SOCIOLOGY OF LAW AND THE EFFECTIVITY OF ASEAN TO PREVENT HUMAN SECURITY ISSUES IN THE REGION

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Abstract

Currently there are no indicators that can measure the effectiveness of the role of ASEAN in Southeast Asia, especially those related to human security issues in the safety of labor and migrants' mobilization. However, ASEAN still working through any possibilities of cooperation to prevent any threats that would endanger the personal securities of ASEAN community. This paper will further analyze the human security issues in Southeast Asia starting with conceptualizing, identifying, and engaging to find how is the effectivity of ASEAN in charge of prevent human security issues from sociology of law perspective with normative-juridical methodology combined with perspective of international relation approach. Based on the findings in conceptual and data, this research will show the problems that have been handled and have not been done by ASEAN institutionally. In addition to showing the relevance of the establishment of ASEAN Political-Security Community (APSC) 2015 as an affirmation for all ASEAN member countries to respond to institutional human security issues especially in the mobilization of labor and migrants.

Keywords: Effectivity; Sociology; ASEAN; Human Security; Mobilization.

INTRODUCTION

The Association of Southeast Asian Nations (ASEAN) is a regional organization in the Southeast Asian who consists of 10 countries, established on August 8, 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand. Since its establishment, ASEAN members have included Brunei Darussalam, Myanmar, Cambodia, Laos and Vietnam. In the founding document of ASEAN (The ASEAN Declaration / The Bangkok Declaration) it is stated that the first purpose and objective of establishing ASEAN is to accelerate economic development, social progress and development of glory in the region in order to strengthen the foundation for a prosperous and peaceful community in Southeast Asia.[1]

The second purpose and objective are to increase regional peace and stability. Geopolitically, the conditions of some countries in the Southeast Asia

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[1] Irene A. Kuntjoro and Sofiah Jamil, "FOOD SECURITY: Another Case for Human Security in ASEAN," in *NTS-Asia 2nd Annual Convention* (Beijing, 2008), 10–11.

region are very vulnerable to internal conflict. In addition, the tendency for conflict to arise when the condition of the population is multicultural. But in the meantime, conflicts and traditional threats such as wars between countries began to be abandoned and shifted to the concept of security that leads to humanitarian interests.[2]

This transition began to appear after the cold war, and develop very quickly.[3] The various issues of security discourse that were previously related to military and political issues, has shifted to issues that were more related to the living conditions of individuals and communities. After the collapse of the cold war, the concept of security in the system underwent a rapid shift.[4] The shift includes a change in the focus of security discourse from military and political issues to issues related to the living conditions of individuals and communities, from a state focus to society and a shift from the concept of national security to human security. Cannot be separated, these human security issues have triggered by the development of ASEAN countries,[5] but are plagued more by internal problems such as the separatist movement, democratization movement and economic discrepancy between ASEAN nations which lead into other Transnational crime such as human trafficking, smuggling of migrants and maritime security threats like piracy and armed robbery.

The problems that been explained before mostly related to the labor mobilization. Migration of labor in ASEAN are very common, as most of ASEAN countries are developing countries, and ASEAN countries are known to be very serious about achieving economic integration.[6] ASEAN Economic Community create a lot more mobilization of the labor from the low-skilled labor until the high-skilled labor. The divergence of ASEAN member states brings into play a different set of

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[2] Mohamad Faisol Keling, Mohamad Nasir Saludin, and Shukri Shuib, "The Development of ASEAN from Historical Approach," 2011, 169–89.

[3] Francis M. Deng, "Reconciling Sovereignty with Responsibility: A Basis for International Humanitarian Action," in *Africa in World Politics*, 6th ed. (Routledge, 2018), 283–325.

[4] Ang Cheng Guan, *Southeast Asia After the Cold War* (NUS Press, 2019), https://doi.org/10.2307/j.ctv136c5xh.

[5] Achmad Zulfikar, "Efektivitas Peran ASEAN Dalam Mengatasi Masalah Human Security Di Kawasan Asia Tenggara," 2017, https://doi.org/10.31227/osf.io/8q264.

[6] Salawati Basir and Saidatul Abd Aziz, *The ASEAN Community: Legal Issues*, 2018.

migration policies for each member states, this situation had contributed to a more and more complicated migration for the low-skilled migrant workers who have to navigate through them, since they lack of information about the legal way of working abroad.

Many political regimes prioritize the survival of the regime by prioritizing acts of violence and neglecting the safety and living conditions of the people, so we must evaluate from principle of human security further. Human security, describing as the keyword to comprehensively seizing all of the menaces that threaten the survival, daily life, and dignity of human beings and to strengthening the efforts to confront these threats. In understanding several cases related to personal security, we can look at examples from the 1997 economic crisis, here we can see the impact of the decline in economic conditions which resulted in the destruction of the life force of individuals and communities, especially from the lower classes. In this event, the economy and unemployment rate increased in almost every country, while there were hardly any national and regional mechanisms capable of providing a social safety net quickly and effectively.

In recent decades the threats to human security in the Southeast Asian region has escalated in various issues such as: natural disasters (e.g. Tsunami, Yogyakarta earthquake, floods and volcanic eruptions in the Philippines and Indonesia, health issues (HIV/AIDS, and avian flu).), environmental issues (smog and deforestation), social safety nets in crisis situations, transnational human trafficking, to human rights cases (ex the human rights violation case through Rohingya of Myanmar), human trafficking, smuggling of migrants, and also armed robbery in Malacca straits,[7] The series of issues above show that individuals are increasingly becoming the main reference in security matters. A series of issues above requires the collective will of ASEAN member countries to develop capabilities in order to deal with these problems effectively.

ASEAN has a mission and aim to enhance the security which mentioned in the ASEAN Charter: "To maintain and enhance peace, security, and stability and

[7] Ninne Zahara Silviani, "Implementasi Hukum Internasional Dalam Pencegahan Penyelundupan Migran Melalui Laut Di Kepulauan Riau" (Universitas Padjadjaran, 2021).

further and strengthen peace oriented values in the Region", and to implement this aim, ASEAN has several action through written agreement which consisting the ambition and purpose to realize the plan, such as ASEAN Blue Print 2025, Kuala Lumpur Declaration (Which established the ASEAN Political and Security Commission), and other Agreement like Treaty of Mutual Legal Assistance. In this paper, the author will measure the effectiveness of ASEAN's role in preventing the problem of Human Security in the Southeast Asia Region based on aspects of conceptualization, identification, level of involvement, and recommended solutions. Thus, this paper will answer the research question: How is the effectiveness of ASEAN's role in overcoming the problem of Human Security in the Southeast Asia Region in terms of Legal Effectiveness Theory especially from the labor mobilization issues around ASEAN countries which could be threats to human security if the violation of migration rules.

PROBLEM RESEARCH

How does the Sociology of Law and Theory of Effectiveness towards ASEAN's role to prevent the violation of provisions in labor and migrants' mobilization under human security issues in the region?

RESEARCH METHOD

The type of research in this legal research is normative legal research.[8] The nature of the research in this paper is descriptive which is carried out with a normative juridical and international relation approach. The types and sources of data used are secondary data. Data collection is carried out by taking an inventory of the required secondary data, both in the form of primary, secondary and tertiary legal materials, then conducting historical searches and synchronization between these legal materials.

The primary legal materials used consist of statutory regulations, especially ASEAN Charter, ASEAN Mutual Legal Assistance 2006, ASEAN Political and Security Community Blueprint 2009. Secondary legal materials that will be used include: scientific works, research results and literature related to the substance of the research. Tertiary legal

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[8] Sri Mamudji and Soerjono Soekanto, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2004).

materials, namely materials that support information on primary and secondary legal materials, including data from newspapers, journals, dictionaries, encyclopedias.

ANALYSIS AND DISCUSSION

A. Sociology of Law and the Theory of Effectiveness

The setting of the sociology of law approach sees law as a social institution that cannot be isolated from social building. The law isn't caught on as a content within the law or composed rules, but as a social reality that shows in life. Law is not understood literarily normatively, but relevant. In like manner, the legitimate approach isn't as it were based exclusively on lawful rationales, but moreover with social rationales in framework looking for the meaning. In this respect, Humanism of Law looks for to supply a depiction of legitimate hones. It points to clarify why a legitimate hone within the social life of society happens, the causes, what variables impact it, its foundation, etc. It continuously tests the observational legitimacy of controls or lawful explanations so as to be able to anticipate a law that's suitable and or not in agreement with a specific society. However, it does not assess the law.[9]

Sociology of law will be so much related to the theory of effectiveness.[10] Effectiveness theory is having the intended or expected effect as serving the purpose". Thus, legal effectiveness can be interpreted as the ability of the law to create or create conditions or situations as desired or expected by law. In reality. The law does not only function as social control, but can also carry out the function of social engineering (social-engineering or instrument of change). Thus, the effectiveness of the law can be seen both from the point of view of the social function of control and from the point of view of its function as a tool for making changes. The factors that can affect the effectiveness of the law can be detailed as follows:[11]

1. The legal factor itself;
2. Law enforcement factors, namely the parties that form or apply the law;
3. Factors of facilities or facilities that support law enforcement;

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[9] Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum* (Jakarta: Rajawali Press, 1980).

[10] *Ibid.*
[11] *Ibid.*

4. Community factors, namely the environment in which the law applies or is applied;

5. Cultural factors, namely as a result of work, creativity and taste based on human initiative in the association of life.

B. Human Security Issues in ASEAN

Human security," describing as "the keyword to comprehensively seizing all of the menaces that threaten the survival, daily life, and dignity of human beings and to strengthening the efforts to confront these threats."[12] According to the Former Secretary General of the United Nations (UN) regarding the concept of human security, Kofi Annan, stated that the concept of security has now evolved. The main need at this time is an approach to humanity where human security is threatened by weapons of mass destruction, as well as other aspects related to humanity.

Kofi Annan mentioned that "In the wake of these conflicts, a new understanding of the concept of security is evolving. Once synonymous with the defense of territory from external attack, the requirements of security today have come to embrace the protection of communities and individuals from internal violence. The need for a more human-centered approach to security is reinforced by the continuing dangers that weapons of mass destruction, most notably nuclear weapons, pose to humanity: their very name reveals their scope and their intended objective, if they were ever used."

Furthermore, Kofi Annan explained that human security covers a broad range of things such as human rights, the right to education and health, and freedom in various aspects. "Human security, in its broadest sense, embraces far more than the absence of violent conflict. It includes human rights, good governance, access to education and health care and ensures that each individual has opportunities and choices to fulfil his or her potential. Every step in this direction is also a steep towards reducing poverty, achieving economic growth and preventing conflict. Freedom from want, freedom from fear, and the freedom of future generations to inherit a healthy natural environment – these are the interrelated building blocks

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[12] Amartya Sen, "Why Human Security?," in *International Symposium on Human Security* (Tokyo, 2000).

of human – and therefore national – security."[13]

Several key elements make up human security. The first essential element is the possibility for all citizens to live in peace and security within their own borders. This implies the capacity of states and citizens to prevent and resolve conflicts through peaceful and nonviolent means and, after the conflict is over, the ability to effectively carry out reconciliation efforts. A second element is that people should enjoy without discrimination all rights and obligations - including human, political, social, economic and cultural rights - that belonging to a State implies.[14] A third element is social inclusion - or having equal access to the political, social and economic policy making processes, as well as to draw equal benefits from them. A fourth element is that of the establishment of rule of law and the independence of the justice system. Each individual in a society should have the same rights and obligations and be subject to the same set of rules. These

basic elements which are predicated on the equality of all before the law, effectively remove any risk of arbitrariness which so often manifests itself in discrimination, abuse or oppression."

UNDP formulates seven areas that are the main aspects of this humanitarian security issue. This concept was first put forward by Dr. Mahbub ul-Haq who raised the world's attention to human security issue.[15] The seven areas include: economic security, food security, health insurance, environmental security, personal security, community security, and political security.

1. Economic security - guarantees an individual's basic income, usually from productive workers or, as a last resort, from financing the public safety net. In this sense, only about a quarter of the world's population is currently economically secure. While economic security issues may be more serious in developing

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[13] Dey Ravena, "Wacana Konsep Hukum Progresif Dalam Penegakan Hukum Di Indonesia," *Jurnal Wawasan Yuridika* 23, no. 2 (October 28, 2014): 155–66, https://doi.org/10.25072/JWY.V23I2.10.

[14] Asbjørn Eide, "Economic, Social and Cultural Rights as Human Rights," in *Economic,*

Social and Cultural Rights (Brill | Nijhoff, 2001), 9–28, https://doi.org/10.1163/9789047433866_006.

[15] Sakiko Fukuda-Parr and Carol Messineo, "Human Security: A Critical Review of the Literature," 2012.

countries, concerns arise in developed countries as well.[16] The problem of unemployment is an important factor underlying political tensions and ethnic violence.

2. Food security - requires that all people at all times have physical and economic access to basic food. According to the United Nations, the overall availability of food is not a problem, but the main issue is the poor distribution of food and lack of purchasing power. In the past, food security issues have been handled well at both national and global levels. However, the impact is limited. According to the United Nations, the key is to address issues related to access to assets, jobs and guaranteed incomes (related to economic security).

3. Health insurance - aims to guarantee minimal protection from diseases and unhealthy lifestyles. In developing countries, the main causes of traditional death are infectious and parasitic diseases, while in industrialized countries, the main killers are diseases of the circulatory system. Today, lifestyle-related chronic diseases are the leading killer worldwide, with 80 percent of deaths from chronic diseases occurring in low- and middle-income countries. According to the United Nations, threats to health in developing and industrialized countries are usually greater in affecting poor people in rural areas, especially children. This is due to access to adequate nutrition and health services, clean water and other basic needs.

4. Environmental security - aims to protect the community from short-term and long-term damage from nature, man-made, threats from nature, and damage to the natural environment. In developing countries, lack of access to clean

water resources is one of the biggest environmental threats. In industrialized countries, one of the main threats is air pollution. Global warming, caused by greenhouse gas emissions, is an environmental safety issue.

5. Personal security - aims to protect the public from physical violence, either from (internal) state or external. Some matters related to personal safety between domestic violence, or from adults. For many people, the biggest source of anxiety is crime, especially violent crime.

6. Community security - aims to protect people from loss of traditional relationships and values and from sectarian and ethnic violence. Traditional societies, especially ethnic minority groups are often threatened. About half of the world's countries have experienced some inter-ethnic conflict. The UN has even highlighted the persistent vulnerability of the 300 million indigenous people in 70 countries facing a widening cycle of violence.

7. Political security - relates to whether people live in a society that respects their basic human rights. According to a survey conducted by Amnesty International, political repression, systematic torture, and ill-treatment are still practiced in 110 countries. Human rights violations were most frequent during periods of political unrest. As individuals and groups oppress, governments may try to exercise control over ideas and information. Since its inception, UNDP has developed seven focus areas for assessing human security. Over time, this issue began to get attention from the international community who wanted an improvement towards a better direction regarding the handling of human security.

However, issues regarding the violation of human rights (Human Trafficking and Smuggling of Migrants), armed robbery in the sea, slavery at South

China sea, environmental issues which will threatening human ecosystem like overfishing and deforestation, still becoming a regular issue in ASEAN. Especially in 2020 since the COVID-19 pandemic landed in ASEAN as well and really degrading the quality of human security in ASEAN. Such as scarcity of medical mask, illegal mobilization wave of migrant-worker to their hometown, economic loss and etc. It is such a challenge for ASEAN to commit their agreement and plan to enhance the human security from sociological aspect. Focusing on the personal issues, labor and migrants' mobilization will be so much related to personal security.

As an example, in human trafficking issues, in 2022's report, Vietnam, Cambodia, and Brunei were both dropped down to Tier 3, while Indonesia was lowered from Tier 2 to the Tier 2 watchlist. Tier 3 status opens nations to a range of potential sanctions and penalties, though Washington often waives sanctions for close partners and other nations that promise to take swift remedial action. Get briefed on the story of the week, and developing stories to watch across the Asia-Pacific.[17] These three nations joined their Southeast Asian neighbors Malaysia and Myanmar on the Tier 3 blacklist, bringing the number of Southeast Asian nations in this category to five out of 11 – a remarkable indictment of the region's efforts to stem labor and sex trafficking. Malaysia was downgraded last year, while Myanmar has been at Tier 3 since 2018. Only two of the region's countries – Singapore and the Philippines – were designated Tier 1 (Strangio, 2022)

In other hands, The ReCAAP Information Sharing Centre (ISC) has released its Half Yearly Report that 42 incidents of armed robbery around Asia from January to June, this represents an 11% increase compared to 38 incidents reported during the same period in 2021.[18] 27 Incidents was reported in Singapore Straits, and 3 incidents was reported in the Philippines. Although it happens to the vessels, armed robbery

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[17] "US Adds Vietnam, Cambodia, Brunei to Human Trafficking Blacklist – The Diplomat," accessed July 25, 2022, https://thediplomat.com/2022/07/us-adds-vietnam-cambodia-brunei-to-human-trafficking-blacklist/.

[18] ReCAAP, "News Release: 42 Incidents of Armed Robbery against Ships in Asia Reported to ReCAAP ISC from January to June 2022," 2022, https://www.recaap.org/resources/ck/files/news/2022/Half yearly 2022 report press release(200722).pdf.

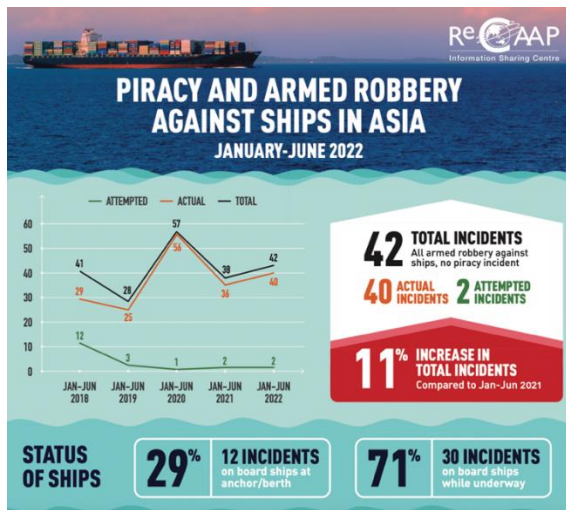surely become a dangerous threat to personal security.

Figure 1: ReCAAP Information of Half Year Report regarding Armed Robbery in the Sea

C. ASEAN Initiative regarding the Prevention of Human Securities Issues in Region and the effectivity

Towards the ASEAN Economic Community (AEC, 2015) ASEAN has gathered intensification of cooperation between member countries and extra-regional agencies in fighting transnational crime. In October 2011, the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) set priorities to combat eight types of transnational crime: counter-terrorism, trafficking in persons, illicit drug trafficking, money laundering, maritime piracy, arms smuggling, international economic crimes, and global crimes. Virtual.[19]

ASEAN create several agreement and action plan to prevent human securities issues, like Mutual Legal Assistance (MLA) in Criminal Matters. ASEAN MLA has the objectives to: "improve the effectiveness of the law enforcement authorities of the Parties in the prevention, investigation and prosecution of offenses through cooperation and mutual legal assistance in criminal matters". The establishment of the ASEAN MLA on November 29, 2004 in Kuala Lumpur, Malaysia was the beginning of the opening of cooperation in the field of legal aid and an important step for ASEAN cooperation in responding to transnational crimes in general. However, in practice, a number of obstacles prevent ASEAN countries from pursuing the MLA process as one of its acts to prevent the human securities which coming from transnational organized crime. The growing problem of transnational crime has been considered a major threat to state security and

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[19] ASEAN, "ASEAN Ministerial Meeting on Transnational Crime" (2011).

regional stability which has attracted political attention at the diplomatic level.

Towards the ASEAN Economic Community (AEC) in 2015, ASEAN has called for intensification of cooperation between member countries and extra-regional bodies in the fight against transnational crime. In October 2011, the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) set priorities to combat eight types of transnational crime: counter-terrorism, trafficking in persons, illicit drug trafficking, money laundering, maritime piracy, arms smuggling, international economic crimes, and global crimes. virtual.

The ASEAN MLA also has the goal of preventing transnational crimes, the scope of assistance that can be provided under this agreement are:[20]

    a. Taking evidence or statements from someone

    b. Arrangements so that someone can provide evidence or assist in the criminal case process

    c. Submission of documents related to the judicial process

    d. Search and seizure actions

    e. The act of investigation or an object and place

    f. Submission of original documents or legalized copies, records and evidence

    g. Identification or tracing of property obtained from a criminal act and objects used to commit a crime

    h. Blocking and confiscation of assets resulting from criminal acts that can be confiscated or confiscated

    i. Confiscation and return of assets resulting from criminal acts

    j. Search and identification of witnesses and suspects

    k. Provision of other agreed assistance in accordance with the objectives of this agreement and the provisions of laws and regulations.

The main objective of ASEAN is to respond effectively and efficiently, based on the principle of comprehensive security against all forms of threats, criminal acts between countries and challenges between regions. Some of the

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[20] ASEAN, "Treaty on Mutual Legal Assistance in Criminal Matters" (2004).

focuses of these non-traditional issues include human trafficking, terrorism, drug trafficking, fishing theft, arms trafficking, cybercrime, ship hijacking, and limiting the space for terrorists. Not only that, this blueprint also emphasizes the aspects of handling natural disasters and emergency response.

This text also states that all ASEAN members are required to act effectively and timely to respond to emergency issues or crisis situations facing ASEAN. Action: Convene special meetings at the Leaders' or Ministerial levels in the event of crisis or emergency situations affecting ASEAN; and develop arrangements to address such situations in a timely manner Based on the explanation above, it has been seen that the APSC blueprint is one solution, as well as being the foundation for further implementation of the handling of human security issues in the Southeast Asia region, so that ASEAN as an institution would have a role in preventing it. However, the most important thing is the serious implementation of all ASEAN members to carry out this blueprint that has been produced by consensus.

The roadmap towards the integration of the 2015 ASEAN Community is getting closer, various preparations have certainly been and are being carried out by all ASEAN member countries. One of the integrations that is interesting to review is the APSC which is oriented towards handling political and security issues as part of the ASEAN community. In the blueprint of the ASEAN Political-Security Community (2015) there are various things that are discussed related to political and security aspects.

APSC is ASEAN's most comprehensive and concrete political-security cooperation, with the aim of ensuring that the people of ASEAN Member States live in peace with each other and with the world at large in a just, democratic and harmonious environment. This framework has upheld the goal of maintaining peace and stability in the ASEAN region. The ASPC also adopts a comprehensive security approach and an outward-looking approach to ASEAN's external relations.

Continuing the mandate of the Kuala Lumpur Declaration entitled ASEAN Forging Ahead Together, ASEAN is determined to implement plans to make the ASEAN Economic Community (AEC) a success, one of which is in the

fields of Politics and Security. ASEAN also wants to strengthen cooperation to secure borders, in accordance with respective domestic laws and policies, to jointly deal with issues of mutual concern including falsification of identification and travel documents.

Following the problem identification, and analyzed through the sociology of law and the effectiveness of the policies which made by the ASEAN, Law should not understand normatively, yet relevant. In normative way, ASEAN as the regional organization has created initiation and plans to protect the human security issues, especially with the APSC, issues relating to violation of labor mobilization regulation hopefully can resolve the future problems.

Effectivity of those initiations will be analyzed from lot more aspects, such are the legal factor, Law enforcement factors, namely the parties that form or apply the law; Factors of facilities or facilities that support law enforcement, Community factors, and cultural factors. In fact, in community factors, are really unsupported. Since the legal factor and the enforcement of the law has been applied, the culture of human trafficking and increasing number of armed robberies, still become a huge threat to the mobilization of people in ASEAN, and only can be reduced and resolved by educating the communities around ASEAN. In other hands, ASEAN who made of mostly developing countries are not fully supported with great facilities of law enforcement complementary such vessels and arms, and only can be resolve by national initiatives before they get to work together.

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CONCLUSION AND RECOMMENDATION

Based on the results of the elaboration of the above concepts, data,

and facts on human security issues handled institutionally by ASEAN in the Southeast Asia region, there are several things that can be concluded than in order to play an effective role in dealing with human security issues, ASEAN member states are encouraged to increase cooperation and joint action at various levels: local, regional and global. In addition, ASEAN must equate the concept and definition of Human Security in order to carry out its functions better. In carrying out its role related to human security issues, ASEAN is still considered ineffective, because it is still limited to a few cases that can be handled while other cases cannot be handled by ASEAN. Coupled with the various potential threats to human security, especially about the mobilization of people like labor and migrants.

ASEAN MLA, ASEAN Political-Security Community (APSC) 2015, and Kuala Lumpur Declaration as ASEAN initiative can be an alternative solution in handling human security problems in Southeast Asia, because it includes several main things that have been identified based on the 1994 UNDP. However, without implementing action, the plan will leave as plan. The involvement of policy makers, academics, and non-governmental organizations in initiating the handling of human security issues in the Southeast Asian region need to be improve in the meantime, either by diplomatic channel, or regional channel, to fit the theory of effectivity.

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