

Abolishment of Non-Interference Principle in Enhancing the Quality of the Settlement of Human Rights Violation in ASEAN

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Abstract

ASEAN has become among few regional institutions that has shown significant economic progress and successful regionalism in the world. However, this remarkable achievement is not followed by the development of the human rights in the region. The US Department of State and Non-Governmental Organization like Amnesty International and Human Rights Watch have reported various violations of human rights occurred in almost all of the member states since the inception of the Association five decades ago. The humanitarian crisis of the Rohingya in Myanmar, East-Timor crisis in Indonesia and Oppression of the Pattani Muslim minority in Southern Thailand by the central government are only a few cases of human rights violations in ASEAN. The experiences have shown that the principle of non-interference becomes a tool of shush upon the occurred violations and paralyzes them to deliver a comment or criticism. Even though ASEAN has established ASEAN Intergovernmental Commission for Human Rights (AICHR) as the regional human rights body, but it still does not serve an effective body to protect and promote human rights due to the complicated mechanism of decision making. This becomes a dilemma for ASEAN member states due to for the sake of humanity they want to solve the violation of human rights in the region, while on the other side, they want to protect their sovereignty by maintaining the non-interference principle. Rethinking the application of non-interference principle is recommended to be conducted in order to enhance the quality of the settlement of human rights violation in ASEAN.

Keywords: ASEAN, Sovereignty, Non-interference Principle, Human Rights

I. Introduction

The year of 2017 comprises the period of Association of Southeast Asian Nations (ASEAN) celebrating its half-century of the existence. The region with more than 600 million inhabitants has shown a significant economic

progress since the establishment of the association 50 years ago. But it is a backlash story when it compares to the human rights development in the region.

ASEAN as a regional association has proved weak and ineffective to deal with the issues of human rights.¹ Countries throughout Southeast Asia have shown signs of increase in human rights violation.² In the state of the Philippines, some countries have warned the newly elected president Redrigo Duterte for the allegation of mass killing on the war on drugs policy that caused the death of thousands of people without considering the law.³ Long back to the 1970s in Cambodia, a decade after the establishment of the association, a communist organization called The Khmer Rouge that ruled in Cambodia from 1975 to 1979, over 1.7 million Cambodians died of forced labor, overwork, starvation, torture and execution.⁴ Pol Pot is the leader for this terrible genocide.⁵ Even the skeletons and the bones of the victims of Pol Pot genocide

¹ Champa Patel, 2017, "Time for ASEAN to Take Human Rights Seriously", available at <https://www.amnesty.org/en/latest/news/2017/02/time-for-asean-to-take-human-rights-seriously/>, accessed on 31 October 2017 at 2:17 p.m.

² Vincent Bevins, Mata-Mata Politik, "Selain Myanmar, Pelanggaran HAM Juga Terjadi di Seluruh Asia Tenggara", available at <https://www.matamatapolitik.com/selain-myanmar-pelanggaran-hak-asasi-manusia-juga-terjadi-di-seluruh-asia-tenggara/>, accessed on 5 November 2017 at 7:40 p.m.

³ Riva Dessthania Suasta, CNN Indonesia, 2017, "Filipina Diserang Isu Pelanggaran HAM dalam Sidang PBB", taken from <https://www.cnnindonesia.com/internasional/20170508183629-106-213251/filipina-diserang-isu-pelanggaran-ham-dalam-sidang-pbb/> accessed on 7 November 2017 at 2:55 p.m.

⁴ Sean D. Murphy, 2012, *Principles of International Law*, United States of America, West, p. 482

⁵ Anonymous, "Cambodian Genocide", available at <https://humanrightsprojectap.weebly.com/cambodian-genocide.html>, accessed on 7 November 2017 at 7:16 p.m.

have been piled, there is no justice for millions of people that have been affected by the regime until the death of Pol Pot in 1998 due to a heart failure.⁶

One of the worst human right violation in the region which hit the world attention recently happened in Myanmar. At the beginning of 2016, an allegation of genocide or severe level of violation of human right has occurred in Rakhine Province, Myanmar. The brutal and inhuman treatment suffered the Rohingya Muslim minority in the country as they are being refused and expelled from the land that they have been lived over the generations⁷. As the consequences of the principle, ASEAN does not deliver a very critical statement towards the other member states' internal affairs. ASEAN denies Pol Pot as the genocide regime, even though at the time Cambodia was not the member of the association yet. ASEAN also refrains from giving a scathing criticism upon the People's Power occurrence in the Philippines, as long as Marcos is still in his throne. ASEAN will even support the former president of the Philippines at the time as the consequences of the application the principle.⁸

⁶ Carrie Williams, "Pol Pot's Dangerous Regime: A Human Rights Disaster", available at <https://www.youthkiawaaz.com/2012/05/pol-pots-dangerous-regime-a-human-rights-disaster/>, accessed on 8 November 2017 at 9:48 a.m.

⁷ Amnesty International, 2016, "Myanmar: Security forces target Rohingya during vicious Rakhine scorched-earth campaign" taken from <https://www.amnesty.org/en/latest/news/2016/12/myanmar-security-forces-target-rohingya-viscious-scorched-earth-campaign/>, accessed on 1 May 2017 at 3:31 p.m.

⁸ Bambang Cipto, 2010, *Hubungan Internasional di Asia Tenggara*, Yogyakarta, Pustaka Pelajar, p. 32

Based on the discussion above, a sufficient action should be done by other member states in the region to intervene Myanmar in order to end the ballot of the Rohingya and to bring justice for the Cambodians is needed. Unfortunately, the existence and the application of Non-Interference principle in ASEAN make the members paralyze to act upon the occurred tragedy in other states.

II. Discussion

1. The History and the Application of Non-Interference Principle in ASEAN

The countries in Southeast Asia have achieved a remarkable accomplishment by uniting 10 countries in the region that have the same purposes of regional peace and welfare. The achievement is reflected on the implementation of ASEAN Way that makes principle of non-interference as its core.⁹

The principle was first lined out in the 1967 Bangkok Declaration as ASEAN's establishment document. The Bangkok Declaration stated that to maintain internal and regional security, member-states should

⁹ Tram-Anh Nguyen, 2016, Norm or Necessity? The Non-Interference Principle in ASEAN, *Cornell International Affairs Review*, Vol. 9, No. 1, available at <http://www.inquiriesjournal.com/articles/1318/norm-or-necessity-the-non-interference-principle-in-asean>, accessed on 3 March 2018 at 2:27 p.m.

prevent external interference. The non-interference policy was emphasized in the Kuala Lumpur Declaration of 1997.¹⁰

The treaty that emphasized the prohibition of external interference is the Treaty of Amity and Cooperation (TAC) of 1976. There are six (6) primary principles adopted in this treaty. The principles are:

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

The reason of the adoption of the non-interference principle by the ASEAN's founding member was mainly internal security concerns. The application of non-interference policy enables countries to focus on

¹⁰ Mieke Molthof, 2012, "ASEAN and the Principle of Non-Interference", available at <http://www.e-ir.info/2012/02/08/asean-and-the-principle-of-non-interference/>, accessed on 10 November 2017 at 2:32 p.m.

their own domestic matters, avoiding intervention or criticism from other state that could become an obstacle on nation development.¹¹

In spite of the fact that ASEAN effortlessly has made no action to define the meaning of interference, the reference of the ASEAN document follows the definition of the Westphalian sovereignty. According to Krasner, the meaning of sovereignty based on the Treaty of Westphalia is an organizational procedure for implementing a state that is based on the principle of territoriality and free from external influence from the structures of internal authority. The principle of non-interference prohibits ASEAN member states to criticize and intervene domestic affairs of other states.¹² The Association practice before the mid-1990s recommends that it was understood as an involvement of a member states towards the other member state internal politics in the form of commentary or criticism through a military intervention. This expansive understanding drove the non-interference approach work as a course of action for the aversion of any acts by ASEAN member-countries expresses that would conceivably undermine the expert of the overwhelming political elite and upset internal administration in any of the part states.¹³

¹¹ Nehginpao Kipgen, 2012, Association of Southeast Asian Nations (ASEAN): Cooperation Problems on Human Rights, *Strategic Analysis*, Vol. 36, No. 1, Routledge Taylor & Francis Group, p. 105

¹² Tram-Anh Nguyen, *Op cit*

¹³ Mieke Molthof, *Op cit*

The application of non-interference principle in ASEAN is clearly visible on the silence of the Association regarding the conflict and military coup in Thailand, East Timor in Indonesia, Mindanao in the Philippines and the political persecution of former Deputy Prime Minister of Malaysia. Even though ASEAN firmly cling on their commitment to not interfere each other internal issues, there are some cases where ASEAN violates the consensus they have agreed upon. ASEAN has interfered the domestic affairs of Myanmar and Cambodia. The intervention of ASEAN in both states shows an implication of double standard in application of non-interference principle. The Association treats the members differently. ASEAN implements the non-interference principle whenever issues happen inside its dominant members but tend to intervene the least powerful members.¹⁴

The first case of violation of the principle happened in Cambodia. In 1997, there was a coup on the leadership of Cambodia in national elections. Hun Sen as the second Prime Minister of Cambodia took over the position of the head of government from the first Prime Minister Norodom Ranaridh. The coup occurred when Cambodia applied for the membership of ASEAN. As the application of non-interference, at the time ASEAN refused to involve in domestic dispute of Cambodia.

¹⁴ Tram-Anh Nguyen, *Op cit*

Nevertheless, the attitude of ASEAN turned after a pressure from the West and Japan who are the main trading partner in the region. ASEAN decided to postpone the membership of Cambodia and sent their representatives to settle the crisis.¹⁵

The second case of violation the principle is the case of Myanmar military coup in 1989. The junta rejected to give the leadership to Aung San Suu Kyi who just won the national election in 1990 and put her under house arrest for a long period. Dissimilar from Cambodia, ASEAN accepted the membership of Myanmar in 1997 in spite of intense rejections by the West because of the committed violations of human rights. ASEAN directly accepted Myanmar because of its potential natural resources that are able to boost the economic growth of the region. Due to the unresolved human rights crisis in Myanmar, the European Union and United States refused to attend any meeting with ASEAN that involve Myanmar and annulled all kind of cooperation. As the result of the massive pressure from the West, ASEAN broke the non-interference principle by demanded Myanmar to release Aung San Suu Kyi and to improve the human rights situation.¹⁶

The mentioned cases of violation of non-interference principle above

¹⁵ *Ibid*

¹⁶ *Ibid*

show that the inconsistency of ASEAN member states towards the application of the principle.

2. The Impact of Non-Interference Towards the Human Rights Development in ASEAN

The appearance of the non-interference policy that may seem like this is a way to promote the independence of the members due to the consideration of the colonization that they bitterly experienced in the past. But, the existence of non-interference can fill in as a *de facto* code of silence, especially on the issue of human rights.¹⁷

Human rights is being marginalized in ASEAN. The Association refused the involvement of foreign countries or other international organizations that demand the region to reform their mechanism of the protection of human rights application. Even though the existence of reports from United States Department of State or Amnesty International and Human Rights Watch, ASEAN does not give its concern.¹⁸

¹⁷ Jodesz Gavilan, 2017, “The Deafening Silence of ASEAN on Human Rights Violations”, available at <https://www.rappler.com/newsbreak/in-depth/187759-asean-2017-human-rights-violations-deafening-silence>, accessed on 31 March 2018 at 10:40 a.m.

¹⁸ Li-ann Thio, Implementing Human Rights in ASEAN Countries: Promises to Keep and Miles to Go before I Sleep, *Yale Human Rights and Development Journal*, Vol. 2 Iss. 1, p. 3

Numerous have required the abolishment of the non-interference policy, especially to offer path to a compelling treatment of human rights in the region. One of the figure that wanted to eliminate the non-interference principle in ASEAN was the former Secretary General of ASEAN, Surin Pitsuwan. He suggested the replacement of non-interference principle with a “Flexible Engagement” approach. This approach allows a member-states to discuss openly other state’s domestic matters. Unfortunately, Surin’s proposal for this approach was rejected outright by the majority of the member states due to the fear of loss of national sovereignty and put the stability of the region at risk.¹⁹

Following the complicated discussion on the application of human rights in the region, there is a silence that openly expressed in ASEAN when it comes to human rights abuses. Some of the citizens of ASEAN member-states are encountering repression by their own country. Creating government authoritarianism that paralyzes some of the rights of the citizens that should be enjoyed universally.²⁰

In fact, out of 10 members of ASEAN, only Singapore and Malaysia who apparently do not violate the human rights. The following table shows the cases of human rights violation throughout ASEAN.

¹⁹ Mieke Mothof, *Op. cit*

²⁰ Jodesz Gavilan, *Op cit*

No.	Country	The Case of Human Rights Violation
1.	Cambodia	Genocide-related cases that remain unresolved in Pol pot regime
2.	Thailand	Various shootings and bombings of Pattani Muslim minority from Thailand's central government as a result of separatist movement.
3.	Malaysia	Racial discrimination and the enforcement of the Internal Security Act
4.	Philippines	Rodrigo Duterte as the President conduct a brutal war against drugs that has killed thousands of people
5.	Myanmar	Allegation genocide committed by the Myanmar military and government towards the Muslim minority of Rohingya
6	Vietnam	Imprisonment of two citizen due to their criticism to the government ²¹
7.	Indonesia	An extra-judicial killings, disappearances, and tortures committed by the Indonesian military in East Timor, Aceh, and Irian Jaya, where separatist movements exist

Table 3. List of Human Rights Violation in ASEAN

²¹ Vincent Bevins, *Op cit*

The data on the table shows that almost all of the ASEAN member states have violated the human rights. ASEAN's adherence to non-interference was most evidently manifested in its response to the 1999 East-Timorese crisis. Regardless of the status of the crisis as a serious regional security threat and pressure from the United States and the United Nations, there was a silence from the members of ASEAN, which emphasizes that the crisis is a domestic affair of Indonesia and should not be intervened on the grounds of humanity that ultimately constitute a unilateral decision by the West.²²

A tension once occurred with the non-interference policy when the expansion of the membership to include Myanmar. ASEAN was getting massive pressure by international human rights groups and the west due to the denial of the recognition of Aung San Suu Kyi who has unpredictably won the 1990 national election. Instead, the military junta put her under house arrest. Despite a massive pressure from the west to limit economic relations with Myanmar, the leaders of ASEAN leaders at ASEAN Ministerial Meeting in 1991 chose a constructive engagement policy with Myanmar. ASEAN hoped that by the

²² Wei Yang Toh, 2016, "Rohingya Crisis: Rethinking ASEAN's Principle of Non-Interference, Fox & Hedgehog", available at <http://www.foxhedgehog.com/2016/12/rohingya-crisis-rethinking-aseans-principle-of-non-interference/>, accessed on 28 February 2018 at 12:02 p.m.

application of policy will improve the human rights circumstance in Myanmar so that membership in ASEAN might continue easily.²³

Since Myanmar officially becomes the part of ASEAN, the region is often seen as intricate in terms of regional cooperation due to its consensus decision-making mechanism and unwillingness to interfere the other domestic affairs of member states. The member states enjoyed this “closed-eyes” policy and called this action as the ASEAN Way. This policy has been criticized because it will risk the future of ASEAN human rights protection and promotion project in the verge of collapse that caused by the political will of each member states government.²⁴

ASEAN’s stubborn attitude to the reluctance to discuss regional human rights cannot last long. The issue of human rights is dynamic and frequently discussed topic around the world. After the end of the cold war, the issue of human rights is becoming the main topic in international relation. Embracing to the norms of non-interference and state sovereignty, ASEAN member state consent to not intervene the domestic affairs of each other state to maintain the stability of the region. As a result of the adherence of non-interference, the region

²³ Robin Ramcharan, ASEAN and Non-interference: A Principle Maintained, *Contemporary Southeast Asia*, Vol 22, No. 1, p. 66

²⁴ Byron Nagy, 2016, “Human Rights and the ‘ASEAN Way’: Political Barriers to Progress”, available at <http://www.e-ir.info/2016/11/16/human-rights-and-the-asean-way-political-barriers-to-progress/> accessed on 2 March 2018 at 11:25 a.m.

does not give concern on human right issue in the region until early 1990s. The occurrence of massacre in Dili on 1991 ended the silence of ASEAN member state upon the discussion of human rights in the region.²⁵

At the world conference on human rights in 1993, a declaration was approved by the UN member in Vienna and named Vienna Declaration. ASEAN member states also approved this declaration and became the beginning of the commitment of ASEAN member states to uphold human rights in Southeast Asia. This human rights conference declared the need for considering the establishment of regional and sub-regional level agreements for the promotion and protection of human rights. This made ASEAN to take a stance on promoting human rights, a stance widely known as the Asian Values.²⁶

In spite of the fact that ASEAN concerned on the subject of establishing a regional human rights institution back in 1993, there is no serious action taken until a High Level Task Force in 2006 to draft the ASEAN Charter. This Charter is a document that makes ASEAN become a more rules-based organization and a legal entity.²⁷ The

²⁵ Yongwook Ryu and Maria Ortuoste, Democratization, Regional Integration, and Human Rights: The Case of the ASEAN Intergovernmental Commission on Human Rights, *The Pacific Review*, Vol. 27, No. 3, Routledge Taylor and Francis Group, p. 359

²⁶ *Ibid*

²⁷ Andre Asplund, ASEAN Intergovernmental Commission on Human Rights: Civil Society Organizations' Limited Influence on ASEAN, *Journal of Asian Public Policy*, Vol. 7 No. 2, Routledge Taylor & Francis Group, p. 193

ASEAN Charter, which was ratified by all member states in 2008, recognizes human rights as its values. Article 14 of the Chapter stated the commitment of ASEAN to establish human rights institution in the region. In October 2009, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was born.²⁸ The legal basis on protection and promotion of human rights of AICHR is Terms of Reference (ToR). However, the mandates of AICHR were formulated using the approach of “promotion first, protection later”. The ToR of AICHR does not include investigation power, supervising or enforcement. This condition makes the AICHR that become powerless human rights institution as the human rights activist stated. It creates slow progress and long debate in the application.²⁹

Since the establishment of AICHR as the institution to promote and protect human rights in the region, AICHR does not give a significant impact towards the protection of human rights in ASEAN. AICHR has been vigorously condemned for having no power and being toothless for very nearly a long time since it was established. It predominantly works through consultation and consensus among 10 members from part nations who additionally enjoy veto powers. This makes it difficult

²⁸ Yuyun Wahyuningrum, 2014, The ASEAN Intergovernmental Commission on Human Rights: Origins, Evolution and the Way Forward, Published Paper on *International Institute for Democracy and Electoral Assistance*, p. 6

²⁹ *Ibid*, p. 14

for the commission to discharge reports about a part state's asserted infringement.

It likewise does not help that there are no current punishments that can be forced on nations found to have tolerated human rights infringement. This is genuine regardless of whether infringement go straightforwardly against ASEAN's Declaration of Human Rights. Dissimilar to the European Union (EU) and the United Nations which research and investigate and in the end endorse punished those that neglect to follow up on their terrible human rights records, ASEAN member-states are fundamentally left unchecked. Mathew Davies also has the same way of thinking, cautions against pressuring ASEAN to adopt European Union style hard compliance practices.³⁰

There are numerous cases of violation of human rights occurred across ASEAN. The kind of the violation is different from each country, from the lightest level of violation in the form of discrimination through the gross violation of human rights could be found from the report. Despite numerous human rights violations have occurred in ASEAN, the region as if let that happen and prefer to close their eyes. This antipathy response of the ASEAN member states exists because of the consensus of the non-interference policy that binds them. This principle

³⁰ Byron Nagy, *Op cit*

prohibits them to criticize or participate in internal affairs of a state, in this case is the prohibition to involve in occurred conflict or infringement of human right.

Unfortunately, the consistency of ASEAN towards the non-interference principle is questioned. There are some cases of ASEAN break their agreement by intervene the internal affairs of the member states. Apparently the application of the non-interference principle is applied only in the state who has big power and influence in the region. But when it comes to the least powerful state, ASEAN tends to push it to the corner. The situation of double standard of non-interference application in each member states will certainly worsen the image of ASEAN as a regional institution in the world and questioned its capability in solving the regional issues. ASEAN have to take a revolutionary action to reform their concept of regionalism in order to prioritize the interest to protect humanity and to humanize the human being.

3. The Comparison between ASEAN and the European Union

Since the inception of the European Union in 1952, the EU has been through a long way to become a matured and developed international organization, from Community into a greater Union of

diversity of states that has comprehensive legal system.³¹ The European Union is a group of democratic countries in Europe cooperating together improving their citizens life. The member states of EU remain independent nations and sovereign. What makes the union different from other international organization is that the state pools their sovereignty in order gain a strength. Pooling sovereignty practically means that the member states send some of their decision-making power to shared institution they have established. The purpose is the decisions on particular issues of joint interest can be created democratically at European level.³²

The background of the integration of Europe cannot be separated from the event of the World Wars. Over 50 million people lost their lives during the World War II. The survivors experienced a psychological devastation and physical destruction.³³ The World Wars that devastated the whole European countries was occurred because of extreme understanding and application of nationalism idea of the nation state. So, basis of the establishment of regional institution was to fade

³¹ Margot Horspool and Matthew Humphreys, 2012, *European Union Law*, Oxford, Oxford University Press, p. 1

³² European Union, 2005, *How the European Union Works*, Germany, European Commission Directorate-General for Press and Commission, p. 1

³³ Alina Kaczorowska, 2013, *European Union Law*, Oxon, Routledge Taylor & Francis Group, p. 4

the idea of nationalism. Thus, applied approach of regionalism was supra-nationalism.³⁴

To restore peace in the region, on 18 April 1951 in Paris, six western European countries made the first integration of Europe named the European Coal and Steel Committee (ECSC). The ECSC is more likely only for a free trade treaty. To expand the scope of the institution, in 1957, the Treaty of Rome established European Economic Community (EEC). Finally on 7 February 1992, the Treaty on European Union or the Treaty of Maastricht was signed as the foundation of European Union.³⁵

Meanwhile in Southeast Asia, the applied approach of regionalism in ASEAN is intergovernmental approach. The reason of the application of the approach is because of the colonialism that mostly experienced by the Southeast Asian states. The existence of national movement in the past that furiously struggle to gain their independence was the reason of the regional integration in this region. The idea of integration is to keep their newly independent and sovereign nation from external powers³⁶.

³⁴ Maneesha Tripathi, 2015, European Union and ASEAN: A Comparison, *International Journal of Research (IJR)*, Vol. 2, ISSN 2348-6848, p. 378

³⁵ *Ibid*, p. 377

³⁶ *Ibid*, p. 378

Before the establishment of ASEAN in 1967, there were several attempt to integrate the region. The first attempt of integration was happened on 1961 by establishment of Association of Southeast Asia (ASA), but a conflict between Philippines and Malaysia ruined the attempt. Later, MAPHILINDO which a cooperation between Malaysia, Philippines and Indonesia appeared and replaced ASA. Again, this second attempt of integration was failed due to political confrontation of President Soekarno.³⁷ Finally, the last attempt of integration was successful. ASEAN was established due to the same experience of colonization (except Thailand) with the purposes of creating welfare and peaceful Southeast Asian Nations community.³⁸ After forty years of establishment of ASEAN, the leaders of ASEAN signed the historic Charter in November 2007. The Charter was designed to make the region as a single community. The existence of ASEAN for more than half-century is considered as successful regional integration in the world.³⁹

The structure of organization of European Union is almost as equal as a sovereign state that has Executive, Legislative and Judicial power. In executive body, there is the European Commission (EC). Just like the

³⁷ Bambang Cipto, *Op cit*, p. 13

³⁸ Min-hyung Kim, 2011, *Theorizing ASEAN Integration, Asian Perspective*, Lynne Rienner Publisher, Vol. 35 No. 3, p. 407

³⁹ Maneesha Tripathi, *Op cit* p. 378

function of executive power, EC also has the same executive function in a state which is proposing a new legislation.⁴⁰ European Commission is an independent body which free from any intervention of a member state. The policy issued by the EC must uphold the interest as the citizen of European Union as a whole and not for individual interest of a state.⁴¹ There is no comparable of this institution in ASEAN.⁴²

The next is the legislature that consists of European Parliament and the Council of the European Union. The roles of the parliament are passing the European law, supervise democratically other EU institutions particularly the European Commission and it may adopt or reject the budget proposal.⁴³ The Council is the primary decision-body of the EU. It represents the member states and there must be one minister from each national governments of European Union member. The Council that consists of the head of state or government usually conduct a meeting twice a year. The Council has six main duties.

- 1) Passing the European laws jointly with the European Parliament.
- 2) Coordinating the broad and social policies of the member states.
- 3) Concluding international agreements between EU and other countries or international institution.

⁴⁰ European Commission, *Op cit*, p. 7

⁴¹ *Ibid*, p. 20

⁴² Maneesha Tripathi, *Op cit* p. 379

⁴³ European Commission, *Op cit*, p. 11-12

- 4) Approving the annual budget together with the Parliament.
- 5) Developing the common foreign and security of the EU.
- 6) Coordinating cooperation between the national courts and police in criminal issues. ⁴⁴

ASEAN also has this kind of Council named Council of Minister of ASEAN, but the Council only meets once a year and does not have a legislative function. ⁴⁵

Lastly, the judiciary power of the EU is the European Court of Justice (ECJ). The duty of the court is to ensure the EU legislation is interpreted and applied equally in all EU countries. It ensures there will be no different treatments on the same matters or clash in each policy of each member states.⁴⁶ Again, the existence of this kind of institution in ASEAN is none, but the founding treaty of ASEAN mentions a possibility of creating a high council that consist of the minister of the member states with limited role and *ad hoc* dispute settlement.⁴⁷

As the most advanced regional institution in the world, there is no other institutions that are able to be compared with EU. With perfectly structure of institution and clear duties, EU takes the lead of role model of regional institution. When there is an issue appeared in the region,

⁴⁴ *Ibid*, p. 14-15

⁴⁵ Maneesha Tripathi, *Op cit*, p. 379

⁴⁶ European Commission, *Op cit*, p. 25

⁴⁷ Maneesha Tripathi, *Op cit*, p. 379

EU is able to take decision by using unanimity or a majority vote. After the Union reached the qualified majority, EU can directly execute the decision in the region and individual state because the member states have pooled their sovereignty to the Union. Unlike what happened with ASEAN that still shackled with non-interference principle, there is no clear and formal procedure of decision making in ASEAN. This condition makes ASEAN slower to take action and seemingly powerless to deal with their own regional issue.

III. Closing

ASEAN needs to abolish the non-interference principle because it inhibits the settlement of human rights violation cases in ASEAN. The non-interference prohibits states or any international organization to interfere the domestic affairs of a state, resulting various cases of human rights violation occurred in almost all ASEAN member states. So the cases of violation of human rights cannot be solved well.

Entering the modern era of inter-connectedness that uphold the values of humanity, ASEAN should rethink its principle non-interference application in order to enhance the quality of the human rights settlement in the region. ASEAN can imitate the applied method in EU that has been proved successfully settling regional issue by pooling some of their sovereignties to the Association. In addition,

AICHR as the human rights institution in ASEAN should establish permanent human rights court that can strengthen the promotion and protection of human rights in the region. Also there should be an additional Article in Terms of Reference (ToR) as the legal basis of AICHR in running their purpose by providing humanitarian assistance if humanitarian crisis occurs in the region.

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