

Human Rights Violations in Southeast Asia

**The case of Khmer Rouge of 1975-1979 (Cambodia) and
The case of East Timor of 1999 (Indonesia)**

Dr. Nazaruddin Nasution, MA
FISIP UIN JAKARTA

Abstract- This research proves that in the 40 years of ASEAN, none of the member countries free from human rights violations ~ either ordinary or gross ones. ASEAN possesses instruments, namely the ASEAN Charter, the ASEAN Community, the National Commissions and AICHR to promote and protect human rights within ASEAN. One of human rights theories used in this paper is Francis Deng's Responsibility to Protect involving four categories of human rights violation (genocide, war crimes, ethnic cleansing, crimes against humanity), besides theory of natural rights, the universality of human rights and of Regionalism as well. This paper examines the case of genocide in Cambodia under the Khmer Rouge regime (1975-1979) and crimes against humanity in East Timor (1999), the resolution of both cases was resolved differently. Cambodia resolved it in judicial terms (the Khmer Rouge Tribunal), while Indonesia and Timor Leste overcame it in non-judicial terms (Commission of Truth and Friendship).

Keywords: Human rights, Responsibility to Protect, genosida, crimes against humanity

I. INTRODUCTION

This paper aims to prove that human rights violations have taken place in Southeast Asia. In the 50 years of ASEAN, none of the ASEAN member countries are free from the human rights violations, either the common or the specific ones. There are at least three reasons why human rights violations occur. First, the attitude of the rulers that allow violations of the law. Second, the different political treatment of groups within the community, and third, a social and economic gap in the society. The research also found the different ranking of ASEAN's human rights records based on the commitment of the member countries to some of the international human rights instruments. In the face of these human rights violations, ASEAN possesses four instruments and institutions, namely the ASEAN Charter, the ASEAN Community, the National Commission on Human Rights and the ASEAN Intergovernmental Commission on Human Rights (AICHR), which create efforts to promote and protect human rights within ASEAN. This paper uses three theories of human rights. The first is the John Locke's Theory of Natural Rights which affirms that human rights apply to every human being in society, either the minority (the ruler) or the majority (the people). Following that, the second theory is Dennis Driscoll's Universality of Human Rights that recognizes that human

rights apply anywhere, anytime and for anyone. Last but not least, the third is Francis Deng's Responsibility to protect that underlines the state's responsibility to protect in the event of massive human rights violations involving four categories, namely genocide, war crimes, ethnic cleansing, and crimes against humanity. On the other hand, another theory called Theory of Regionalism has a different idea, it binds countries located in a particular area or region, in this case, Southeast Asia, to commit themselves to a broader society.

Furthermore, this paper examines precisely the case of law enforcement to solve human rights violations in two countries, namely genocide in Cambodia under the Khmer Rouge regime (1975-1979) and crimes against humanity in Indonesia (East Timor), shortly after the announcement of Act of Free Choice (1999). Both cases are in line with ASEAN's efforts to implement the ASEAN Charter in the principles of human rights, democracy, the rule of law and good governance as well as the ASEAN Community, consisting of three pillars: political-security, economic and socio-cultural pillars.

Table 1. The international protection of human rights: some key treaties, conventions, and declarations

Year	Agreement
1948	The Universal Declaration of Human Rights (United Nations General Assembly)
1948	The Convention on the Prevention and Punishment of the Crime of Genocide
1950	The European Convention for the Protection of Human Right and Fundamental Freedoms
1965	The International Convention on the Elimination of All Form of Racial Discrimination
1966	The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights
1979	The American Convention on Human Rights
1979	The International Convention on the Elimination of Discrimination Against Women (CEDAW)
1981	The African Charter on Human and People's Rights (the Bajul Charter)
1984	The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
1984	The Convention on the Rights of the Child
1989	The Declaration of Principles of Indigenous Rights
1993	The Vienna Declarations and Action Programme

Source: *The Globalization of World Politics 4e*, p. 508

II. THREE FACTORS THAT TRIGGER HUMAN RIGHTS VIOLATION IN SOUTH EAST ASIA

There are three main factors that trigger human rights violations in Southeast Asia. The first one is the acts of violence perpetrated by the ruling classes against community groups (vertical conflict). Second, the conflict also occurs due to the ongoing conflict between community groups in a country, which escalates and ends with social clashes (horizontal conflict). The last cause is the condition when individuals undertook specific behavior and actions against other individuals due to disputes motivated by political, economic, social or cultural factors. One of the most prominent causes of human rights abuses, including massive human rights violations, is the unreasonable acts perpetrated by the ruler of a state by the force that is imbued with the religious matter. For example, the non-Muslim rulers in several states in Southeast Asia that act against Muslim minorities, such as Rohingya in Myanmar, Pattani in Thailand and Moro in the Philippines.

A similar situation also occurs in the Communist countries, where the majority group goes against the non-Communist minority group. Such a condition happened in Vietnam, Laos, and Cambodia. Human rights violations can also occur when the Muslim majority rulers in the countries like Malaysia, Indonesia and Brunei perform negligence of law enforcement. These are, among other things, experienced by the Christian, Hindu, Buddhist or Ahmadiyah and Shiite groups in Indonesia.

According to Mahdev Mohani, in addition to communist systems that are still embraced by Vietnam and Laos, ASEAN countries can be classified into two categories of power systems. First is the authoritarian or limited democracy that is implemented in Myanmar, Malaysia, Singapore and Brunei Darussalam. The second system is the constitutionalism or transitional justice, which can be found Cambodia, Philippines, Thailand, and Indonesia.

ASEAN's member states can also be classified based on the scale of human right violations cases that happen in the country. There are countries with smaller-scale human rights violations such as Singapore, Malaysia, Brunei, Vietnam, and Laos. There also countries that have massive human rights violation cases namely Myanmar, Thailand, the Philippines, Indonesia, and Cambodia.

Table 2. Status of Human Rights Protection

Country	Freed om Ranki ng*	Human Developm ent Index**	Press Freedom Ranking ***	Human Rights Ratificatio ns
Brunei	Not Free	Very High	Difficult	3/22
Cambodia	Not Free	Medium	Difficult	11/22
Timor Leste	Partly Free	Medium	Satisfacto ry	11/22
Indonesia	Partly Free	Medium	Difficult	11/22
Laos	Not Free	Medium	Very Serious	9/22
Malaysia	Partly Free	High	Difficult	5/22
Myanmar	Not Free	Low	Difficult	4/22
Philippine s	Partly Free	Medium	Difficult	14/22
Singapore	Partly Free	Very High	Difficult	3/22
Thailand	Partly Free	High	Difficult	11/22
Vietnam	Not Free	Medium	Very Serious	7/22

*FreedomHouse's 2014 ranking of Freedom in the World. Three ranking are awarded: Free, Partly Free or Not Free

** From the UNDP's 2014 Human Development Index, States can have very high, high, medium or low human development

*** From Reporters Without Borders' 2014 World Press Freedom Index. The situation can be good, satisfactory, noticeable problems, difficult, or very serious

The Vienna Conference on Human Rights, held in Vienna in 1993, provide the international stage which discussed the cultural, philosophical, academic, and political debate on "Asian exceptionalism." There were 171 participating countries and more than 800 non-governmental organizations (NGOs) involved in this conference. It results in the Vienna Declaration and Program of Actions, which is are considered as the starting point of a new era of human rights implementation [1].

Cases of violation of human rights within ASEAN

One of the human rights violations in ASEAN is the Rohingya case. The latest development of that crisis opened the possibility for one ASEAN member country, in this case, Indonesia, to play the role bilaterally in trying to solve the problem faced by the Rohingya people. It indicated that Myanmar has a good intention to address parts of the problem that is related to the humanitarian assistance. However, the political and legal aspects of this case remain unsolved. The country has not addressed the issues related to *the Responsibility to Protect* concept, and the recognition for the Rohingyas to be accepted as part of the Myanmar people.

The existence of the non-interference principle makes the issue becomes more difficult to solve. The ASEAN Intergovernmental Commission on Human Rights (AICHR) as an institution that is expected to resolve the problem is unable to do much because of its inadequate authority. From the viewpoint of ASEAN, it is difficult to reach a consensus in this humanitarian conflict due to the two different and contradicting views between Myanmar and other ASEAN members [4].

The case of Khmer Rouge of 1975-1979 (Cambodia)

The substantial experiments in international criminal justice have been taking place at the Extraordinary Chambers in the Courts of Cambodia (ECCC), a tribunal created by the United Nations and Cambodian Government to adjudicate some of the most egregious crimes of the Pol Pot era [2]. Between April 17, 1977, and January 6, 1979, the Khmer Rouge systematically murdered at least 1.7 million people—just over 20 percent of the population of Cambodia. In 2006, the ECCC came into operation, with the hopes of many Cambodians, and, indeed, members of the international community that those responsible for one of the worst humanitarian atrocities of the twentieth century would finally be held to account for their actions. ECCC has much in common with other hybrid tribunals which share certain disadvantages such as the challenge of mixing local and foreign practices and personnel, as well as the involvement of a host government with a weak judicial capacity. The first case that came to the public before the ECCC was the case of Kaing Guek Eav, or known as Comrade Duch, the Chairman of Toul Sleng Prison. It is estimated that 17,000 individuals were imprisoned and killed [3]. He is currently serving a life prison sentence. The second case had four defendants: Nuon Chea (87), known as “Brother Number 2” and Khieu Samphan (82), who was the former head of state. Both of them also got a life prison sentence. However, Khmer Rouge foreign minister Ieng Sery died in 2013, and his wife, Ieng Thirit, another senior regime figure, was declared mentally ill, hence unable to stand trial in 2011 [6].

The case of East Timor of 1999 (Indonesia)

On 21 December 2004, Indonesia and Timor-Leste declared they would jointly establish a Commission of Truth and Friendship (CTF) to investigate the 1999 violence, which resulted in around 2000 victims [5]. The aim of the Commission of Truth and Friendship (CTF), built in May 2005, was to establish the truth about human rights violations before and after the referendum in 1999. Besides that, it also aimed to prepare recommendations to “healing the wounds of the past and strengthening friendship” between the two nations (CTF 2008, i). Leigh-Ashley Lipscomb, who assisted in producing the expert advisors reports to the CTF, suggests that Timor-Leste cited “geopolitical vulnerability” as a justification for inaction on past crimes. As a fragile state, Timor-Leste’s leadership recognizes it does not have the political power to compel Indonesia to alter its policies, and any attempts to apply pressure, which are likely to undermine Timor-Leste’s national security and economic interests [5].

Table 3. Comparison between the solution to the case of gross violation of human rights in Cambodia and East Timor, Indonesia

Khmer Rouge, Cambodia	East Timor, Indonesia
1. The existence of “political will” from the Cambodian government and the United Nations (international instrument)	1. The existence of “political will” from the Indonesian and Timor Leste governments (bilateral instrument)
2. There are “pressures” from outside power (external)	2. There are “pressures” from inside and outside (external) power
3. The process is in the form of “judicial” (the establishment of <i>Khmer Rouge Tribunal</i> , agreed upon by the Cambodian government and the United Nations)	3. The process is in the form of “non-judicial” (the establishment of <i>the Commission of Truth and Friendship</i> , agreed upon by the government of Indonesia and the government of Timor Leste)
4. <i>No Remedy</i>	4. <i>No Remedy</i>
5. <i>Non Recurrence</i>	5. <i>Non Recurrence</i>

Indonesia's contribution to the settlement of the Cambodian case (1970-1991) has given a blue report card to Indonesia with its role as *an interlocutor* and *a peace-maker*. Meanwhile, Indonesia's involvement in the East Timor case (1975-1999), particularly before and right after Act of Free Choice in 1999, is considered as a crime against humanity, which has resulted in Indonesia obtaining a red report card by the international community.

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