

THE IMPLEMENTATION OF AHRD IN INDONESIA STUDY CASE: HUMAN RIGHTS VIOLATIONS TOWARDS HUMAN RIGHTS ACTIVISTS IN PAPUA

¹Iron Nur Biantoro, ²Putri Dira Fahira, ³Siti Athiya Alifah

¹²³International Relations, President University, Bekasi, Indonesia

¹*iron.biantoro@student.president.ac.id*, ²*putri.fahira@student.president.ac.id*,
³*siti.alifa@student.president.ac.id*

Abstract

Cases of human rights violations continue to occur in the Asian region, including the ASEAN region, even though ASEAN countries have agreed to adopt the ASEAN Human Rights Declaration. In fact, the practice of AHRD is still minimally considered by ASEAN and ASEAN members themselves. Indonesia as an ASEAN member is also still taking action against human rights such as the case in Papua, not only local residents who get human rights violations from the government, but also from some data it is found that Papuan human rights activists are also intimidated. In this case, it can be seen that the implementation of the AHRD has not been fully maximized in Indonesia in handling cases of human rights violations contained in the points in the AHRD.

Keywords: Human Rights Violations, ASEAN, AHRD, Papua

1. Introduction

1.1. Background

Common liberties have turned into a problem that Western nations are battling for, particularly after the Cold War, when the United States rose to turn into a superpower. The United States is forcefully spreading its radical belief systems and the idea of fundamental freedoms as the reason for accomplishing progressivism. This additionally impacted Asian nations, particularly after the Asian Financial Crisis in 1997-1998. The emergency carried many changes to Asia, particularly after the Structural Adjustment Programs (SAPs) expected by the International Monetary Funds (IMF) to change the economy and government. Then, at that point, the nations in Southeast Asia that are individuals from ASEAN started to make an ASEAN Charter and shaped the ASEAN Intergovernmental Commission on Human Rights (AICHR) to help observe the authorization of common liberties in ASEAN part nations. All part nations marked the Charter, which was trailed by the foundation of the ASEAN Human Rights Declaration.

On 19 November 2012 ASEAN conducted a Human Rights Declaration finding a way to disappoint almost everyone after its submission (Human Right Watch, 2012). The United States expresses outrageous concerns that the Declaration does not conform to world norms and could be used as a safeguard for further violations of liberty (Baer, 2012). However, in spite of such analysis, the Declaration remains as the very first Southeast Asian contract of common freedoms and contains responsibilities not exclusively to monetary, social and social privileges - the customary focal point of local commitment with privileges concerns - yet in addition to undeniably more antagonistic common and political freedoms.

The Declaration of Human Rights in (ASEAN Human Rights Declaration) which was done in November 2012 turned into the underlying establishment for ASEAN part nations in fortifying the sway of every part country in conquering their homegrown issues, particularly the issue of Human Rights (HAM) (Narine, 2012). With the presence of this AHRD, it is trusted that the state will actually want to shield the basic freedoms of its kin and decrease outrage from common society and NGOs who firmly go against brutality and basic liberties infringement. Albeit the AHRD has been pronounced and embraced in the laws of ASEAN nations, savagery and basic freedoms infringement keep on happening.

In Indonesia, for instance, as one of the ASEAN part nations, has a genuinely enormous record of common freedoms infringement. A few instances of common liberties infringement that are as yet unsettled right up 'til today are the mass homicide in 1965, the Petrus 1982-1985 case, the 1989 Talangsari occurrence in Lampung, the 1998 Trisakti understudy shooting, the Semanggi 1 and 2 misfortunes, the May 1998 mobs, and the Waisor case. furthermore Wamena Papua (Tshandra, 2015). Every one of these instances of basic liberties infringement takes numerous casualties, up to large number of individuals. All things considered, common freedoms infringement that happened in these cases were instances of gross basic liberties infringement which included assault, abuse, murder, torment and others.

From one year to another, until now, Papua and West Papua remain regions that are defenseless against instances of basic freedoms infringement. Data from the Komisi untuk Orang Hilang dan Korban Tindak Kekerasan (KONTRAS) recorded as

many as 31 incidents such as terror or intimidation experienced by Papuan human rights activists in 2020 (Siswanto, 2021).

As in Kompas' coverage on September 30, 2021, there were 17 Papuan activists who were arrested by the police. When the activists were holding a demonstration, this made the activists disappointed because 3 days earlier there was also a demonstration aimed at the KPK but it was not disbanded. The purpose of this demonstration by Papuan activists is to reject racism and solve human rights violations in Papua (Ihsanuddin, 2021). These common freedoms infringements show how insignificant the public authority's endeavors, both focal and nearby legislatures, are in executing and carrying out participation in maintaining basic liberties through AHRD.

From the cases that have been written in the problem identification section and many other cases related to torture and unusual arrests of Papuan activists. This can be a problem related to the ASEAN Human Rights Declaration (AHRD) because it has ignored the general and political rights of the activists, most of the activists also received bad treatment that violated their human rights. It against point of AHRD number 22 that point out about the right to freedom of thought and and AHRD number 23 point out about the freedom of expression and opinion without interference.

1.2 Research Question and Objective

1.2.1 Research Question

How is the implementation of the ASEAN Human Right Declaration in the Province of Papua related to human rights violations against the activists and defenders of human rights?

1.2.2 Objective

The purpose of this research is to examine AHRD implementation at the subnational or provincial levels in Indonesia, particularly in Papua. Interactions involving violations of human rights faced by human right activists in Papua Province might be examined.

1.3 Hypothesis

Cases of human rights violations continue to occur in the Asian region, including the ASEAN region, even though ASEAN countries have agreed to adopt the ASEAN Human Rights Declaration. In fact, the practice of AHRD is still minimally considered by ASEAN and ASEAN members themselves. Indonesia as an ASEAN member is also still taking action against human rights such as the case in Papua, not only local residents who get human rights violations from the government, but also from some data it is found that Papuan human rights activists are also intimidated. In this case, it can be seen that the implementation of the AHRD has not been fully maximized in Indonesia in handling cases of human rights violations contained in the points in the AHRD.

1.4 Literature Review

Based on the understanding explained by UNICEF, Human Rights are those that legalize and maintain dignity or can also be called the strata of all humans. In what way does each human being live amid society? Their ties to the state and the state that has obligations to them have been regulated in Human Rights itself. (UNICEF, n.d.) The government has been required by Human Rights Law to carry out certain things and prevent actions that other people should not do. Each individual has their

responsibilities, among which are: utilizing their human rights, and each individual must respect and appreciate each other. No one has the right to commit violations, be it individuals, groups, or even the government.

The idea of human rights is based on a fundamental philosophical tenet: that there is an objectively discernible moral order, one whose legitimacy is independent of and applicable to all human beings everywhere and at all times. This theory holds that moral notions and opinions can be objectively proven to be essentially true. One of several universalist moral stances is contemporary human rights doctrine. Human rights theory's emergence and advancement are inextricably linked to the rise of moral universalism.

Human rights are based on moral universalism and the idea that a global moral community is made up of all people. The presence of rationally discernible trans-cultural and trans-historical moral truths is a premise of moral universalism. Human rights safeguard the fundamental liberties and well-being required for human agency and result from morality. Human rights are social representations of the moral views of human potential that have been chosen and are based on specific substantive justifications of the necessities of human life.

For the example of human rights is the freedom of expression, the definition of freedom of expression is the right to freely express ideas and opinions through speech, writing, or other forms of communication. However, all of this is done without violating the rights of others. Examples include citizen journalism, using social media, memes, hashtags, a verbal and written expression of opinions, press freedom, and infographics.

The adoption and implementation of the Asean Declaration of Human Rights (AHRD) in November 2012 marked the latest addition to the regional of human rights protection. While it did not create a treaty-based regime, it did include all three 'generations' of human rights (Purba, 2020). The ADHR is appreciated by many because it is considered the main gate for the protection of human rights in the Southeast Asia region. ADHR is the basis for "Association of Southeast Asian Nations citizens" to do more binding regional instruments on human rights (Rachminawati, 2014).

The ASEAN Human Rights Declaration is part of the ASEAN Community, which has several objectives, namely to build a framework for cooperation in terms of human rights in the ASEAN Region and to emphasize that ASEAN is committed to the Universal Declaration of Human Rights and other charters in which ASEAN is a party. Although the aim is to build cooperation in the field of human rights, the author feels that this will be difficult to do in the ASEAN region considering that ASEAN adheres to the principle of non-interference in which the cooperation that will be built by fellow ASEAN members is only limited to the promotion of human rights. It is hoped that the existence of AHRD can build cooperation between ASEAN members to be a mediation bridge against ASEAN member countries that commit human rights violations, as is happening in Papua today.

In addition to being the main gate for protecting human rights, AHRD is also expected to be able to figure out and solve minority problems in the ASEAN Region. Ten ASEAN member countries have a people of more than 600 million and form a rich national and minority cultural mosaic (Rachminawati, 2014). Examples of cases of Human Rights violations towards the minority such as the racism that befell Papuans.

In this paper, we will conduct research related to the implementation of AHRD in Indonesia, especially on human rights activists in Papua. There was a research before us in 2015 with the title *Analysis of ASEAN Human Rights Declaration Implementation Regarding Human Rights Violations Against Human Rights Activists and Defenders in the Provinces of Papua and West Papua 2015*. We were only able to get one journal related to the implementation of AHRD in Papua because only a few sources raised the issue. this. By analyzing journals related to the implementation of AHRD and the violence against human right in Papua, we hope to add additional information for us in working on this paper. From the results of the research that has been done, the researcher concludes that the securitization process carried out by ASEAN to make human rights issues an important issue to be handled through the creation of AHRD as a means of speech act is not able to make ASEAN member countries that have ratified it. AHRD really makes it a serious security issue. The implementation of AHRD in Indonesia, especially in the provinces of Papua and West Papua, has not yet been implemented properly due to conflicts with the ASEAN Way. This makes ASEAN member countries, such as Indonesia, ignore the securitization process and speech act that has been made through AHRD.

It raised a question about how is the implementation of the ASEAN Human Right Declaration in the Province of Papua related to human rights violations against the activists and defenders of human rights?

2. Research Method

Understanding research methods, according to Darmadi, is a scientific way to obtain or obtain data with a specific purpose. Research activities based on scientific characteristics are the meaning of the scientific method. The characteristics in question are rational, empirical, and systematic. The method is divided into two, namely qualitative and quantitative. Choosing a qualitative method aims to collect and complete research data. At the same time, the qualitative method aims to describe experiences and give meaning to life. Qualitative methods are also called systematic subjective approaches (Darmadi, 2013).

In this research paper, the author will use a qualitative method, namely to examine AHRD implementation at the subnational or provincial levels in Indonesia, particularly in Papua. Interactions involving violations of human rights faced by defenders and activists of human rights in Papua Province might be examined. The qualitative method itself is a describe to explore and understand the intepretation of individuals or populations that are ascribed to human social problems. The research process involves questions and procedures that arise; data collection in participant settings; analyzing data inductively, building from specific themes to general themes; and making interpretations of the meaning of the data. The final written report has a flexible writing structure (Creswell, 2012).

The data collection technique in this paper is to collect data, information, or facts that are related and relevant to the problem to be studied. Due to some limitations in conducting this research, the author was not able to directly review or directly interview the person concerned. Therefore, this study uses secondary data analysis, namely by searching literature or data and various information with various kinds of material through library studies and searching data through the internet.

The writing method we chose was a qualitative descriptive method. Sugiyono revealed that qualitative research is descriptive, which means that the data collected is more data in the form of words than numbers (Sugiyono, 2010). Furthermore, based on the Gay perception, qualitative research analyzes, collects, and interprets complete or comprehensive narrative and visual data to find knowledge or views about certain phenomena. (Gay, 2006). Then, the purpose of this qualitative research itself focuses on encouraging a more detailed or in-depth knowledge or understanding, such as phenomena in the process, environment, or perhaps beliefs in this paper, in the form of the phenomenon of human rights violations that have been felt by human rights activists in Papua and Papua. as well as the implementation of the ASEAN Human Rights Declaration (AHRD) in Indonesia. In this case, the writer must be able to collect, analyze and interpret the data and then also describe it. The purpose of this method is to be able to describe anything related to the discussion of this research. Namely, the author must be able to explain at the subnational and provincial levels, Indonesia and especially Papua, regarding the implementation of the ASEAN Human Rights Declaration (AHRD). Relationships involving human rights violations felt and faced by human rights activists, and defenders may be analyzed in the Papua province. All data collected during the field research were systematically structured, understood, and interpreted to help answer the research questions posed in this research paper.

3. Result and Analysis

The declaration held in 2012 was the result of ASEAN's long journey to commit to human rights (Asean Trade Union Council, 2012). The ASEAN Human Rights Declaration (AHRD) was formed by Association of Southeast Asia Nations member countries whose basic premise is that there is a standardization of a written human rights stability system or norms, which are expected to be able to promote and ensure the commitment of Association of Southeast Asia Nations member countries in upholding human rights in their countries. The formation of the ASEAN Human Rights Declaration (AHRD) still respects the aspect of mutual respect in terms of the political, historical, religious, and cultural, backgrounds of each ASEAN member states (Nopiza, 2019). The ASEAN Human Rights Declaration (AHRD) was also formed based on international pressure that continues to pressure the Association of Southeast Asia Nations region which has many cases of violations of human rights, it is hoped that this declaration will reduce international pressure on the ASEAN region (Davies, 2013).

The values recorded in the ASEAN Human Rights Declaration (AHRD) section prioritize the basis of Non-interference, namely the original core principle which is the regional foundation of ties between countries that are part of ASEAN (Keling, Md. Som, Saludin, Shuib, & Ajis, 2011).

This can be seen from point number 7 of Asean Human Right Declaration (AHRD), Contains about human rights are universal but, in the implementation, it must consider the regional and national contexts such as looking at the political, social, cultural, and religious backgrounds. This point even seems that this declaration weakens the Universal Declaration of Human Rights or known as UDHR, which places domestic law as the highest law compared to the Universal Declaration of Human Rights (UDHR) (Victoria Nuland, 2012).

Annual report issued by KontraS with the title Human Rights Daily Record 2021 HAM eroded out contains reports on violations of human rights violations that occurred in 2021, including human rights violations that occurred in Papua. In 2021 there were 25 incidents of civil liberties violations related to the issue of Papua and the criminalization of human rights activists, 275 people were arrested; 146 people are students, 115 people are civilians, 31 people are activists, and 1 person is a journalist (KontraS, 2021). Some examples of criminalization cases experienced by Papuan activists in 2020 there were 6 Papuan activists who were suspects by the police on suspicion of treason. Finally, these six Papuan activists were sentenced to 9 months in prison by the judge. This is a result of the peaceful action of activists at the end of 2019, this peaceful demonstration was carried out in Surabaya. At first, the activists had obtained permission to hold a peaceful protest, but when the action was taking place the activists raised the Bintang Kejora flag and sang the anthem Papua Bukan Merah Putih, on this basis they were charged with treason. However, some experts say that there is an error in interpreting the meaning of treason and it is too narrow to see these symbols such as flags and songs are interpreted as acts of treason (KontraS, 2021). Then there were the arrests of 2 Papuan activists on charges of confiscation of goods and beatings. These two activists were arrested without an arrest warrant, no confiscation warrant but the police confiscated a cellphone as evidence even though the accusations against these 2 activists had nothing to do with electronics. The determination of the suspects was very hasty. These two activists are active Papuan activists, they reject the extension of special autonomy for Papua, and are active in human rights issues in Papua, (KontraS, 2020). This is of course contrary to the ASEAN Human Rights Declaration which has been approved by all ASEAN members state including Indonesia, namely in point 23 which contains everyone has the right to freedom of expression and opinion without any interference (ASEAN, 2012).

Association of Southeast Asian Nations itself adopted human rights by establishing a human rights commission in Association of Southeast Asian Nations called the ASEAN Intergovernmental Commissions on Human rights (AICHR). Declarations. However, it is unfortunate that this Declaration cannot fully defend the people of the ASEAN Region who experience human rights violations due to the non-interference principle adopted by ASEAN. The same thing with cases of human rights violations that occurred in Papua, there is not much that this Declaration can do, because this declaration collides with the non-interference principle adopted by ASEAN (Molthof, 2012), and this declaration was also made on the basis of reducing pressure from international assistance to Association of Southeast Asian Nations in resolving cases of human rights violations in the Association of Southeast Asian Nations region. This declaration is also believed to be more focused on promoting human rights in the ASEAN region compared to resolving cases of human rights violations among ASEAN member state. In some of the criticisms directed at the ASEAN Human Rights Declaration (AHRD) regarding how the ASEAN Human Rights Declaration weakens the principle of universal human rights, several points from the AHRD which are considered ambiguous and weaken universal human rights have been discussed above, and how these points have an impact on the weakening of the law and as a justification for the state to commit human rights violations against its people, as is happening in Papua today. ASEAN has committed to respect for, promotion, and protection of human rights as stated in the ASEAN charter. However, from the time when the ASEAN Human Rights Declaration was adopted by ASEAN

members, ASEAN members were only committed to the promotion of human rights. There is no attempt to respect and protect human rights in the ASEAN region. ASEAN countries continue to commit human rights violations against their people as happened in Papua. ASEAN is not able to become a negotiating bridge or a mediation bridge to reduce conflicts over human rights violations that occur in Papua, as ASEAN should do in its commitment to respect and protect human rights. In other words, the ASEAN Human Rights Declaration failed to protect the people of ASEAN from human rights violations committed by member countries of ASEAN. (Davies, 2013).

4. Conclusion

Human Rights Violations that occur in Indonesia, especially in the Papua region, which has experienced a series of human rights violations, as well as human rights activists who defend Papua, who continue to be criminalized, even until 2021 275 Papuan human rights defenders have been criminalized. This shows the implementation of the ASEAN Human Rights Declaration (AHRD) is not going well in Indonesia. From our analysis, we can say that the ASEAN Human Rights Declaration (AHRD) is more focused on the promotion of Human Rights compared to preventing/resolving cases of human rights violations in ASEAN friends and also the existence of the Non-interference principle adopted by ASEAN which also weakens the principle of Human Rights. universally because there are points in the AHRD that domestic law is the top law in resolving and implementing human rights in each ASEAN member country. We hope that by revising the points that perpetuate the principle of non-interference in the ASEAN Human Rights Declaration (AHRD) and focusing the points on preventing or resolving human rights cases in ASEAN, we can improve and resolve cases of human rights violations in the Association of Southeast Asian Nations region.

Bibliography

Books

- Bogdan, R. C. 1982. *Qualitative research for education: An Introduction to Theory and Methods*. Boston: Allyn and Bacon.
- Creswell, J. W. 2012. *Educational research: Planning, conducting, and evaluating quantitative and qualitative research (4th ed.)*. Boston: MA: Pearson.
- Darmadi, H. 2013. *Metode Penelitian Pendidikan dan Sosial*. Bandung: Alfabeta.
- Gay, L. M. 2006. *Educational research: Competencies for analysis and applications*. New Jersey: Pearson Education, Inc.
- Keling, M. F., Md.Som, H., Saludin, M. N., Shuib, M. S., & Ajis, M. N. 2011. *The Development of ASEAN from Historical Approach*. Asian Social Science.
- Nopiza, U. I. 2019. *ASEAN Declaration Of Human Rights Sebagai PenguatannRule Of Law Hukum Hak*. ResearchGate.
- Purba, M. 2020. *Implementation Of Asean Human Rights Declaration In The Protection Of Women And Children's Rights*.
- Sugiyono. 2010. *Metode Penelitian Kuantitatif Kualitatif & RND*. Bandung: Alfabeta.

Journals

- Davies, M. 2013. *The ASEAN Synthesis: Human rights, Non-intervention, and the ASEAN Human Rights Declaration*. The Johns Hopkins University Press, 51-58.
- Rachminawati. 2014. *ASEAN Human Rights Declaration: A New Form of Universalism*. Indonesian Journal of International Law: Vol. 11 : No. 3 , Article 4.
- Narine, S. 2012. *Human Rights Norms and the Evolution of ASEAN: Moving without Moving in a Changing Regional Environment*. Contemporary Southeast Asia. A Journal of International and Strategic Affairs: Vol. 34, No. 3. 366.

News

- Ihsanuddin. 2021, September 30. *Ditangkap Saat Unjuk Rasa, Aktivis Papua: Polisi Rasis dan Diskriminatif*. Retrieved from Kompas: Kompas.com: <https://megapolitan.kompas.com/read/2021/09/30/18534061/ditangkap-saat-unjuk-rasa-aktivis-papua-polisi-rasis-dan-diskrim>
- Siswanto. 2021, November 9. *Kasus Veronica Koman: Teror terhadap Aktivis HAM Papua Terus Berulang*. Retrieved from BBC News Indonesia: <https://www.suara.com/news/2021/11/09/101259/kasus-veronica-koman-teror-terhadap-aktivis-ham-papua-terus-berulang>
- Tshandra, N. 2015, September 29. *Ini 8 Kasus Pelanggaran HAM yang Masih "Macet" hingga Sekarang*. Retrieved from Kompas: Kompas.com: <https://nasional.kompas.com/read/2015/09/29/05220051/Ini.8.Kasus.Pelanggaran.HAM.ya.ng.Masih.Macet.hingga.Sekarang?page=all>

- Victoria Nuland. 2012, November 20. ASEAN Declaration on Human Rights. Retrieved from U.S Department of State : <https://2009-2017.state.gov/r/pa/prs/ps/2012/11/200915.htm>
- YASMIN, N. 2020, June 8. Unlawful Killings Point to Continued Human Rights Abuses in Papua: Amnesty. Retrieved from Jakarta Globe: <https://jakartaglobe.id/news/unlawful-killings-point-to-continued-human-rights-abuses-in-papua-amnesty>

Websites

- ASEAN. 2012, November 19. ASEAN Human Rights Declaration. Retrieved from . Retrieved from ASEAN: <https://asean.org/asean-human-rights-declaration/>
- ASEAN Trade Union Council. 2012, November 21. ASEAN Human Rights Declaration: a step forward or a slide backwards? Retrieved from Asean Trade Union Council: <https://aseantuc.org/2012/11/asean-human-rights-declaration-a-step-forward-or-a-slide-backwards/>
- Molthof, M. 2012, February 8. ASEAN and the Principle of Non-Interference. Retrieved from E-International Relations: <https://www.e-ir.info/2012/02/08/asean-and-the-principle-of-non-interference/>
- KontraS. 2020, April 25. 6 Aktivis Papua Di Vonis 8 dan 9 Bulan Penjara, Kuasa Hukum : Putusan Hakim Keliru & Hakim Gagal Menghadirkan Cinta dan Damai Bagi Masyarakat Papua. Retrieved from KontraS: <https://kontras.org/2020/04/25/6-aktivis-papua-di-vonis-8-dan-9-bulan-penjara-kuasa-hukum-putusan-hakim-keeliru-hakim-gagal-menghadirkan-cinta-dan-damai-bagi-masyarakat-papua/>
- KontraS. 2021. Catatan Harian HAM 2021 HAM Dikikis Habis. KontraS.
- KontraS. 2021, March 5. Segera Bebaskan 2 Aktivis Mahasiswa Papua. Retrieved from KontraS: <https://kontras.org/2021/03/05/segera-bebaskan-2-aktivis-mahasiswa-papua/>
- UNICEF. (n.d.). What are Human Rights. Retrieved from UNICEF: <https://www.unicef.org/child-rights-convention/what-are-human-rights>