

ASEAN BRIEFS

The Right to Education in Emergencies
and the Case of the COVID-19 Pandemic



Vol. 7/ Issue 1/ July 2020





ASEAN Briefs is a regular publication about current developments on ASEAN regionalism, especially in the Political-Security, Economic as well as Socio - Cultural Pillars.

**The Habibie Center -
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Executive Summary

“Primary education shall be compulsory and available free to all.”

*(The International Covenant on Economic,
Social, and Cultural Rights, Article 13(2)(a))*

This issue of ASEAN Briefs mainly explores the right to education in emergencies, particularly for children, and the urgency for governments to protect such right amidst the situation of the COVID-19 pandemic, highlighting on Southeast Asian countries.

International law recognizes education as a fundamental right. Education in emergencies is important as schools provide stability for their students amidst the uncertainties and serve as an important institution for children to learn and gain information they can trust. However, the pandemic has forced school closures around the globe, and while some governments has been exemplary in demonstrating swift adaptation to distant learning, others have not performed as well due to various reasons, including Internet availability discrepancies. Amongst the challenges, this issue of ASEAN Briefs argues that governments are responsible for respecting, protecting, and fulfilling such right, with maximum use of available resources.

For the purpose of this brief, education discussed here mainly refers to primary education.



Introduction: education in emergencies

In January, the World Health Organisation (WHO) declared the COVID-19 situation as a public health emergency of international concern, which is defined in the International Health Regulations document as “an extraordinary event which is determined [...] to constitute a public health risk to other States through the international spread of disease and to potentially require a coordinated international response”.¹ COVID-19 has impacted all sectors in almost every state, and education is of no exception. As of 23 June 2020, the United Nations Educational, Scientific, and Cultural Organisation (UNESCO) recorded 1,089,749,858 affected learners – or 62.2% of total enrolled learners – and 118 country-wide school closures across the globe.² These numbers might seem big, yet they are already an improvement from the nearly 1.6 billion affected learners in April, according to the same source. A few countries have recently started re-opening schools in May and June, such as Singapore³ and Vietnam⁴ in Southeast Asia,

contributing to the lesser number of students having to learn from home. Unfortunately, although some countries have shown success in handling the pandemic thus far, the education sector still faces a long and winding road to returning to normal operations.

Out of nearly 9,000 children living under emergencies across the globe, 99% see education as a priority.⁵ Education in emergencies is particularly important to children and youth, as schools provide stability for their students amidst the uncertainties and serve as an important institution for children to learn and gain information they can trust. Research has found that ‘providing children living in emergency and post-emergency situations with structured, meaningful, and creative activities in a school setting or in informal learning spaces improves their emotional and behavioural well-being’.⁶ In humanitarian emergencies or crises, the circumstances in man-made conflicts or natural disasters may differ with pandemics, in the sense that humanitarian law provides a wide set of rules

1 International Health Regulations (2005): Third Edition, Art 1
2 ‘School closures caused by Coronavirus (Covid-19)’ (UNESCO)
<<https://en.unesco.org/covid19/educationresponse>>

3 ‘Press Releases: Arrangements for Schools and Institutes of Higher Learning at the End of Circuit Breaker’ (19 May 2020) <<https://www.moe.gov.sg/news/press-releases/arrangements-for-schools-and-institutes-of-higher-learning-at-the-end-of-circuit-breaker>>

4 ‘Asia Today: Vietnam schools reopen, New Zealand hits zero’ (AP, 4 May 2020) <<https://apnews>.>

<[com/1bb180691c7b830221fda35d103c44f7](https://doi.org/10.3102/0034654316671594)>

5 ‘What do Children Want in Times of Emergency and Crisis?’ (Save the Children 2015) <<https://www.savethechildren.org/content/dam/global/reports/education-and-child-protection/what-children-want.pdf>> p.1

6 Dana Burde and others, ‘Education in Emergencies: A Review of Theory and Research’ [2017] 87(3) Review of Educational Research <<https://doi.org/10.3102/0034654316671594>>



Photo: Eman Mohammed/UNESCO

that explicitly protects children and imposes on governments the obligation to ensure the education of children living in areas with armed conflicts. It is considered a war crime to direct any attack on educational buildings such as schools both in international armed conflicts.⁷ Further, armed conflicts not of an international character,⁸ and combatants are also prohibited from launching any forms of attacks on schoolchildren and educational personnel.⁹ Meanwhile in pandemics, the threats are virtually invisible: we are fighting against microscopic-size virus, not a legitimate subject

⁷ Rome Statute of the International Criminal Court (17 July 1998) UN Doc A/CONF.183/9, Art. 8(2)(b)(ix)

⁸ *Ibid*, Art 8(2)(e)(iv)

⁹ UNSC Res 1998 (12 July 2011) UN Doc S/RES/1998; UNSC Res 2143 (7 March 2014) UN Doc S/RES/2143

of any law. Therefore, in this situation, when a child tries to pursue their right to education amidst a pandemic, governments should be held responsible for ensuring that education is continued without exposing schoolchildren to the risk of contracting the disease in the process.

Continuous interruption to education with little to no appropriate response can lead to a bigger problem in the future, as children and youth all over the world are experiencing at the moment. As schools have been closed and online learning is considered the ‘new normal’, admittedly many students do not have the adequate resources in order to follow online lessons in full. Socio-economic disparities in many areas of Southeast Asian countries leave little to no choice for the students concerned, particularly refugees and other vulnerable groups.

Right to education in international law

International law recognizes education as a fundamental right through Article 26 of the Universal Declaration of Human Rights (UDHR), Articles 13 and 14 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), as well as Articles 28 and 29 of the Convention on the Rights of the Child (CRC). Said provisions mention state parties’ obligations to ensure the right of access to public educational institutions and programs on a non-discriminatory basis and stating that primary education shall be compulsory and available free to all.

In 1999, the Committee on Social, Economic and Cultural Rights published its General Comment No. 13 on the right to education, elaborating on the normative content of Article

13 ICESCR and state parties' obligations arising from it. In nature the General Comments are not legally binding, but they are strongly considered as authoritative interpretations of particular provisions in treaties, and through the document, the Committee explained the specific legal obligations on the right to education imposed upon state parties in the Covenant. Although emergency situations are not explicitly regulated in either the Covenant or the General Comment No. 13, the latter sets out a general rule for governments: 'States parties are obliged to fulfil (provide) a specific right in the Covenant when an individual or group is unable, for reasons beyond their control, to realize the right themselves by the means at their disposal'¹⁰ and mentions that state parties are under the obligation 'to respect, protect, and fulfil each of the "essential features" (availability, accessibility, acceptability, adaptability) of the right to education'.¹¹ It further illustrates that amongst others, states must 'fulfil (provide) the adaptability of education by designing and providing resources for curricula which reflect the contemporary needs of students in a changing world'¹² – which would possibly best describe the current situation, as it is important that school curricula be as flexible as possible in order to better suit the ever-changing needs of students amidst the pandemic. The accessibility feature, on the other hand, remains crucial as governments need to ensure that educational institutions and programmes are accessible to everyone without discrimination – especially to the most vulnerable groups, within safe reach, and that primary education is available free to all.¹³ Further strengthening state parties' obligation on the right to education, General Comment No. 13 also put an emphasis on how

'any retrogressive measures taken in relation to the right to education' are strongly presumed impermissible for state parties, and doing so will require state parties to prove careful consideration, full justification with regard to the Covenant, as well as the maximum use of available resources.¹⁴

The ICESCR does not mention whether or not states are allowed to limit or derogate from economic, social, and cultural rights in times of emergency. However, its Article 4 regulates that state parties to the Convention 'may subject such rights only to such limitations as are determined by law and only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society'. It is then further explained in the Committee's General Comment No. 3 that 'a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party' and failing to do so is presumed a failure to fulfil their obligations.¹⁵

Despite the absence of a strong enforcement mechanism with legal consequences, the ICESCR serves as a codification of international customary laws on economic, social, and cultural rights, and lays out a strong guiding basis for states on complying with their obligation to respect, protect, and fulfil their people's rights. With that being said, while it is important to note that three ASEAN Member States (AMS) – Brunei Darussalam, Malaysia, and Singapore – have not taken any action upon the ICESCR, it is of higher importance to see whether the practices of such states as well as the other AMS are in line with what the

10 UN Committee on Economic, Social and Cultural Rights, 'CESCR General Comment No. 13: The Right to Education' (1999) UN Doc E/C.12/1999/10, para. 47

11 *Ibid*, para. 50

12 *Ibid*

13 *Ibid*, para. 6

14 *Ibid*, para. 45

15 UN Committee on Economic, Social and Cultural Rights, 'CESCR General Comment No. 3: The Nature of States Parties' Obligations' (1990) UN Doc E/1991/23, para. 10

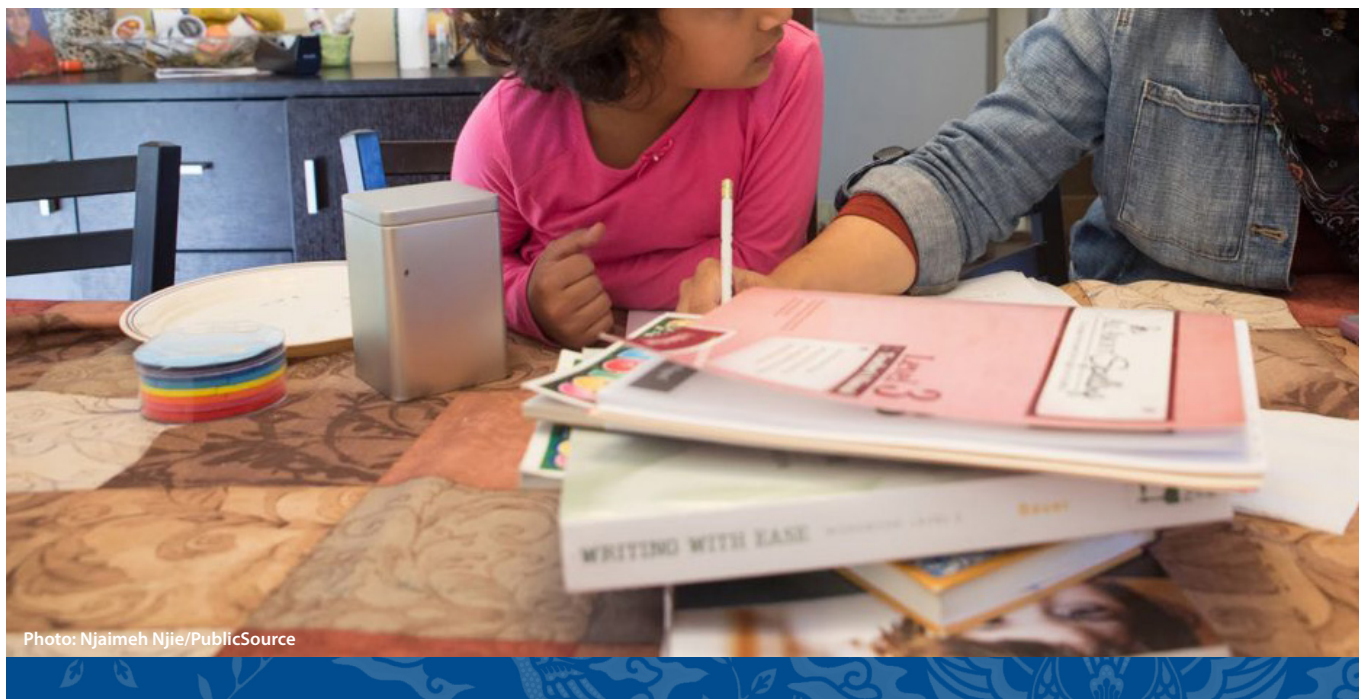


Photo: Njaimeh Njie/PublicSource

international law views necessary.

Government responsibility and select practice in Southeast Asia

Article 2(1) of the ICESCR obligates each state party to take the necessary steps ‘to the maximum of its available resources’ to progressively achieve full realisation of the rights in the Covenant, including the right to education. International organisations have done their part in strongly reminding states that education is an important human right to be protected amidst this pandemic. In early June, UNESCO and UNODC stated that they are working together to “bridge the gap between education and justice and to empower children and youth to understand and exercise their rights, think critically, make sound ethical judgments, act with integrity, challenge injustice and promote fair societies.”¹⁶

¹⁶ Stefania Giannini and John Brandolino, ‘COVID-19 – Education is the bedrock of a just society in the post-COVID world’ (UNESCO, 2 June 2020) <<https://en.unesco.org/news/covid-19-education-bedrock-just-society-post-covid-world>>

The COVID-19 Guidance document released by OHCHR reiterates the obligation of state parties to the Convention to ‘provide timely and effective measures to support the enjoyment of core economic and social rights of people affected by emergency restrictions, including through support for employment and livelihoods, housing, food, education, social protection and health, in order to enable them to comply with the emergency measures’¹⁷ [emphasis added]. In March, WHO, UNICEF, and the International Federation of the Red Cross published the ‘Key Messages and Actions for COVID-19 Prevention and Control in Schools’ document. Although at the time of publication the pandemic situation might not have been as dire as it is at the moment, the early timing might have benefited states as the document explicitly suggests that in case of temporary school closures, governments need to support continued access to quality education, including through online learning strategies, at-home exercise assignments, and

¹⁷ ‘Emergency Measures and COVID-19: Guidance’ (OHCHR, 27 April 2020) <https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf> emphasis added



using wide-coverage broadcasting medium such as television and radio to air education contents.

Almost every governments' initial –and ongoing– response to COVID-19 vis-à-vis education continuity has been via online learning, which seemed most possible to navigate the chaotic early days of the worldwide health crisis. It is understandable that no country is ever fully prepared for a disruption on such a large scale that major adjustments need to be done in no time. With practices of region- or even nationwide 'lockdowns' leading to school closures, schools are pushed to come up with full-on academic solution to the unprecedented home-based learning situation, and students are forced to adapt to a whole new learning system – all while sailing through the stormy seas of pandemic. However, it is interesting to see how governments interpret their respective best versions of crisis mitigation when it comes to education.

In Southeast Asia, some states fared admittedly far better than the others. Well-executed quick

responses have been identified as one of the most important factors for the smooth sailing of home-based learning. In this sense, the Singaporean government may have set a high standard for providing education in Southeast Asia. In mid-April, it was reported that about 12,500 laptops and tablets as well as 1,200 Internet dongles have been loaned to students with insufficient devices at home for home-based learning.¹⁸ This was done as a follow-up from their Circuit Breaker policy which involved temporary school closures. Similarly, the Malaysian government imposed the first phase of Movement Control Order (MCO) on 18 March 2020, allowing no gatherings that also saw the closing of schools – which were initially closed for a week for an 'extended holiday' from 14 March 2020,¹⁹ but were later extended to comply with the following phases of MCO.²⁰ Approximately two weeks after the

18 Ang Hwee Min, 'About 12,500 laptops and tablets loaned out to students for home-based learning: MOE' (*Channel News Asia*, 20 April 2020) <<https://www.channelnewsasia.com/news/singapore/covid19-laptops-schools-moe-education-home-based-learning-12658828>>

19 Loh Foon Fong, 'School holiday extended to March 31' (*The Star*, 20 March 2020) <<https://www.thestar.com.my/news/nation/2020/03/20/school-holiday-extended-to-march-31>>

20 Radzi Razak, 'PM says schools to stay closed, home-



Photo: Hau Dinh/AP

closure, the Ministry of Education provided a set of teaching and learning platform guidelines as well as a ministry-provided online learning platform to support learning at home, while at the same time encouraging learning through books in consideration of situations of limited Internet access.²¹ Some countries show creative efforts in line with the aforementioned WHO document – aside from routinely airing educational programs since April,²² Indonesia also partners up with media services provider and producer giant Netflix to provide curated quality documentaries on its government-owned television channel,²³ with

the idea of ensuring free and widely accessible quality content throughout the archipelago as television is easier to access than Internet in some areas.

Aside from the primary concerns on students, another important issue is how the complexity of educating amidst a pandemic affects educators. Aside from worrying about job security, educators are left with complicated responsibilities – from re-adjusting school calendars, preparing for national-level examinations, to coming up with a technical solution of how to complete said tasks. At this stage, governments need to swiftly step in and make necessary changes to the policies, so that educational institutes are allowed to assess the situation and needs of their students, to then adjust the curricula accordingly. One exemplary practice can be seen in Thailand: in April, the Thai Minister of Education Nataphol Teepsuwan implemented a set of strategies for education amidst the COVID-19 pandemic, including introducing new pedagogical approaches and parental role, allowing time for teachers to adapt to

based learning to be utilised during MCO' (*Malay Mail*, 10

April 2020) <<https://www.malaymail.com/news/malaysia/2020/04/10/pm-says-schools-to-stay-closed-home-based-learning-to-be-utilised-during-mc/1855459>>

21 Khairah N. Karim, 'Edu Ministry introduces guidelines on online teaching, learning platforms' (*New Straits Times*, 28 March 2020) <<https://www.nst.com.my/news/nation/2020/03/578945/edu-ministry-introduces-guidelines-online-teaching-learning-platforms>>

22 Nina Loasana, 'COVID-19: TVRI to air educational program to help students learn from home' (*The Jakarta Post*, 11 April 2020) <<https://www.thejakartapost.com/news/2020/04/10/covid-19-tvri-to-air-educational-program-to-help-students-learn-from-home.html>>

23 Maria Fatima Bona, 'Netflix Documentaries to Air on TVRI for Distance Learning' (*The Jakarta Globe*, 18 June 2020) <<https://jakartaglobe.id/news/netflix-documentaries-to-air-on-tvri-for-distance-learning>>

the necessary technologies, and exploring a suitable assessment system to monitor learning performance in crisis.²⁴

If we take a look across the region, there might be various reasons behind the challenges e-learning poses in different countries – but the lengths governments are willing to go as well as infrastructure disparity and its level of readiness remain the most important two. Even in well-prepared countries such as Malaysia, there is still a need to address the Internet availability discrepancies where some rural parts have little to no connection to Internet²⁵ – let alone countries with partial Internet shutdown such as Myanmar.²⁶ When discussing bridging the digital divide, it has to be acknowledged that changes are not expected to be quick as it is a multi-faceted issue that involves heavy infrastructural establishments and major policy adjustments, not to mention the related business stakeholders who will need to weigh in upon the issue. However, the need to bridge such divides while ensuring education in times of crises ultimately requires a multi-dimensional approach. For so long, the different levels of equitable infrastructure development – such as the extreme inequality of Internet penetration across the region²⁷ – admittedly have not seemed to be prioritising the

concerns of education, looking at how some governments scramble for quick solutions. This, however, should not be seen as some kind of negligent failure: this situation is, again, unprecedented. Instead, this policy gap shall serve as a strong reminder that states need to ensure that education rights will still be fulfilled, regardless of the circumstances.

Recommendations

Adhering to the aforementioned issues, it is understandable that education is a right that must be protected and fulfilled amidst the COVID-19 pandemic – and the direness of such public health emergency shall never become a reason for governments to not put forward their best efforts to do so. As discussed earlier, there are a few policy recommendations that can be made upon this matter.

- Where online/e-learning is applicable, states need to make sure that the technical issues are financially covered by either national or local governments. There are expenditures that may have never existed before, such as on laptops, tablets, and Internet services; and in response to this, governments shall swiftly adapt their budgetary policies to ensure that students, educators, and their families do not have to bear the extra burden of paying for having their rights fulfilled.
- Online learning methods have shown efficiency and efficacy in certain areas, however they shall not be the only option. UNESCO has stated that they are working together with countries to ‘find hi-tech, low-tech, and no-tech solutions to assure the continuity of learning’, and governments need to follow suit. In areas where online learning is

24 ‘Education Minister Nataphol Teepsuwan on COVID-19 strategy in Thailand’ (UNESCO, 21 April 2020) <<https://bangkok.unesco.org/content/education-minister-nataphol-teepsuwan-covid-19-strategy-thailand>>

25 For example, see ‘Rural students without internet access risk being left behind during MCO’ (*The Borneo Post*, 17 April 2020) <<https://www.theborneopost.com/2020/04/17/rural-students-without-internet-access-risk-being-left-behind-during-mco/>>

26 ‘Internet blackout in Myanmar’s Rakhine enters its second year’ (*Aljazeera*, 21 June 2020) <<https://www.aljazeera.com/news/2020/06/internet-blackout-myanmar-rakhine-enters-year-200621065709404.html>>

27 See the data provided in Molly Moore, ‘Internet penetration in Southeast Asia 2020, by country’ (May 2020) <<https://www.statista.com/statistics/487965/internet-penetration-in-southeast-asian-countries/>>

considered more as a burden than beneficial, home learning kits shall be distributed while still observing health and safety protocols. Where such face-to-face distribution opportunity is limited, governments shall also consider making use of state-owned services that may help with logistics, such as national mail services.

- Educational institutions shall be allowed, or even encouraged, to adapt and ‘tailor’ their respective curricula in order to achieve the intended education goals that might have been set before the pandemic. More often than not, educators can feel restrained in following strict guidelines for the applied curricula, particularly regarding administrative requirements. This extra burden may not be necessary in this situation, as the most important thing is to keep the education process going. Giving more autonomy to educational institutions would help educators identify the most suitable method to ensure that they are giving efficient and effective lessons to their pupils. In relation to this, governments shall also figure out the best fit for any national-level examinations and consider every possible option with students’ best interests in mind.

- The complicated situation can take a toll on educators’ and related school personnel’s well-being, particularly on doing their jobs. Employers of such educators – governments for state-owned schools and the private institutions for private-owned schools – need to pay attention to their employees’ physical, mental, and financial wellbeing in playing their part of ensuring continued education. Governments shall strike a balance between fair school payment scheme for families as well as fair compensation to educators and related personnel.

- In the longer run, governments need to prepare for bouncing back to ‘normal’ – despite the fact that it is still unclear whether we can return to pre-COVID-19 circumstances or establish a ‘new normal’. This may include preparing alternative modes of education that would be readily available to launch whenever necessary. In particular, to avoid a long-term impact on education levels in a country, every educational institution needs to keep an eye on their returning and dropout numbers, especially students from vulnerable communities and the disabled.

- Where necessary, governments shall apply policy-based regulatory intervention to mitigate problems. As emergencies are extraordinary situations, many existing policies and regulations may not work well with the ongoing circumstances. The intervention shall be done with the people’s best interests as primary consideration.

- With the decline in number of cases and very low local transmissions that is starting to be seen in some Southeast Asian nations, those governments are now preparing to reopen schools with extra cautionary measures. As the dynamics of disease transmission are still difficult to predict, quick responses are crucial and to do so, both governments and educational institutions need to maintain effective communication for the purposes of determining whether the situation is safe for schools to open or not.

- To be able to better overcome similar situations in the future, states should ensure that varied delivery systems of education are available, and that the curricula are flexible enough to adjust to unforeseen circumstances. In the long term, this requires

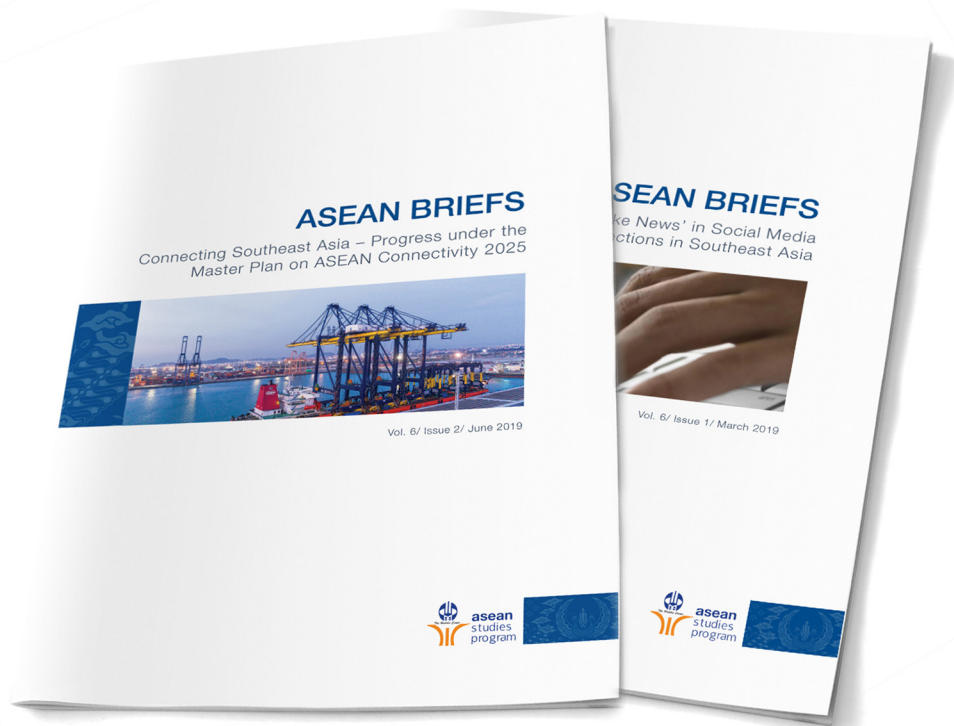
investing in the necessary telecommunication and technological infrastructure, in order to remove structural obstacles impeding the full implementation of the right to education.

For what it's worth, this pandemic is an invaluable and irreplaceable lesson for everyone – the government, educational institutions, even parents and schoolchildren – in building a 'longer-term resilience of education systems'.²⁸ Every stakeholder in the field of education is now significantly more aware of the endless possibilities of ensuring education, strengthening it as a non-negotiable right that needs to be prioritised at all cost. After all, education is not merely a short-term quick fix for the present: it is the embodiment of a long-term commitment in building a better future generation. To quote UNESCO: "Education is a key ally in defending rights and protecting the rule of law and is an essential life skill in crises. How can you protect your rights when you do not know what they are?"²⁹

²⁸ *Ibid*

²⁹ Stefania Giannini and John Brandolino (n 16)





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About The Habibie Center

The Habibie Center was founded by Bacharuddin Jusuf Habibie and family in 1999 as an independent, non-governmental, non-profit organisation. The vision of The Habibie Center is to create a structurally democratic society founded on the morality and integrity of cultural and religious values. The mission of The Habibie Center are first, to establish a structurally and culturally democratic society that recognizes, respects, and promotes human rights by undertaking study and advocacy of issues related to democratization and human rights, and second, to increase the effectiveness of the management of human resources and the spread of technology.

About ASEAN Studies Program

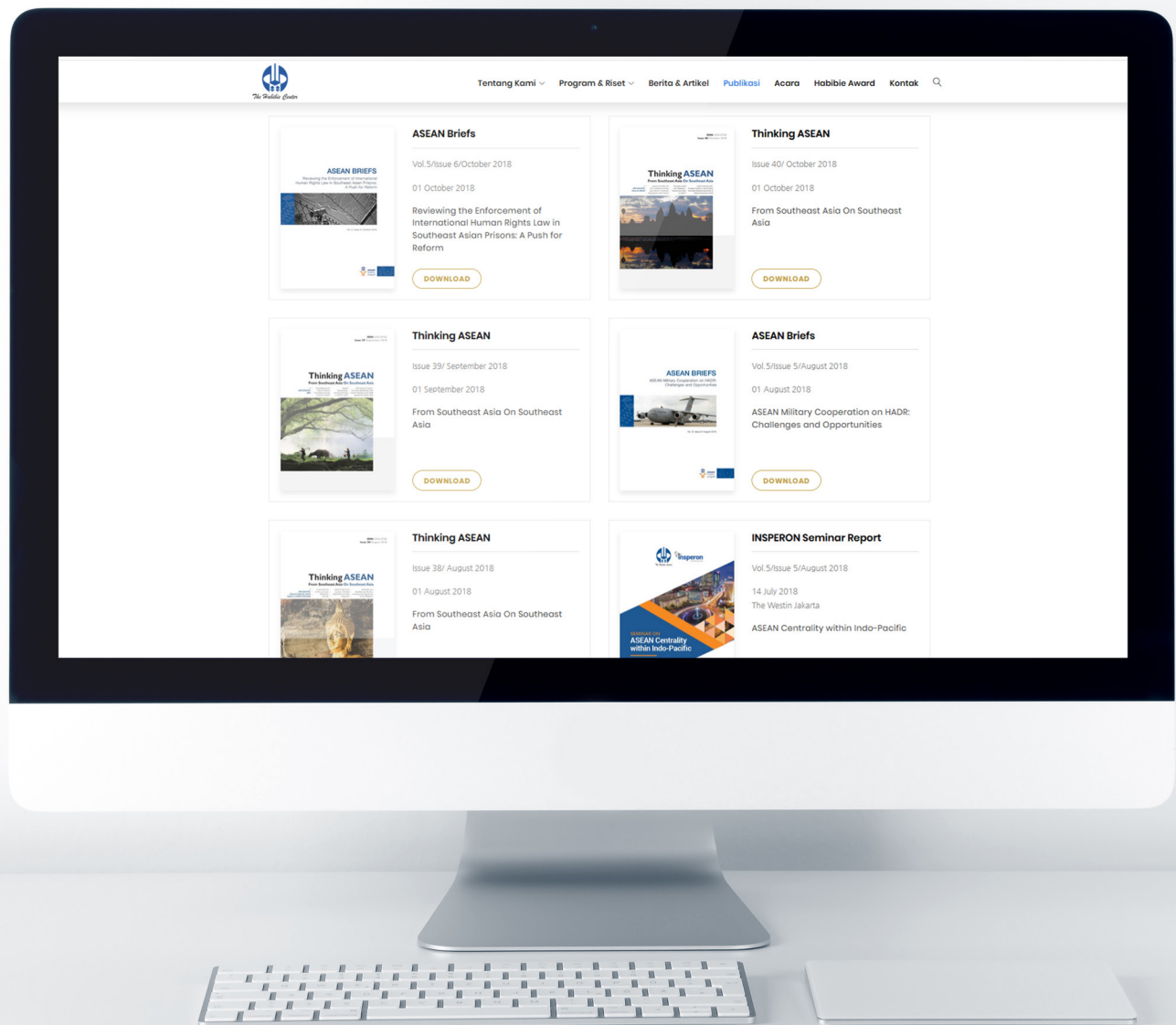
The ASEAN Studies Program was established on February 24, 2010, to become a center of excellence on ASEAN related issues, which can assist in the development of the ASEAN Community by 2015. The Habibie Center through its ASEAN Studies Program, alongside other institutions working towards the same goal, hopes to contribute to the realization of a more people-oriented ASEAN that puts a high value on democracy and human rights. The objective of the ASEAN Studies Program is not merely only to conduct research and discussion within academic and government circles, but also to strengthen public awareness by forming a strong network of civil society in the region that will be able to help spread the ASEAN message. With the establishment of ASEAN Studies Program, The Habibie Center aims to play its part within our capabilities to the ASEAN regional development.

About Talking ASEAN

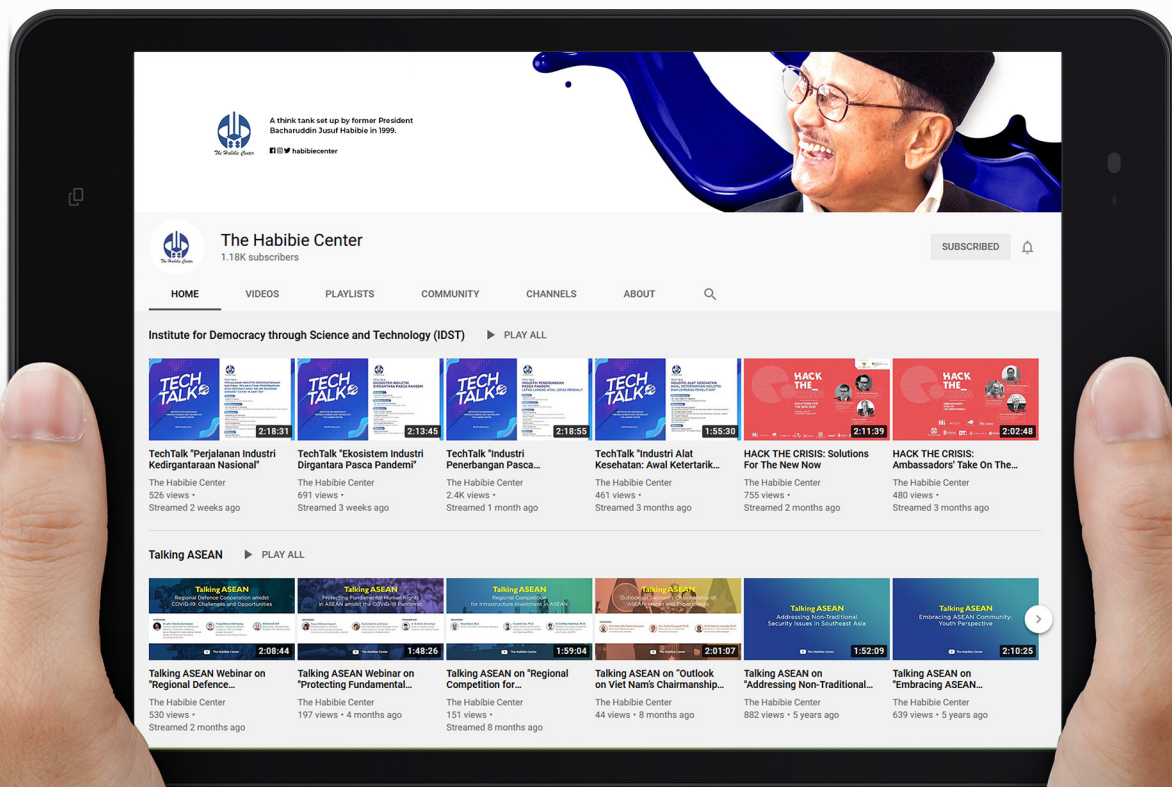
Talking ASEAN is a monthly public dialogue held at The Habibie Center in Jakarta. Covering a wide array of issues related to ASEAN, Talking ASEAN addresses topics of: Economic Integration, Socio-cultural, & Democracy, human rights and regional peace, among others. Featuring local and visiting experts, Talking ASEAN is one of a series of twelve dialogues regularly held each month and open to a target audience consisting of ASEAN officials, foreign ambassadors & diplomats, academics, university students, businesses, and the media.

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