

## CHAPTER ONE

### INTRODUCTION

#### A. Background

Nowadays, the issue of Human Rights is still one of the most frequently discussed topics around the globe. Almost every day we can hear the news about people is being discriminated, mass killing, torture, the enforced disappearance of political opponents, etc. The 1948 Universal Declaration of Human Rights (UDHR) is the modern international framework that covered the human rights issue. Since the declaration, all countries in the world have international code and principle or a parameter on how to deal with human right in domestic or regional.

As the center of human rights development in the world, Europe is the perfect role model to be followed. Starting from the *Magna Carta* in England, *Declaration des Droits de l'Homme et du Citoyen* in France until the integration of European countries into one community named European Union in Maastricht Treaty where the member states governments consent on working together on foreign and security policy and in the area of justice and home

affairs (including the human rights case).<sup>1</sup> The development shows that the region was taking serious efforts and actions on the promotion of human rights.

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. The economic progress is proved on 2015 when ASEAN implemented ASEAN Economic Community that aimed to create a single market in the region.<sup>2</sup> Unfortunately, the successful economic progress is contrary 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. ASEAN Intergovernmental Commission on Human Rights (AICHR) as the local body to promote and protect human rights, has been torpid, tightened by rules requiring accord for any choice it makes, which has had an incapacitating impact on its activities. Part states have

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<sup>1</sup> European Union, 2005, *How the European Union Works*, Germany, European Commission Directorate-General for Press and Commission, p. 5

<sup>2</sup> Yordan Gunawan and Yovi Cajapa Endyka, 2017, "The Protection of Small and Medium Enterprises in Yogyakarta: The Challenges of ASEAN Economic Community", *Pertanika J. Soc. Sci & Hum.* 25 (S): 199 - 206 (2017), ISSN 0128-7702 (Print); ISSN 2231-8534 (Online), Kuala Lumpur, University Putra Malaysia Press. Also available at: [http://www.pertanika.upm.edu.my/Pertanika%20PAPERS/JSSH%20Vol.%2025%20\(S\)%20Oct.%202017/JSSH\(S\)-0550-2017.pdf](http://www.pertanika.upm.edu.my/Pertanika%20PAPERS/JSSH%20Vol.%2025%20(S)%20Oct.%202017/JSSH(S)-0550-2017.pdf)

thought that it was simpler to stay bound together by their poor records on human rights.<sup>3</sup>

Countries throughout Southeast Asia have shown signs of increase in human rights violation.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> Pol Pot is the leader for this terrible genocide.<sup>7</sup> Even the skeletons and the bones of the victims of Pol Pot genocide have been piled, there is no justice for millions of people that have

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<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> Sean D. Murphy, 2012, *Principles of International Law*, United States of America, West, p. 482

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

been affected by the regime until the death of Pol Pot in 1998 due to a heart failure.<sup>8</sup>

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 generations<sup>9</sup>. The government of Myanmar seemingly lets this happen and do nothing. Even the Nobel Prize winner Aung Sang Suu Kyi, who is the symbol of human rights promotor, rejects that there is no ethnic cleansing occurred in Myanmar.<sup>10</sup> 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

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<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> Voice of America, "Myanmar's Aung San Suu Kyi Denounces Human Rights Violations in Rakhine State" taken from <https://www.voanews.com/a/myanmar-leader-aung-san-suu-kyi-to-give-national-address-on-rakhine-crisis/4034038.html> accessed on 27 December 2017 at 11:02 a.m.

the former president of the Philippines at the time as the consequences of the application the principle.<sup>11</sup>

Based on the discussion above, a sufficient action should be done by other member states in the region to end the violation of human rights. 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. Unlike what happened on the other part of the hemisphere, the European Countries who are in the membership of Supranational European Union, the member states should retain their sovereignty and as a supranational state that has direct authority for some issues over its member states. The member states take decisions on a majority vote and give up their veto right in deciding on particular matters.<sup>12</sup>

## **B. Research Questions**

1. What is the challenge of ASEAN dealing with human rights violation?
2. Why does ASEAN need to abolish the principle of Non-Interference principle?

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<sup>11</sup> Bambang Cipto, 2010, *Hubungan Internasional di Asia Tenggara*, Yogyakarta, Pustaka Pelajar, p. 32

<sup>12</sup> Susan Senior Nello, 2005, *The European Union Economics, Policies, and History*, Maidenhead Berkshire, McGraw-Hill Education, p. 4

### **C. Research Objectives**

The objectives of this research are to understand further of the concept of Non-Interference principle in ASEAN, to analyze the challenges of ASEAN dealing with the human rights violation and urgency of the abolishment of Non-Interference principle which applied in ASEAN. Also, another objective is to propose a suggestion on a better solution of the Human Rights violation in ASEAN.

### **D. The Advantages of Research**

There are some advantages of research, namely:

#### **1. Theoretical Aspect**

This research gives benefits to know genuinely about the Non-Interference principle in ASEAN and the reasons why ASEAN have to abolish it and also how the impact after the abolishment will provide significant changes for the settlement of Human Rights violation in a better way.

#### **2. Practical Aspect**

This research provides a better understanding of the applied principle in ASEAN, in this case, is the non-interference principle. This principle does not allow any member of the state to intervene the domestic affair of other states. Also, the research will provide more understanding of the reasons why does ASEAN need to abolish the non-interference principle in ASEAN relating to the settlement of the Human Rights Violations.

## **E. Overview of the Chapter**

This research consists of five chapters, namely Chapter I: Introduction. Chapter II: Literature Review. Chapter III: Research Methods. Chapter IV: Finding and Analysis, and lastly, Chapter V: Conclusion and Suggestion.

The research aims to learn more about the reasons why does ASEAN needs to abolish the Non-Interference Principle and the issues and challenges in the implementation after the abolishment of the principle, this research will elaborate the topic systematically by dividing it into five chapters.

The first is Chapter I, consisting of Introduction, will elaborate general matter, such as Background, Research Question, Research Objective, Research Benefits, and Overview of The Chapter. The background contains the current condition of the existing unsettle human rights cases in ASEAN and how the ASEAN Member States response towards the victim of the human rights violation condition in ASEAN earlier. Problems of the topic are the reasons why does ASEAN need to abolish the principle of Non-Interference Principle.

The second is Chapter II, Literature Review; this chapter discusses the related library reviews regarding Literature Review of Non-Interference Principle and Human Rights Violation in ASEAN. Moreover, it will elaborate more on the International Human Rights Law, Humanitarian Law and National Law Relating to Violation of Human Rights.

The third is Chapter III; this chapter elaborated research method which used in this research. The discussion is started from the type of research, legal

materials, method of collecting data, and method of data analysis. Type of this research is normative legal research. The research applies statute and case approaches. The data were gathered from some literature consist of primary legal material, secondary legal material, and tertiary legal material. Furthermore, the data were taken through library research and analyzed systematically by using the qualitative and descriptive method.

The fourth is Chapter IV, Findings and Analysis, the chapter elaborates the case with the normative legal research, with case approach. The focus of this research is on the reasons why does ASEAN need to abolish the principle of Non-Interference as the better way to solve the Human Rights case in ASEAN, the barriers of the abolishment and the challenges within after the abolition. The chapter will describe more about advantages and disadvantages either ASEAN abolish the principle or not.

The last is Chapter V, Closing. Contain the conclusions and the suggestion from the author toward all of the result of the research



