

---

## Who's All?: 10 Years of SOGIE Exclusion From The ASEAN Human Rights Declaration

The ASEAN Human Rights Declaration (AHRD) has raised the standard of an international human rights instrument by introducing the right to peace; right to development; and right to a safe, clean, and sustainable environment.<sup>1</sup> The addition of these rights in the manuscript were based on the 'Value Adding' of ASEAN's social, economic, and political particularity. As much as it is a step forward towards a more accurate and adaptive set of rights, the use of ASEAN Values in the promulgation of a human rights instrument also means the erasure of certain rights considered as not in accordance with the ASEAN Values. One of them is the rights associated with Sexual Orientation and Gender Identity/Expression (SOGIE). Despite being universally recognized and protected through the adoption of the Universal Declaration of Human Rights (UDHR), SOGIE rights continue to be left out from ASEAN's human rights regime. The exclusion of SOGIE rights is reflected through the absence of any mention or recognition of SOGIE throughout the document, specifically the omission of SOGIE as one of the bases of the non-discrimination principle in Article 2.

Ten years after its unveiling, the exclusion of SOGIE from AHRD is still facing innumerable criticisms. The pressure for an amendment does not come only from within, but also from various outside parties.<sup>2</sup> This reaction is understandable considering the expected significance of AHRD in cultivating new and progressive human rights norms in Southeast Asia. Even though the power of the ASEAN Intergovernmental Commission on Human Rights (AICHR) as the main body of authority of AHRD is still limited, its existence helps to legitimize norms that protect political contestation, which pushes the enforcement of these rights in domestic political settings.<sup>3</sup> While rights do not necessarily give birth to access, the establishment of SOGIE rights in the AHRD will grant LGBT+ individuals a stepping stone to pursue other basic human rights. The ASEAN Community Vision 2025 Statement expresses Southeast Asia's future that is rules-based, people-oriented, and people-centered: a future in which democracy, good governance, human rights, and fundamental freedoms are enjoyed by all. However, the disregard of LGBT+ Southeast Asians whose lives are subject to violent and systematic discrimination has made numerous parties skeptical of this statement. This tragedy seeks an answer to the question: who do we mean by "All"?

The impact of SOGIE exclusion from the AHRD extends much beyond the normative level. Despite some existing progress for equality, the lack of a legitimate political instrument to protect

---

<sup>1</sup> Renshaw, C. S. (2013). The ASEAN human rights declaration 2012. *Human Rights Law Review*, 13(3), 557-579.

<sup>2</sup> *Ibid.*

<sup>3</sup> Langlois, A. J. (2021). Human rights in Southeast Asia: ASEAN's rights regime after its first decade. *Journal of Human Rights*, 20(2), 151-157.

SOGIE rights has made the current application of SOGIE rights remain arbitrary, vague, inconsistent, varied and contradictory, especially at the domestic level.<sup>4</sup> For example: in 2020, the Indonesian House of Representatives failed to pass a legislation criminalizing homosexual conduct through the Family Resilience Bill due to the concern of government's interference in Indonesian citizen's private lives.<sup>5</sup> However, in the same year, Jakarta Police raided a private party and charged nine men of the LGBT community with the pornography law which carries a maximum sentence of 15 years of imprisonment.<sup>6</sup> This unclear and uneven respect to SOGIE rights on institutional and individual level is also observed in other Southeast Asian countries.<sup>7</sup>

As long as SOGIE rights are not recognized and protected through the AHRD, LGBT+ Southeast Asians will continue to face insecurity and constant fear of unlawful persecution. The exclusion of SOGIE in AHRD has been proven to worsen the ambiguity of law enforcement associated with SOGIE-related issues. As a community that strives to provide opportunities for all, the recognition of the fundamental rights of marginalized groups should be the bare minimum of what it means to include "All." Ten years after its implementation, the AHRD may still fail to include all of us. However, all of us have many years to come to work together and redefine the meaning of "All."

Total 632 words count

#### References:

- Langlois, A. J. (2021). Human rights in Southeast Asia: ASEAN's rights regime after its first decade. *Journal of Human Rights*, 20(2), 151-157.
- McDonald, J. (2020). *LGBT Community Targeted by Police in Indonesia*. Thediplomat.com. Retrieved 30 August 2022, from <https://thediplomat.com/2020/09/lgbt-community-targeted-by-police-in-indonesia/>
- Renshaw, C. S. (2013). The ASEAN human rights declaration 2012. *Human Rights Law Review*, 13(3), 557-579.
- Sutrisno, B. (2020). *House continues deliberation of controversial family resilience bill*. The Jakarta Post. Retrieved 30 August 2022, from <https://www.thejakartapost.com/news/2020/09/21/house-continues-deliberation-of-controversial-family-resilience-bill.html>.
- Wilkinson, C., Gerber, P., Offord, B., & Langlois, A. J. (2017). LGBT Rights in Southeast Asia: One Step Forward, Two Steps Back?. *IAFOR Journal of Asian Studies*, 3(1), 5-17.

---

<sup>4</sup> Wilkinson, C., Gerber, P., Offord, B., & Langlois, A. J. (2017). LGBT Rights in Southeast Asia: One Step Forward, Two Steps Back?. *IAFOR Journal of Asian Studies*, 3(1), 5-17.

<sup>5</sup> Sutrisno, B. (2020). *House continues deliberation of controversial family resilience bill*. The Jakarta Post. Retrieved 30 August 2022, from <https://www.thejakartapost.com/news/2020/09/21/house-continues-deliberation-of-controversial-family-resilience-bill.html>.

<sup>6</sup> McDonald, J. (2020). *LGBT Community Targeted by Police in Indonesia*. Thediplomat.com. Retrieved 30 August 2022, from <https://thediplomat.com/2020/09/lgbt-community-targeted-by-police-in-indonesia/>.

<sup>7</sup> Wilkinson, et. al. *Loc. Cit.*