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“Human Rights Work in the ASEAN Intergovernmental Commission on Human Rights”: An Interview with Yuyun Wahyuningrum

Sarah Anaïs Andrieu and Gabriel Facal

Yuyun Wahyuningrum is the Representative of Indonesia to the ASEAN Intergovernmental Commission on Human Rights (AICHR) since 2019. She has spent more than 22 years working in human rights organisations, including the Human Rights Working Group (HRWG), Forum-Asia, Oxfam, Child Workers in Asia, the Solidarity Center, and the National Commission on Child Protection.

During your mandate as Representative of Indonesia to the ASEAN Intergovernmental Commission on Human Rights (AICHR, 2019–now), what have your main tasks been?

As a representative, my role is first to implement the mandate of AICHR, secondly to perform Indonesian foreign policy on human rights in ASEAN, and third to carry on human rights diplomacy tasks. I differentiate between

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implementing Indonesian foreign policy on human rights in ASEAN and performing human rights diplomacy, taking into account the specificities of Indonesian history. Indonesia did not implement or did not have any foreign policy on human rights in ASEAN before the Reformasi period (1998–), but after Reformasi, there have been a number of policies on human rights that Indonesia wanted to implement. These are the three main functions, roles, and assignments for me as the representative of Indonesia.

According to you, what are the ongoing challenges to human rights in Southeast Asia? What are the main issues which are addressed by AICHR?

I think impunity is the main challenge for human rights in the region. The rise of militarisation, authoritarianism, and populism. People do not have mechanisms to report their grievances to the governments. And not all ASEAN member states have mechanisms to address human rights violations, while at the same time violations happen almost every day. More and more, we see the increase of militarisation in different countries in the region, which has especially been the case during the COVID-19 crisis. In Indonesia, Thailand, and other countries, military officers have been very effective in handling several public issues by deploying the army. In Singapore, they have distributed vaccines, masks, and tools for fulfilling health protocols. The military are used because they have a commando organisation and therefore can react quickly.

More generally, whenever we talk about a regional issue, it must fall into one of the three following categories. First, the cross-border dimension, which regards the whole of ASEAN: for instance, trafficking in person, migration, and refugee smuggling. A second category is transboundary: a case may happen in a particular country but its impact can expand beyond the borders. This is something that ASEAN needs to address, not only AICHR, but ASEAN as a regional organisation. And third, issues that are not considered transboundary or cross-border, but which happen in all countries and become regional concerns. For instance, fake news, freedom of expression, opinion online or offline. If the issues do not fit in one of these three categories, it doesn't mean that they are not important but only that they do not reach the regional level in which ASEAN needs to address them.

There are a number of issues for which not all countries feel that they have concerns, like countering violent extremism. Laos, Brunei, and Vietnam do not think that terrorism is part of their concern. But, they know the severity of the problem and therefore, they feel the need to take care of it.

Many observers and researchers point to the regression of democracy in the region, what is your opinion about it?

Yes, even before COVID-19, the democracy level did not necessarily move forward but even backward. Taking the statistics of the Economics International Unit, none of the Southeast Asian countries falls under the category of democracy: they are just semi-democratic or not democratic at all. And those who belong to the non-democratic category typically maintained that level for the last ten years. Freedom House uses different indicators, but the results are almost the same.

In this context, action at the level of AICHR is rather difficult because ASEAN requires consensus to make any agreement. If one country refuses, then there is no project at all. To be able to arrive at a consensus, I have to do homework to persuade other countries that they can at least agree on the idea, and then we can move forward. There are a number of strategies to persuade countries, for instance, using documents on which ASEAN already agreed in the past and emphasising that we can elaborate on these. Second, we choose terms with which the representatives don't feel uncomfortable. We have to arrange and design a project in a way so that members do not feel threatened. For instance, currently, we are discussing a workshop on the right to nationality. This is very basic, but some countries disagree. One of the reasons is not the substance, but rather because of the participation of civil society. Representatives fear that their country will become a target of criticism from civil society if they come to the meeting. My suggestion to AICHR is that we can make ASEAN member states dialogue on the right to nationality because it is the obligation of the government to provide nationality and identity to the citizens. So even if we cannot involve civil society now, it's okay. Civil society can act as resource person, not as participant. But some countries believe that we cannot do that: we have to bring in civil society. We discussed that project for more than three years and now the country that is the proponent of the project dropped it.

For Indonesia, when I started my AICHR role as representative in 2019, I was told by some to choose the low-hanging fruits; which means the issues that are easily accepted. There has been an assumption that we should look more at economic, social, and cultural rights. At the same time, if you are a democratic country, you cannot take the easiest way. You have to find ways that challenge ASEAN. Because in doing so we can map the level of sensitivity of member states. If we start with something easy, of course everything will be done. But I should not take that path because other countries will do it. No country in Southeast Asia rejects human rights. Human rights have been included in their constitution and they ratified some of the conventions.

But how they perform human rights, how they want to be perceived in human rights implementation, is really under their control. Countries may choose issues that can be considered non-political. To me, there is no human rights issue that is not political. But this is the way member states design the programmes.

For me, I intentionally do not choose, for instance, the right to education. Not that the right to education is not important. But let other countries do it. I choose prevention of torture or the right to remedy or prevent trafficking in person. Trafficking in person is actually an issue that is acceptable for many member states. The issue of migrant workers is very sensitive, as well as the issues of freedom of expression, freedom of religion and belief, community policing, or engaging with police on implementing the community policy approach. So that's how I see that Indonesia should proceed and that's how I implement it. I still implement activities that were left by the previous

representatives, like the right to health. Right to health is very important for me, especially since COVID-19. We can use the right to health to address the most marginalised groups, like refugees and migrant workers. Economic, social, and cultural right dimensions can enable us to reach those groups that many governments do not want to talk about. In public health, if you don't take care of them, the [COVID-19] virus will spread out. You cannot discriminate. So, we can use the right to health to establish links between civil, political rights, and economic socio-cultural rights.

Are there any issues that you would have liked to address, but that were too politically sensitive?

So far, I have not dropped any projects. I actually picked up some of the issues that were dropped by the others. One example of a sensitive issue in ASEAN is migrant workers. This project has been there since 2012 in AICHR, but it is very difficult to move forward. It is about migration management, so it is not necessarily sensitive to the record of how member states respect, protect, fulfil the rights of migrant workers, but there has been a lot of rejection. So, I broke down the problem, asking the members what their difficulties are, discussing again at the next meeting, and then moving on to the next issue, meeting after meeting, until all is clear and we can move forward. Since 2020 until now we have produced five drafts of the report. I continue until everyone is happy and we can finalise this. This effort is useful to establish trust and confidence. Since Indonesia is a sending country for migrant workers, the receiving countries can be suspicious of our intentions and fear effects on their country's image. So, I follow all the procedures, I answer all the questions, and our researchers provide comments and inputs. And then I report back to AICHR regularly on how the money has been used, who the researchers are, what their nationality is, how drafts change, and so on.

Another example is the ASEAN Human Rights Dialogue, a platform in which ASEAN member states can talk about their human rights issues and their own ways of solving the problems. And we can ask questions without being accused of violating the non-interference principle. In the past, whenever a country asked questions about the human rights situation in another country, the questioned country would use the non-interference principle as an argument. My reading on ASEAN follows what Surin Pitsuwan labelled "comprehensive engagement", or what Anwar Ibrahim called "flexible engagement". Ali Alatas also mentioned equivalent terms. I learned from Article 2 on non-intervention of the UN Charter, which still enables us to talk about human rights. There are at least three components. First, agreement among member states. Second, agreed modalities to establish trust in the process. And third, is the platform, so it [discussion of the issue] is not spilled over to other meetings. I copied these elements and proposed them for the ASEAN human rights dialogue.

This dialogue was first organised in 2013 when it was only attended by AICHR representatives and national institutions from Indonesia [the ASEAN Human Rights Dialogue with the Government of Indonesia]. The rest of the

countries did not report. In 2021, I proposed another ASEAN Human Rights dialogue. We call it mini UPR (Universal Periodic Review). But still, the participation was limited to ASEAN member states. We’re doing it step by step. At that time, we did not want to limit or decide what issue needed to be addressed. It was up to them [the ASEAN member states]. They signed the Universal Declaration of Human Rights anyway. The most important thing is to establish the practice of member states talking about human rights to other member states in the context of ASEAN. In September 2021, eight out of ten countries voluntarily provided a briefing on human rights, and therefore, when we asked questions to them, no one accused me or other representatives of violating the non-interference principle. It was considered successful and this year [2022] we are going to do it again. Indonesia is the initiator and will be working with Cambodia, as the chair [of ASEAN in 2022]. If ASEAN countries can talk about human rights openly and frankly, perhaps we can shy away from the idea that human rights come from the West or that human rights are a political tool of foreign countries.

When I started at AICHR in 2019, whenever I tabled the issue of Rohingya it was always blocked by Myanmar for many reasons: first for violating the non-interference principle. Second: “we are family. How can you do that to your family members?” With the coup in Myanmar in 2021, I insisted that we need to have a specific agenda to talk about human rights. We started having meetings on recent developments in human rights in ASEAN in April 2021, and then in July and November 2021, and in March and June 2022. So there have already been five meetings, in which a country representative can talk about the human rights of other countries without being accused of violating the non-interference principle. Indonesia is focusing on institutional development inside AICHR, to fulfil the mandate of protection.

Is there a particular hierarchy or distribution of tasks among the different representatives in AICHR? And does Indonesia carry a significant weight in comparison with the other representatives?

No, I think in terms of the selection of issues, AICHR representatives are often driven by the level of comfort of each member state. For instance, Cambodia is more comfortable talking about the right to education than other rights. Other countries, like Thailand, are keen to address environmental rights or the rights of persons with disabilities. As long as they can pick and choose issues based on their level of comfort it is fine, because we would like to encourage member states to participate and contribute to generating the regional discourse on human rights. The establishment of AICHR and the adoption of the ASEAN Human Rights declaration provided the avenue to recognise human rights issues as regional issues.

In the past, human rights issues were discussed by individual member states, but not necessarily by ASEAN. People could hardly talk about regional human rights issues because there were none. When AICHR was established, a catalogue of rights was defined and the violation of these rights became a regional concern. Civil society often criticises AICHR for being weak, and lacking

protection mandates, which is valid, but at least we should be able to fulfil the promotional part. We cannot just always condemn what we don't have and forget what we already have. We have to maximise what we have. And to be able to fulfil AICHR's tasks of promoting human rights requires a lot of political discussion on sensitive issues. At the same time, we also need to improve protection.

Do you have any particular achievement in mind?

AICHR, together with other sectoral bodies of ASEAN, has achieved an action plan on the implementation of rights of persons with disabilities. With regard to institutional development, I already mentioned the AICHR human rights dialogue and the agenda on recent human rights development in ASEAN. In 2019 we agreed to come up with a complaint mechanism to address human rights issues at different levels. One is through standard-setting or norms, plans of action, commitments of member states, and ASEAN sectoral bodies. Second, through institutional development, perhaps later through stakeholder engagement. Thus, we can see that despite all its limitations, AICHR can be a vehicle for change in ASEAN at different levels: through collective commitments made at the level of ASEAN, then spilled over to member states, or vice versa. As of now, there is no fixed formula. But I think it is important to always look at the political opportunities for change, both at the national and the regional level.

For instance, at the regional level, we have the ASEAN human rights declaration. Before the ASEAN human rights declaration was adopted, Brunei didn't have any specific provisions on human rights in its constitution. After the declaration was adopted, they still do not, but they practice it because they participate in our activities and talked about human rights when they became the chair. Another example is the ACTIP (ASEAN Convention Against Trafficking in Persons), now ratified by all member states. Before the ratification, each member state tried to identify the loopholes in their own laws, and then, after the ratification, they harmonised with the regional norms. It happened in Thailand, Indonesia, Singapore, and Brunei. During our workshops, we heard from member states how they rearranged themselves.

We can see different examples where the ASEAN declaration does not necessarily involve a change at the national level, while ACTIP made some changes at the national level. It may be due to the characteristics of the documents: ACTIP is a convention so it requires ratification, it is legally binding, while a declaration is not. This contributes to the relations between national norms and regional norms.

Would you like to elaborate on the interaction between AICHR and civil society?

AICHR has guidelines on civil society affiliation. Even though they are not affiliated with AICHR, civil society groups are always invited to workshops as participants. They are not invited to official meetings of AICHR because those are closed meetings of member states. But they can also ask for a meeting and they will be allocated 60 minutes to present themselves. For instance,

Forum-Asia or the Working Group on Regional Human Rights Mechanisms based in Manila often use this opportunity to talk at AICHR official meetings. In workshops, civil society groups have the opportunity to ask what AICHR has been doing on specific issues. But workshops, training sessions, or seminars are not the places to make decisions or policies. These are made at the AICHR meetings. However, ideas, concepts, principles, and recommendations emanating from the workshops are sometimes discussed in the official meeting of AICHR, and then recognised and accepted on principle.

Actually, in the current COVID-19 period, the opportunity to engage or to widen engagement with civil society is becoming bigger and bigger because it doesn't require additional money. You can join from wherever you are. And then we can expand, we can add more people and there's no problem. For physical meetings, we have to calculate, and then this affiliation status becomes one of the selection tools to choose who from the lists can come or can be invited. But at the same time, in a number of workshops, speakers are not required to be affiliated. Sometimes civil society actors complain that they are not engaged, and sometimes we invite them, but they don't come to the meeting. I think our role in AICHR is to open space for them to engage, and it remains their decision to use it or not.

When we had the EU-ASEAN dialogue in Brussels (2019), civil society organisations presented their statements. There were NGOs from ASEAN, and other participants coming from the EU. That was not on the agenda, but the EU invited civil society into the room at the opening and ASEAN sectoral bodies got angry. Before the situation worsened (or what I imagined would be so), I made a first intervention, setting the tone that we welcomed civil society and would pay attention to their statements and concerns, and thanked them for coming. I also quoted the ASEAN charter, and how important people are in the process of ASEAN community building. After that, the responses from other sectoral bodies were rather positive about the participation of civil society.

Do you see a significant change with the initiative of the Indonesian President when he invited other countries of the region to discuss the situation in Myanmar after the 2021 coup? According to you, was it a turning point in supporting the leading position of Indonesia in the field of human rights?

Regarding Myanmar, Indonesia maintains its previous position: putting human rights, the welfare, and safety of civilians as the top priority. It was like that during the Nargis disaster, when addressing the issue of Rohingya and now with the coup. It has been maintained as such, regardless of the governments. When I started to work as a representative, I always brought discussion on Rohingyas, even if it was rejected in every meeting. Indonesia will be the chair of AICHR in 2023, and the issue of Myanmar will continue to be discussed. We will continue what Cambodia is doing now. People expect much from Indonesia.

Indonesia has several institutions that could be useful to help Myanmar establish democratic institutions amended by the Constitution. In Indonesia,

we have the General Election Supervisory Agency (Bawaslu) and the General Elections Commission (KPU). In Myanmar, there are no institutions to supervise the elections, neither a Constitutional court to make final decisions concerning the results of elections. These have been identified as things that Indonesia should work on with Myanmar.

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