

In-depth Review: Legal review on human rights enforcement in the ASEAN and EU context



L. yes Esty Pratiwi ^{a,1}, Triyono Adi Saputro ^{b,2*}, Kholilul Rahman ^{c,3} Samsul Arifin ^{d,4} Muhammad Saiful Islam ^{e,5}

^{a,d} Faculty of Law, Universitas Muhammadiyah Surabaya, Surabaya, Indonesia

^b Departemen of Islamic Economy Law, Universitas Muhammadiyah Surakarta, Indonesia

^c Faculty of Law, Universitas Bhayangkara Surabaya, Surabaya, Indonesia

^e Faculty of Politic, Al-Mustafa International University, Qom, Moallem, Iran

* corresponding author: 3ada.as@gmail.com

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Abstract

ASEAN is one of the regional organizations without an inter-governmental regional human rights machinery. In addition, ASEAN must respond to the new phenomenon that human rights are no longer merely a problem within a country, but have become a problem between countries. On this basis the author carries out a legal comparison, because one of the points stated in the objectives in The ASEAN Charter, namely: respecting fundamental freedoms, promotion and protection of human rights, and promotion of social justice, as well as the establishment of an ASEAN human rights body, as a step to guarantee more concrete human rights certainty in ASEAN. The method used in this research is legal research with a common-core method approach which in general is the application of the functional method which is expanded by using the law in context method. The aim of this research is to unify the mechanisms for law enforcement and protection of human rights in ASEAN which are related to the authority of regional human rights institutions in deciding cases of violations of human rights so that they are in accordance with the objectives contained in the ASEAN Charter.

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1. Introduction

ASEAN is a regional international organization in the Southeast Asia region.¹This organization has fulfilled the legal criteria as a regional international organization when the ASEAN Charter was ratified by all members so that it came into force on December 15

¹ Phillipe Sand and Pierre Klein, Bowett's Law of International Institutions, Fifth Edition, Thompson and Sweet and Maxwell, p. 18; Jan Klabbers, An Introduction to International Institutions, Cambridge University Press, 2002, p. 6-9.

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journaloflawandjustice@gmail.com

2008.² The signing of the ASEAN charter was based on two basic ideas, namely: (1) the existence of common interests, and (2) the reality of interdependence between the people and ASEAN member countries in a unified vision, identity and community (one vision, one identity, and one community) who care for each other, and for the creation of shared prosperity.³ One of the concepts regarding the existence of ASEAN is the fact of a shared desire to live in a peaceful, safe and stable region, sustainable economic growth, shared prosperity, social progress, as well as to advance the common interests, ideals and aspirations of the people of Southeast Asia.⁴ In addition, ASEAN member countries agreed to form the ASEAN community as a step to ensure sustainable development that is beneficial for present and future generations and places welfare and decent living as well as the prosperity of the people at the center of the process of establishing the ASEAN community.⁵

The ASEAN Community consists of three pillars, namely: the ASEAN Political and Security Community,⁶ ASEAN Economic Community (ASEAN Economic Community), ASEAN Socio-Cultural Community.⁷ The ASEAN Political and Security Community has the aim of maintaining peace between countries in the ASEAN region and also with other countries in the world and upholding the values of justice, democracy and harmony.⁸ The ASEAN Economic Community (AEC), especially the AEC Blueprint 2025, has a vision to achieve a highly integrated and cohesive, competitive, innovative and dynamic economic community; by increasing networking and sectoral cooperation; and more resilient, inclusive, people-oriented, people-centred community, and integrated with the global economy.⁹ Meanwhile, the ASEAN Socio-Cultural Community is a commitment of ASEAN member countries to improve the quality of life of the people of regional countries by establishing cooperative activities based on people-oriented, people-centred, environmentally friendly, and geared toward the promotion of sustainable development. which aims to face new challenges in ASEAN.¹⁰ This common desire must continue to respect the sovereignty and equality of ASEAN member countries as well as comply with

² Zou Keyuan, 'Legal Framework for the Development of China-ASEAN Relations', in *China-Asian Relations and International Law*, ed. by Zou Keyuan, Chandos Asian Studies Series (Chandos Publishing, 2009), pp. 45–65 <<https://doi.org/https://doi.org/10.1016/B978-1-84334-438-4.50003-0>>.

³ Felix K Chang, 'Economic and Security Interests in Southeast Asia', *Orbis*, 58.3 (2014), 378–91 <<https://doi.org/https://doi.org/10.1016/j.orbis.2014.05.005>>.

⁴ Sjamsumar Dam and Riswadi, *ASEAN Cooperation: Background, Development and Future*, Ghalia Indah, 1995, p. 15-17.

⁵ 'Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues', in *China-Asian Relations and International Law*, ed. by Zou Keyuan, Chandos Asian Studies Series (Chandos Publishing, 2009), pp. 233–35 <<https://doi.org/https://doi.org/10.1016/B978-1-84334-438-4.50016-9>>.

⁶ Koesrianti, Association of South East Asian Nations, Airlangga University Press, Surabaya, 2014, p. 95.

⁷ Paik Keun-Wook, 'Towards a Northeast Asian Energy Charter', *Energy Policy*, 20.5 (1992), 433–43 <[https://doi.org/https://doi.org/10.1016/0301-4215\(92\)90065-A](https://doi.org/https://doi.org/10.1016/0301-4215(92)90065-A)>.

⁸ <https://asean.org/asean-political-security-community/>, accessed on 22 September 2019.

⁹ Keyuan, 'Legal Framework for the Development of China-ASEAN Relations'.

¹⁰ Rene Abcede and Weena Gera, 'Examining the Coherence of Legal Frameworks for Ecosystem Services toward Sustainable Mineral Development in the Association of Southeast Asian Nations', *Ecosystem Services*, 29 (2018), 228–39 <<https://doi.org/https://doi.org/10.1016/j.ecoser.2017.04.003>>.

the principles of democracy and the protection of human rights and basic human freedoms.¹¹

The signing of the ASEAN Charter and the formation of the ASEAN community provide opportunities and challenges for ASEAN member countries.¹² One of the challenges faced is the mechanism for law enforcement and human rights protection. Looking at cases of human rights violations that have occurred in ASEAN, such as the forced disappearance of human rights activists in Laos, the Rohingya case, freedom of religion in Vietnam, religious discrimination in Myanmar, the condition of migrant workers in Malaysia and freedom of worship that occurs in several regions in Indonesia, it can be concluded that It is concluded that law enforcement and human rights protection in ASEAN is not yet good.¹³ Human rights protection is the framework and goals that ASEAN wants to achieve.¹⁴ This goal is based on the rules of law in the ASEAN charter, where ASEAN has created the content and forum for protection

Human rights in the context and perspective of ASEAN.¹⁵ Article 14 of the ASEAN Charter is the basis for the formation of the ASEAN human rights body or the ASEAN inter-governmental Commission of Human Rights (AICHR).¹⁶ The formation of AICHR is an important achievement in efforts to promote and protect human rights in the ASEAN region as a commitment of ASEAN member countries to form the ASEAN Human Rights Body as mandated in the ASEAN Charter.¹⁷ It was AICHR who then took the role in drafting the ASEAN Human Rights Declaration (AHRD) together with the Pnomp Penh Statement which became the most important document in ASEAN to introduce the international world to human rights recognized in ASEAN by maintaining ASEAN characteristics in the declaration.¹⁸ It is hoped that the above provisions for the

¹¹ Yasir Khan, 'Peacekeeping', in *Encyclopedia of Violence, Peace, & Conflict (Third Edition)*, ed. by Lester R Kurtz, Third Edit (Oxford: Academic Press, 2022), pp. 652–68 <<https://doi.org/https://doi.org/10.1016/B978-0-12-820195-4.00270-3>>.

¹² Hesti D. Lestari, "ASEAN Community: Dispute Resolution and Law Enforcement, *Journal of International Law*, Vol. 6 no. 1, October 2008, p. 124.

¹³ Katrina Nakamura, Yoshitaka Ota, and Francisco Blaha, 'A Practical Take on the Duty to Uphold Human Rights in Seafood Workplaces', *Marine Policy*, 135 (2022), 104844 <<https://doi.org/https://doi.org/10.1016/j.marpol.2021.104844>>.

¹⁴ Francesca Palmiotto and Natalia Menéndez González, 'Facial Recognition Technology, Democracy and Human Rights', *Computer Law & Security Review*, 50 (2023), 105857 <<https://doi.org/https://doi.org/10.1016/j.clsr.2023.105857>>.

¹⁵ Anja Mihr, 'Global Human Rights', in *International Encyclopedia of Education (Fourth Edition)*, ed. by Robert J Tierney, Fazal Rizvi, and Kadriye Ercikan, Fourth Edi (Oxford: Elsevier, 2023), pp. 70–78 <<https://doi.org/https://doi.org/10.1016/B978-0-12-818630-5.01012-5>>.

¹⁶ Heribertus Jaka Triyana, "ASEAN and Strengthening the Rule of Law of Human Rights Law in the Southeast Asia Region", *Opinio Juris Journal*, vol. 15, January-April 2014, p. 80.

¹⁷ Marie Claire Van Hout and others, 'Judicialisation of the Mentally Ill and/or Mentally Incapacitated in the Malawi Criminal Justice System: Gaps and Flaws of Human Rights Protection', *Forensic Science International: Mind and Law*, 4 (2023), 100121 <<https://doi.org/https://doi.org/10.1016/j.fsimpl.2023.100121>>.

¹⁸ Ayu Hannah Zaimah, Dr. Mohammad Ridwan, SH, MS, Nurdin, SH, MH "The Urgency of Establishing a Human Rights Court (HAM) by the ASEAN Inter-Governmental Commission on Human Rights, *Law Journal*, April 2015.

protection and promotion of human rights in ASEAN will create a positive pattern and a dynamic correlation to increase the legal expectations of the people in Southeast Asia towards improving the conditions for respecting and protecting human rights.¹⁹

The absence of formal law and human rights justice in ASEAN makes legal enforcement and protection mechanisms ineffective. This is related to "the ASEAN way"²⁰ which places great emphasis on state sovereignty²¹ and the existence of differences in mechanisms for resolving human rights legal issues among ASEAN countries. The absence of a formal dispute resolution mechanism within ASEAN can result in disputes or differences between member countries widening and not being resolved properly, passing down to the next generation, resulting in strained relations between ASEAN countries in the future.²² So, for the sake of ASEAN's credibility, there must be a way to resolve disagreements between ASEAN countries by establishing a credible dispute resolution mechanism.²³

Several prior studies have examined human rights concerns within the framework of ASEAN and the EU, encompassing an initial investigation on the topic "The correlation between the origins and structure of the ASEAN Intergovernmental Commission on Human Rights (AICHR)". The findings of this study indicate that researchers in the fields of international law and international relations have needed clarification on the motivations for the formation of regional or international human rights agencies by governments. Nations may find it counterintuitive to establish such institutions, as their primary concern lies in the internal affairs of the state and its population rather than in interactions between nations. Moreover, these organisations come with the burden of sovereignty expenses and need to provide clear advantages. Various theoretical hypotheses have been proposed in the literature as a response to this theoretical dilemma. The recently formed ASEAN Intergovernmental Commission on Human Rights (AICHR) presents an opportunity to examine which theory is more effective in explaining the establishment of interstate human rights institutions. This essay not only examines the reasons for the creation of the AICHR by ASEAN member nations but also aims to establish a connection between this issue of "why" and our comprehension of the AICHR's regime design. This essay examines four critical characteristics of the AICHR. It demonstrates how our assessment of their effectiveness is contingent upon our knowledge of the underlying motivations for ASEAN's establishment of this entity.

¹⁹ Alison D Renteln, 'Human Rights', in *Encyclopedia of Violence, Peace, & Conflict (Third Edition)*, ed. by Lester R Kurtz, Third Edit (Oxford: Academic Press, 2022), pp. 276–98 <<https://doi.org/https://doi.org/10.1016/B978-0-12-820195-4.00227-2>>.

²⁰ Gillian Goh, "'the ASEAN way': Non-intervention and ASEAN's Role in Conflict Management", *Stanford Journal of East Asian Affairs* 3, no. 1 (2003): 113-118.

²¹ Budi Hermawan Bangun, "ASEAN Challenges in Handling Rohingya Refugees", *Padjajaran Journal of Legal Studies* 4, no. 3, 2017, p. 569-587.

²² Koesrianti, "Analysis of the Binding Strength of the ASEAN Charter and the Development of Dispute Resolution Mechanisms in ASEAN", *Juridika* Vol. 26 no. 1, January 2011, p. 59.

²³ Aliu Oladimeji Shodunke and others, 'Establishing the Nexus among Mob Justice, Human Rights Violations and the State: Evidence from Nigeria', *International Journal of Law, Crime and Justice*, 72 (2023), 100573 <<https://doi.org/https://doi.org/10.1016/j.ijlcrj.2022.100573>>.

According to this article, the intricate combination of factors within ASEAN makes it practically impossible to develop a universal theory explaining why states establish interstate human rights institutions. However, ASEAN's strong desire to align with global cultural norms demonstrates that regional human rights institutions have become a customary component of the process of building a regional community.²⁴

The research is titled "ASEAN and Regional Governance after the Cold War: From Regional Order to Regional Community?" The findings of this study demonstrate that the mainstream realist and constructivist explanations of ASEAN, which have been widely featured in *The Pacific Review* since the journal's establishment in 1988, are reviewed and criticised in this work. The conduct and effects of ASEAN cannot be easily categorised using theoretical frameworks that focus solely on material or ideational factors for explanation. ASEAN's conduct is characterised by intricate dynamics resulting from the interplay between material factors such as power, territory, and wealth and ideational factors such as norms, ideas, and identity. ASEAN member states actively strive to maintain both domestic and regional order, both inside the organisation and in the broader context outside ASEAN. Throughout this context, the primary focus remains on state interests and identities, indicating that the enduring ASEAN principles of sovereignty and non-interference continue to play a vital role in regional governance. Given these circumstances, and in spite of the Charter's recently expressed political principles of democratisation, human rights, and the rule of law, it appears uncertain whether an ASEAN Community that prioritises the well-being of its people and promotes inclusive regional governance, aiming to address the concerns and requirements of the general population rather than just the preferences of the elite, can be successfully established. The concluding section of the report delves into the potential insights that a critical examination of ASEAN may uncover. The paper aims to determine if there are any political opportunities arising within current structures and practices that could lead to gradual but significant progressive change, specifically in the domains of human rights and social justice, which are crucial for establishing an inclusive ASEAN Community.²⁵

Furthermore, the outcomes of the study titled "Can human rights conditionality mitigate repression?" Analysing the economic accords of the European Union. The research findings indicate that the incorporation of human rights obligations into international commercial agreements has become a prevalent phenomenon. We contend that the impact of these agreements is contingent upon the level of influence exerted by one partner over the other. Through a thorough examination of the European Union's (EU's) interactions with developing nations, we discover that human rights provisions are only adequate under certain conditions. Specifically, they are linked to enhanced political freedom and physical integrity rights solely in countries that rely more heavily on aid from the EU. An extensive examination of the European Union's implementation

²⁴ James Munro, 'The Relationship between the Origins and Regime Design of the ASEAN Intergovernmental Commission on Human Rights (AICHR)', *International Journal of Human Rights*, 15.8 (2011), 1185 – 1214 <<https://doi.org/10.1080/13642987.2010.511996>>.

²⁵ Helen E S Nesadurai, 'ASEAN and Regional Governance after the Cold War: From Regional Order to Regional Community?', *Pacific Review*, 22.1 (2009), 91 – 118 <<https://doi.org/10.1080/09512740802651169>>.

of its human rights provision in the African-Caribbean-Pacific (ACP) group demonstrates that the Union primarily addresses infringements on political rights, such as coups and flawed elections. Moreover, enforcement serves as a potent driver of transformation in states that heavily rely on aid. Other possible interpretations, such as the notion that the influence of the human rights provision is contingent upon the process of legalising it, the nation's strategic significance, the level of non-governmental organisation involvement, or the effectiveness of domestic institutions, lack substantial evidence to substantiate them.²⁶

The author's study demonstrates innovation in analysing the implementation of human rights enforcement in ASEAN and the EU, as indicated by the presentation of three research findings. This paper employs a macro-comparative method that specifically examines historical and legal organisational approaches. The objective is to identify the reasons that contribute to the lack of power of human rights organisations in ASEAN to make decisions about situations of human rights abuses. ASEAN employs a distinctive approach to address a range of issues, both within and outside the organisation. This approach is characterised by consultation and consensus, guided by several principles: respect for the sovereignty of each member state, non-interference, peaceful resolution of conflicts, and avoidance of coercive methods. ASEAN lacks an autonomous judicial entity dedicated to the impartial enforcement of human rights law. These considerations undoubtedly provide challenges in maintaining and safeguarding human rights in ASEAN. Contrary to the EU, which possesses a more comprehensive law enforcement structure. The European Union (EU) has the European Court of Human Rights (ECHR) to ensure and safeguard human rights. This judicial organisation is responsible for safeguarding the human rights of individuals inside the European Union and granting them the opportunity to present their cases in court in instances of human rights breaches they have encountered.²⁷

2. Research Method

The method used in this research is normative legal research.²⁸ The author uses the common-core method in this writing.²⁹ In general, the common-core method is an application of a functional method that is expanded by using the law in context method so that with this

²⁶ Daniela Donno and Michael Neureiter, 'Can Human Rights Conditionality Reduce Repression? Examining the European Union's Economic Agreements', *Review of International Organizations*, 13.3 (2018), 335–57 <<https://doi.org/10.1007/s11558-017-9283-2>>.

²⁷ Jonathan Klaaren, 'Human Rights: Legal Aspects', in *International Encyclopedia of the Social & Behavioral Sciences (Second Edition)*, ed. by James D Wright, Second Edi (Oxford: Elsevier, 2015), pp. 375–79 <<https://doi.org/https://doi.org/10.1016/B978-0-08-097086-8.86158-9>>.

²⁸ Agung Basuki and others, 'Establishing Ecological Justice in the Governance of Land Inventory , Ownership , and Utilisation in Indonesia', *Journal of Law, Environmental and Justice Environmental and Justice*, 18.2 (2023), 137–54 <<https://doi.org/10.62264/jlej.v1i2.12>>.

²⁹ M Yazid Fathoni and Acasio Fernandez, 'Establishment of Land Court in Indonesia : An Effort to Realise Justice Based on Pancasila', *Journal of Law, Environmental and Justice*, 1.2 (2023), 86–104 <<https://doi.org/10.62264/jlej.v1i2.6>>.

method a legal problem resolution will be sought by using the same function in ASEAN and the EU regarding a social problem that underlies the same problem that occurs in ASEAN and the EU regarding the authority of regional human rights institutions in deciding cases of human rights violations.³⁰

3. Results and Discussion

Understanding Human Rights

According to the United Nations Declaration of Human Rights (UDHR), human rights are a set of basic human rights that cannot be separated from their existence as humans. Human dignity will develop if the most basic rights, namely freedom and equality, can be developed.³¹ A regional human rights regime is defined by a system of recognition in the name of human rights norms and decision-making procedures that are binding on its member countries which will then have implications for the willingness of its members to implement these norms accompanied by the authority to enforce them (enforcement).³²

The ASEAN Charter has a complex and decisive function in strengthening and protecting human rights, namely: (1). As one of the basic elements of human rights protection which is the basic philosophical basis which is the adoption of universal human rights values and particularism of shared Southeast Asian values in its norms and mechanisms; (2). As justification for the formation of human rights law in the context of norms and procedures; and (3). Development and strengthening of ASEAN institutions in protecting human rights in Southeast Asia in relation to basic international human rights conventions ratified by ASEAN countries.³³ ASEAN as a regional organization has recognized basic human rights as stated in the UDHR. This can be seen in the AICHR terms of reference (ToR), Article 1 states that ASEAN upholds international human rights standards as outlined in the Universal Declaration of Human Rights, the Program of Action and the Vienna Declaration, as well as international human rights instruments to which ASEAN member states are party states.³⁴

The same thing also happens in European Union regional organizations where respect for basic human rights is also respected and upheld. This is indicated by the inclusion of these values in *Treaty of European Union* (TEU, European Union 2002) which became the basis for its founding which recognizes the principle of liberty, democracy and respect for human

³⁰ Rebecca Strating, Sunil Rao, and Sallie Yea, 'Human Rights at Sea: The Limits of Inter-State Cooperation in Addressing Forced Labour on Fishing Vessels', *Marine Policy*, 159 (2024), 105934 <<https://doi.org/https://doi.org/10.1016/j.marpol.2023.105934>>.

³¹ Petter Grahl Johnstad, 'The International Regime of Drug Control May Violate the Human Right to Life and Security', *International Journal of Drug Policy*, 113 (2023), 103960 <<https://doi.org/https://doi.org/10.1016/j.drugpo.2023.103960>>.

³² Jack Donnelly, *Universal Human Rights in Theory and Practice*; Second Edition, London: Cornell University Press, 2003, p. 127.

³³ Randall Peerenboom, "Varieties of Rule of Law: An Introduction and Provisional Conclusion", in Randall Peerenboom (Editor), *Asian Discourse of Rule of Law, Theories and Implementation of Rule of Law in Twelve Asian countries, France and The US*, London, New York, Routledge Curzon, 2004, p. 10-23.

³⁴ Van Hout and others.

rights and fundamental freedom and the rule of law.³⁵ Apart from being included in its founding treaty, the EU's commitment to maintaining these values so that they become a reference in policy making and political processes within it, can also be seen through the existence of the Lisbon Treaty which was ratified in 2007 and the Charter of Fundamental Rights of the European Union (European Union, 2007).³⁶

The cases of human rights violations that still occur in both ASEAN and the European Union are an important social fact that the existence of judicial institutions which have the authority to decide cases of violations of human rights law is very necessary. In ASEAN itself, since the founding of the AICHR, there have been several cases of serious human rights violations reported to the commission as shown in the table below:³⁷

Case	Amount	Country	Reporter
Migrant workers	9	Indonesia	Indonesian Migrant Workers Union
Violation of press freedom	2	Indonesia	LBH Press
Crime	3	Indonesia	Contrast
Women's rights	1	Indonesia	Indonesian Women's Coalition
Death penalty	1	Singapore	Save Vui Kong Campaign
Murder in Maguindanao	1	Philippines	Center for International Law
The Rohingya Massacre	1	Myanmar	Contrast
Total	18		

Apart from those in the table above, other cases of human rights violations that occurred in ASEAN are the brutal war against drugs in the Philippines led by Rodrigo Duterte, the imprisonment of people who insulted the royal family via Facebook by the Thai government,

³⁵ Isabella Kaminski, 'UN Investigates Impact of Investment Treaties on Human Rights', *The Lancet Planetary Health*, 7.10 (2023), e794–96 <[https://doi.org/https://doi.org/10.1016/S2542-5196\(23\)00214-0](https://doi.org/https://doi.org/10.1016/S2542-5196(23)00214-0)>.

³⁶ Ana Maria Corrêa, 'Regulating Targeted Advertising: Addressing Discrimination with Transparency, Fairness, and Auditing Tests Remedies', *Computer Law & Security Review*, 46 (2022), 105732 <<https://doi.org/https://doi.org/10.1016/j.clsr.2022.105732>>.

³⁷ WHO. 2015. Task Force on ASEAN and Human Rights, "Hiding Behind Its Limits."

as well as the sentencing of two people to prison. who fought the government in Vietnam.³⁸ The European Union also faces the same social reality where human rights violations still occur in several regions such as Hungary which are suspected of violating the rights of refugees and asylum seekers,³⁹ the existence of forced labor or modern slavery for workers from North Korea in several European Union countries,⁴⁰ as well as torture carried out by the European Union border force, Frontex, against refugees.⁴¹ The foregoing illustrates that there are similar social realities regarding the continuing occurrence of human rights violations, both in the ASEAN and EU regions, where law enforcement can be carried out using the function of the respective regional human rights protection mechanisms based on the UNDHR and other applicable international agreements. in ASEAN and in the EU.

History of Human Rights Law Enforcement in ASEAN

ASEAN is known as a successful regional organization in Southeast Asia with the aim of securing for their peoples for posterity the blessing of peace, freedom, and prosperity.⁴² At the beginning of its formation, ASEAN did not focus too much on human rights issues. However, as a regional organization that has a vision of one vision, one identity, one community Human rights issues are relevant to discuss considering that human rights violations often occur in ASEAN member countries, so a regional mechanism is needed to handle them.⁴³

After World War II, the human rights regime began to develop. This is proven by the increasing number of countries paying attention to humanitarian rights. Several regional human rights regimes are starting to emerge, such as the European human rights regime which was formed based on the 1960 European Convention, the American human rights regime which was formed based on the 1968 American Human Rights Convention, and the African human rights regime which was formed based on the *African Charter* 1981. In 1997, ASEAN held a Human Rights Conference in Singapore known as the World Conference on Human Rights. At the conference there was disagreement between countries regarding the universality of human rights, emphasis on individual rights, and social responsibility related

³⁸ Chalik Mawardi and Farah Hanum, 'Policy on the Handling of Rohingya Refugees in Aceh : Balancing State Sovereignty and Human Rights ?', *Journal of Law, Environmental and Justice Environmental and Justice*, 1.2 (2023), 122–36 <<https://doi.org/10.62264/jlej.v1i2.7>>.

³⁹ Nazifa Rafa and others, 'The Pursuit of Energy in Refugee Contexts: Discrimination, Displacement, and Humanitarian Energy Access for the Rohingya Refugees Displaced to Bangladesh', *Energy Research & Social Science*, 83 (2022), 102334 <<https://doi.org/https://doi.org/10.1016/j.erss.2021.102334>>.

⁴⁰ Siti Munirah Yusoff, Mohd Afandi Salleh, and Md Mahbubul Haque, 'Malaysian and Indonesian Law and Policy on Rohingya Refugees: A Comparative Review', *Indonesian Comparative Law Review*, 4.2 (2022), 59–71 <<https://doi.org/10.18196/iclr.v4i2.15819>>.

⁴¹ Ashraful Alam and others, 'Impact of Rohingya Refugees on Food Prices in Bangladesh: Evidence from a Natural Experiment', *World Development*, 154 (2022), 105873 <<https://doi.org/https://doi.org/10.1016/j.worlddev.2022.105873>>.

⁴² Antje Missbach and Gunnar Stange, 'Muslim Solidarity and the Lack of Effective Protection for Rohingya Refugees in Southeast Asia', *Social Sciences*, 10.5 (2021) <<https://doi.org/10.3390/socsci10050166>>.

⁴³ Lindra Darnela, 'Islam And Humanity Commodification Of Aid For Rohingya In Aceh', *Al-Jami'ah*, 59.1 (2021), 57–96 <<https://doi.org/10.14421/ajis.2021.591.57-96>>.

to ASEAN values.⁴⁴

However, the countries that are members of ASEAN have opened their voices regarding their views on human rights and the commitment they have taken to respect them as stated in the Vienna Declaration. ASEAN also agreed to continue to coordinate and put this humanitarian issue together to reach an agreement and joint approach regarding human rights. ASEAN also wants to actively participate in the implementation, promotion and protection of human rights in the region. In this case ASEAN stated, "*the Foreign Ministers agreed that ASEAN should coordinate a common approach on human rights and actively participate and contribute to the application, promotion, and protection of human rights... They further stressed the importance of strengthening international cooperation on all aspects on human rights and that all governments should uphold humane standards and respect human dignity. In this regard and in support of the Vienna Declaration and Program of Action of 25 June 1993*".⁴⁵ Then at the 26th AMM Joint Communique meeting in Singapore, ASEAN also said, "ASEAN recognizes that human rights are interrelated and indivisible, it affirms its commitment to and respect for human rights and fundamental freedoms as set out in the Vienna Declaration. It agreed that ASEAN should consider the establishment of an appropriate regional mechanism on human rights."⁴⁶

The next development was in 1998, in commemoration *Universal Declaration on Human Rights* (UDHR), discussions regarding human rights in the region again became a focus in the Joint Communique, namely by forming a working group that focused on mechanisms for enforcing the rights of women and children. The next development was the formation of the Vientiane Action Program (VAP) which was adopted by all ASEAN member countries in 2004.⁴⁷ The VAP functions as a map for ASEAN to strengthen political, security, economic, social and cultural cooperation between members in the 2004-2010 period, which marks that ASEAN looks more concrete in proposing an agenda regarding human rights.⁴⁸ Some of the activities carried out by VAP are: 1. Promote public education and awareness about human rights; 2. Establishing a network of cooperation in human rights mechanisms; 3. Elaborating on ASEAN instruments on the protection of migrant workers; 4. Establish an ASEAN Commission that focuses on the rights of women and children.⁴⁹

⁴⁴ Nicholas Tarling and Edmund Terence Gomez, *The State, Development and Identity in Multi-Ethnic Societies: Ethnicity, Equity and the Nation*, *The State, Development and Identity in Multi-Ethnic Societies: Ethnicity, Equity and the Nation*, 2008 <<https://doi.org/10.4324/9780203932162>>.

⁴⁵ Promoting and Protecting Human Rights in ASEAN by Termasak Chalermपालानupap, <https://asean.org/storage/images/archive/HLP-OtherDoc-2.pdf>, accessed on 1 November 2019.

⁴⁶ Sriprapha Petcharamesree, *The ASEAN Human Rights Architecture: Its Development and Challenges*, *The Equal Rights Review*, Vol. Eleven 2013, p. 48.

⁴⁷ Kendra Dupuy, Júlia Palik, and Gudrun Østby, 'No Right to Read: National Regulatory Restrictions on Refugee Rights to Formal Education in Low- and Middle-Income Host Countries', *International Journal of Educational Development*, 88 (2022), 102537 <<https://doi.org/https://doi.org/10.1016/j.ijedudev.2021.102537>>.

⁴⁸ Lindsay Robbins, 'The Rohingya Case in Aceh: Indonesia's Role as a Destination for Refugees', *Towson University Journal of International Affairs*, 53.2 (2020), 1--15.

⁴⁹ Syed S Mahmood and others, 'The Rohingya People of Myanmar: Health, Human Rights, and Identity', *The Lancet*, 389.10081 (2017), 1841-50 <[https://doi.org/https://doi.org/10.1016/S0140-6736\(16\)00646-2](https://doi.org/https://doi.org/10.1016/S0140-6736(16)00646-2)>.

The next development was the signing of the ASEAN Charter (ASEAN Charter) which came into force in December 2008. This Charter was a turning point for ASEAN as a rules based organization in the human rights regime in the region. Enforcement of human rights looks more serious with the existence of Article 14 of the ASEAN Charter which stipulates the establishment of a human rights body which will be carried out in accordance with the terms of reference (ToR) that have been determined by the ASEAN foreign ministers' meeting. After several years, ASEAN foreign ministers finally reaffirmed their commitment to respect human rights and fundamental freedoms as stipulated in the 1993 Vienna Declaration and agreed that ASEAN should also consider establishing a regional mechanism. The ASEAN Charter is the constitutional basis for the formation of the ASEAN Intergovernmental Commission on Human Rights (AICHR).

Countries in Southeast Asia are starting to open up to care about human rights issues in their region. In July 2009, the ToR as the terms of reference for the AICHR was adopted at the 42nd ministerial level meeting. The formation of human rights institutions in ASEAN was also followed by the formation of *ASEAN Commission on the Promotion and Protection of the Rights of Women and Children* (ACWC) in 2010. This commission is a commission that works to fight for and protect the rights of women and children. The ToR is a call for member countries to develop strategies to promote and protect human rights and fundamental freedoms. However, AICHR's mandate is only formulated with safeguards and approaches in mind. The ToR does not include investigative authority even though the commission is a commission whose function is to uphold human rights standards in accordance with the UDHR, the Vienna Declaration and other international human rights instruments.

It should also be noted that enforcement of human rights in ASEAN is relatively slow, after 40 years of its founding, it was only on November 18 2012 that the heads of state of the 10 ASEAN member countries ratified the draft Human Rights Declaration amidst issues of serious human rights violations committed by several member countries, such as in Myanmar. The ASEAN Human Rights Declaration adopted in 2012 has established human rights cooperation in the Southeast Asia region and continues to develop human rights protection in three pillars.⁵⁰ AICHR will coordinate with these pillars regarding human rights issues, such as: First, on the ASEAN Political and Security Community Pillars: a. Eradication of human trafficking; b. Protection of human rights in anti-terror policies in the region; c. Prevention of conflict and serious human rights crimes (genocide, crimes against humanity and war crimes); d. Protection of human rights in the face of non-traditional threats (non-traditional security threats). Second, on the Pillars of the ASEAN Economic Community: a. Protection of human rights in trade agreements with non-ASEAN and intra-ASEAN; b. Social protection with a human rights perspective in ASEAN labor policy; c. Freedom of movement and work for ASEAN citizens (freedom of movement and right to work). Furthermore, in the Social and Cultural Community Pillar: a. Protection of environmental rights; b. Protection of children's and women's rights; c. Protection of rights in education.⁵¹

⁵⁰ Missbach and Stange.

⁵¹ Bilal Dewansyah, Wicaksana Dramanda, and Imam Mulyana, 'ASYLUM SEEKERS IN A NON-IMMIGRANT STATE ASYLUM SEEKERS IN A NON-IMMIGRANT STATE AND THE ABSENCE OF

AICHR also drafted a five-year plan designed to advance human rights protection in ASEAN. The AICHR five-year work plan (2010-2015) aims to strengthen ASEAN in upholding human rights in the region. AICHR's five-year work plan consists of various activities, such as holding meetings, workshops, training and seminars related to human rights, conducting studies, and engaging with other regional human rights organizations. AICHR is expected to prepare at least one study per year concerning issues regarding corporate social responsibility, migration, human trafficking, juvenile justice, the right to information in criminal justice, the right to health, the right to education, the right to life and the right to peace .

History of the Development of Human Rights Law in the European Union

The philosophical basis of thinking about human rights in Europe can be traced to Plato and Aristotle in Ancient Greece and Roman times. According to Richard P. Laude, for the elite Greek population in Athens, the principles of equal rights for citizens (isotimia), equal freedom of speech (isogoria) and equality before the law (isonomia) applied. Meanwhile, in Roman times, the concept of "equality for all people" (not just Athenian citizens) was introduced based on Cicero who stated, "according to the law of nature, all men are equal, and by the same law all are born free."⁵² The first philosopher to use the concept of "respect of separate human beings" was Polotius (205-270) but its political and legal impact did not occur until the Middle Ages.⁵³

Indeed, more concrete thoughts about human rights only emerged in mainstream European political thought in the 17th century, namely when John Locke published his book entitled "*Second Treaties of the Government*" in 1688 which also for the first time outlined a fully developed theory of natural rights.⁵⁴ According to Locke, although the same individual has natural rights to life, liberty and residence, to protect these rights requires a government founded on a social contract between those who rule and those who are governed so that the provision applies that citizens are obliged to obey the government only if the government It protects the human rights of its citizens. According to Donnelly, the idea of human rights in Europe was a political demand launched by the middle class, namely the newly emerged bourgeois group, in the early days of modern Europe to challenge the privileges of the traditional nobility. Unfortunately, this theory only protects the rights of European men who have ownership while women, such as slaves, servants and workers, regardless of gender, do not have their human rights recognized. Until the beginning of the 20th century, major debates about the scope of human rights ran parallel to political thought in Western countries

REGIONAL ASYLUM SEEKERS MECHANISM: A CASE STUDY OF ROHINGYA ASYLUM SEEKERS IN ACEH-INDONESIA AND ASEAN RESPONSE', *Indonesia Law Review*, 7.3 (2017), 341–66 <<https://doi.org/10.15742/ilrev.v7n3.373>>.

⁵² Richard P. Claude, *The Classical Model of Human Rights Development*, John Hopkins University Press 1976, p. 73.

⁵³ Elisa Ortega Velázquez, 'Minority Rights for Immigrants: From Multiculturalism to Civic Participation', *Mexican Law Review*, 10.1 (2017), 103–26 <<https://doi.org/https://doi.org/10.22201/ij.24485306e.2017.19.11385>>.

⁵⁴ Paroma Wagle, 'Securing Human Right to Water of Slum-Dwellers in Mumbai, India: Achievements, Limitations, and Institutional Appropriation', *Geoforum*, 132 (2022), 1–9 <<https://doi.org/https://doi.org/10.1016/j.geoforum.2022.03.016>>.

(Europe and the United States), involving thinkers such as Thomas Hobbes, Sir Edward Coke, Jean Jacques Rousseau, Max Weber, James Madison, Thomas Jefferson, Karl Marx, and others.

A more concrete human rights protection movement began to strengthen in Western Europe since before World War II because it was driven by the strength or expansion of Nazism and fascism launched by totalitarian military governments in Germany and Italy. This movement grew stronger after World War II ended, with the hope that an international system for developing and protecting human rights would be able to prevent a repeat of the disasters of world war. Apart from that, this movement was also based on fear of the threat of widespread communism from the Soviet Union which continued to occupy Central and Eastern Europe after World War II ended.⁵⁵

Western European countries are the main supporters *Universal Declaration of Human Rights*(UDHR) which was proclaimed on December 10, 1948 by the UN. To become a normative international reference for human rights protection. As a group of countries that were the initial signatories to the UDHR, Western European countries were the most consistent supporters of the international human rights movement at the UN. The concept of human rights and basic freedoms developed in Western Europe stems from their perspective which consists of three beliefs with the basic idea that social and economic problems are seen as problems that must be solved by the government and therefore if they remain unsolved, then seen as a violation of political rights. According to James W. Nickel, the three beliefs are, first, that poverty, exploitation and discrimination are threats to human well-being and dignity, which are as serious as deliberate violations of traditional political rights.⁵⁶

The second belief is that human suffering and severe inequality are not inevitable, but are the result of social, political, and economic conditions that can be changed and are subject to moral or political control. The third belief is that economic, political and social systems are truly inseparable or that government power is often used to create and maintain economic and social institutions that benefit certain parties. If the government were to support an economic system that gave abundant wealth to a few people and instead left a number of people in a state of misery, and if such a system were actually not inevitable but could be replaced by a system that was far more conducive to the well-being and dignity of everyone, it would make sense it would seem that such a government would be accused of its involvement in crimes that arise from the existing system.⁵⁷

The European Union does not contain specific references to human rights. It was only in 1977 that the first important steps related to human rights were taken by the European Community, namely when organs such as the European Commission, the Council of Ministers and the European Parliament agreed on the Joint Declaration on the Protection of Fundamental Freedoms. In the declaration, the three institutions emphasized the importance of "...protecting fundamental rights which specifically originate from the Constitutions of all member states and the European Convention for the protection of Human Rights and

⁵⁵ Agustí Pérez-Foguet, 'Broadening the Water Affordability Approach to Monitor the Human Right to Water', *Cities*, 143 (2023), 104573 <<https://doi.org/https://doi.org/10.1016/j.cities.2023.104573>>.

⁵⁶ Ortega Velázquez.

⁵⁷ Mihr.

Fundamental Freedoms.⁵⁸

Several organs in the European Union handle or at least include human rights issues within the scope of their activities. The European Parliament devotes much of its attention to human rights issues through the Sub-Committee on Human Rights which is under the Foreign and Security Affairs Committee. The Sub-Committee on Human Rights publishes an annual report on human rights in the world, including the role of the UN and European Union policy in the field of human rights. Although it has no legislative powers, the European Parliament has the power to reject the European Commission's proposals and to approve or disapprove cooperation agreements with third parties. When it comes to agreeing on cooperation agreements with other countries (in the fields of finance, trade or foreign aid), the European Parliament holds a debate on human rights in the country concerned. According to Baehr, although European Parliament resolutions are not legally binding, they do have political value.⁵⁹

European Parliament and *European Political Cooperation*(EPC), which was formed in 1970 and is one of the main activities of the Council of Ministers, initially paid a lot of attention to human rights issues, but nowadays activities in the field of human rights are mostly handled by the European Commission. It was this Commission that requested an official mandate from the Council of Ministers in 1990 for all members of the European Union to sign and ratify the ECHR (European Convention on Human Rights) in the Council of Europe's human rights system. Even though this proposal was rejected by the UK and a number of Scandinavian countries, the Court of Justice (CoJ) located in Luxembourg in its various decisions actually referred to various articles in the ECHR.⁶⁰ However, it needs to be emphasized here that the CoJ is not a special human rights court like the European Court of Human Rights (an organ of the Council of Europe); The CoJ also handles various other cases within the scope of the European Union's activities.

The Secretariat General of the European Union also deals with issues related to human rights. In 1984, when the European Union was still in the form of the European Community, a member of the Secretariat General was given the task of coordinating the activities of the European Community in the field of human rights. In fact, in 1988 a new directorate was established within the Secretariat General whose task was to handle cooperation between member countries' governments: this directorate had a member who had expertise in the field of human rights. This directorate assists the chairman of the European Commission in his coordination tasks.⁶¹ After the Maastricht agreement which included common foreign and security policy as one of the pillars of the European Union. The directorate became part of a new directorate for foreign affairs of the European Union in November 1993.⁶²

When compared with the human rights legal system within the framework of the Council

⁵⁸ Kaminski.

⁵⁹ Mahmood and others.

⁶⁰ Ortega Velázquez.

⁶¹ M. Syafi'ie, 'Instrumentasi Hukum Ham, Pembentukan Lembaga Perlindungan Ham Di Indonesia Dan Peran Mahkamah Konstitusi', *Jurnal Konstitusi*, 9.4 (2016), 681 <<https://doi.org/10.31078/jk945>>.

⁶² Kaminski.

of Europe, the human rights legal system within the European Union framework has at least three different characteristics. First, human rights issues are not the main focus of the European Union's activities, which initially focused more on economic cooperation. Human rights issues only became a concern after European Union cooperation developed. There is no one (main) organ that specifically handles human rights in the European Union, but only parts or sub-sections of the main organs of this regional organization. Likewise, there is no specific, detailed and concrete agreement that guides human rights that are protected or fought for that is owned or issued by the European Union. However, this institution refers to the ECHR and ECS issued by the Council of Europe.

Second, if the Council of Europe focuses its activities on upholding and protecting human rights within the territory of its member states which have signed and ratified the ECHR and ECS and their amendment protocols, then the European Union's human rights enforcement and protection activities are more focused on other countries which are not countries. its member countries. Indeed, in July 1991 the European Parliament had adopted a resolution demanding the preparation of an annual report on respect for human rights in the European Community, and in 1992 the Committee on Civil Liberties and Home Affairs had published its first draft report on the subject, but the focus Human rights in the European Union remain oriented towards its external environment. This can be seen from the sections or sub-sections in the European Union organs that deal with human rights issues: these institutions mostly highlight or focus their activities on human rights in other countries, not European Union member countries. Third, the European Union uses human rights issues as an instrument of its foreign policy, especially in relation to providing foreign aid.⁶³

However, it should be noted that as a regional organization and also a member of the CoE, the European Union countries are bound to *European Convention on Human Rights* (ECHR) so that all EU member states should comply with EU law. In addition, the success of the Treaty of Lisbon in giving status to the Charter of Fundamental Rights of the European Union to apply on a par with the agreement establishing the European Union, is the basis of human rights regulations.⁶⁴

Legal Organization In Enforcement of Human Rights in ASEAN.

The regulation of mechanisms for resolving human rights violations in ASEAN is contained in the ASEAN Charter Protocol regarding dispute resolution mechanisms which was established in Hanoi, 8 April 2010 which refers to Article 2 of the ASEAN Charter, namely prioritizing peaceful dispute resolution and article 22 letter (l) of the ASEAN Charter which states that member countries are obliged to resolve disputes through dialogue, consultation and negotiation, as well as establishing a settlement mechanism in the field of ASEAN

⁶³ Haikal Arsalan and Dinda Silviana Putri, 'Reformasi Hukum Dan Hak Asasi Manusia Dalam Penyelesaian Perselisihan Hubungan Industrial', *Jurnal HAM*, 11.1 (2020), 39 <<https://doi.org/10.30641/ham.2020.11.39-50>>.

⁶⁴ Eva Nave and Lottie Lane, 'Countering Online Hate Speech: How Does Human Rights Due Diligence Impact Terms of Service?', *Computer Law & Security Review*, 51 (2023), 105884 <<https://doi.org/https://doi.org/10.1016/j.clsr.2023.105884>>.

cooperation.⁶⁵ Dispute resolution procedures regulated in the ASEAN Charter Protocol include; consultation (provided for in Article 5 of the Protocol); good offices, mediation, conciliation (regulated in Article 6 of the Protocol); as well as the Arbitration body regulated in Article 8 of the Protocol.

However, although the aim of the AICHR is to *promote and protect human rights and fundamental freedoms of the people* However, this authority is only limited to promotion and does not cover the aspect of protecting human rights for individuals or groups of individuals in the region of ASEAN member countries. Simply put, this authority will only reach the government level in the form of non-binding recommendations or suggestions for improvement and such authority reduces the immediate and mandatory nature of fulfilling these rights.⁶⁶ This fact makes AICHR only implement human rights protection mechanisms under internationally recognized protection standards, especially in implementing the ICCPR. Even though the ToR in the AICHR determines that these mechanisms and standards must be in accordance with international standards as specified in the UDHR 1948, and the Vienna Declaration and Program of Action.⁶⁷ To date, corrective measures or *Remedies* which can be used to improve the condition of human rights protection has never been initiated by the AICHR because it collides with existing legal regulations and government policies related to domestic security issues or problems that are full of human rights violations, such as detention of civilians by the military and being tried in military courts, periods of detention which is not in accordance with the provisions of criminal procedural law, and there is no rehabilitation and compensation.⁶⁸

The blurring of norms and legal mechanisms for protecting ASEAN human rights has occurred, especially regarding the implementation of international human rights norms and mechanisms that already exist and are in effect and it is the obligation of every ASEAN member country to do so. This ambiguity can be seen in the unclear existence of the AICHR as a complement to the system of national and international legal norms and mechanisms and not as a duplication of existing norms and mechanisms, and the absence of a work guide or rule of engagement (RoE) owned by AICHR regarding human rights dissemination efforts which are the domain of national human rights institutions in ASEAN member countries.⁶⁹ This ambiguity in norms and legal mechanisms has resulted in the emergence of ambiguity or bias in the law on human rights protection by ASEAN now and in the future.

AICHR is still focusing its work on thematically compiling advocacy activities through certain themes that are prominent in the Southeast Asia region and has not yet focused its work in accordance with the norms and mechanisms for protecting human rights as has been implemented in Europe and Latin America in the context of regionalization of human rights protection law. In the roadmap for an ASEAN Community 2009-2015, actions to strengthen

⁶⁵ Missbach and Stange.

⁶⁶ Hesti Armiwulan, 'Diskriminasi Rasial Dan Etnis Sebagai Persoalan Hukum Dan Hak Asasi Manusia', *Masalah-Masalah Hukum*, 44.4 (2015), 493 <<https://doi.org/10.14710/mmh.44.4.2015.493-502>>.

⁶⁷ Syafi'ie.

⁶⁸ Brian Z. Tamanaha, *A Realistic Theory of Law, A Realistic Theory of Law*, 2017 <<https://doi.org/10.1017/9781316979778>>.

⁶⁹ Armiwulan.

human rights have been determined as activities of ASEAN as an international organization that has internal and external legal dimensions within the framework of the rule of law. These actions are: (1). Establishment of the ASEAN Human Rights Body and its framework; (2). Refining norms and mechanisms for special human rights protection for children and women; (3). Cooperate with sectoral bodies within the ASEAN framework in protecting human rights; (4). Strengthen interaction and cooperation in protecting human rights, especially with civil society and social organizations relevant to the work of ASEAN bodies; (5). Increasing cooperation in exchanging data and information in the field of human rights protection among ASEAN members in accordance with the provisions of the UN Charter and UDHR; (6). Increase public education and awareness regarding human rights; (7). Cooperate actively and fully in efforts to establish a commission to protect the rights of children and women.

Of the seven areas of action, strengthening the rule of law in protecting ASEAN human rights as an activity of regional international organizations needs to be followed up by determining the protection priority scale, fulfillment orientation, advocacy model, and consultation as well as creating a data bank regarding human rights protection issues in all ASEAN member countries. .

Legal Organization In Enforcement of Human Rights in the EU

Bearing in mind the limitations of the human rights legal system in the European Union, this section will draw heavily on cases that arise in connection with the enforcement of the ECHR and ESC, as well as cases at the European Court of Human Rights which is within the Council of Europe's human rights legal system. Complaints regarding human rights violations can be submitted by states (against other countries) or by private individuals (against their own countries or other countries that are members of the Council of Europe that ratify the ECHR and ESC) and non-governmental organizations. Between 1955 and 1996, the European Commission on Human Rights received 34,297 complaints by private individuals. Of these, the majority are unacceptable for follow-up. Only around 10 percent (3,458 cases) can be processed. The number of complaints per year also continues to increase. Complaints that are rejected (inadmissible) cannot be appealed to the European Court of Human Rights.⁷⁰ One of the human rights violations by the state that is often referred to is the complaint case by Mr. Aksoy (Aksoy Case) regarding the persecution carried out by his country, Turkey, which has violated Article 3 ECHR regarding the offense of persecution. The European Court of Human Rights obtained evidence that Mr. Aksoy had been brutally persecuted. The treatment received by Mr. Aksoy is the worst abuse ever reported to this human rights court. According to the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe, the Turkish government has persecuted Mr. Aksoy systematically. For this reason, the government must stop these actions or Turkey's membership in the Council of Europe will be reviewed. The case of Mr. This Aksoy was

⁷⁰ Bettina Nunner-Krautgasser and Philipp Anzenberger, 'General Principles in European Small Claims Procedure : How Far Can Simplifications Go?', *Lexonomica*, 4.2 (2012), str. 133-146.

decided on December 18, 1996.⁷¹

An interesting private case is the complaint filed by the heirs of three Northern Irish citizens against the UK, known as the *Mr. McCann and others v the United Kingdom*. Mr McCann, Ms. Farrell and Mr. Savage had been murdered by British security forces on suspicion of being a terrorist activist and member of the IRA. The prosecutor accused the UK of violating Article 2 of the ECHR which guarantees the right to life. The case, which was handled by 19 jurors, finally decided on September 5 1995; (1). 10 to 9 of the jury found there had been a breach of Article 2 ECHR; (2). The jury all agreed that the UK should pay the claimant damages of £38,700 to cover court costs; (3). The jury all agreed to reject the prosecution's claims for damages caused by the defendant; (4). All jurors agreed to reject the claimants' request for compensation for the costs of examining the cause of death; (5). All jurors agreed to reject the other demands submitted by (the prosecutor) in order to achieve just satisfaction.⁷²

Another private case submitted to the ECHR that was recently decided is *Magassouba v. the Netherlands* which was decided on October 24 2019. In this case, Magassouba sued the Dutch government for rejecting his asylum application. In cases of serious crime and terrorism, countries that ratify the ECHR do face a dilemma. On the one hand, the state is obliged to protect its population and citizens, but on the other hand, the state is also obliged to respect human rights, including the human rights of individuals suspected of violating human rights. There are also quite a lot of cases of complaints between countries, for example between Northern Ireland against England, Greece against England, Austria against Italy, Denmark against Greece, Greece against Turkey, Denmark against Turkey, and so on. It turns out that many complaints between countries contain political motivations, for example the case of Northern Ireland against England or the case of Greece against Turkey. However, there are also complaints based on a sense of humanity to truly uphold human rights, such as what Scandinavian countries did against Greece and Turkey.⁷³ However, countries are generally reluctant to file complaints against other countries because they are afraid it will be seen as an unfriendly action and could backfire on their diplomatic relations with the country being sued.

European Convention on Human Rights as a regional human rights agreement that supports the protection of fundamental civil and political rights, it has created a supranational European Court of Human Rights judicial body. This judicial body is considered to be an effective judicial body for complaints about human rights violations. After the report is submitted, the court will determine whether the report can be accepted or not. This provision is contained in Article 3 ECHR which states: "The Court may receive applications from any

⁷¹ Andrew Bartlett, Ashley Morgan, and Osborne Clarke, 'Enforcement of Judgments and Arbitral Awards in the UK (England and Wales): Overview Judgments : Legal Framework', *Thomson Reuters*, 2017, 1–28 <[https://uk.practicallaw.thomsonreuters.com/6-619-3495?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/6-619-3495?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)>.

⁷² Publication of the European Court of Human Rights, Case of *McCann and others v. the United Kingdom* 1996, p. 64.

⁷³ Samuel Issacharoff, 'Constitutional Courts and Democratic Hedging', *Georgetown Law Journal*, 99.4 (2011), 961–1012.

person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of its rights.”⁷⁴

4. Conclusion

ASEAN only ratified the draft ADHR (ASEAN Declaration on Human Rights) in 2012, compared to the European Union, which ratified the ECHR in 1950. ASEAN human rights enforcement is ineffectual without a global human rights court. In contrast, the EU has an independent and supranational human rights judicial institution to make human rights enforcement and protection more visible and effective. The legal standing of people, organizations, and countries to register human rights abuses proves this. The AICHR's ASEAN human rights framework includes monitoring, advocacy, and consultation. Each nation will investigate human rights abuses in ASEAN. Determine the protection priority scale, compliance orientation, advocacy model, and consultation, and create a human rights data bank in all ASEAN member nations to strengthen the rule of law in defending human rights. Apart from that, AICHR must be given legal authority to determine legal comments on human rights protection standards by redefining its role as a facilitator and collaborator rather than just a subject or object of human rights protection within the rule of law. The ASEAN Charter applies state sovereignty as a responsibility to protect human rights for all individuals or groups as a proactive approach to improve the national human rights system or mechanism. The AICHR must keep developing ratios or indicators for ASEAN human rights program policies. AICHR, a body founded under the ASEAN Charter, would be more successful in dealing with human rights breaches if it had a regional judicial authority.

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⁷⁴ Chris Marsden, Trisha Meyer, and Ian Brown, ‘Platform Values and Democratic Elections: How Can the Law Regulate Digital Disinformation?’, *Computer Law and Security Review*, 36 (2020), 105373
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