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Arrangement of Joint Commitment In Protection Of Human Rights In The Region of ASEAN

Cover Page Footnote

ARRANGEMENT OF JOINT COMMITMENT IN PROTECTION OF HUMAN RIGHTS IN THE REGION OF ASEAN Surya Nita The University of Indonesia's School of Strategic and Global Studies (surya.nita@ui.ac.id) ABSTRACT Protection of human rights must be carried out wherever humans are. The state's obligation to fulfill, to respect, to protection is an obligation for every country, including all ASEAN countries. Human rights crimes that occurred in ASEAN countries require joint commitment arrangements between ASEAN countries to ensure the protection of human rights in each country. So There is a need for a study to analyze the joint commitment arrangements in protecting human rights in the ASEAN region. Based on the explanation above, the study problem boundaries are formulated as follows: 1. How is the joint commitment arrangement for protection of human rights in the ASEAN region?; How are the efforts of the Indonesian government regulating the protection of human rights in the ASEAN region?. The purpose of this paper is to analyze the arrangement of joint commitments to protect human rights in the ASEAN region and to analyze the efforts to regulate the Government of Indonesia in the proctection of human rights in the ASEAN region. The method used is juridical normative with literature study and analysis used descriptive qualitative by describing human rights arrangements in the ASEAN region. Based on the explanation above, ASEAN first 1967 had a joint commitment to the Charter of Association of Southeast Asian nations and in 2012 the ASEAN Declaration of Human Rights. In 2009 the ASEAN Intergovernmental Commission on Human Rights (AICHR) was formed, which is an integral part of the ASEAN organizational structure which acts as a consultative body and provides advice on the protection of human rights. This institution is supported by the ASEAN as a joint commitment in providing protection of human rights in ASEAN countries. Second, that Indonesia has rules regarding human rights as regulated in the 1945 Constitution, Law No. 39 of 1999 about Human Rights and other regulation related to human rights. Indonesia is committed to protecting human rights both in Indonesia, in ASEAN countries and around the world. Keywords: Joint Commitment, Human Rights, ASEAN 1. Introduction Freedom is the main goal of development and the main means of development. Humans are the engine of change in terms of political freedom, economic freedom, social opportunity, transparency, health and security insurance. Development is the process of expanding human freedom. Development is strengthened by democracy and the protection of human rights. What a person can achieve can be affected by economic opportunities, political freedom, social strength, enabling conditions, good health, basic education, and one's initiatives to change

Arrangement of Joint Commitment in Protection of Human Rights in The Region of ASEAN

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ABSTRACT

The state's obligation to fulfill, to respect, to protection is an obligation for every country including ASEAN. Human rights crimes that occurred in ASEAN countries require joint commitment arrangements between ASEAN countries to ensure the protection of human rights in each country. The problem boundaries are formulated as follows: 1. How is the joint commitment arrangement for protection of human rights in the ASEAN?. How are the efforts of the Indonesian government regulating the protection of human rights in the ASEAN?. The purpose to analyze the arrangement of joint commitments to protect human rights in ASEAN and the efforts to regulate the Government of Indonesia in the protection of human rights in the ASEAN. The method used is juridical normative with literature study and analysis used descriptive qualitative by describing human rights arrangements in the ASEAN. ASEAN first 1967 had a joint commitment to the Charter of Association of Southeast Asian nations and in 2012 the ASEAN Declaration of Human Rights. In 2009 the ASEAN Intergovernmental Commission on Human Rights (AICHR) was formed, which is an integral part of the ASEAN organizational structure which acts as a consultative body and this institution is supported provides advice on the protection of human rights in ASEAN countries. Second, that Indonesia has rules regarding human rights as regulated in the 1945 Constitution, Law No. 39 of 1999 about Human Rights and other regulation related to human rights. Indonesia is committed to protecting human rights both in Indonesia, in ASEAN and around the world.

Keywords: Joint Commitment, Human Rights, and ASEAN.

1. Introduction

Freedom is the main goal of development and the main means of development. Humans are the engine of change in terms of political freedom, economic freedom, social opportunity, transparency, health and security insurance. Development is the process of expanding human freedom. Development is strengthened by democracy and the protection of human rights. What a person can achieve can be affected by economic opportunities, political freedom, social strength, enabling conditions, good health, basic education, and one's initiatives to change one's life for the better in accordance with basic human rights as stipulate in the declaration of human rights. This is the responsibility of a country, namely to fulfill, to respect, and to protect of human rights. According to Friedman, the legal system is a system that includes the substance, structure and culture of law concerning legislation in the form of legal products, structures and legal culture. There is on federal state with fifty legal systems in the United States. There is a separate legal system for each nation and there is a different legal system such as in the European Economic Community Organizations and the United Nation including the Southeast Asia region (Suherman, 2012).

Southeast Asia has an association of ASEAN country organizations. The ASEAN organization was founded in 1967. The ASEAN organizations has proven successful in maintaining security and stability in the region to prevent potential open conflicts in the region, thus enabling it to become an engine of growth, investment attractiveness and protection of human rights. The state has the obligation to fulfill, respect and protect human rights which is an obligation for every country, including all ASEAN countries are contained in the ASEAN Declaration of Human Rights in 2012.

Indonesia Foreign Minister, Retno Marsudi, said that all ASEAN member countries agreed and were committed to promoting and protecting human right through the ASEAN Intergovernmental Commission on Human Rights (AICHR). AICHR is a human rights institution in ASEAN with general responsibility is for the promotion and protection of human rights in the ASEAN region. This commitment is in terms of funding for AICHR in implementing human rights protection in ASEAN. Based on the explanation above, the author will examine the joint commitment arrangement in protecting human rights in the ASEAN region (Setnas-asean.id, 2018).

Human rights problems that arise today are the case of military coup in the country of Myanmar which defeated the leading democratic government by killing 715 people, as well as communities that need protection by ASEAN countries because Myanmar is an ASEAN member. At the time of writing, the ASEAN Summit in April 2021 was initiated by the state of Indonesia. This summit was held by the state of Brunei Darussalam as Chair of ASEAN. It is hoped that it can resolve the condition of the Myanmar people by opening humanitarian assistance and being able to coordinate with the UN Security Council and UN Human Rights Council in providing humanitarian assistance, resolving conditions in Myanmar peacefully, providing human rights protection.

Whereas the fundamental obligation of the international community refrain from committing acts of violence, whether commit in their own country or committed against other countries, is to resolve disputes peacefully, respects human rights, the freedoms regulated in the UN Charter which has been approved by all countries. The UN can also impose on non-member countries to ensure international peace and security. The UN Charter contains a list of fundamental principles and in article 2 (4) states that, if necessary, the UN can force non-members to guarantee peace in the absence of violence or stop violence. So that in the case of Myanmar, the UN can enter into an international peace mission as regulated in the fundamental principles that.

Based on the explanation of the background of the problem above the crucial issues that commitments ASEAN countries in protecting human rights, human rights crimes, does not have regulation on human rights court in ASEAN. The title of the research is Arrangement of Joint Commitments in Protecting Human Rights in the ASEAN Region. Then the limits of the problem formulation and objectives will be limited as follow:

1.1. Problem Formulation and Research Objectives

The formulation of the problems that are limited in this paper is as the follows: 1. How is the arrangement of joint commitments to protect human rights in the ASEAN region?; 2. How are the efforts of the Indonesian government regulating the protection of human rights in the ASEAN region?.

The purpose of this paper is to analyze the arrangement of joint commitments to protect human rights in the ASEAN region and the efforts of the Indonesian government to regulate the protection of human rights in the ASEAN region.

2. Literature Review

International public law with various agencies and institutions created a universal law order. International public law and international private law must compete with state power and corporate strategies. That the international legal system is a supranational and global legal system that continues to strive for the structuring and regulation of an international public order (Menski, 2014). As a subject of international law, a state with rights and obligations in international law has the following basic rights and obligation, the right to freedom in international law is called the right to self-determination (self-determination), the right to exercise jurisdiction over the territory, the people who live in it, du within its territory is a right inherent in every independent country as a consequence, of its sovereignty, the right to obtain a legal position equal to other countries, the principle of equality of state sovereignty, the right to carry out self-defense or collectively (self-defense) of all UN member states, must refrain from using violence against territorial integrity and political independence of other countries or in other ways in other ways inconsistent with the purpose of the UN Charter article 2 paragraph (4) (Sefriani, 2018).

International sources of law are international agreements (treaties), hierarchies in treaty apply and binding agreements, international treaties in Indonesia, International customary law, elements of customary international law, changes in international customary law, relationship between customary law with international treaties, general principles recognized civilized nations, judicial decisions (jurisprudence), legal works (writing publicist), decisions of international organization, hierarchy in international law. The source of law and the application of hierarchies in international law, ius cogens as the highest norm in international law. The substance and hierarchy of norms ius cogens, obligation erga omnes (Sefriani, 2018).

The fundamental obligation of the international community to refrain from taking action of power (use of force) against other countries, to resolve disputes peacefully, to respect human rights, fundamental freedoms, as well as self-defense are conventional obligations regulated in the UN Charter, where all member states agree to it. Without consensus regarding fundamental rights and the inherent difficulties in peremtory norms, there is no human rights hierarchy (Sefriani, 2018).

Based on article 38 of the statute of the international court of justice, it is used as a reference in the international source law according to paragraph 1 of this article to decide on international disputes submitted by judges in using international treaties, international customs, general principles of law recognized by civilized nations, court decisions and doctrines of works as additional law (Sefriani, 2018).

2.1 International Agreement on Human Rights Protection

International treaties are instruments for the implementation of international relations, which are written to facilitate proof. International treaties have various terms convention, final act,

declaration, memorandum of undern standing (MoU), agreement, protocol, which have a juridical impact. International treaties according to article 2 (1a) of the 1969 Vienna Convention on the law of treaties are agreements made by states in written form and regulated in international law. Treaty creators require state participants to be in writing. Furthermore, article 11 of law no 24 of 2000 stipulates as follows, ratification of international treaties whose material referred to in article 10 of law No. 24 of 2000 with presidential decree, Government of the Republic Indonesia submits a copy of every presidential decree that ratifies an international agreement to the house representatives (Sefriani, 2018).

The human rights arrangement stipulated in the international Bill of Human rights is a term used for collective reference to the three main human rights instruments and their optional protocols as follows, The Universal Division of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural rights (ICESCR), the first option protocol on ICCPR (Rover, 2000).

Treaties that are important in protecting human rights include:

- Convention on the prevention and punishment of the crime of genocide;
- Convention relating to the status of refugees;
- Protocol on refugee status;
- International conventions on the elimination of all forms of racial, discrimination;
- International Convention against torture and other atrocities inhuman or degrading treatment or punishment;
- Convention on the rights of the child;
- An option Protocol to the ICCPR aimed at abolishing the death penalty. (Rover, 2000)

Human rights are recognized and protected by the covenant on Civil and Political Rights as stipulated in part III (articles 6-27), part II of the covenant (article 2-5) on various state obligation regarding rights relating to individuals. The substantive obligation in article 2 paragraph (1) every country strives to respect and guarantee all rights of individuals residing in its territory and subject to its jurisdiction which are recognized in the covenant without any differences, such as race, color, gender, language, religion, political opinion or other opinion, national origin or social background, wealth, birth, or other status (Kasim, 2001).

In this provision, the state recognizes the rights protected by the covenant to whom these rights are addressed. Based on the convention, each state has the obligation to respect guaranteeing the rights of individuals in its territory and jurisdiction, showing that everyone is protected by the covenant of unity and that legal entities do not have human rights. This is confirmed in Travaux Preparatories more individual.

In a country there is a humanitarian problem, serious human rights violations that develop with humanitarian intervention. Intervention on the basis of humanity. Interventions are carried out collectively under the mandate of the United Nations, aiming to address humanitarian problems so current practices are justified by international community. The ILC draft on the responsibility of the state provides space to intervene in problems that create an obligation on the international community (erga omnes) to solve them. Interventions can be categorized as punitive interventions or imposing sanctions on perpetrators of violations of international law so that their application can be justified (Sefriani, 2018).

The terms area and jurisdiction as used in article 2 paragraph (1) can be a special meaning in a special situation. Suppose that a state party to the convention oversees all or part of the territory of another country and is accused of violating individual rights in that territory. Whether the jurisdiction of the state party. The provisions in this convention stipulate that the state party will safeguard the rights and freedoms of every person in the jurisdiction (Sefriani, 2018).

The obligations borne by the state party as stipulate in article 2 paragraph (1) consist of respecting, guaranteeing the rights recognized by the convention without violating the rights stipulated in the convention. This effort regulates the steps of the state through officials or authorities at the government level. The obligation to guarantee these rights goes beyond the obligation to respect because language is a common travaux preparatories of the state's obligation to take steps so that every individual can enjoy rights guaranteed in the covenant.

Limited civil and political rights due to a state of emergency are regulated in article 4 paragraph (1) of the covenant to allow states parties to take advantage of the reduction of rights in an officially declared general emergency that threatens the life of the nation. Steps taken by states parties to use reduction are as follow, they should be strictly required by urgency of the situation, measures not to conflict with other international obligation borne by the state parties, and measures not include discrimination on the basis of race, skin color, gender, language, religion, or social origin (Sefriani, 2018).

General emergencies must have the following characteristics, must be actual or immediate, the effect must involve the entire nation, the crisis or danger is of such an extraordinary nature that the normal or restraining measures permitted by convention to maintain public safety, health and order are clearly inadequate.

Southeast Asia has ASEAN association of Nations charter which was approved by the member states of ASEAN on behalf of the head of state or government of Brunei Darussalam, Kingdom of Cambodia, Republic of Indonesia, Lao People's Democratic Republic, Malaysia, Union of Myanmar, The Republic of Singapore The Kingdom of Thailand and the Socialist Republic of Viet Nam with the common growth, mutual prosperity and social progress and to advance the main democracy, the rule of law and good governance, respect and protection of human rights and fundamental freedoms. In 2012 ASEAN agreed to a Declaration on Human Rights.

In addition to the protection of the convention that was signed by the charter or the United Nations, it establishes human rights as an international issue, it affirms the human rights obligation of UN member states, including Indonesia and all ASEAN countries. International law will harmonize differences in national law.

3. Research Methodology

This type of research is qualitative research. The research method used is normative juridical by discussing the rule of law in accordance with the formulation of the problem under study. This legal research method examines the rule of law regarding mutual commitment in protecting human rights in the ASEAN region.

3.1 Data Collection Method

The method of data collection is by using literature study to collect secondary data in the form of laws and regulations related to the issues discussed. The legal rules used in this paper are as follows:

- 1. Declaration of human rights;
- 2. UUD 1945;
- 3. Law No, 39 of 1999 About Human rights;
- 4. Law No. 24 of 2000 About International Treaties;
- Law 12 of 2005 About the Ratification of International convention on civil and political rights;

- 6. International Convention on Economic, Social and cultural rights;
- 7. The Charter of the Association of Southeast Asian nations;
- 8. ASEAN Declaration of Human Rights.

3.2 How to Analyze Data

Data analysis is the process of systematically searching and compiling data obtained from available documents (Sugiyono, 2016). This study analyzes the legal rules that apply in Indonesia and in ASEAN countries related to the protection of human rights as a joint commitment of all ASEAN members. The analysis used is descriptive qualitative by the describing the development of the criminal justice system in Indonesia by upholding the values of Pancasila and human rights the applicable laws and regulations in accordance with the problem.

4. Results

The joint commitment to protecting human rights in the ASEAN region is regulated assigned by the 10 countries in the charter of the Association of Southeast Asian Nations and the ASEAN declaration of human rights in 2012. The Charter is a joint commitment in the common desire to have lasting peace and security, and stability, sustainable economic growth interests, ideals and aspirations. Comply with the principles of democracy, the rule of law and good governance, respect and protection of human rights and fundamental freedoms.

The ASEAN Intergovernmental Commission on Human Rights (AICHR) is an integral part of the ASEAN organizational structure which acts as a consultative body and provides advice on the protection of human rights. The AICHR institution was formed in 2009 in its obligation to increase human rights awareness in the ASEAN community. This institution is supported by the ASEAN organization as a joint commitment in providing protection of human rights in ASEAN countries and ratified in 2012 the ASEAN Declaration of Human Rights.

4.1 AICHR's Role in Providing Human Rights Protection in the ASEAN Region

AICHR is expected to be able to provide a standard setting for institutional building in providing human rights protection in Southeast Asia, an institutional with activities that carry out socialization in fulfilling human rights, monitoring the implementation of human rights in Southeast Asia, as an institution that provides a complaint mechanism, even in the future as an institution that resolving human rights courts in Southeast Asia in violations of human rights, the state can be held accountable for allegations of human rights violations.

There are 16 cases of human rights that have occurred in ASEAN countries in AICHR in March 2010 where Kontras complained about victims of human rights violations in 1965, victims of the May 1998 in Indonesia. Families of victims of journalist killings in the Philippines, and several victims in Myanmar. Until 2011 there was no resolution of the case because AICHR argued that it had received the report because it did not yet have a mechanism for receiving civil society case reports.

Human rights violations occurred in the Rohingya ethnic community in Myanmar, They are part of the country. Where they occur ethnic demolition and eventually become refugees in Indonesia and other Southeast Asian countries. This condition occurs and has not been resolved in providing protection of human rights in ASEAN.

The closure of several ASEAN countries in discussing human rights is a very difficult matter in providing protection of human rights in the ASEAN region. So it requires a joint commitment for all countries to continue to implement the ASEAN charter which has been signed by ASEAN member countries as forming an international agreement that must be implemented as mandated in the ASEAN charter which provides respect and protection of human rights and fundamental freedoms.

A joint commitment between countries in the ASEAN region is needed to ensure fulfillment, respect and protection as stipulated in the Universal Declaration of Human Rights, Civil Political Rights and Economic Social Cultural Rights and international legal rules agreed by all countries.

An international tribunal (court) sends a message that the international community cannot allow atrocities to continue. Prevent future massacres both in that country and around the world. The international tribunal consists of experts who can apply and terpret developing international standards in the context of law. Atrocities committed by a number of people, all actors (government planners, or direct actors) plus collaborating with them politically can create stability, divide society, and are logistically unacceptable (kritz, Menyikapi Kekejaman Tinjauan Tehadap Mekanisme Pertanggungjwaban terhadap Pelanggaran Massal HAM, 2003). The process of resolving human rights violations uses a national reconciliation process with all aspects related to disclosing the truth of past gross human rights violations by taking into account the voice of the victim. Determine the method or mechanism for resolving cases of crimes against humanity through court mechanism or formal legal means, through the mechanism of forgiveness or granting amnesty by revealing the truth of taking both. The existence of a formal legal human rights court instrument through legislation as a form of providing a sense of community justice.

So that a sense of justice is needed for justice seekers who are victims of human rights against the violation of their human rights by the state. According to Ralws, producing principles of justice without having to suppress a single goal and without making justice depend on that goal (Karen, 2015).

That a sense of justice is needed providing protection for the people of ASEAN by respecting, fulfilling and protecting human rights. Pancasila justice as the ground norm of the Republic of Indonesia should be the basis for providing a sense of justice as regulate in the Pancasila principles. Indonesia as a country that has adhered to the principle of justice in the life of the nation and state should be committed to providing observation, fulfillment and protection of human rights for citizens and all of humanity.

4.2 Indonesian Government Arrangements in Protection of Human Rights

The Indonesian government's efforts to regulate the protection of human rights in the ASEAN region are stated in the 1945 Constitution that Indonesia respects human rights wherever it is. Human rights arrangements as regulated in the Law No. 39 of 1999 about human rights. It is the responsibility of the state to respect, fulfill and protect the human rights of every person. Apart from that, it is regulated in various ratification rules that were signed by the Indonesia state.

In Indonesia the ratification process is based on article 10 of law no. 24 of 2000 about international treaties. This law is an implementation of article 11 of the 1945 Constitution which gives the president the authority to make international agreements with approval of the house representatives. Article 10 of Law No. 24 of 2000 provides a reference that the ratification of international treaties is, issues of peace politics, state defense and security, territorial changes/delimitation of the territory of the Republic of Indonesia, sovereignty/sovereign rights of the state; human rights & environment, the establishment of a

new rule of law, foreign loans/grants. If the convention has been ratified, the legal rule is binding on Indonesia with all its legal consequences (Sefriani, 2018).

The legal formal efforts that have been made by Indonesia in providing a sense of justice to the public against human rights and humanitarian violations that have occurred in Indonesia have formed the KKR Law. This rule serves as the legal basis for resolving cases of human rights and humanitarian violations and providing a sense of justice and restoring it by providing compensation to victims both physically and psychologically, even though in practice the conditions of human rights and humanitarian trials that occur in Indonesia only punish technical actors in the field and their leadership, however it does not punish the state as being responsible for respecting, fulfilling and protecting human rights in Indonesia.

5. Discussion

The development of the ASEAN Summit in 2021 discusses three issues related to the development of the ASEAN community, ASEAN external relations as well as regional and international issues regarding the condition of Myanmar. This is a joint commitment between ASEAN countries in providing peace, ending violence and providing protection of human rights for the people of Myanmar. In this condition, ASEAN countries should ask to open humanitarian assistance in order to provide assistance to the people of Myanmar.

In addition, ASEAN countries can coordinate with the UN Security Council and the UN Human Rights Council to be able to send delegations to make efforts to monitor the condition and situation of the Myanmar people due to the current military junta, so that they can stop violence and establish peace in a democratic manner with a military junta that is control the current government of Myanmar and restore the power of a democratically elected government.

5.1 The Joint Commitment of ASEAN Countries in Providing Human Rights Protection for The People of Myanmar

Whereas as stipulated in the Charter of the Association of Southeast Asian Nation and in 2012 it was approved by all ASEAN member on the ASEAN Declaration of Human Rights. So that this becomes the basis for joint commitment for ASEAN countries to be directly involved in resolving problems that occur in Myanmar society, in this case providing humanitarian assistance in order to provide a sense of peace to people who are victims of the ongoing military junta violence in Myanmar. It is hoped that ASEAN countries will coordinate with the UN Security Council and the UN Human Rights Council to immediately step in to stop the violence that has occurred, provide humanitarian assistance, resolving the coup conflict democratically by restoring the legitimate government elected by the people.

Myanmar a part from being a member of ASEAN is also a member of the United Nations where the fundamental obligation of the international community to refrain from committing acts of violence whether committed in their country or committed against other countries, to resolve disputes peacefully, respect human rights, the freedoms regulated in the Charter the UN, which all member states agree is regulated in the UN Charter.

It is hoped that the ASEAN Summit will immediately take action to save the people of Myanmar from widespread victims of violence and stop the coup immediately by holding cooperation with UN Security Council and UN Human Rights Council to resolve the coup that occurred in Myanmar. This condition is not that easy to be resolved, because joint commitment of all ASEAN countries has agreed to strongly reject the military coup that is taking place in Myanmar so that immediately provide humanitarian assistance which can certainly provide peace to the people of Myanmar.

For the military junta that carried out the coup should be held responsible for the death of victims of violence processed under international law, either by an international human rights court or a human rights court, which ASEAN countries must immediately establish to resolve violence, torture and human rights violations that have occurred in Myanmar so that all ASEAN countries continue to comply with the Charter of Association of Southeast Asian Nations, which was agreed in 2012 to the ASEAN human rights Declaration as well as the obligation of the international community to refrain from committed against other countries, to resolve disputes peacefully, respecting human rights, the freedoms regulated in the UN Charter, which all member states agree on are regulated in the UN Charter which has been approved by all countries.

6. Conclusion

Based on the analysis above, the conclusion in the paper is that the ASEAN Intergovernmental Commission on Human Rights (AICHR) is an integral part of the ASEAN organizational structure which acts as a consultative body and provides advice regarding the protection of human rights and ASEAN countries have the Charter of the Association of Southeast Asian Nations and the declaration of human rights. ASEAN human being agreed upon in the commitment in providing protection of human rights in ASEAN countries. Second, that Indonesia has rules regarding human rights as regulated in the 1945 Constitution, Law No. 39 of 1999 about Human Rights and other regulation related to human rights. Indonesia is committed to protecting human rights both in Indonesia, in ASEAN countries and around the world.

The suggestions put forward in this paper are that first, there need to be a commitment that is upheld by all ASEAN countries. This joint commitment needs to be put into practice in the formation of an international judicial institution specifically for the ASEAN region that can resolve human rights cases. Increasing the function of AICHR in providing human rights protection for the ASEAN region by resolving human rights cases that occur in ASEAN countries, immediately resolving violence and human rights violations in Myanmar by providing punishment through human rights trials in ASEAN countries. The two countries of Indonesia as counties that uphold and provide protection of human rights, remain commitment to carrying ASEAN charter which has been signed by Indonesia.

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