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THE INFLUENCE OF INTERNATIONAL LAW ON MUNICIPAL LEGAL SYSTEMS IN ASEAN

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Article	Abstract
<p>Keywords: <i>ASEAN, Compliance, International law,</i></p> <p>Article History Received: Apr,19,2024; Reviewed: Apr,23,2024; Accepted: May,26,2024; Published: Jun,10,2024</p>	<p>The paper explores the influence of international law on ASEAN member states' municipal legal systems, with a focus on treaty incorporation, customary international law, and involvement with international jurisprudence and institutions. It emphasizes the challenges that ASEAN faces, such as fragmentation, a lack of public awareness, and varying political conditions, which interfere with unified implementation of international law. Despite these challenges, mutual dependence and aspirations for regional integration demands continuous compliance to international law. The ASEAN Charter plays an essential role in strengthening the region's legal framework. Furthermore, efforts to address fragmentation, raise public awareness, and increase stronger political commitment to international law are essential for an ASEAN region that is stable, honors human rights, and is fully integrated.</p>

1. INTRODUCTION

The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967, unified by mutual interests and interdependence among the member states which are bound by geography, common objectives and shared destiny. Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam are the member states of ASEAN.¹

ASEAN, as a regional organization, does own several legal frameworks to guide the continuity of its enforcement. The ASEAN Charter serves as the main constitution. This constitution, which was adopted in 2007, set out the organization's fundamental principles, goals, and organizational framework. It strengthens the legal system by offering a more coherent basis for making decisions and carrying them out.²

International law serves a valuable influence in ASEAN's legal framework, shaping municipal legal systems to promote regional integration, human rights, economic cooperation, and responses to transnational affairs. While challenges exist, the increasing interconnectedness necessitates continued engagement with international law for a stable and rights-respecting ASEAN region.³ This paper will explore to what extent and in what ways does international law influence domestic legal systems in ASEAN.

2. RESEARCH METHODOLOGY

The research used "Normative Juridical Legal Research" in accordance with Soerjono Soekanto's opinion that legal research is carried out by examining secondary materials or library materials or library legal research, through searching for books, laws, literature, and other legal materials.⁴

¹ Association of Southeast Asian Nations (ASEAN). (2007, November 20). Charter of the Association of Southeast Asian Nations
<<https://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf>> Accessed 23 February 2024.

² *ibid*

³ Pratomo, Eddy (2009), 'Prospect and Challenges of International Law in ASEAN and in Indonesia ASEAN Charter Aftermath: International Treaty Perspective', IUSTUM Journal of International Law 4(2), pp. 1-26.

⁴ Soerjono Soekanto (2011), 'Penelitian Hukum Normatif, Suatu Tinjauan Singkat' RajaGrafindo Persada Jakarta, p.12.

3. ANALYSIS AND DISCUSSION

3.1 International Law's Influence on ASEAN Countries

3.1.1 Treaties and Conventions

There are several mechanisms when it comes to the action of incorporating international treaties and conventions into municipal law, depending on the legal systems and approaches of each state. Same goes with how the member states of ASEAN ratified ASEAN treaties into their law.

In a direct incorporation mechanism, states automatically incorporate ratified treaties into their municipal legal systems without further action.⁵ Singapore is a country that generally adopts the direct incorporation approach. Other states require specific legislation to interpret the treaty into municipal law, outlining its application and enforcement mechanisms.⁶

This approach is practiced in Indonesia, which typically requires specific legislation as an interpretation of the treaty.⁷

States that practice dualist approach maintain a distinction between international and domestic law, requiring specific legislation to give effect to treaty provisions.⁸

Thailand practices the dualistic approach which allows both mechanisms to be applied.⁹

⁵ Mario Mendez, 'The Legal Effects of Treaties in Domestic Legal Orders and the Role of Domestic Courts', in *The Legal Effects of EU Agreements* (Oxford, 2013; online edn, Oxford Academic, 23 May 2013) <<https://doi.org/10.1093/acprof:oso/9780199606610.002.0006>> Accessed 23 February 2024.

⁶ Odile Ammann, 'Chapter 4 The Legal Effect of Domestic Rulings in International Law', in *Domestic Courts and the Interpretation of International Law* (Leiden, Brill | Nijhoff, 2020) <https://doi.org/10.1163/9789004409873_006> Accessed 23 February 2024.

⁷ ES Tandingan, EM Parinussa, MR Ndoen, 'The Legal Provisions of Indonesian Law System on International Agreements' (WICSTH 2021) (EAI, 2022) <<http://dx.doi.org/10.4108/eai.7-9-2021.2318258>> Accessed 23 February 2024.

⁸ Odile Ammann, (n.6).

⁹ OHCHR, "Committee on Economic, Social and Cultural Rights Considers Report of Thailand" (OHCHR) <<https://www.ohchr.org/en/press-releases/2015/06/committee-economic-social-and-cultural-rights-consider-report-thailand>> Accessed 23 February 2024.

Some factors that influence the various approaches lie in the state's constitution, where some constitutions mandate specific procedures for treaty incorporation, the state's legal system, for instance, civil law systems often favor direct incorporation, while common law systems might prefer transformation, and the state's political considerations, where regional political factors can influence the chosen approach.¹⁰

The successful implementation of ASEAN treaties and conventions in promoting regional cooperation and norms depend on the various approaches that member states adopt to integrate them into their national legal frameworks. It is necessary to address issues such as harmonization and implementation gaps in order to guarantee the complete effectiveness of these instruments.

The municipal laws of member states are significantly influenced by ASEAN treaties, which shape a variety of fields including trade, the environment, and the protection of human rights. Some examples include The ASEAN Human Rights Declaration. While it does not act as a legally binding treaty, it sets aspirational standards and encourages member states to review and harmonize their municipal laws with the principles of human rights.¹¹

In supporting environmental protection, ASEAN established The ASEAN Agreement on Transboundary Haze Pollution. This agreement has led to the implementation of national laws regulating land use, fire management, and pollution control to address transboundary environmental issues.¹²

Not only the ASEAN treaty, the incorporation of international treaties also influenced the ASEAN member states' municipal law. The Paris Agreement, ratified by all member states of ASEAN, has influenced national legislation related to climate change mitigation and adaptation strategies.¹³

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), is a United Nations treaty which ASEAN member states are a part of, has led to the adoption of national anti-torture legislation and the establishment of preventive mechanisms.¹⁴

¹⁰ Michael Da Silva (2020), 'International "Constitutions" and Comparative Constitutional Law', 10 *Notre Dame J. Int'l & Comp. Law* 139

¹¹ Association of Southeast Asian Nations, ASEAN Human Rights Declaration <<https://asean.org/asean-human-rights-declaration/>> Accessed 24 February 2024.

¹² Association of Southeast Asian Nations, Agreement on Transboundary Haze Pollution <<https://asean.org/wp-content/uploads/2021/01/ASENAAgreementonTransboundaryHazePollution-1.pdf>> Accessed 24 February 2024.

¹³ United Nations Framework Convention on Climate Change, Paris Agreement, <https://unfccc.int/sites/default/files/english_paris_agreement.pdf> Accessed 24 February 2024.

¹⁴ United Nations, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 UNTS 85, <<https://www.ohchr.org/sites/default/files/cat.pdf>> Accessed 23 February 2024.

The impact of ASEAN and international treaties on municipal legislation varies depending on factors like level of commitment, since binding treaties have a stronger influence than non-binding instruments. Second is domestic political context, national political will and capacity to implement treaty obligations play a crucial role. Lastly, the legal systems. Different legal systems may require varying degrees of legislative adjustments to comply with treaties.¹⁵

ASEAN faces many obstacles in its efforts to carry out treaties and promote regional integration. These include the need to adjust to a new kind of regionalism that involves a wider range of stakeholders, policy inconsistencies, political and security conflicts, financial inequalities, and problems with legal integration. The ASEAN Charter is a start in the right direction, but there are still many barriers in the way of true treaty implementation and further integration.¹⁶

3.1.2 Customary International Law

Just like international treaties and conventions, the recognition and application of customary international law principles in ASEAN countries' municipal legal systems vary depending on the country's constitutional and legal orders, socio-political interests, and priorities.¹⁷

Certain ASEAN member states, such as Vietnam, adopt a monist approach and integrate Customary International Law directly into their legal systems,¹⁸ while other member states, like Thailand, maintain a separation of powers and require special legislation to apply Customary International Law.¹⁹

In monitoring state practice and acceptance as evidence of Customary International Law principles, courts are essential because they can apply the principles directly to disputes or interpret municipal law in a way that takes them into consideration. Nevertheless, difficulties like judicial capacity limitations, fragmentation, and creating a balance between national interests lead to a challenge. Regardless of these differences, ASEAN nations

¹⁵ Desierto D. (2010), 'Asean's Constitutionalization of International Law: Challenges to Evolution Under the New ASEAN Charter', *Columbia Journal of Transnational Law*, 49, 268-320.

¹⁶ Lin C. (2010). 'ASEAN Charter: Deeper Regional Integration under International Law?', *Chinese Journal of International Law*, 9, 821-837.

¹⁷ Cheah Wui Ling, 'Universal Jurisdiction through the Eyes of ASEAN States: Rule of Law Concerns and the Need for Inclusive and Engaged Discussions', Policy Brief Series No. 141 (Transnational Organized Crime Elimination Project, 2022), <<https://www.toaep.org/pbs-pdf/141-cheah/>> Accessed 24 February 2024

¹⁸ Lan Anh Nguyen, Hao Duy Phan and Jessye Freeman, 'International and ASEAN Law in the ASEAN 10 National Jurisdictions: The Reception of International Law in the Legal System of Vietnam', ASEAN Integration Through Law: The ASEAN Way in a Comparative Context (Plenary on Rule of Law in the ASEAN Community) <<https://cil.nus.edu>.

¹⁹ OHCHR, (n.9).

recognize the importance of Customary International Law, and efforts that address disintegration, improve judicial capability, and promote regional cooperation can help ensure that these principles are applied more consistently and successfully throughout the region.²⁰

Customary International Law, despite its challenges, plays a huge influence in shaping municipal legal developments in ASEAN countries in various aspects like international relations, governance, and human rights. Law of the sea, for instance, has been incorporated by numerous ASEAN member states into their national law, as a maritime regulation, governing fisheries, freedom of navigation, Exclusive Economic Zone, and more.

3.1.3 International Jurisprudence and Institutions

International jurisprudence and institutions have a significant impact on domestic courts in ASEAN member countries. Regional courts play an important role in interpreting and implementing international law, particularly by giving authoritative decisions in disputed conflicts.²¹

The willingness of regional courts to engage with international law varies based on the nature of the legal rule at the certain issue, whether horizontal (state-to-state), vertical (state-to-private party), or transnational (private-to-private).²²

While some regional courts may refuse in enforcing international jurisprudence, the precedential value of international judgments can ensure equal treatment before the law and promote unified interpretation and application of international law.²³

ASEAN Intergovernmental Commission on Human Rights (AICHR), the integral part of ASEAN, is a concrete application on how international institutions can play a significant role in influencing municipal legal practices in ASEAN member states. The essence of AICHR is promoting and protecting human rights in the region, and its recommendations and decisions can influence regional legal practices of ASEAN member states.²⁴

The AICHR has issued recommendations on the rights of women and children, the rights of persons with disabilities, and the protection of migrant workers.²⁵

²⁰ P Tangsubkul & FL Fung-wai, 'The New Law of the Sea and Development in Southeast Asia', 23(7) *Asian Survey* (1983) 858-878.

²¹ David Sloss & Michael Van Alstine, *International Law in Domestic Courts Research Handbook on the Politics of International Law* (2017).

²² Petrova Georgieva, Virdzhiniya. 'Hierarchy between Domestic and International Tribunals: Utopia or Near Future?' *Anuario Colombiano de Derecho Internacional (acdi)*, 14 (2021) 21-71.

²³ *ibid.*

²⁴ White L.A., 'Do International Organizations Influence Domestic Policy Outcomes in OECD Countries?', (2020) In: Nieuwenhuis, R., Van Lancker, W. (eds) *The Palgrave Handbook of Family Policy*. Palgrave Macmillan, Cham.

²⁵ David Sloss & Michael Van Alstine, (n.21).

3.2 Comparative Analysis across ASEAN Member States

All member states are bound by ASEAN law, which includes treaties and agreements establishing regional norms and obligations. However, there is an increasing engagement with international law across the region, driven by factors like globalization and regional integration.²⁶

ASEAN member states take different approaches to international law. Some countries, such as Indonesia and the Philippines, embrace democracy and stick to some global human rights standards, whereas others, such as Singapore, Malaysia, and Thailand, follow the law but are hesitant to adopt global standards, particularly in terms of civil and political rights. Furthermore, some countries, such as Cambodia, Laos, Myanmar, Vietnam, and Brunei, indicate slow progress in human rights compliance and have been less proactive in adhering to global standards and transparency/monitoring requirements.²⁷

When it comes to approaches to incorporate and implement international law in ASEAN member states' municipal law, the diversity can contribute to some challenges. First is fragmentation. The diverse approaches create inconsistency in how international law is applied across the region. Second, lack of awareness. Limited public awareness and understanding of international law can limit the effective implementation of it. Lastly, political will. Political considerations can sometimes undermine the commitment to international legal obligations.²⁸

When it comes to understanding the reason behind the diverse approaches of international law application in ASEAN member states' municipal law despite the common objectives and the bond by geography, there are several factors we need to take notes of. The factors include historical experience, colonialism, unequal treaties, and post-war experiences, which have increased the perception that international law is of questionable value and can be used for instrumental purposes.²⁹

Nevertheless, The ASEAN Charter asserts the organization's legal personality and

²⁶ Ndukwe F. O, '6 Promoting Trade: Regional Integration and the Global Economy' (2004) In *New Partnership for Africa's Development USA: International Monetary Fund* <<https://doi.org/10.5089/9781589062627.072.ch0006>> Accessed 26 February 2024.

²⁷ Huck Winfried, 'Informal International Law-Making in the ASEAN: Consensus, Informality and Accountability.' (2020) 1 *Journal of International Law of Peace* 101-138.

²⁸ Lowe Vaughan, 'Implementing international law', *International Law: A Very Short Introduction, Very Short Introductions* (Oxford, 2015; online edn, Oxford Academic, 26 Nov. 2015), <<https://doi.org/10.1093/actrade/9780199239337.003.0003>> Accessed 26 February 2024

²⁹ Simon Chesterman, 'Asia's Ambivalence about International Law and Institutions: Past, Present and Futures' (2016) *European Journal of International Law*, Volume 27, Issue 4, p. 945-978.

plays a crucial role in shaping regional agreements and ensuring compliance with international obligations.³⁰

4. CONCLUSION

There are various ways and extents to which international law influences ASEAN member states' municipal legal systems. International law has a significant impact on national legislation and legal practices in the region, particularly in trade, the environment, and human rights. Treaties, customary international law, and the decisions and recommendations of international courts and institutions are all examples of mechanisms that demonstrate this influence.

However, the extent of influence varies considerably between member states due to factors such as different approaches to treaty incorporation, the recognition and application of customary international law, and engagement with international jurisprudence and institutions. Furthermore, challenges such as fragmentation, a lack of public awareness, and varying political conditions will limit the unified and effective implementation of international law throughout ASEAN.

Despite these challenges, the growing mutual dependence and shared aspirations for regional integration call for continuous compliance with international law. The ASEAN Charter is an essential step toward strengthening the region's legal framework and encouraging compliance with international obligations. Moving forward, efforts to decrease fragmentation, raise public awareness, and develop a stronger political commitment to international law will be essential in ensuring a more stable, rights-respecting, and integrated ASEAN region.

³⁰ Haneefa Adzka, 'ASEAN as a Subject of International Law: Its Role in the Formation of International Treaties.' (2022) *Journal ASEAN Dynamics and Beyond*, 3(2), 110.

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