. (2013). *Still Window-Dressing, a Performance Report on the Third Year of the ASEAN Intergovernmental Commission on Human Rights (AICHR) 2011-2012*. Bangkok: Asian Forum for Human Rights and Development.