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# HUMANITARIAN DIPLOMACY THROUGH THE ESTABLISHMENT OF AICHR (Asean Intergovernmental Commission On Human Rights)

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## Abstrak

ASEAN Charter that was ratified in 2008 has made ASEAN as a ruled based organization. This requires member states to carry out the provisions of ASEAN Charter in good faith. As mandated on article 14 of the ASEAN Charter, ASEAN established the ASEAN Human Rights Body (AICHR) on October 23, 2009. As a vehicle on multilateral humanitarian diplomacy AICHR is expected to guarantee the progress of several agendas namely human rights, social justice and democratic formation of the ASEAN Community. Multilateral diplomacy itself is not a new concept in inter-state relations. Debate over the role and effectiveness of the multilateral diplomacy is influenced by the dichotomy of difference between realist perspective (emphasizing the role of the state) and idealistic perspective (pinning its hopes on universal principles). Regardless of this debate, ASEAN's multilateral diplomacy on human rights depends on each state's foreign policy. In fact, there are various human rights violations in ASEAN due to limited authority of AICHR, the non-intervention principle as well as decision-making mechanism within ASEAN.

## I. INTRODUCTION

On the 20<sup>th</sup> of November 2007, or 40 years since the signing of the Bangkok Declaration (Declaration of ASEAN in 1967), ten heads of state/heads of government of ASEAN members signed the ASEAN Charter. This indicates a binding signing statement (consent to be bound by a treaty) to the ASEAN Charter. It also means the ASEAN member states must implement the ASEAN Charter in good faith, as mandated

by Article 26 of the 1969 Vienna Convention (The Vienna Convention on the Law of Treaties).

International agreement is one of the sources of international law. This is as stipulated in Article 38 paragraph (1) letter a Statute of the International Court of Justice stating that: "*The Court, whose function it is to decide in accordance with international law... shall apply international conventions, whether general or particular, establishing expressly recognized by the contesting States.*"<sup>49</sup>

Of the provisions of Article 38 paragraph (1), we can conclude that in solving, hearing and deciding cases that are submitted to the International Court, treaty can be used as a source of international law, whether general or specific provisions contained, which is recognized by countries involved in the dispute.

In general, international treaties can be defined as an agreement between subjects of international law lead to the rights and obligations under international law<sup>50</sup>. International arrangements on these international treaties are codified in the Vienna Convention on the Law of Treaties of 1969 (the 1969 Vienna Convention on Treaties). In Article 2 paragraph (1) letter a. 1969 Vienna Convention, an international treaty is defined as "an agreement between the closed states in written form and governed by international law, either in a single instrument or in two or more related instruments and whatever the name of the instrument"<sup>51</sup>.

ASEAN Charter has made ASEAN as a legal binding organization. This charter adheres to several principles, including the principle of non-interference in the internal affairs of ASEAN member states, the regulation on human rights protection in Asean, and various other provisions. The charter is a parameter and guidance on the future direction of ASEAN, which has been concretely written in ASEAN Blue Print. There are three blue print, that is in the fields of politics and security, economy, and socio-cultural.

Long before ASEAN Charter, the UN has had the international legal instruments to accommodate the human rights protection, including the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights,

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<sup>49</sup>International Court of Justice, 1945, **Statute of The International Court of Justice**, article 38 (1)

<sup>50</sup>I Wayan Parthiana, **Pengantar Hukum Internasional**, CV Mandar Maju, Bandung, 2003 (will be referred as I Wayan Parthiana I), h. 209.

<sup>51</sup>Vienna Convention 1969, article 2 (1a)

Convention on the Rights of the Child, the International Covenant on Social and Economic Rights, Convention Against torture, and others.

Indonesia has ratified the ASEAN Charter through Law No.38/2008 on the Ratification of the Charter of the Association of South East Asian Nations. This ratification can strengthen human rights institutions in the country, although this may not be the only indicator for better implementation on human rights, partly because human rights norms are actually set in domestic legislation. In the current era of reform, Indonesia cannot simply rule out the existence of international conventions on human rights. In fact it is necessary to bring domestic and international factors.

The need to attach international and domestic factors became stronger when the National Human Rights Commission, which has played an important role in promoting and protecting human rights in Indonesia, established in 1993. Moreover, after Indonesia has Law No. 39/1999 on Human Rights (State Gazette of the Republic of Indonesia Year 1999 No. 165, State Gazette No. 3886), Act 37 of 1999 on Foreign Relations, Law No. 24 Year 2000 on International Treaties, Law No. 26 Year 2000 on Human Rights Court, whose scope and authority are to examine cases of gross human rights violations, then the need to attach domestic and international factors has become nonnegotiable.

Ratification comes from Latin word, '*ratificare*', that means endorsement or approval. In Latin, ratification is known by several terms, including '*ratum habere*', '*ratum ducere*', '*ratum facere*', and '*ratum alicuicase*', which mean agreement<sup>52</sup>. Indeed, one of the important procedures that must be taken to bind a country to an international treaty, especially if the treaty contains an essential substance for the country concerned, is ratification. Ratification is one procedure that provides the binding force of a treaty, as stated in article 14 of the Vienna Convention 1969. In practice, several ways are known to be bound by an international treaty<sup>53</sup>. One way that is often used is the ratification and signing.

If the treaty explicitly states that it will bind by signing, then since the signing took place, the agreement is legally binding<sup>54</sup>. However, if ratification is required, then

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<sup>52</sup> Edy Suryono, **Perjanjian Internasional di Indonesia**, CV Remadja Karya, Bandung, 1984., h. 24.

<sup>53</sup> Vienna Convention 1969, article 11.

<sup>54</sup> Vienna Convention 1969, article 12.

after the signing (ad referendum), it is necessary to do ratification or approval by the competent authority as a sign of consent to be bound by the agreement<sup>55</sup>.

The signing of ASEAN Charter has changed ASEAN from a loose association to a rule-based organizations with legal personality. ASEAN Charter is based on the notion of the importance of mutual interest between the people and ASEAN member countries. It is expressed in the unified vision, identity and community, or commonly known as one vision, one mission, one community. This shared interest within ASEAN community also respects the principles of democracy, human rights and the sovereignty of each country.

Furthermore ASEAN Charter also gives a great influence in the dynamics of Asean to assert itself as a safe organization<sup>56</sup>. This is due to ASEAN's ability to guarantee its members not to use armed force in resolving conflicts in the region, in order to maintain harmonious relations between countries<sup>57</sup>. It can not be denied that a remarkable thing in Asean is the absence of war among ASEAN members since the organization was established<sup>58</sup>. Necessity for mutual respect or respect among member states for the creation of a peaceful and democratic life to establish an organization is the key success for Asean.

However, despite the success as already mentioned above, there are also factors of constraint. Several things can be noted among others are the guarantee of justice, fundamental freedoms, the protection of human rights, the guarantee of democratic life for all citizens of ASEAN that have not happened as expected<sup>59</sup>. Though one of the goals is to strengthen ASEAN and promote democracy and protect human rights. Promotion and protection of human rights is part of the political community building security (political security community).

To that purpose, on October 23, 2009, at the 15th Asean Summit in Thailand, ASEAN leaders agreed to the establishment of the ASEAN Human Rights Body or AICHR (ASEAN Inter Governmental Commission on Human Rights). In this declaration, ASEAN member countries are committed to further develop cooperation in order to promote and protect human rights in the ASEAN region. The establishment of

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<sup>55</sup> Vienna Convention 1969, article 14.

<sup>56</sup> Sheldon Simon, *The Regionalization of Defence in South East Asia*, Pacific Review, Vol. 5, No.2, 1999, hal. 122

<sup>57</sup> Article 1 (4) ASEAN Charter

<sup>58</sup> Michael Leifer, *Asean as model of a security community* in Hadi Soesanto (ed), Asean in a changed regional and international economy, Jakarta, CSIS, 1995, pp., 129-132.

<sup>59</sup> ASEAN Charter Article 1 (4) and (7) on the Purpose of ASEAN

AICHR is mandated by Article 14 of the ASEAN Charter and ASEAN's commitment to building a community-based or people-oriented society, especially with the vision to realize the Asean community by 2015<sup>60</sup>. With the AICHR is expected to guarantee the protection of human rights, social justice, until the establishment of the ASEAN Community can be realized.

Although the existence of AICHR is very important, but in practice, it faces some obstacles. This is indicated by the existence of human rights violations that occurred in Indonesia, Thailand, Philippines, Myanmar and other ASEAN members. One example is the detention of Aung San Suu Kyi as political prisoner without clear judicial mechanism<sup>61</sup>. ASEAN is viewed as an organization that runs rigid adherence to the principles of the ASEAN Charter, including the principle of non-intervention. Another case is the massacre of 57 people in the province of Manguindanao Philippines, which killed 31 journalists and labeled as a case where the most journalists were killed<sup>62</sup>.

Indonesia as the originator gets tough challenge from other ASEAN members, because the protection of human rights and democratization in ASEAN countries are in contrast to the expected situation and conditions. AICHR's real purpose is to promote and protect human rights and fundamental freedoms or to promote and protect human rights and fundamental freedoms of the people. In fact AICHR's authority is still limited to the promotion and does not include protection aspects. This has made AICHR works below the standard of human rights mechanisms, using a consensus approach that characterizes ASEAN. However, consensus approach to human rights enforcement often does not bring maximum results.

In relation to these matters, it needs optimization measures to encourage the realization, protection and promotion of human rights in Asean. This needs consistency and commitment of all members of Asean, so the formation of AICHR as a step to introduce humanitarian diplomacy can be realized.

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<sup>60</sup> Yukik Nishikawa, *Human Security in Southeast Asia*, Routledge, 2009, pp., 14.

<sup>61</sup> PBB kecewa atas sikap Asean tentang Burma, Tempo, 21 November 2007

<sup>62</sup> Reuters, *Journalist Deaths hit record in 2009*. Report on 17th December 2009

## II. THE ROLE OF AIHCR IN HUMAN RIGHTS ENFORCEMENT IN ASEAN

Promotion, protection and enforcement of human rights within the framework of universality is one of the pillars of modern international society. Therefore, instruments on human rights are invented. This basically serves to provide direction and guidance of the implementation principles on human rights, to exclude excuses from any country to ignore this issue.

One of the international legal instruments that serve as guidelines for all countries to respect human rights is the Universal Declaration of Human Rights (UDHR). Human rights are rights which are owned not because public administration or positive law alone, but due to human dignity<sup>63</sup>.

In order to reinforce its position the international human rights guidelines, a number of people suggested that a statement on human rights organized by the United Nations is not just a declaration, but also norms backed by enforcement procedures to exert international pressure on states that violate human rights. In the end, the chosen form is the covenant, on the reasoning that covenant signed and ratified by participating countries will be far more effective than any form of declaration. It is as described by Ifdhal Kasim:

First, at its core, is a meeting of minds international covenant of state parties entered into an agreement concerning the tasks and specific obligations they have to shoulder and try effectively. Meanwhile, the declaration is considered as something less effective in terms of the law. Secondly, the provisions contained by the covenant does not throw doubt on the law, while the declaration is often considered only contains moral rules. Third, *vinculum juris* (an obligation of law) that was created by the covenants are usually not included in the declaration. *Vinculum juris* establishes an obligation for states parties entered into an agreement to execute the laws and practices in accordance with international obligations that have been approved. Therefore, it can be concluded that although politically or morally a declaration is weighted, but in terms of the protection is not as strong as the protection afforded by international treaty. Based on the principle of *pacta sunt servanda*, which is also a state party to an international treaty obligation to implement the provisions of the covenant effectively and responsibly<sup>64</sup>.

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<sup>63</sup>Jack Donnely, *Universal Human Rights in Theory and Practice*, Cornell University Press, Ithaca and London, 2003, pp.7-21.

<sup>64</sup>Ifdhal Kasim, *Hak Sipil dan Politik: Esai-Esai Pilihan*, ELSAM, Jakarta, 2001, pp. 7.

International law is more attention to the issue of human rights after 1945. Prior to that year if there are countries that commit human rights violations both to foreigners and its own citizens then fully into the jurisdiction and sovereignty of the country concerned. Placenta when a country commits impunity or omission of the human rights violations that occurred in the region, the international community can not do anything given the understanding that it is a country's sovereignty. However, this view changed when the international community began to give considerable attention to the enforcement of human rights in the adoption of the Universal Declaration of Human Rights of 1948. D.J. Harris states that *"it was therefore no surprise when the realisation and protection of human rights became one of the purpose of The United Nations and when The Charter imposed obligations upon members to this end."*<sup>65</sup>

In relation to human rights violations, then there is an individual responsibility and this has been going on since the mid-nineteenth century. It means that the individual perpetrators of gross human rights violations can be prosecuted by national or international courts. The existence of an international tribunal is not intended to replace national courts, because an international tribunal has been running when national courts are unwilling or unable to want to prosecute the offense Unable This situation intensified when the International Criminal Court or the International Criminal Court established by the Rome Statute entered into force for terms of the number of countries that ratified been fulfilled. Ian Broiwnlie said that: *"since the latter half of the nineteenth century it has been generally recognized that there are acts or omissions for which international law imposes criminal responsibility on individual and for which punishment may be imposed, either by properly empowered international tribunals or by national courts, and military tribunals"*.<sup>66</sup>

Universal Declaration of Human Rights of 1948 which was passed by the UN General Assembly is an official interpretation of the UN Charter, and the codification of general principles of law that contains more detailed number listed as human rights<sup>67</sup>. Further UDHR is seen as a common standard which is an achievement for all mankind

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<sup>65</sup>D.J.Harris, **Cases And Materials On International Law**, Sweet & Maxwell, Fifth Edition, London, 1998, pp. 624.

<sup>66</sup>Ian Brownlie, **Principles of Public International Law**, The English Language Book Society and Oxford University Press, Third Edition, 1979, pp. 561

<sup>67</sup>T. Koopmans, **Compendium van hett staasrecht**, Kluwer: Deventer, 1986, pp.39-40

and all nations<sup>68</sup>. Therefore UDHR is encapsulated in a declaration, not a treaty to be signed or ratified. However, this declaration has proven to be a tool that can serve as guidelines for countries in the process of enforcement of human rights.

Various international legal instruments on human rights has been accepted by many countries in the world, including international organizations. Over time, the legal status of this declaration should be recognized that strong. In addition to an authentic interpretation of the UN charter cargo, this declaration has also evolved into customary international law that binds all states legally<sup>69</sup>. Therefore, the obligation to carry out the declaration has been explicitly mentioned in the Preamble to the UDHR and must be implemented by the state in good faith, and violations of the UDHR is a violation of international law<sup>70</sup>.

In UDHR, human rights are set in general, while the specific human rights arrangements can be seen in the UDHR derivatives, such as the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), Convention Against Torture (CAT), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

In ICCPR governing civil and political rights, regulating non derogable human rights, or rights that can not be reduced / diderogasi under any circumstances. An example is the right to life, violation of torture, as well as freedom of thought, conscience, and religion run. In practice non-derogable human rights, often remained unfulfilled for reasons of national security, or other circumstances that threaten the country with esentiil and threaten public interest considerations (public order). Often this understanding basic justification wearing Bentham thought about utlity Theory which says that individual rights can be unfulfilled for the happiness for as many people, the greatest people for the greatest number.<sup>71</sup>

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<sup>68</sup>Mohammed Bedjaoui, *The Difficult Advance of Human Rights Towards Universality in Universality of Human Rights in a Pluralistic World*, dilaporkan oleh Dewan Eropa, 1990, pp.,45.

<sup>69</sup>Louis B.Sohn, *The New International Law Protection of the Right of Individuals Rather than States*, 32 Am, U.I, Rev I, 1982.

<sup>70</sup>Article 26 of the Vienna Convention 1969 about Pacta Sunt Servanda.

<sup>71</sup>Jeremy Bentham, *An Introduction to the Principle of Moral and legislation* in Utilitarianism, Mary Warnock ed, The Fontana Library, 1969, pp., 64-77.

In the case of detention of Aung San Suu Kyi in Myanmar, a pretext given is to protect the regime in power at the time. In Burmanese Law, 1975 stated that only those who are considered dangerous state that can be held without any evidence, the detention period of 5 years and must be renewed annually. With this basic Aung San Suu Kyi, has been deprived of the rights and fundamental kebebasan, eg political rights, the right to live free, and fair treatment trial. If the violation of human rights ratified by Aung San Suu Kyi may be tolerated then it is not a kind of violation will occur again in the future.

The above course of action can not be justified, because every citizen has the right to protection of his country, as a logical consequence of State Responsibility. John Rawls states that every citizen has a right that can not be removed, because it is rooted in justice and the welfare of society as keseluruhan. Keadilan not justify the sacrifices imposed on a few lawful for greater profits are enjoyed by many people<sup>72</sup>.

### III. HUMANITARIAN DIPLOMACY IN THE FRAMEWORK OF REGIONAL DYNAMICS

Regional dynamics is strongly influenced by the conditions of each country that are in the area. Indeed, there is no consensus about the best way to understand the nature of relations between states, which is certainly loaded with the national interests of each country. This attitude is also in line with what Holsti said the link between legal norms related to the interaction between state policy decisions regarding the establishment and implementation of measures that include the collective interests and core values, relations between countries in organizing friendly, and the government would try to organize their actions to fit the rule of law<sup>73</sup>.

Robinson subsequently classify national interest in two general categories, namely: a nation's national interests and the interests of the degree of similarity between two or more nations (international interests). According to Robinson, the national interest of a nation that is divided into 6:

1. Primary interest (primary interest), such as the protection of cultural identity, political, and physical, as well as survival in the face of external pressure. This interest can never be compromised;

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<sup>72</sup>John Rawls, *A Theory of Justice*, Oxford University Pres, 1973., pp.3

<sup>73</sup> K.J. Holsti, *Politik Internasional: Suatu Kerangka Analisis*, Bandung, 1987, pp 353.

2. Secondary importance (secondary interest), in which includes the protection of citizens residing abroad and supports immunity of diplomats nation;
3. Permanent interests (permanent interest), which in general is of interest is constant in the long term and may change over time;
4. Variable of interest (variable interest), which is of interest is a function of all the different personalities, public opinion, interest of a Baian, political groups, as well as moral values and politics of a nation;
5. Public interest (general interest), in the interests of a nation that can be used in a positive way of looking at the geographic region, a large number of people or in some specific areas, such as economic, social, education, and so on;
6. Special interests (spesific interest), is part of the public interest, but the scope and coverage relatively more narrow<sup>74</sup>

The concept of interest nasional used as a basis for explaining the behavior of a foreign nation<sup>75</sup>. National interest is a major part of foreign policy and an essential requirement for the survival of the state itself. Foreign policy as a means of achieving national goals and interests. National interest arises by the interaction factors that are needed from one country to another, with geographic and strategy, the level of economic, political and development, national history, and culture.

Donald E. Nuchterlein views national interest as the perceived needs and wants of a country in its relation with to other countries<sup>76</sup>. National interests, according Nuchterlein, is divided into four, namely:

1. The interests of defense, is to protect the interests of citizens from outside threats.
2. Economic interests, in the interests of improving the economic well-being through economic relations with other countries, including the existence and expansion of marketing products through bilateral and regional cooperation.
3. World Order interests, in the interests of building a world order in the field of security and economy.
4. Ideology interest, an interest to protect and propagate the values and beliefs to others.

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<sup>74</sup> Thomas W. Robinson, **Op.Cit** , pp. 184 - 185.

<sup>75</sup> Mas'oeed Mochtar, **Ilmu Hubungan Internasional Disiplin dan Metodologi**, Jakarta, LP3ES, 1990, pp.162.

<sup>76</sup> David. V. Edwards, **The American Experience: Introduction to American Political Experience**, New Jersey, Prentice Hall Inc, 1985, pp. 508.

Patterns of interaction in international relations can not be divorced from any kind of interaction that occurs in the international community by both state actors and non-state actors. Description of the relationship or interaction patterns between countries divided Holsti (1987) into two forms of conflict and cooperation. There are other forms of interaction which is referred to as situations that fall between the two forms namely, competition. Relations between states is determined by the nature of the state and society.

Conflict is a condition of the existence of a difference between groups including the establishment of the position to be achieved<sup>77</sup>. Cooperation or collaboration is agreement on certain issues between the two countries or more in order to take advantage of common interests or conflicts of interest. Cooperation can occur in containers international organizations and institutions, but in reality, most cooperative collaboration was always a conflict in it. Cooperation is not problematic in the identification of shared goals but how to achieve those goals.

Relationship between two or more countries is always reciprocal, it can be seen with the reciprocal process between action and reaction<sup>78</sup>. For example; country A and B interact with each other, the nature of the relationship between them is a rival. It means that if country A to country B behaved X then B will reply actions also A with X or Y. Retaliation country B may be less than or equal to or even greater than the act of state A. In a reciprocal interaction or relationship, there are some things that should be taken into account, among other benefits that may be obtained, and the costs or risks that must be borne. Relations between the two countries may be stable or unstable. Relationship is relatively stable when both parties occupy the same relative position and the balance between the factors that hold interaction. Stable or not the relationship the two countries depends on the nature of the pattern of inter-state relations.

According to Frankel, the interaction is done through inter-state relations and technical instruments such as diplomacy, propaganda, economic instruments, military power and war. Most of the verbal behavior and state are included in the category of diplomacy and propaganda<sup>79</sup>. Economic and military fields has its own peculiarities that

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<sup>77</sup>K.J. Holsti, **Op.Cit** , pp. 589.

<sup>78</sup>**Ibid.**

<sup>79</sup>Joseph Frankel, **Teori Kontemporer Tentang Tingkah Laku Negara**, Bina Aksara, Jakarta, 1991, pp. 116-146.

are treated separately with other equipment normally used in actual military and economic done indirectly. Instruments and tools are idikator interaction intensity and form of inter-state relations. Depiction of inter-state relations can be seen from diplomatic relations as well as one of the AICHR humnitarian diplomacy in Asean.

In carrying out its obligations, tied to the AICHR, general principles and specific. The general principle refers to the Asean Charter Article 2, which asks Asean countries not to interfere in the internal affairs of other fellow Asean members. Furthermore, other general principles such as adherence to the rule of law, good governance, the principles of democracy and constitutional government. Often the principle of non-intervention makes AICHR limited motion. Whereas in the enforcement of human rights, Asean should begin to shift the paradigm of non-intervention principle, while still respecting the sovereignty and integrity of ASEAN countries.

In addition to this general principle, as stated in Article 2 of the ASEAN Charter, there are also specific principles, such as respect for the principles of international human rights, universality, impartiality, objectivity, non-discrimination, politicization, as well as the avoidance of double standards. In addition there is also a recognition of the principle that the primary responsibility to promote and protect human rights and fundamental freedoms lies in each member state. This is in line with the thinking Brian Barry, who stated that the responsibility to guarantee human rights and ensure that justice in society is the creation of the state. AICHR therefore obliged to seek a constructive approach and non-confrontational and cooperate to improve the promotion and protection of human rights obligations among stakeholders, namely fellow Asean members. In addition AICHR should also adopt an approach that can contribute to the development of norms and standards of human rights in ASEAN.

AICHR also has the mandate to form the ASEAN Human Rights Declaration and human rights-related legal instruments. Additionally AICHR function more emphasis on the promotion of human rights, such as increased public awareness of human rights, encouraging the development of the capacity of ASEAN member countries to implement human rights obligations more effectively and strengthen the norms of human rights in Asean. Participation of ASEAN member countries in various international human rights events, dialogue and cooperation on issues of ASEAN members are also encouraged by the AICHR human rights.

Unfortunately AICHR can only provide advisory services and technical assistance for sectoral bodies Asen, therefore considered AICHR ASEAN human rights body that focuses on human rights promotion, but not on the issue of enforcement. Though the Asean wanted the enforcement of human rights a reality, not just a mere extension of human rights violations<sup>80</sup>. Asean human rights protection mechanisms in individual refuses complaint, the complaints of human rights violations committed by the individual. AICHR also not allowed to do a review for countries situation, or a discussion of the human rights situation in the member states.

The reason is the review function has been performed by the agency reviews the level of the world, or has been done by the United Nations as a universal organization. AICHR therefore do not need to review in Asean level. Human Rights Commission of the AICHR is composed of representatives from Asean countries, with attention to gender equality, integrity and competence in human rights didang. Membership is expected to representatif AICHR and not really tied apaun except to existing guidelines. This qualification is very important, since there is a huge responsibility that belongs to the representative darinegara members to be as impartial and objective<sup>81</sup>.

AICHR's impartiality can produce good law, because the law and human rights enforcement must be separated from all non-juridical elements, such as elements of political, sociological, and historical. This is what is called the law of Hans Kelsen pure, laws are objective and fair unless the provisions of the law<sup>82</sup>. Decision-making in the AICHR at the decision-making mechanism within ASEAN, which is based on consultation and consensus<sup>83</sup>. This mechanism is much opposed by some quarters, remember to get the agreement of 10 member states is not easy and takes a long time. This is due to the lack of good faith of the countries to resolve the existing problems. Asean should be focusing performance of the Commission on Human Rights after the ratification of the ASEAN Charter ASEAN than just mutual consensus of approval or

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<sup>80</sup> Kerjasama Asean Dalam Upaya Menuju Terbentuknya Mekanisme HAM di Asean, Jakarta, 2003, LIPI Direktorat Jenderal Kerjasama Asean Deplu-RI, pp.16-19.

<sup>81</sup> The commissioners made up of 10 people who are representatives of the Asean member states, but only 2 of them (Indonesia and Thailand) whose membership is chosen nationwide to process eleksi rigorous and lengthy, the other appointed by their respective governments).

<sup>82</sup> Darji Darmodiharjo, **Pokok-Pokok Filsafat Hukum**, Gramedia Pustaka Utama, Jakarta, 2008, pp. 115.

<sup>83</sup> ASEAN Charter Article 20

other states that sometimes slow in responding to the existing issue. Therefore, the mechanism of decision-making in the AICHR should also be updated.

As such, provisions regulating the mandate and functions of AICHR, verily commission is far from international standards of human rights commissions, regional or even national standard Indonesian. However, the existence of AICHR as one of humanitarian diplomacy efforts deserve appreciation, given that the establishment of the Asean Human Rights Commission is a step forward for the ASEAN countries in the fight for human rights enforcement in the region.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

##### **Conclusion**

1. Asean Charter adheres to several principles, including the principle of non-interference in the internal affairs of ASEAN member states, the regulation on the protection of human rights in Asean, and various other provisions. Asean Charter is a parameter and guidance on the future direction of ASEAN, which is concrete poured in Asean Blue Print as a benchmark. There are three blue print, that is in the fields of politics and security, economy, and socio-cultural
2. The signing of the ASEAN Charter ASEAN has changed from a loose association be ruled based organizations and have legal personality. Asean Charter is based on the notion of the importance of mutual interest between the people and the Asean member countries. It is expressed in the unified vision, identity and community, or commonly known as one vision, one mission, one community. Common desire in the Asean community while respecting the principles of democracy, human rights and the sovereignty of each country.
3. One of the goals is to strengthen ASEAN and promote democracy and protect human rights. Promotion and protection of human rights is part of the political community building security (political security community). For that purpose on October 23, 2009, at the 15th Asean Summit in Thailand, ASEAN leaders agreed to the establishment of the ASEAN Human Rights Body or AICHR (ASEAN Inter Governmental Commission on Human Rights). In this declaration, ASEAN member countries are committed to further develop cooperation in order to promote and protect human rights in the ASEAN region. The establishment of AICHR is mandated by Article 14 of the ASEAN Charter and ASEAN's commitment to building a community-based or people-oriented society, especially with the vision

to realize the Asean community by 2015. With the AICHR is expected to guarantee the protection of human rights, social justice, until the establishment of the ASEAN Community can be realized.

4. In carrying out its obligations, tied to the AICHR, general principles and specific. The general principle refers to the Asean Charter Article 2, which asks Asean countries not to interfere in the internal affairs of other fellow Asean members, adherence to the rule of law, good governance, the principles of democracy and constitutional government. Often the principle of non-intervention makes AICHR limited motion. Whereas in the enforcement of human rights, Asean should begin to shift the paradigm of non-intervention principle, while still respecting the sovereignty and integrity of ASEAN countries.
5. Specific principles, such as respect for the principles of international human rights, universality, impartiality, objectivity, non-discrimination, politicization, as well as the avoidance of double standards. In addition there is also a recognition of the principle that the primary responsibility to promote and protect human rights and fundamental freedoms lies in each member state.

### **Recommendations**

1. AICHR can only provide advisory services and technical assistance for sectoral bodies Asean, therefore considered AICHR ASEAN Human Rights Body which focuses on human rights sale, not on the issue of enforcement. Though the existence of an enforcement Asean want a real human, not just a mere extension of human rights violations. Asean human rights protection mechanisms in seharsnya not reject individual complaints, ie complaints of human rights violations committed by the individual.
2. AICHR authority should not be limited only to the promotion but also includes aspects of protection, considering the purpose of the AICHR is to promote and protect human rights and fundamental freedoms of the people.
3. Necessary optimization measures to encourage the realization, protection and promotion of human rights in Asean. For this purpose need consistency and commitment of all members of Asean, so that the formation of AICHR as a step humanitarian diplomacy can become a reality. Consensus approach in resolving human rights violations often do not bring maximum results and lead to AICHR run under the standard mechanisms of human rights mechanisms,.

# PROCEEDING

Workshop on Humanitarian Law and Diplomacy:  
From Perspective to Practice

Jogjakarta Plaza Hotel, Yogyakarta | October, 22<sup>nd</sup> - 23<sup>rd</sup> 2013



International Committee of  
The Red Cross (ICRC)

ICRC



Jurusan Ilmu Hubungan Internasional  
Fakultas Ilmu Sosial dan Politik  
Universitas Gadjah Mada



Institute of  
International  
Studies

DEPT. OF INTERNATIONAL RELATIONS  
UNIVERSITY OF GADJAH MADA

# Proceeding

## Workshop on Humanitarian Law and Humanitarian Diplomacy: From Perspective to Practice 2013

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# Background

The world today witnesses an ever-increasing commitment toward humanitarian values, evidenced by the growth in the number of humanitarian organizations and group of people dedicated to address humanitarian issues. Nevertheless, some parts of the world are still far from being a good place to live for human being. People in places like East Africa and Syria have been suffering the consequences of wars and violence, while others in South and Southeast Asia are haunted by the threats of natural disaster. These humanitarian tragedies can no longer be considered as domestic problem of each state. Humanitarian crises triggered by either man-made or natural disasters have shown the need for global solidarity to formulate an effective and concerted response. International Migration Review elaborates four logics behind the engagement of countries into humanitarian issues: 1) Humanitarian issues reflect the standards of civilization; 2) Humanitarian issues can threaten domestic and international order; 3) Multilateral forums are the legitimate means to handle these issues; 4) Multilateral organization provides burden-sharing mechanisms (Barnett p. 250). These four logics underwrite the increasing number of countries committed to humanitarian goals. Consequently, humanitarian diplomacy is starting to become an important part of international diplomatic agenda.

Indonesian President Spokesperson, Teuku Faizasyah, claimed that humanitarian diplomacy is a 'flagship' for Indonesian foreign policy (Minutes of Meeting at the Department of International Relations UGM March 2012). 'Flagship Enterprise' reflects active participation and significant contribution from Indonesia to increase its role in humanitarian action. Indonesia's vision to raise its roles on humanitarian action relies on its current participation on peacekeeping operation, conflict resolution and disaster management. Humanitarian diplomacy itself is understood as 'persuading decision makers and opinion leaders to act, at all times, in the interests of vulnerable people, and with full respect for fundamental humanitarian principles' (IFRC: Humanitarian Diplomacy). However, as Phillippe Regnier noted, humanitarian diplomacy as a concept still suffers from imprecision and unclear operational application (Regnier 2011). Such deficiency makes those who wish to engage in humanitarian diplomacy unable to determine the scope of action and, therefore, the strategies to achieve humanitarian objectives.

This problem calls for a more robust academic framework on humanitarian diplomacy. Institute of International Studies Program on Humanitarian Action (IIS PoHA) answers this

call by holding two events: “Workshop on Humanitarian Law & Humanitarian Diplomacy: From Perspective to Practice” and “Seminar Indonesian Humanitarian Action Forum (IHAF) Humanitarian Diplomacy: From Perspective to Practice”.

# Kata Pengantar

Assalamualaikum Wr. Wb.

Atas nama Jurusan Hubungan internasional Fakultas Ilmu Sosial dan Ilmu Politik Universitas Gadjah Mada, saya mengucapkan terima kasih dan penghargaan yang sebesar-besarnya atas kontribusi dan partisipasi semua pihak dalam penyelenggaraan *Workshop on Humanitarian Law & Humanitarian Diplomacy: From Perspective to Practice*. Workshop yang berlangsung selama dua hari ini merupakan bentuk komitmen kami untuk mengembangkan *humanitarian studies* di Indonesia. Dalam pelaksanaan kegiatan ini, kami mendapat dukungan penuh dari International Committee of the Red Cross (ICRC) yang memiliki perhatian dan kepentingan yang sama dengan kami dalam hal pengembangan *humanitarian studies*.

Ide dasar dari diplomasi kemanusiaan adalah upaya meyakinkan pembuat kebijakan dan opini untuk selalu mengambil tindakan bagi kepentingan kelompok-kelompok sosial yang rentan, dengan berpedoman pada prinsip-prinsip kemanusiaan yang fundamental. Diplomasi kemanusiaan yang dikembangkan dan terus diperkaya keberadaanya secara empiric memberikan kontribusi yang melengkapi kajian seperti Hukum Humaniter Internasional. Namun demikian, secara konseptual diplomasi kemanusiaan sebagai praktik dan gagasan belum memiliki struktur definisi yang jelas dan operasionalisasi yang bisa menuntun aktivitas riset. Makna diplomasi kemanusiaan masih kabur dan dipahami dengan cara yang berbeda-beda. Untuk itu, penting bagi para cendekia untuk mendiskusikan gagasan dan praktik diplomasi kemanusiaan secara saintifik.

Kegiatan *workshop* diikuti oleh seminar *Indonesian Humanitarian Action Forum* (IHAF) di hari ke tiga. Kegiatan ini memang ditujukan terutama untuk mengungkap dan mengelaborasi aspek hukum kemanusiaan dan diplomasi kemanusiaan dalam Hubungan Internasional dari banyak perspektif. Berawal dari konsep-konsep yang dilontarkan para cendekia yang berbeda-beda, seminar dimaksudkan untuk meringkainya ke dalam sebuah *body of knowledge* yang terkodifikasi. Kegiatan ini didukung penuh oleh *International Committee of the Red Cross* (ICRC) yang memiliki komitmen dalam pengembangan studi ini.

Kedua kegiatan di atas merupakan momentum yang baik bagi Institute of International Studies, Programme on Humanitarian Action, sebagai lembaga riset jurusan, untuk mempererat hubungan kemitraan dengan ICRC. Jalinan kerjasama antara lembaga ini dan ICRC sudah berlangsung sejak lama meliputi banyak kegiatan, seperti workshop, seminar, konferensi, dan kompetisi debat hukum humaniter internasional. Saya berharap kemitraan ini dapat terus berkembang membawa manfaat bagi lebih banyak pihak.

Akhir kata, besar harapan saya pelaksanaan kegiatan *Workshop on Humanitarian Law & Humanitarian Diplomacy: From Perspective to Practice* dapat memperkaya pengetahuan kita tentang gagasan dan praktik diplomasi kemanusiaan. Harapannya, kalangan akademisi, pemerintah, maupun NGO yang ingin terlibat dalam diplomasi kemanusiaan dapat menentukan ruang lingkup yang jelas dalam melakukan aksi kemanusiaan sehingga dapat menentukan strategi untuk mencapai tujuan kemanusiaan secara optimal.

Ketua Jurusan Hubungan Internasional FISIPOL UGM

Dr. Eric Hiariej, M.Phil

Humanitarian diplomacy means persuading decision makers and opinion leaders to act, at all times, in the interests of vulnerable people, and with full respect for fundamental humanitarian principles (IFRC)