CHAPTER 6

Algorithmic Governance and the Evolution of the ASEAN Human Rights Mechanism

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1 Introduction

Established in 1967, the Association of Southeast Asian Nations (ASEAN) built the momentum for the region's development of human rights norms and institutions when the ratification of its Charter by all member states took place in 2008 (Wahyuningrum, 2014). Beginning with the creation of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in October 2009, ASEAN continues to symbolize its leaders' commitment to uphold human rights by launching the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) in April 2010. While it is apparent that the AICHR needs to step up its game in promoting and protecting human rights in ASEAN, reviewing the commission's work over the years remains important for a better future. The second consultation meeting regarding the review of the AICHR Terms of Reference (TOR), for instance, produced a good suggestion to interpret the TOR more creatively for future implementation (Wahyuningrum, 2014). Indeed, even though the AICHR is not mandated to address human rights issues in specific

countries and labeled a "toothless tiger" because its lack of law enforcement (Kelsall, 2009), the AICHR still has the capacity to explore different kinds of human rights promotion and protection scenarios, two of them being ensuring freedom of expression in cyberspace and, in a broader sense, promoting digital rights in ASEAN.

Many things have happened in the course of 10 years in ASEAN considering the rapidly changing digital media environment: After the 2014 coup d'état, the Thai government and military utilized digital technologies to identify the regime's traitors and suppress political opposition, creating what Pinkaew Laungamsari calls in her paper "cyber dystopia" as the Thai government continues to militarize cyberspace by combining mass surveillance and surveillance of the masses (Laungamsari, 2016). In 2017, Indonesia witnessed how racism and sectarianism played a significant role in social media and electoral politics in the 2017 Jakarta gubernatorial election, an event packed with negative information and false news disseminated through websites that deliberately published fabricated content and disinformation (Lim, 2017). In fact, in the same year, Indonesia and Vietnam were ranked 124th and 175th respectively in the World Press Freedom Index, emboldening the problem of fake news in ASEAN countries.

However, ASEAN comprises 10 countries with different domestic laws in respect of their different social, political and cultural values. When it comes to ensuring the freedom of expression in cyberspace and promoting digital rights in ASEAN, it is important to realize that the concept of digital rights is very vague: It can be debated using various perspectives, and there will always be disagreements about the meaning and interpretation of relevant rights, whether it belongs to the users, citizens or humans—and how they should be balanced with security

or economic efficiency, to name a few other concerns to take into account (Karppinen, 2017). Nevertheless, it is apparent that ASEAN leaders could agree on pushing ASEAN toward a secure, sustainable and transformative digitally enabled economy as stipulated by the ASEAN Information and Communication Technology (ICT) Masterplan 2020 (ASEAN, 2015). Indeed, ASEAN covers a region of 330 million internet users engaging in e-Commerce worth US$50 billion in 2017 (Custer, 2018), serving the region with not only tremendous economic opportunities, but also challenges.

Responding to the opportunities and challenges the digital economy presents is a must, and the urgency is recognized by recent ASEAN strategy documents seeking to position ASEAN in a transition toward a digital economy. More importantly, being one of the three pillars of the ASEAN Community, the ASEAN Economic Community (AEC) Blueprint 2025 contains an element of e- commerce within which are harmonized consumer rights and protection laws. The ASEAN Digital Integration Framework, which aims to develop mechanisms to develop coordination to enhance enforcement of intellectual property rights in the digital environment, integrate e-commerce considerations into the ASEAN High-level Consumer Protection Principles and enhance consumer rights awareness is one among various other frameworks to prepare the region for the transition, like the Framework on Personal Data Protection and Framework on Digital Data Governance (ASEAN, 2017). Suffice to say, ASEAN leaders show awareness that in the digital age, companies are generating, storing and maintaining an overwhelming amount of big data to assess markets and human behavior (Jenkins, 2015), hence the formation of regulations to protect consumer rights and governing digital data. Now, what happens to the social struggles happening in

cyberspace?

The issues of the threat of restrictive laws, fake news, safety of journalists and harassment of women online in ASEAN were discussed during the AICHR High Level Dialogue on Managing Freedom of Expression in the Information Age in 2018 (UNESCO, 2018). Then-representative of Indonesia to the AICHR, Dr. Dinna Wisnu, stated that while focusing on finding ways and means to secure freedom of expression, ASEAN member states also need to realize that understanding and identifying potential shortcomings in how freedom of expression is perceived and managed is equally important. It is true that the AICHR faces apparent challenges in ensuring freedom of expression in cyberspace, as some media outlets are facing intimidation by the state and having their licenses revoked, and religious, ethnic and social minorities continue to be subjected to discrimination (Wahyuningrum, 2018). Despite these serious issues, 10 years after its establishment the commission remains paralyzed by the guidelines to be "nonconfrontational" and to refrain from interference in member states' affairs, thereby raising the urgency to develop an evolutionary approach that could contribute to the development of human rights norms and standards in ASEAN (Wahyuningrum, 2018).

This evolutionary approach is stipulated within the AICHR's TOR, and while there is no definition on it, the ASEAN 2009 declaration on the Intergovernmental Commission on Human Rights clarified that its expected outcomes are balancing the promotion and protection mandate of the AICHR, among other things (ASEAN High Level Panel, 2009). However, it is misleading to think of an evolutionary approach as a linear change toward a credible human rights system when it is supposed to be a dynamic effort, the outcomes of which could be progressive, regressive or something in between

(Wahyuningrum, 2018). It can be inferred that the AICHR's inactivity on human rights issues is hampered by its own limits and state controls. It is also apparent that the challenges faced by the AICHR are new, it involves a whole range of complexity, adding digital governance and big data into the mix: The rapidly changing digital media environment requires deeper understanding to identify the potential shortcomings in how the freedom of expression is perceived and managed in ASEAN, just as Dr. Wisnu pointed out. This new digital environment could be a challenge, but it could also be an opportunity to evolve ASEAN's human rights mechanism. Hence, this chapter will discuss why the AICHR should consider technological development in the evolution of its human rights mechanism.

2 ASEAN and Human Rights Problems in the New Digital Environment

ASEAN and digital transformation are inseparable. Forecast to have 483 million internet users by 2020, Thailand, Indonesia, Vietnam, the Philippines, Malaysia and Singapore's online retail market combined is projected to reach $88 billion by 2025 (Hong Kong Trade Development Council, 2017). However, economic growth is not the only thing following digital transformation. The Internet of Things (IoT)— part of the transformation—is also an increasingly important tool through which human rights defenders and activists mobilize and advocate. Simultaneously, it provides people with access to infinite amounts of information. Given its versatility, the United Nations Human Rights Council (UNHRC) passed a resolution affirming that "the same rights people have offline must also be protected online," (UNHRC, 2016).

This acknowledgment calls for further elaboration on the universal definition of human rights protection online and adoption of viable frameworks or policies to address the human rights violations online in ASEAN.

Human rights violations online in ASEAN as discussed during the AICHR High Level Dialogue on Managing Freedom of Expression in the Information Age in 2018 include the threat of restrictive laws, fake news, safety of journalists and harassment of women online (UNESCO, 2018). In Thailand, for instance, the Thai state and military initiated Cyber Scouts and Cyber Witch Hunts programs to curb political opposition to the authoritarian government after the 2014 coup d'état online (Laungamsari, 2016). Simultaneously, groups such as Social Sanction (SS) and Rubbish Collector Organization (RCO) utilize Facebook as a platform to spread hate speech and mobilize mass events supporting the authoritarian government. In 2016, the Thai UNHCR branch had to shut down its Facebook page as a result of relentless threats and internet attacks launched by the RCO after the international organization granted asylum for a government opposition activist (Schaffar, 2016). Furthermore, Thai's lese-majeste law bans Thai citizens from insulting the monarchy—a provision now hampering prodemocracy activists and putting at least 117 authoritarian government's critics in jail from 2014 to 2018 (Nitta and Ono, 2018). Nevertheless, the other nine ASEAN member states also struggle with laws restricting freedom of speech online.

In Cambodia, the lese-majeste provision was introduced in March 2018, followed by amendments to articles 34 and 42 of Cambodia's Constitution to require every Cambodian to act against political parties that do not place the nation's interests first (Human Rights Watch, 2019). These new provisions hamper Cambodia's media freedoms further, as the country already suffers from

attacks on human rights defenders and the government's political oppositions as well as increasing government surveillance and interventions in social media networks (Human Rights Watch, 2019). On the other hand, the Indonesian government struggles in defining "negative content" in its endeavor to curb terrorism, hate speech and pornography.

Lacking a clear definition of "negative content" and proper reporting mechanism, the Indonesian Electronic Information and Transactions Law (ITE Law) was deemed unaccountable and vague by the Institute for Policy Research and Advocacy (ELSAM) and other human rights groups (The Jakarta Post, 2019). Furthermore, the revision of the 2008 ITE Law passed in 2016 grants the government full authority to terminate access to prohibited content and requires electronic system organizers to delete electronic information deemed irrelevant by someone requesting deletion based on court ruling—a capacity feared to lead to abuse of power and restriction to information (Johnson, 2016). Similarly, the Myanmar government has increased the use of its vaguely worded laws to imprison individuals.

In 2018, 60 percent of defendants charged for criminal defamation under section 66(d) of the 2013's Telecommunications Act were journalists and activists, with most complainants being the Myanmar government, military or political party officials (Human Rights Watch, 2019). These journalists and activists' offenses include broadcasting a satirical play about armed conflict on Facebook and sharing an experience as a forced child soldier at the age of 14 in an interview. The same pattern is seen in the Philippines, where Duterte's "war on drugs" takes a toll on media freedom.

The Duterte administration's threat to shut down Rappler.com—an online news outlet critical of the government's "war on drugs"—in January 2018

marked the increase in attacks on media freedom in the Philippines (Human Rights Watch, 2019). Another concern for the country's struggle for freedom of speech was the formulation of the new draft regulations by the Philippine House of Representatives in May 2018. Designed to allow Congress to ban reporters who sully lawmakers' reputation, the new draft regulations are deemed ambiguous and stifling by various journalists and several Congress members who denounced it (Human Rights Watch, 2019). While the "war on drugs" stifles critics in the Philippines, citizen's struggle for freedom of speech online in Malaysia stemmed from the government's endeavor to curb fake news.

Introduced in March 2018, Malaysia's Anti-Fake News law was criticized for its failure in considering technological advancement and vagueness (Human Rights Watch, 2019). Despite its shortcomings, the Anti Fake News law remains a Malaysian government endeavor to curb fake news—a small part of disinformation and misinformation that affect how societies perceive the world, the existence of which are made even more significant with the increasing utilization of social media (Yatid, 2019). The authorities in ASEAN member states are trying to keep up with technological advancement and continue their struggle with internal politics and human rights dynamics simultaneously. Nevertheless, while Malaysia's newly elected government has considered repealing the law, Vietnam's problematic Cybersecurity Law went into effect in January 2019.

According to the data localization and representative office requirement of the law, service providers are obliged to take down offensive content within 24 hours of receiving the Ministry of Public Security or the Ministry of Information and Communication's request as well as disclose user data to the authorities (Thuy, 2018).

Indeed, it is important to note that ASEAN's plan to digitalize should be hand-in-hand with proper policies and planning to ensure the fulfillment of human rights.

3 New Media, Social Media Activism and the ASEAN Struggle for Freedom of Expression Online: The Cases of Indonesia, Myanmar and Thailand

It is apparent that the discussion on the new media, interaction between technology and social, political and cultural structures and relationships, and the digital dimensions of political processes in ASEAN are a starting point to evolve ASEAN's human rights mechanism. This is because it can be seen that the phenomenon sparks various responses in ASEAN member states social and political dynamics, especially social media activism. In Indonesia, for instance, the belief in the internet as the deliverer of a better society put forth by the country's internet development actors, activists and users is believed to shape how technology, including social media, is used in Indonesia's domestic politics. While this stems from the belief that the source of Indonesia's successful resistance against Suharto was political mailing lists, the linkages between the internet, other media and offline social networks made radical information spread beyond the digital elites and reach society at large have to be taken into account to understand the problem ASEAN faces when it comes to ensuring freedom of expression in cyberspace (Lim, 2013). Thus, the term new media is fitting to explain the complexity of this phenomenon.

In a 2016 paper titled New Media in Southeast Asia: Concepts and Research Implications (2016), Dayana

Lengauer gathered various concepts revealing the depth and earnest implications of digital media in everyday and institutional life, giving insights into the dimensions of state-citizen relations that are often veiled. Various ethnographic studies have discovered the unusual ways in which digital technologies are becoming a part of daily dynamics of social, political and cultural life, even though it is important to note that this phenomenon largely depends on regional situations, infrastructure, offline relationships and other locality factors (Lengauer, 2016). Indeed, the term new media itself was introduced by Ilana Gershon (2012) as she argued that the definition of new in this sense is the people's perceptions and experiences with social media like Facebook and Instagram, rather than the technologies themselves. Thus, exploring the way in which different actors set their parameters for participation in cyberspace and seizing digital media for its socio-political and cultural agenda without disregarding political centralization, bureaucratization, urbanization and regional uniqueness is important to understand how digital media feeds into, reflects and shapes "symbolic struggles over the perception of the social world," (Bourdieu, 1989)—something that can be done by allowing the emergence of new types of exchange "across the gap between the virtual and the actual," (Boellstorff, 2012).

ASEAN member states like Singapore and the capital cities of Malaysia, Indonesia and Thailand are shaped and continuously modified by the scientific and technical novelty. Despite startling technological developments, digital divides continue to exist, often pointing to the "more fine-grained issues of social and economic status and access," (Tacchi, 2012). Development models that often center on the arguably interactive, participatory and democratic perspectives Web 2.0 technologies open

(Castells, 2009) overlook the more "informal ways in which the consumers, service providers and platforms come to subvert, resist and reconfigure mobile media infrastructures," (Horst, 2013). As scholars like Merlyna Lim and Jo Tacchi have argued, the availability of new media does not prescribe the development of a participatory culture. Furthermore, numerous cases in Indonesia show that social activism does not always yield the support of the masses, nor does it translate into a vast offline movement (Lengauer, 2016). These scholars are basically doing a more "careful analysis of political processes and their digital dimensions," (Postill, 2012) because digital media cultures evolve within a complex society and more encompassing systems of power relations. Hence, the process-related approach Postill introduced directs attention to the gaps between cyber and physical space where the emergence of the new forms of social interaction take form, instead of referring to cyber and physical space as two distinct and sovereign arenas of action (Lim, 2015).

Indeed, the significance of social media lies in the dynamics that unfolded as millions of people get in touch with technology and utilize it to collaborate, share information and socialize (Ellison & Boyd, 2013). The social impacts of the internet and social media are best understood as the "result of the organic interaction between technology and social, political, and cultural structures and relationships," (Lim, 2013). Both Pinkaew Laungamsari and Wolfram Schaffar follow Evgeny Morozov's (2012) critique on the idea that the new media is advancing democracy and freedom by showing how the Thai state and military utilize digital technology to militarized cyberspace in the aftermath of the 2014 coup d'état: Initiated by the government, programs such as Cyber Scouts and Cyber Witch Hunts are the harbingers of an emergent right-wing movement carried

by individuals and ultra-royalist groups dedicated to work as a countermovement against political oppositions and traitors of the regime (Laungamsari, 2016). Another example showing how features new media technologies are misused in Thailand is shown by Schaffar through the case of Social Sanction (SS) and Rubbish Collector Organization (RCO), both Facebook groups serving as a hate speech and mobilization tool for state-sponsored mass events by the authoritarian regime that came into power with the coup d'état. In 2016, the RCO managed to make the Thai United Nations High Commissioner of Human Rights (UNHCR) branch shut down its Facebook page after the group openly threatened and relentlessly launched internet attacks on the organization for granting asylum to a government opposition activist (Schaffar, 2016).

In Indonesia, on the other hand, social media's potential for politics has enthused optimistic pronouncements on digital empowerment and the renewal of public spheres. As Merlyna Lim (2017) argues, this overoptimistic view shows how social media platforms intensify civic exchanges among citizens, boost citizen engagement, alter political engagement, and enable citizen journalism that promotes transparency. Nevertheless, it is important to note that studies have also shown that the internet has been used to put forth not only democratic opinions, but also undemocratic ones (Lengauer, 2016). Social media's potential for grassroots activism in Indonesia was first heralded through Prita Mulyasari's case, where the mother of two was prosecuted for defamation in 2008 when she sent an e-mail to friends and relatives complaining about a certain private international hospital (Lim, 2017). This case became popular online, birthing the "Coin for Prita" Facebook page that managed to gather donations to pay her court fine—she was

eventually found not guilty. The draconian Cyber Law, as Toriq (2015) calls it—along with the defamation law used against her, though, remains to be problematic on its own. After being amended in 2016, activists from the Legal Aid Institute for the Press and the Institute of Policy Research and Advocacy noticed that the newly passed amendment granted the government capacity to terminate access to contents that were deemed inappropriate and prohibited it from the internet, which could possibly lead to power abuse (Johnson, 2016).

Nevertheless, a successful case of social media activism like Prita's case is largely an anomaly. While activists and marginalized communities use the media for many causes, social media provides a friendly environment for activism that revolves around simplified narratives targeting urban middle class consumers—the landscape is generally unfavorable for complex issues like injustice and inequalities, or for the poor (Lim, 2017), as causes of the poor are largely framed by middle class advocates, as Lim put it, and not by the poor themselves. Furthermore, it is important to note that social media platforms are dependent upon a larger media system, making social media activism dependent on "the incredible shrinking sound bite" culture of the mainstream media (Lim, 2017). Thus, bearing in mind that social media usage is embedded in everyday social and cultural practices of the urban middle class that revolves around consumption, the understanding of social media's impact on Indonesia's politics should be within the context of personalized forms of the urban middle class political participation's rise within which communication practices is inseparable from consumptive orientations (Lim, 2017). Indeed, in Indonesia, Lim argues that individuals are mobilized by commercial frameworks with affect and emotion as the main currencies.

It is important to note that communication technologies are not automatically political, but the use of digital media can undoubtedly be meaningful politically, like what had been shown by Prita's case. Thailand has shown the same positive impact of social media in its political dynamics: The political expressions and social media rhetoric of Thai women during the 2013-2014 Bangkok political protests analyzed by Olivia Guntarik and Verity Trott demonstrate how the rise of digital media has altered the trajectories of political experiences and formations of political participation in Thailand, as they argue that social and digital media have enabled Thai women to speak out their opinions despite the country's conflict laden environment. Furthermore, all previous discussions confirmed the significance of online communication platforms when offline forms of activism or other forms of social and political participation are restricted or limited. However, further inquiry into the wider effects and implications these technologies and their appropriation bring along for different actors and their "revolutionary" projects have to be done to pinpoint the problem of freedom of expression in ASEAN because of its relevance to the proliferation of hate speech and fake news in the region.

Since the digital media has become intrinsic to both the institutions that structure and the practices that organize social and political life, the rise of online activism is indicative for ongoing transformations within political landscapes and state-citizen relationships (Lengauer, 2016). Hence, Guntarik and Trott plead for reconsideration of what it means to be politically engaged in a digital age, adhering to changing forms of citizenship that develop along autonomous forms expression and loose networks of social interaction and are accompanied by a broader mistrust toward politicians (Lengauer, 2016).

Further inquiry on the implications of technologies in creating alternative spaces for political participation and civic engagement shows that there is rise of hate speech on social media as they become sites for the open expression of discontent, a trend in the context of Southeast Asian political dynamics (Lengauer, 2016).

In Myanmar, Rainer Eizenberger discusses popular interpretations of the internet and local use of social media. According to his interview with the cofounders of the Myanmar ICT for Development Organization (MIDO), seeing the fact that digital technologies and new media only recently hit Myanmar's market, Facebook is largely perceived as a legitimate news channel. While the internet is the "central conduit and node" (Coleman, 2010) for the work of both freelance journalists and news agencies, the difference between quality news and light package of information may not be clear under some circumstances (Lim, 2013). Indeed, as had been mentioned before, the narrative of activism always competes with entertainment content tailored for urban middle-class consumers. Furthermore, as Lim (2017) argues, it is important to note that a high proportion of users access social media from mobile devices are tailored for the quick bite experience.

Social media activism marks a period of innovation and experimentation in the use of new media technologies and participatory culture. Online expression and popular culture, combined with socialization, create multiple layers where millions of Indonesians come together. On Facebook, Twitter, and the like, citizens meet, organize, collaborate and act—however, these platforms, as Lim argues, do not facilitate deliberative discourses on complex issues, mainly because the features of social media are first and foremost, social. Hence, as it should be, utilization of social media by urban middle classes revolve around fun, self-expression and social gain—it facilitates and amplifies

a culture that helps establish a foundation, a training ground, and a learning space for individuals to express their opinions, exercise their rights and to collaborate with others. Understanding the nature and limitations of social media activism and its conditions for success, activists may utilize, employ and transform it into meaningful civic engagement and political participation (Lim, 2013). This brings about the necessity to analyze how this can be achieved and what kind of concept should be utilized to show the way in which news of social and political significance is produced, disseminated and consumed within social media platforms.

4 Algorithmic Regulation

Algorithmic regulation is essentially decision-making systems that regulate a domain of activity to manage risks or alter behavior by doing continuous computational generation of knowledge (Yeung, 2018). Like so, the systems continuously collect real-time data emitted from numerous dynamic components within a regulated environment. The collected data is then used to identify, as well as automatically refine or prompt refinement of the system's operations when necessary—in order to achieve a prespecified goal (Yeung, 2018). Yeung explained that there are two types of decision-making systems: reactive and preemptive. Yeung also introduced a taxonomy identifying eight different forms of algorithmic regulation based on their configuration at each of the three stages of the cybernetic process that takes place at the level of standard setting, information gathering and monitoring, and at the level of sanction and behavioral change (Yeung, 2018).

On the two types of decision-making systems, the

first one is reactive systems, which trigger an automated response based on algorithmic analysis of historic data. Preemptive systems, on the other hand, act preemptively based on the algorithmic assessment of historic data in order to infer predictions about future behavior (Yeung, 2018). These two types are distinctive from each other based on their underlying logic drawn from the various standards of regulatory governance's literature. The logic behind reactive algorithmic systems, for instance, can be examined by drawing on insights from "tools of government" literature that can be found within public administration, which are outcome-based regulation and performance-management systems (Yeung, 2018). Conversely, preemptive algorithmic systems are understood as an arrangement of risk-based regulation, as an arrangement of actuarial justice, and as an arrangement of systematic surveillance-driven "social sorting" (Yeung, 2018).

Focusing on the preemptive algorithmic systems and the three types of arrangements underneath the umbrella. As an arrangement of risk-based regulation, it is utilized to monitor the performance of regulated entities to identify those considered "high risk" and thus prioritized for attention (Yeung, 2018). As an arrangement of actuarial justice, algorithmic regulation is oriented towards intervention seeking to shape the future by preventing unwanted activities, accentuating the power of risk profiling process that is greatly enhanced by the utilization of Big Data analytics (Yeung, 2018). Last, as an arrangement of systematic surveillance-driven social sorting, algorithmic regulation utilizes data mining techniques to segment populations into different user groups and targeting them accordingly. Through this process, objects of interest can be profiled.

5 Governance by Algorithms and Digital ASEAN Initiative

The role of algorithms in development of the Internet of Things (IoT) lies in mining, sorting and configuring large sets of data comprised of potentially useful information into useful packages (Danaher, et al., 2017). Indeed, algorithms are problem solving mechanisms—it includes Big Data and the algorithmic treatment of these data (Castro, 2018). Seeing that the new media phenomenon ignited various social and political issues in ASEAN, focusing on internet-based services built on algorithmic selection will bring a new light on how, unbeknownst to policymakers, governance by algorithm is taking place and why an adequate democratic legitimation of this form of governance by algorithms is necessary, strengthening the argument that mainstreaming algorithmic research to accumulate more data to explain the features and risks algorithms present in all ASEAN member states is important for the evolution of an ASEAN human rights mechanism.

Just and Latzer (2017) put their attention specifically on internet-based services that build on algorithmic selection, which is defined by the automated assignment of relevance to specifically selected pieces of information. Just and Latzer (2017) provided a basis for the discussion of the governing role of algorithms in information societies, characterized by a growing flood of big digital data creating a rise in demand for automated algorithmic selection to handle and make sense of massively collected data, by showing the categorization of internet applications build on algorithmic selection in accordance to their central societal function ranging from search (e.g. Google, Shutterstock, Info.com, Ask.com), surveillance (e.g. Sonar,

Webwatcher), and forecasting (e.g. PredPol) to filtering (e.g. Norton), content production (e.g. Google AdSense, Yahoo!) and recommendations (e.g. Spotify, Netflix) (Latzer, et al., 2014). The functioning of these algorithmic selection applications can be best described and explained with a basic input-throughput-output model: Starting from a user request and available user characteristics, statistical operations to select elements from a basic data set are applied, and relevance is assigned. Algorithmic selection on the internet is, in accordance to this process, defined as a process that assigns relevance to information elements of data set by an automated, statistical assessment of data signals that are decentralized generated (Just & Latzer, 2017).

The role of algorithms in managing contemporary society, Castro (2018) argues, is heavily associated with neoliberalism. Castro argues that Big Data denotes the injunction of "measurability that affects all walks of life and is beholden to competition, [with] the latter looms as an intrinsic value to neoliberalism, dissociating itself from cooperation through the division of labor, established as the standard of economic organization by Adam Smith (1981) and social structure by Durkheim (1893)." Further arguing that algorithmic analytics are projecting a market framework into the social sphere and amounts to a kind of risk management, Castro contributes to this writing by showing that ASEAN's initiatives in digital transformation to enhance its digital economic prowess makes mainstreaming algorithmic research to strengthen its human rights mechanism even more crucial.

The Digital ASEAN initiative is led by a coalition of leading tech companies, including Cisco, Google, Grab, Lazada, Microsoft, Sea Group and Tokopedia, according to the Center for Finance, Technology and Entrepreneurship. Indeed, the Digital ASEAN initiative was announced

at the World Economic Forum in 2018, where ASEAN leaders pledged to train 20 million people in Southeast Asian Small and Medium Enterprises (SMEs) by 2020 and commitments from the aforementioned companies to hire and train 200,000 digital workers in ASEAN (Centre for Finance, Technology and Entrepreneurship, 2019). Member countries' determination to follow up this pledge and further the region's digital transformation can also be seen through the integration of the top-down governmental plan in Singapore's regulatory bodies, called Smart Nation, that is dedicated to transition Singapore into a digital innovation hub (Centre for Finance, Technology and Entrepreneurship, 2019). Other ASEAN countries have followed suit: Industry4WRD—an initiative which aim is to speed up digitization of local manufacturing companies to improve efficiency and productivity—was recently launched in Malaysia. The Philippines, on the other hand, promotes digitization by launching the Inclusive Industrial Strategy (i3s) initiative focused on revamping the country's industrial, logistics and commerce sector through the introduction of Big Data and analytics, while Thailand has Thailand 4.0 and Indonesia has Indonesia 4.0.

Discussion on the ASEAN human rights mechanism is therefore getting more and more complicated—in the wake of the proliferation of governance by algorithm, the algorithmic predictions of user preferences deployed by social media platforms guide not only what advertisements individuals might see, but they also personalize search results and dictate the way in which social media feeds, including newsfeeds, are arranged. A Council of Europe (2018) study, for instance, considers the centrality for many experiences of the Internet as a quasi-public sphere (Latzer, 2013) and the ability to massively amplify certain voices (Latzer, 2013) of big platforms like Google and Facebook.

On the other hand, the personalization of information that users receive based on their predicted preferences and interests can create what is called "filter bubbles", which could compromise the right to information comprised within freedom of expression. While filter bubbles and echo chambers are concepts that are plausible and widely discussed, it is important to note that empirical evidence for their existence in ASEAN is intertwined. Europe is facing the same challenge in this matter.

Nevertheless, the point remains that in the wake of the Digital ASEAN initiative, the degree to which the digital media and device networks can be utilized as tools of social control continues to be a concern (Shorey & Howard, 2016). From the discussion of the new media phenomenon in ASEAN countries and the Digital ASEAN Initiative, it can be inferred that algorithms do have a governing role. Governance can generally be understood as institutional steering, which is further elaborated by Latzer (2014) as the horizontal and vertical extension of the traditional government. Horizontally, this role of governance requires the role of actively governing technology to be adequately considered—vertically, it suggests focusing on multilevel governance including global aspects and technological governance strategies—hence the application co-evolutionary and institutional perspective on governance by algorithm (Just & Latzer, 2017). In the contemporary world, technology, particularly software, has been playing a growing role in the media sector. Related to this is the emerging awareness that technology can have impacts and can be perceived as an actor or agency or as an institution that could affect individual or collective behavior and eventually social order. This situation calls for and leads to an intensified discussion about the role and characteristics of different technologies (Just & Latzer, 2017).

In line with the growing awareness of algorithms'

significance in the evolution of communication systems, technological issues are increasingly seen and treated as policy issues, also in the case of algorithms, directing attention away from a merely functional or instrumental understanding of technology to an understanding that technology (software) is design, even a reality construction with the ability to evoke a specific behavior, to shape and reshape meaning and activities (Latzer, 2013). If internet governance is defined as how a multitude of actors and their governance mechanisms or instruments shape the evolution and the utilization of the internet, then (software) technology needs special attention – both as a governance mechanism or instrument and as an actor (Just & Latzer, 2017).

The assessment of technology's role as an instrument of governance and actor in general, and of algorithmic selection on the internet specifically, depends on the choice of analytical lenses. The long debate on the rights approach is characterized by an antagonism between technical and social determinism. In most cases, also in communications, technology is, in the contemporary world, understood as being shaped primarily by social forces (Just & Latzer, 2017)—a perspective believed to systematically underestimate technology's role. The research is challenged with the situation where theories, classifications and research findings have been elaborated on the basis of a techno-economic reality that no longer exists, based on a pre-Internet reality that no longer reflects media convergence and the evolution of quaternary media, represented by algorithmic selection applications. An innovation-coevolution-complexity approach introduced by Latzer (2013) allows the appropriate integration of the role of technology and technological change taking place in the contemporary world, seeing the fact that innovations such as new algorithms are the center of

change. It is also important to note that the advantage of innovation approaches in technology studies lie in their finding that technology is not just formed by society, but that it can also be active as a structure, institution and even actor (Latzer, 2013).

Combined with evolution theories, innovation theories are moved towards an evolutionary economics of innovation (Just & Latzer, 2017). This perspective posits that technological innovation processes are understood and assessed as evolutionary processes (Just & Latzer, 2017). The term "complexity" comes from the fact that algorithms have features like elements' interdependencies, nonlinear developments, emergence, and feedback loops characterize complex systems. Furthermore, they are both systems where big networks of interdependent components without central steering and with only simple rules on the individual level develop sophisticated collective behavior characterized by highly developed information processing and a capability to adapt through trial and error learning, which are both characteristics of evolution (Just & Latzer, 2017). These complexity characteristics, including the resulting low predictability and controllability in policymaking, clarify the evolution of the internet in general and the effects of algorithms on, specifically, the internet (Latzer, 2013).

6 Digital Revolution and the Evolution of the ASEAN Human Rights Mechanism

The Digital ASEAN Initiative invites more people to be included in the digitization of the region—technology is widely used in a lot of aspects, and before no time, innovations in networked digital communication technologies and the rise of Big Data, omnipresent

computing, and cloud storage systems, it is getting more and more important to ensure the legitimacy and accountability of these technologies, or software—which algorithms are a part of. Social media activism marks a period of innovation and experimentation in the utilization of the new media technologies and participatory culture. Online expression and popular culture, combined with socialization, create multiple layers where millions of Indonesians come together. On Facebook, Twitter, and the like, citizens meet, organize, collaborate and act—however, these platforms do not facilitate deliberative discourses on complex issues, mainly because the features of social media is first and foremost, social. Still, it has the potential to be a platform of meaningful civic engagement and political participation. Acknowledging the fact that activities in general and media consumption are increasingly shaped by automated algorithmic selection is the first step to make sure its legitimacy and regulate it.

Amid the growing use of technology in ASEAN, focusing on internet-based services that build on algorithmic selection, or the automated assignment of relevance to selected pieces of information, Just and Latzer provided an empirically based, functional typology of the rapidly growing number of services that build on automated algorithmic selection of the internet that demonstrate the broad scope of algorithmic selection applications in information societies with algorithmized societal functions ranging from search and recommendations to forecasts and content production (Just & Latzer, 2017). Algorithmic selection applications are a prime example of the growing importance of software, as well as an example of the governing role of software. As an institution, software is affecting societies similarly to laws, contracts, and values that are imprinted in algorithms. A basic governance model technological and societal change

shows the co- evolutionary interplay and highlights the role of technology simultaneously designing and being designed. Algorithms are active in governance tools, as well as self-learning and relatively autonomous actors in increasingly complex ecosystems, characterized by nonlinear developments, emergence, and feedback loops. The consequences of growing complexity are declining predictably and controllability, as well as increasingly unintended consequences of private and public attempts to govern via algorithms (Just & Latzer, 2017).

Based on empirical-analytical findings, it is argued that algorithmic selection on the internet has become a growing source of and factor in social order, in a shared social reality in societies, which is increasingly what we think about but also how we think about it and consequently how we act, thereby coshaping the construction of individuals' realities, structurally similar but essentially different to mass media (Just & Latzer, 2017). Algorithmic reality construction has various peculiarities, and it differs from reality construction by the traditional mass media and consequently the social order in contemporary information societies. Generally, these differences lie first in the growing personalization of constructed realities and the subsequent individualization effects. Second, there are major differences in the constellation of actors, a consistent part of the internet's ecosystem (Just & Latzer, 2017).

Personalization as a formative feature of algorithmic reality construction happens based on user characteristics, behavior, and location. It furthers individualization in societies, both in the form of dangerous and endangered individuals: dangerous in the sense of fragmentation, fewer unplanned encounters and less shared experience, and decreasing social cohesion—and endangered, in a sense of more controlled individuals, with less privacy and freedom. Nonetheless, technology not only causes these

problems but at the same time offers solutions by the way it is designed (Just & Latzer, 2017). Essentially, the special constellation of actors in algorithmic reality construction is marked by the dominance of private governance by global companies, increasing platformization, and algorithms as actors and policymakers. The prevalence of private algorithmic governance based on proprietary Big Data tends to strengthen selection criteria oriented on special interests concerned with profit maximization, thus weakening public interest goals and social responsibility in the construction of reality and eventually consolidating and creating new social inequalities (Just & Latzer, 2017). Algorithms as intermediaries push the platformization of markets and modify power structures, leading the mass media to lose ground in the construction of realities. Furthermore, the increasing role of algorithms as actors that are relatively autonomous with delegated (moral) agency, driven by rising machine intelligence, raises agency and accountability challenges for complex ecosystems that produce outcomes that are less controllable and predictable when compared to mass media's reality construction (Just & Latzer, 2017).

Altogether, this comparative exploration of governance by algorithms demonstrates how and in which direction the increasing individualization, commercialization, inequalities, and deterritorialization and decreasing transparency, controllability, and predictability that algorithmic selection in the internet tends to shape individuals' realities and consequently, social order. From a public-policy perspective, formative features of algorithmic reality construction highlight several risks—making adequate democratic legitimation of this form of governance by algorithms to be called for. All in all, the article suggests that the overview of features and risks identified can form the basis for further

investigation in this direction.

The importance of why a human rights mechanism is needed in the fulfillment, protection and respect of human rights is to ensure that through independent institutions the principles of human rights can still be well implemented even in a country led by an authoritarian regime. This mechanism is also carried out when the process of establishing international human rights standards reaches its peak with the adoption of a number of international instruments, the United Nations (UN) begins to move the next stage of implementation through reporting, monitoring and enforcing the norms stated in these instruments. This is done openly by the appointment of a Special Rapporteurs team filled by independent experts appointed by the United Nations, whose main task is to look for facts that occur in the country relating to human rights violations and report them back to the UN (Subedi, 2011).

The human rights mechanism at the international level has important functions to monitor the implementation of human rights values by states who are bound into international agreements. Such actions will be very influential when a country is still controlled by an authoritarian government where individual complaints about the fulfillment of human rights by the state are taboo. However, the shortcomings of this mechanism lie in the fact that its implementation requires the approval of the parties, especially the state. Then, the recommendations made by the treaty bodies have a non-binding nature because the implementation remains dependent on the goodwill of the state to meet the recommendations of the committee (Nurhidayatuloh & Febrian, 2019).

Regional human rights protection mechanisms constitute the main pillars of the international system for the promotion and protection of human rights. In the last

decade, several nonlegally binding declarations on human rights have been adopted, such as the Declaration on the Elimination of Violence against Women in the ASEAN Region, the Declaration against Trafficking in Persons Particularly Women and Children, and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

The quest for the AICHR is to respond to the need for checks and balances in the exercise of power, and the need to build an effective and accessible system for the promotion and protection of human rights from the national to the regional, complemented by the multilateral (Muntarbhorn, 2012), with the simple philosophy behind this approach being that of "human rights are and should be the business of everyone," (Muntarbhorn, 2012). The expectations faced by ASEAN are thus high, especially because of the Charter and the birth of the various bodies mentioned. The challenge now is to progress beyond the legitimization of human rights through those entry points – to the actualization of human rights in terms of genuine protection and implementation of human rights. One of the AICHR's shortcomings is that it has no authority to issue binding decisions, consider cases, or conduct investigative visits. These missing functions and the lack of binding requirements for independence and expertise of the AICHR members lead to criticism, with the most criticized provision being "decision by consensus" only, which implies that each state might reject any criticism of its human rights records by veto (Raventos, et al., 2010).

In accordance to its mandate and functions, being proactive is encouraged in Article 5— this includes an invitation to promote the implementation of international instruments on behalf of women and children, help the UN's Universal Periodic Review and helping report preparation for human rights treaties, encourage data

collection, capacity building and review of national laws and practices, promote actions for the prevention and elimination of all forms of the violations against the rights of women and children—including victims' protection and support for women and children's participation (ASEAN Secretariat, 2010).

7 Results

Although the important argument of this chapter will be that technology matters to human rights promotion and protection in ASEAN, it is important to understand why technology matters for ASEAN. Wiebe E. Bijker's explanation on why technology matters to politics, and vice versa, is observable in ASEAN's case. First, the reason lies in the relations between technology and modernization (Jasanoff, 2006). Modernization theorists such as Emile Durkheim, Karl Marx, and Max Weber began with the Industrial Revolution and how it transformed societies and politics in Western Europe. Subsequently, there is a link between modernization and development. Graham (2001) observes that the technological revolution produced a major realignment in politics and economics as it is linked to information technology, the growth of knowledge-based industries, and the globalization of economic processes (Jasanoff, 2006). In this general conception of modernization, the relation between technology and democratization is also relevant for ASEAN, considering the region's demographic shift to a younger population, rising middle class, and rapid implementation of technology (ASEAN, 2012). Going back to the emergence of knowledge-based industries. These industries create "knowledge societies" where democratic institutions are favored because these

societies are comprised of well-educated and innovative workers who tend to apply this point of view to politics, making them more active and demanding (Inglehart, 2001). In Indonesia's case, however, increasing citizens' participation in politics could be seen from Merlyna Lim's (2017) analysis on the 2017 Jakarta gubernatorial campaign. Outburst of social media utilization was becoming an effective tool for electoral politics as it eases information dissemination to influence voters and facilitates freedom of expression, transforming the creation, dissemination, and distribution of information. The positive relationship between technology and democratization can also be observed in the increasing networks of activists focusing on issues of pluralism, equality, and justice. However, Lim (2017) noted that "freedom to hate"—a condition where social media acts as a platform for citizens to voice their negative, divisive comments—simultaneously emerge. This poses another challenge for policymakers. Nevertheless, in this case, technology, specifically social media, matters to Indonesia because it is shaping the modern state as well as its democratic and political institutions.

Second, technology matters to ASEAN because it sets the conditions for political discussion and development—it helps shape ASEAN government's aims and means, and simultaneously becomes an object of politics and technology policy (Jasanoff, 2006). In ASEAN's case, the standard image of technology is the dominant view widely held by politicians. In the political thought domain, this "standard image" leads to technocratic proposals where technology is seen as an end to itself. This implies a technological deterministic view of technology and society, which Bijker (2006) posits to be comprised of two elements: First, technology develops autonomously and is independent of external influences. Second, technology shapes society through its economic and social impact. Even

though technological determinism is criticized because it assumes that technology is immune from political debate or policymaking, ASEAN governments arguably think that politics can only anticipate technological developments and effects (Winner, 1977). Applied to, for example, the rapid penetration of international satellite television in Malaysia in 1992. Malaysian Prime Minister Mahathir Mohamad said that, "the people must equip themselves with new technologies to face an ever-competitive world (Atkins, 2002)." The Prime Minister's speech implies that the complex forces shaping the use of satellite technology and the programming to be relayed on it were dwarfed by the mere potential of the satellite as a medium. This understanding encapsulates the implementation of ASEAN's Digital Transformation initiative with economic transformation as its main goal.

The establishment of the AICHR in 2009 marks the institutionalization of human rights promotion and protection in ASEAN. Adjacent to the AICHR's orchestration is the emergence of ASEAN governments' initiative toward digital transformation marked by the birth of the first ASEAN Information and Communication Technology (ICT) Masterplan 2015 in 2010. The ICT Masterplan 2015 became the symbol of significant progress in economic transformation, people empowerment and engagement, infrastructure development, human capital development and bridging a digital divide in the region (ASEAN, 2015). In 2015, the ASEAN Community was established. Comprised of the ASEAN Political-Security Community (APSC), ASEAN Socio-Cultural Community (ASCC), and most importantly the ASEAN Economic Community (AEC), the significance of ICT in supporting regional integration and connectivity continued to skyrocket.

ASEAN government realizes that ASEAN has

a great potential in becoming the world's fourth largest economy by 2030, considering the region's demographic shift to a younger population, a rising middle class, and rapid adoption of technology (ASEAN, 2012). This rapid use of technology could contribute to the growth of its digital economy from USD31 billion in 2015 to USD197 billion by 2025, leading to the conclusion that the digital economy is the key factor in driving the region's economic growth. However, the relationship between ASEAN Digital Transformation initiative and economic growth is uncanny. According to ASEAN's ICT Masterplan 2020 (AIM 2020), ASEAN is committed to achieve an accessible, inclusive and affordable digital economy, deployment of next-generation ICT to enable growth, creating a sustainable development through smart city technologies, and establishing ICT with the ability to support a single regional market to facilitate regional integration and connectivity efforts (ASEAN, 2015). Another example of ASEAN government's commitment to implement the Digital Transformation initiative to enhance trade and investment, provide e-Business platforms and green technology could also be seen in AEC Blueprint 2025 (ASEAN-Australia Business Summit, 2018). One of the outcomes of this commitment, is foreign and ASEAN digital multinational enterprises (MNEs) as well as ICT companies' increasing attention to ASEAN. Thus, it could be seen that technology matters to ASEAN not just because it shapes the region but also because it brings on many possibilities that must be considered in the protection and promotion of human rights.

Yeung's contribution in explaining the continuity of long-established approaches (regulatory governance, legal and social science literature) in algorithmic regulations helps in mapping the enablers and challenges of technological disruption unfolding in ASEAN. Taking

the Digital Transformation initiative as a case study shows that keeping track of multiple innovations and tackling the ensuing implications of their implementation, especially towards human rights, can be overwhelming for policymakers. Indeed, as the World Economic Forum posits in its 2014 "Delivering Digital Infrastructure: Advancing the Internet Economy" Industry Agenda issue that policymakers need to be aware of the potential for fragmentation at multiple levels in how, and by what rules, technology is governed (World Economic Forum, 2014). This makes it important for ASEAN through the AICHR as its human rights body to evolve in sync with ASEAN's learning economy and society (Hanna, 2018). Take in the example of Smart Nation initiatives taking place all over ASEAN countries—AICHR has an important role in setting appropriate goals for ASEAN that prioritizes human rights.

8 Conclusion and Further Research

Setting an appropriate goal for ASEAN is crucial considering its Digital Transformation initiative. The role of the AICHR is crucial in this transformation stage to make sure that the ASEAN government is setting appropriate goals for inclusivity and human rights protection and promotion in the implementation of the initiative rather than focusing merely on the economic growth.

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