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Judul : Challenges of the ASEAN rights commission

Hariz Ashar

ASEAN foreign ministers approved the ASEAN Inter-Governmental Human Rights Commission (AICHR) in July and are expected to inaugurate the Commission on Thursday during the ASEAN summit in Thailand.

The acceptance of the AICHR gives two indicators of the current global human rights trend.

First, it gives ASEAN an opportunity, as a regional organization, to promote and protect human rights in Southeast Asia.

Second, the implementation or enforcement of human rights legislation in each ASEAN member country can be monitored because AICHR is an interstate organization.

Nevertheless, there are some handicaps because, since the establishment of ASEAN 42 years ago, human rights have never become a big enough concern to be enforced by the ASEAN institution.

ASEAN is always very reluctant to interfere in members' sovereignty. ASEAN never questioned the genocide in Cambodia in the 1970s; the Indonesia Military's long occupation of East Timor; the violation of the right to liberty in Malaysia and Singapore; and martial law in the Philippines and other areas in Indonesia and Thailand in the past. The regional grouping is also powerless against the Myanmar's brutal regime.

The poor responses from ASEAN were caused by the political practices among the member states that run throughout the organization: the *ASEAN way'. The ASEAN way is cooperation that is loose and informal, relying on political persuasion rather than legal enforcement and basing itself on consultation and consensus.

This ASEAN way has been criticized as *rhetoric and hyperbole that ASEAN officials indulge in defensively to deflect attention from the grouping's shortcomings in ensuring more substantive cooperation'.

It can be seen as a conflict avoidance system relying on informal, friendly negotiation in structurally loose settings as opposed to adversarial models in legally grounded institutions.

Momentously, the Commission was established at a time when ASEAN states were basically not interested in human rights and preferred to look upon human rights as a threat to their political interests. So the Commission lacks a protection mandate. It has only a promotional mandate, such as to develop strategies for the promotion and protection of human rights and fundamental freedoms, to enhance public awareness of human rights among the peoples of ASEAN.

The Commission has no power to conduct investigations into particular member states. Furthermore, the decision-making in the AICHR shall be based on consultation and consensus, which is in accordance with Article 20 of the ASEAN Charter. The principles that have often been used by ASEAN state leaders to challenge the universality of human rights by upholding the sovereignty of non-interference (the ASEAN way).

Then how will the Commission's promotional mandate face the ASEAN way or the politics of sovereignty?

There will be a few problems for the future operation of the AICHR.

First, the politics of sovereignty have been exercised for a long time in ASEAN states. At some point, this exercise has caused widespread human rights violations. And unfortunately, there are no adequate and accountable remedies to those violations. Further, human rights violations are still happening, as is clearly seen in Burma. The Commission will not be able to handle a situation such as this because it has no mandate to conduct investigations.

Second, ASEAN foreign ministers fully control the Commission. Therefore, ASEAN might block efforts and steps forward by the Commission if they are not appropriate to ASEAN's politics.

Thus, the AICHR is only able to be a part of national human rights improvements in ASEAN states. To this end, the Commission must make an assessment of the human rights situation in Southeast Asia states. The result of this assessment can be used to formulate a priority program for building cooperation with national human rights institutions, policy makers and civil society in the member states.

However, to reach this situation, ASEAN governments have to keep the human rights discourse open and allow the involvement of the Commission.

It might also seek to build cooperation with international institutions, such as the Office of the High Commissioner for Human Rights and other regional human rights mechanisms. This could help solve serious human rights problems, such as those in Burma.

The writer is deputy coordinator of KontraS (Commission for Missing Persons and Victims of Violence).

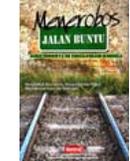
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