

## **Adopting European Union Legal Frameworks for Restructuring ASEAN: Pathways to Regional Stability**

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Submitted: 2024-04-03 | Reviewed: 2024-07-15 | Revised: 2024-11-07 | Accepted: 2024-11-15

**How to cite:** Mirza, Isoni Muhammad Miraj, et al. "Adopting European Union Legal Frameworks for Restructuring ASEAN: Pathways to Regional Stability." *Dialogia Iuridica*, Vol. 16, No. 1, 2024, pp. 001-026.

**DOI:**  
<https://doi.org/10.28932/di.v16i1.8663>

### **ABSTRACT**

*Eversince its establishment, ASEAN has adopted a strict approach in tackling regional issues known as the ASEAN WAY including its non-intervention principle. In that regard, it requires consensus from all ASEAN member states without exception, no matter how long it takes before such problems can be addressed through ASEAN as a regional organization. If consensus is unfeasible, the problems will remain unresolved. Issues inflicting Rohingya ethnic, South China Sea, etc., are prime examples on ASEAN's weakness as an institution. Compared to the European Union as a Supranational Organization, it has a more systematic and flexible approach in solving regional issues. The purpose of this research is to analyze to what extent EU law is applicable within ASEAN's organizational structure to ensure a robust ASEAN integration so that one day it can achieve the status of a supranational organization like the European Union. This research method uses a normative juridical approach by analyzing the principles and instruments of international law applicable within ASEAN organizational structure, one of which is the ASEAN CHARTER as a legal basis that applies for all ASEAN member states,*

*and further to what extent EU Law (EU LAW) is applicable within ASEAN organizational structure. The conclusion in this study is enhancing ASEAN's effectiveness in tackling regional issues and quickly adapting to global challenges such as the European Union, ASEAN countries must ignore differences and concentrate on restructuring ASEAN by redefining ASEAN Way and the Non-Intervention Principle for stronger regional integration and stability.*

***Keywords: Asean; EU Law; Organization***

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## **I. INTRODUCTION**

The existence of globalization where borders are disappearing and the space for actors to move is expanding also marks the emergence of contemporary issues with a variety of new actors. Globalization as the mainstream of world development in the 21st century is followed by the trend of regionalization of countries in all parts of the world. Intense international economic competition demands cooperation between countries in a particular region in the fields of trade and military policy. Cooperation is also needed to address security threats that are organized across countries. One of the most advanced and influential forms of regionalization both theoretically and practically is the European Union.

ASEAN is one of the largest regional organizations in the world and in terms of its development is also the most significant and rapid. Indonesia is one of the ASEAN member countries, including the largest in the region. In the history of its development, ASEAN has managed to achieve a number of important achievements to date, such as the creation of the ASEAN Economic Community, the ASEAN Single Market Community. This is also coupled with the establishment of a number of ASEAN institutions such as the ASEAN Intergovernmental Commission on Human Rights and the ASEAN Inter Parliamentary Commission.

In general, these two institutions have not been able to fully resolve various problems, especially regarding human rights in ASEAN. When looking at the composition of the ASEAN organization and the institutions within it, in its development, many experts consider that ASEAN has the potential to become a supranational institution

like the European Union.<sup>1</sup> However, differences in political policies, economic growth, and the principle of non-intervention among member states mean that ASEAN still has a number of wide gaps and will take a long time to become a more integrated regional institution.

The research method used in this study is to use a juridical-normative approach. In this case, the effectiveness of organs within ASEAN as an international organization that already has international legal personality will be analyzed based on the principles and instruments of international law that apply within the ASEAN organizational structure, one of which is the ASEAN CHARTER, as well as the legal force that applies to fellow ASEAN member states. In addition, it will be further analyzed to what extent EU Law (EU LAW) can be applied in the ASEAN organizational structure as a role model to realize a more solid ASEAN integration process.

Based on the juridical-normative research method, coupled with the results of the analysis of the effectiveness of ASEAN as a regional international organization through its organs, it will be analyzed to what extent ASEAN can be increasingly integrated among its member states so as not to rule out the possibility that in the future it will be closer to becoming a supranational organization like the European Union or not.

## **II. DISCUSSION**

### **1. Existence of Institutions in ASEAN and the European Union**

#### **1.1 European Union Law (EU Law)**

The existence of the European Union gave birth to new concepts and understandings both in terms of law and state politics. For example, the theory of the organizational structure of the state, which for centuries was understood to consist of three possible forms, namely a unitary state, a union state, and a confederation state, can no longer be used as an analysis to understand the existence of the European Union.<sup>2</sup>

The phenomenon of the European Union has also resulted in a tendency to combine aspects of internal state studies that usually characterize the science of

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<sup>1</sup> Ramadhan, Iqbal. "Peran Institusi Internasional Dalam Penanggulangan Ancaman Cyber." *Populis: Jurnal Sosial Dan Humaniora*, Vol. 2, No. 2, 2017, pp. 495–508, <https://doi.org/10.47313/pjsh.v2i2.338>.

<sup>2</sup> Rezkyiniine, Milla Shanthly, et al. "Analisis Kebijakan Luar Negeri: Studi Tentang Keluarnya Britania Raya Dari Uni Eropa Pada Tahun 2016." *JURNAL EKSEKUTIF*, Vol. 1, No. 1, 2018, pp. 1 – 10, <https://ejournal.unsrat.ac.id/v3/index.php/jurnaleksektif/article/view/19159>.

constitutional law and state administration law with external aspects that are usually the domain of public international law. Both fields of science use the state and organizations as objects of study. However, constitutional law generally only looks at the internal aspects of the state it studies, while public international law looks at it from the point of view of external relations between states. However, with the development of the European Union, problems have arisen regarding the difference between constitutional law and public international law. When people talk about the EU constitution, the European parliament, the European Court of Justice, it is no longer clear what the difference between Constitutional Law and Public International Law is.<sup>3</sup>

Regulations (regelling), Decrees (Beschikking), and Judgments (Vonnis) enacted by the Parliament, the Executive Council, or the European Court of Justice, on the one hand can be referred to as norms of international law, but on the other hand are considered part of the everyday meaning of domestic law in EU member states.<sup>4</sup> For this reason, in Germany, professors of constitutional law are usually called professors of public law instead of professors. With regard to the above explanation, a term called EU Law has emerged. In general, EU Law is the law that applies in the European region for countries that are officially incorporated as member states of the European Union. The emergence of this concept is due to part of the sovereignty of the European Union member states being handed over to a higher position institution / agency / organization, namely the European Union, to regulate matters that were previously important and became the domestic affairs of each member state, for example monetary issues, aviation, trade, and so on, all of which are currently the authority of the European Union as an international organization to regulate European Citizens in order to create order and justice regionally. In other words, European Union Law (formerly called European Community Law) is a collection of treaties and laws that can have a direct or indirect effect on the laws of EU member states.

Now the European Union has turned into the largest organization in Europe and has 28 members, namely Belgium, Bulgaria, Czech Republic, Denmark, Germany,

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<sup>3</sup> Abqa, Muhammad Ardhi Razaq, et al. *HUKUM TATA NEGARA: Sebuah Konsep Dasar Dalam Menata Bangsa*. PT. Sonpedia Publishing Indonesia, 2023, pp. 1 – 153.

<sup>4</sup> Zulfikar, M. Adnan Yazar. “Perkembangan Judicial Review Terhadap Tindakan Pemerintah Di Indonesia: (Perbandingan Kelembagaan Antara Tradisi Hukum Civil Law Dan Common Law).” *Padjadjaran Law Review*, Vol. 3, No. 1, 2015, pp. 20–48, <https://doi.org/10.56895/plr.v3i1>.

Estonia, Greece, Spain, France, Ireland, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden, United Kingdom, and Croatia, which only joined in 2013.<sup>5</sup>

The discussion of European Union Law is important because the discussion of the European Union cannot be separated from the regulations made by the European Union itself to be applied in its member states. European law is made to support one or more objectives that have been set in the European Commission Treaty, such as promoting markets between member states or preserving, protecting, improving the quality of the environment. Based on the ties created by the EU treaties, it is an obligation for member states to apply EU law in each of their territories.

In this context, EU development assistance to Indonesia can be seen as a way to diffuse norms understood by the EU to developing countries - in this case Indonesia. This norm diffusion can be seen in the following two ways. First, through the cooperation projects they fund. EU projects are built with a specific goal in mind, which is to impose certain norms on the government that are measured through the achievement of certain targets. These norms are instilled through the involvement of civil society as the driving force of these norms, which is done through financial support and regular monitoring processes as the project progresses to reporting, as well as instilled through interactions between civil society organizations and targeted government institutions. In this way, the EU is indirectly embedding the norms they offer in this project regarding Indonesia's governance processes, but using civil society instead.

This transformation in Europe has led to a new debate on the 'power' of the EU in global politics. Ian Manners, an expert on European regionalism, argues that the EU has 'normative power' based on the distribution of the EU's founding norms (enshrined in the EU's founding treaties) to the international community. Manners argues that the power built by the EU relies on 'norms' that are inherent to itself and championed through its interactions with other entities. One of the EU's efforts in building norms in the global political arena is realized in its involvement in the field of international development. The EU is involved in assisting the democratization process, instilling "Good Governance"

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<sup>5</sup> Yakti, Probo Daron. "Kebutuhan Uni Eropa Terhadap Institusi Keamanan: Peranan NATO Di Era Kontemporer." *Jurnal Hubungan Internasional*, Vol. 9, No. 1, 2016, pp. 81–98, <https://journal.unair.ac.id/JHbI@kebutuhan-uni-eropa-terhadap-institusi--keamanan--peranan-nato-di-era-kontemporer-article-10736-media-89-category-8.html>.

norms, as well as promoting human rights in third world countries that have just undergone a democratization process, including Indonesia.<sup>6</sup>

From the explanation above, this means that the application and internalization of aspects of EU Law can be done in such a way, through cooperation or national development programs in ASEAN member countries, such as Indonesia, which will indirectly have an impact on the effective implementation of the functions and duties of ASEAN organs as an international organization.

## **1.2 ASEAN Charter**

The ASEAN Charter is the most important foundation for all ASEAN actions as a regional organization. The ASEAN Charter itself was only established in 2008 and officially came into force the following year. Prior to 2008, ASEAN's main legal umbrella was limited to the 1967 Bangkok Declaration. However, with the enactment of the ASEAN Charter in 2008, the legal system regarding ASEAN as an international organization became stronger in helping to address various issues and challenges in the future.<sup>7</sup>

## **1.3 ASEAN Way and Principle of Non-Intervention**

In carrying out its vision and mission, ASEAN institutionally applies principles called the ASEAN WAY and the Non-Intervention Principle.<sup>8</sup> This principle basically emphasizes the importance of maintaining the sovereignty of member states. Therefore, under any circumstances, no matter how big the problem that occurs in an ASEAN member state, other member states are strictly prohibited from interfering in the internal affairs of the member state. Even if it must be resolved institutionally, there must be a consensus involving all member states, all of which without exception agree to resolve the problems being faced internally by each member state.

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<sup>6</sup> Umar, Ahmad Rizky Mardhatillah. "Bukan Sekadar "Kekuatan Normatif": Uni Eropa, Good Governance, dan Diskursus Pembangunan Indonesia Pasca-Orde Baru." *Jurnal Kajian Wilayah*, Vol. 5, No. 1, 2014, pp. 23 - 46, <https://doi.org/10.14203/jkw.v5i1.122>.

<sup>7</sup> Bangun, Budi Hermawan. "Menuju Masyarakat Ekonomi Asean 2015: Aspek Regional Dan Implikasinya Terhadap Hukum Nasional Indonesia." *Supremasi Hukum: Jurnal Penelitian Hukum*, Vol. 24, No. 2, 2017, pp. 111– 123, <https://doi.org/10.33369/jsh.24.2.111-123>.

<sup>8</sup> Widiastuti, Arum. "Perspektif ASEAN Terhadap Prinsip Non-Intervensi." *Jurnal Usm Law Review*, Vol. 5, No. 1, 2022, pp. 377 – 388, <https://doi.org/10.26623/julr.v5i1.4802>.

If any member state disagrees, consensus will still not be reached and the resolution cannot be institutionalized through ASEAN. This is also ASEAN's weakness in resolving regional issues quickly and effectively due to the rigid and inflexible application of the ASEAN WAY principles. This makes it difficult for member states who really want to accelerate the resolution of their domestic problems through ASEAN. This can also be seen from cases such as human rights violations against ethnic Rohingya in Myanmar and also the South China Sea conflict which has not been resolved until now.

#### **1.4 ASEAN and EU Intengration**

The term integration is closely related to the concept of regionalism. Regionalism is explained through 5 categories, namely regionalization, regional awareness and identity, interstate cooperation, state-promoted regional integration, and regional cohesion. These five categories refer to the awareness of interaction based on a shared identity within a region, as well as establishing economic, social, cultural and political cooperation within a region.

The existence of the European Union and its institutions is the basis for its member countries, so that it becomes a forum for mutual interaction and even cooperation between the European Union and external parties. The integration of the European Union is quite diverse, how they agree on economic cooperation in the concept of free trade / single market, single currency, as well as agreements in dealing with humanitarian issues such as asylum seekers.

Factors driving EU regional integration include; economics (cost-benefit calculations), values and identity and information.<sup>9</sup> The economic, regional identity and information benefits of collaboration are a clear illustration of the existence of a regional integration collaboration.

According to Acharya and Stubbs, regional cooperation itself is influenced by the existence of a security community among regional countries.<sup>10</sup> Creating a safe environment between countries is necessary, not only as an effort or tendency to reduce war/conflict, but also to create peace within a community or region.

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<sup>9</sup> Sampson, Thomas. "Brexit: The Economics of International Disintegration." *Journal of Economic Perspectives*, Vol. 31, No. 4, 2017, pp. 163–184, doi: 10.1257/jep.31.4.163.

<sup>10</sup> Luneto, Riska. "Dinamika Uni Eropa: Integrasi Kawasan Dan Referendum Britania Raya." *Dinamika Global: Jurnal Ilmu Hubungan Internasional*, Vol. 6, No. 01, 2021, pp. 1 - 23, <https://doi.org/10.36859/jdg.v6i01.371>.

This combination of perspectives is the basis for Ayoob's view of regional cooperation. According to him, developing countries are relatively 'weak', they still tend to be preoccupied with building national identities so that awareness of the importance of non-domestic institutions based on cultural and historical similarities is needed to overcome anarchic interactions and become a party to oversee and make rules for cooperation and dispute resolution.

In principle, in regional integration there are several important reasons that underlie countries joining voluntarily in a region, namely the existence of a common background, starting from history, the similarity of what was experienced in the past and the similarity of fate that is felt later so as to create a common identity with other regional countries.<sup>11</sup> We know that the European Union was born after World War II, where almost the entire region felt the direct impact of the conflict that occurred, so the desire to improve after the conflict that occurred became one of the reasons. Another concept behind the birth of regional integration is the geographical condition of the country, the integration that exists in a region cannot be separated from the geographical proximity of a country, the last is the desire of the country to have and create rules in interactions and relationships in a region.<sup>12</sup>

Interactions between countries in the global political arena include several areas of cooperation in it. This cooperation then gave birth to efforts to unite / integrate the region, the economy and various other collaborations. The presence of globalization then becomes one of the factors for the development of interactions between nations, political, economic and even cultural globalization is often a topic of international discussion. Globalization is then closely related to regional integration carried out by regional countries, cooperation efforts are carried out on the basis of common history, identity, and the principle of non-intervention and respect for the sovereignty and authority of a country.

The increasing complexity of international politics presents challenges to cooperation based on integration and national sovereignty. Rapid globalization often tests a state's control over its domestic and international affairs. In certain cases, there are

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<sup>11</sup> Louis, Fawcett, et al. *Regionalism in World Politics: Regional Organization and International Order*. Oxford: Oxford University Press, 1995, p. 51.

<sup>12</sup> Tidore, Mashita Dewi. *Dinamika Referendum Inggris Di Uni Eropa, Studi Kasus: Referendum Brexit*. Universitas Hasanuddin, 2017, p. 25.



concerns about the authority of cooperating institutions and states in addressing issues. In International Law, the sovereignty of an organization is closely linked to fairness in disputes between member states. If a state fails to adapt or comply with international rules, external parties may have the responsibility to intervene. Sovereignty is closely related to national interest, which is built on certain factors, such as a country's basic needs and the desire to be able to defend the country in the global political scene. Furthermore, sovereignty is closely related to national interest, which is often seen as an attempt to achieve power that can later be used as a tool to maintain control in interactions between nations and maintain the sovereignty of a state.<sup>13</sup> Immigration factors are closely related to integration and population growth. Natural disasters can also increase immigration because they can displace people from their homes, prompting them to move.<sup>14</sup> The Schengen Agreement, a basic pact of the European Union, led to the establishment of the Dublin Convention, which aims to eliminate borders in the region. The convention regulates the procedure for asylum entry and the treatment of migrants by receiving countries. Although it has undergone revisions, the main objective of the Dublin Convention remains to provide protection for asylum seekers and ensure a fair distribution of the quota of immigrants entering the EU.<sup>15</sup> On the one hand, this agreement allows the free entry and distribution of asylum seekers in the European Union. Therefore, cooperation between EU member states in addressing this issue is highly dependent on common policies. The UK and France are two examples of countries that have had difficulty integrating immigrants with their domestic rules and policies.<sup>16</sup>

The granting of asylum is a universal right, and the EU's adoption of the Geneva Conventions is reflected in its open door policy or free movement principle under the Common European Asylum Seekers (CEAS). Each member state is obliged to accept individuals seeking protection.<sup>17</sup>

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<sup>13</sup> Supra Note 1, p. 13.

<sup>14</sup> Kementerian Luar Negeri Republik Indonesia. "Isu-isu Kemanusiaan 2019." *Kementerian Luar Negeri Republik Indonesia*, 20 Mei 2023, <https://kemlu.go.id/>.

<sup>15</sup> Fratzke, Susan. *The Fading Promise of Europe's Dublin System. Brussels: Migration. Research*, Brussel: Migration Policy Institute Europe, 2015, p.25.

<sup>16</sup> Eremina, N.V, and A.Y Chikhachev. *FROM "OPEN DOOR POLICY" TO MIGRANT CRISIS: THE REFORMING OF MIGRATION POLICY IN EUROPEAN AND NATIONAL DIMENSIONS (THE EXAMPLES OF GREAT BRITAIN AND FRANCE)*. Comparative Politics Russia, 2016, pp. 36-61.

<sup>17</sup> Commission, European. "Migration and Home Affairs." *European Union*, January 1, 2020, [https://ec.europa.eu/home-affairs/what-we-do/policies/asylum\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en).

After 2011, the number of global refugees jumped significantly as the Syrian civil war pushed Syrians to flee. In 2013, the number reached 51.2 million, and in 2014, the number increased to 59.5 million, compared to around 37.5 million in the previous decade as reported by UNHCR. For example, countries such as Pakistan and Syria often choose the UK as their main destination rather than other countries. Regional integration demonstrates the potential for cooperation among sovereign states within the global system.<sup>18</sup>

In the context of the European Union, in 1993 the European Union agreed on the concept of a Single Market that oversees cooperation in the fields of goods, services, human resources, and monetary freedom.<sup>19</sup> This integration also poses its own threats as it does not always lead to the unification of all member states. Sometimes one of the member states withdraws. This also happened to the UK. The discussion of Article 50 of the European Union treaty regarding the process of withdrawing as a member began in 2015-2016 with various long discussions between elements of government. The strong reason for the UK's withdrawal as a member of the regional cooperation is the economic and immigrant issues that have colored the journey of the European Union.<sup>20</sup>

The referendum to leave the UK continues to provoke questions among various circles. Whether it was successful or not remains to be seen. Some people believe that this referendum could have a positive or negative impact on the economy and politics of both parties.<sup>21</sup>

On the other hand, in terms of monetary integration, the EU's journey as a large institution consisting of countries with high economic ownership did not allow member countries to fully benefit from this cooperation. The problem that drew international attention to the European Union was the financial crisis of 2000, which was largely influenced by the high level of debt that had increased significantly, and the introduction of the new Euro currency in the same year.<sup>22</sup>

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<sup>18</sup> Linklater, Andrew, and Hidemi Suganami. *The English School of international Relations*. England: Cambridge University Press, 2009, p. 39.

<sup>19</sup> European Union. 2020. "The history of the European Union." May 19, 2023, [https://europa.eu/european-union/index\\_en](https://europa.eu/european-union/index_en).

<sup>20</sup> Somai, Miklós, and Zsuzsanna Biedermann. *BREXIT: REASONS AND CHALLENGES*. Acta Oeconomica, 2016, pp. 137-156.

<sup>21</sup> Holden, Patrick. *Brexit: An international relations perspective*. Academic Commentary, England: University of Plymouth, 2018, p. 81.

<sup>22</sup> Beker, Victor. *The European Debt Crisis: Causes and Consequences*. Journal of Stock and Forex Trading, 2014, pp. 90-120.

Basically, the European Union gives full power and authority to member states that have independent policies in the monetary field, such as devaluing the value of their currency and giving them the authority to respond to crises independently, we can see this in the Greek crisis that occurred in 2009.<sup>23</sup> A problem that may be faced by other countries, especially those with lower foreign exchange earnings, is the increase in the amount of contributions that member countries have to pay.<sup>24</sup>

In 2021, the UK and the EU face new changes. British citizens will no longer be able to enjoy the same freedoms to work and move around Europe as visas are introduced for all British citizens engaged in activities in Europe.<sup>25</sup>

In terms of further economic integration, there is a single market agreement that applies to member countries, where the removal of trade barriers with the concept of free trade is very pronounced between countries. The single market itself aims to stimulate trade and improve efficiency and product quality as well as minimize barriers that become instruments in economic and trade cooperation.<sup>26</sup>

## **2. Weaknesses or Limitations in ASEAN's Institutional Responses on Regional Matters**

For many years, ASEAN has been incapable of dealing with regional issues. One of the prime factors of such weakness is the fact that ASEAN member states are still dependant on carrying out "ASEAN Way" along with its "Non-Intervention" principle in dealing with regional matters. As such, even in the midst of for instance, human rights violations inflicting Rohingnya Ethnic in Myanmar, South China Sea Dispute, and other regional issues inflicting ASEAN member states, eventhough such cases pose significant threat to regional security, but due to the aforementioned principles, ASEAN member states are unwilling to waive their state sovereignty in an attempt to deal with such regional issues collectively under the authority of ASEAN as the sole regional organization within. Consequently, such regional issues remain unresolved and regarded as domestic affairs which member states are not allowed to intervene. Even if such issues

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<sup>23</sup> Park, Donghyun, et al. "ANALYSIS OF BREXIT AND ITS POLICY LESSONS FOR ASIAN INTEGRATION." *Asian-Pasific Economic Literature*, Vol. 34, No. 2, 2020, pp. 20 – 38, <https://doi.org/10.1111/apel.12310>.

<sup>24</sup> UKEssays. "Impact of Brexit on Regional Integration 2018." May 22, 2023, <https://www.ukessays.com/essays/society/impact-of-brexit-on-regional-integration.php?vref=1>.

<sup>25</sup> BBC. "BBC News." 2020, <https://www.bbc.com/news/uk-politics-32810887>.

<sup>26</sup> European Community. "The European Single Marker." 2019. <http://www.ec.europa.eu>.

should be resolved through ASEAN, it requires unanimously a consensus by which all of ASEAN member states, without any exception, must agree to resolve the issues collectively through ASEAN. This is also the embodiment of ASEAN Way and its Non Intervention Principle.

### **3. Reforming ASEAN : Lessons from EU Law?**

In the previous section, we have emphasized the need for ASEAN's involvement in addressing large-scale issues that threaten its stability. In this regard, Southeast Asian leaders have long recognized the importance of ASEAN intervention. Unlike the European Union, ASEAN does not have the authority to intervene in its members' internal disputes. For example, conflicts such as the Singapore-Malaysia water issue and the Indonesia-Malaysia migrant worker issue must be resolved bilaterally. Meanwhile, Malaysia's border disputes with Singapore, Indonesia and the Philippines remain unresolved in ASEAN discussions.<sup>27</sup>

Since 2003, attention to the condition of ASEAN finally emerged in Bali Concord II. This agreement became the basis for the integration of the ASEAN community and led to the need to ratify the ASEAN Charter. However, the ASEAN Charter, which has just been ratified by all ten ASEAN member states, still firmly includes an agreement not to interfere with the sovereignty of each country. ASEAN's firm adherence to this principle of non-intervention can actually be seen as an "obstacle" to ASEAN cooperation in handling disputes that occur among ASEAN member states. This fact calls for a restructuring of ASEAN.<sup>28</sup>

Restructuring refers to the need for an entity to change its organizational systems and structures for better outcomes in the future. This concept also applies to ASEAN. While ASEAN and the European Union have similarities as evolving international organizations, ASEAN's organizational structure has the potential to resemble that of the European Union. However, significant cultural, historical, economic, and political differences among ASEAN countries suggest that full integration, similar to the EU's supranational model, is still a long way off. Nevertheless, given the aforementioned

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<sup>27</sup> Mangku, Dewa Gede Sudika. "Peluang dan Tantangan ASEAN Dalam Penyelesaian Sengketa Kuil Prah Vihear di Perbatasan Kamboja dan Thailand." *Pandecta Research Law Journal*, Vol. 6, No. 2, 2011, p. 115, <https://doi.org/10.15294/pandecta.v6i2.2329>.

<sup>28</sup> *Ibid.*

similarities, it is not impossible that aspects of EU law could be applied to create a more solid ASEAN in the future.

This certainly requires analysis to see to what extent aspects of EU law can be applied in improving the organizational structure of ASEAN. To analyze the facts above, there are several things that need to be considered as indicators in analyzing the application of EU Law in ASEAN: (1) Effectiveness of the Organizational Structure in ASEAN in addressing various regional issues; (2) Differences in historical, economic, cultural, political and social backgrounds among ASEAN member states; (3) The concept of International Legal Personality between ASEAN and the European Union; (4) Political Willingness of member states to make ASEAN more flexible in dealing with various existing problems.

First, in relation to point number 1 above, it is of course difficult for ASEAN to take its own initiative in resolving existing regional issues. This is proven by the unresolved South China Sea conflict, Myanmar's conflict with the Rohingya ethnicity, and so on, although ASEAN has forums/sub organs to help resolve these issues, such as the ASEAN Intergovernmental Commission on Human Rights, ASEAN Forum on Political Stability, and so on. However, these organs are ineffective due to the ASEAN Way & Non Intervention Principle where ASEAN member states are very rigid in applying this principle which results in the domestic affairs of member states which, although the scale has the potential to threaten ASEAN, cannot be resolved through the ASEAN forum.

Secondly, in relation to point number 2, it cannot be denied that due to the significant differences in various social and economic factors among ASEAN member states, the process of realization, expansion, and integration towards a more solid ASEAN is still not fully optimal. In the process of expansion, for example, in contrast to the European Union which continues to add member states, ASEAN has been slow to do so. This is evidenced by the case of Timor Leste where it was only at the end of 2022 that Timor Leste's membership as an Official Member of ASEAN was successfully approved by member states to be further verified in ASEAN's administrative system as a regional organization.

Thirdly, in terms of International Legal Personality, ASEAN is not like the European Union where they can act both on behalf of the organization and on behalf of

their respective member states as well as for various international cooperation representing both the interests of its member states and ASEAN as a whole for similar activities. It may be that in some international cooperation, there are member states that do not participate and bind themselves and not on behalf of ASEAN.

Fourth, related to point 4, changes to ASEAN and the restructuring of its internal organs require collective political will. Because without it, it will be difficult for ASEAN to make internal changes and integrate more solidly in the future.

Based on the above, an analysis comparing EU law with ASEAN's changing organizational structure can be conducted using certain indicators and facts as benchmarks. For example, the ASEAN Single Aviation Market (ASAM) mirrors the EU's Air Traffic Union System. Although not all ASEAN countries can compete in their national aviation sectors, the ASAM system can be optimized as a model to achieve aviation unification in ASEAN, similar to the European Union. ASAM originated from an agreement among ASEAN member states and falls under ASEAN as a major international organization, which suggests that integration within the ASEAN aviation industry is possible.

In relation to the effectiveness of ASEAN organizational restructuring, efforts are also needed to redefine the ASEAN WAY and the principle of non-intervention so that it can be modified in such a way that it can be applied more flexibly and less rigidly in addressing various global problems and issues. Issues such as the case of violence against ethnic Rohingya in Myanmar or the South China Sea conflict, etc. can be resolved more effectively through ASEAN institutions. ASEAN as an organization should be able to act more flexibly in this era of globalization in addressing various global issues and challenges. More specifically, this can also empower the duties and functions of ASEAN sub-organizations such as AICHR, AIPA, ASEAN Political and Security Forum, etc., more effectively and optimally in dealing with any existing regional problems in accordance with their respective authorities.

With effective and optimal restructuring, the ASEAN integration process in various fields will certainly be faster and more solid. This is because the functions and duties of ASEAN organs can be optimally empowered. So it is natural that through this acceleration, integration between ASEAN member countries will also be faster and more optimal.

With the implementation of the ASEAN Economic Community in 2015, the process of regional economic integration is becoming increasingly apparent. The four characteristics of AEC are first, a single market and production base; second, a highly competitive region; third, equitable economic growth; and fourth, a region integrated with the global economy. The achievement of AEC Blueprint 2015 shows that ASEAN's economic condition is getting better along with the implementation of AEC Blueprint 2015.<sup>29</sup>

ASEAN connectivity is considered as a supporting factor for the realization of these conditions. ASEAN connectivity is regulated in the Hanoi Declaration on the Adoption of the Master Plan on ASEAN Connectivity (MPAC) which aims to support economic growth, reduce development gaps, promote the integration process, improve competitiveness, and encourage connectivity between communities. There are three pillars of connectivity, namely physical connectivity centered on infrastructure development; institutional connectivity in terms of trade, investment and mobilization facilities; and finally people-to-people connectivity for human resource development, cultural exchange and tourism industry development. At the 28th and 29th Summits, ASEAN agreed to realize MPAC 2025/ASEAN Connectivity 2025.<sup>30</sup>

The recent humanitarian crisis involving the Rohingya ethnic group in Myanmar has drawn global, regional and bilateral attention. Despite strong reactions from various stakeholders, the principle of non-intervention in a country's internal affairs hinders effective solutions. In addition, the commitment of ASEAN leaders seems to be symbolic, leading to the humanitarian issue being sidelined.<sup>31</sup>

In accordance with the principles in the spirit of ASEAN cooperation, member states uphold the value of mutual respect for sovereign rights, although it is expected that dispute resolution can be achieved through peaceful means. ASEAN here still acts as a forum that serves as a reference for Southeast Asian countries in resolving regional issues. In an effort to resolve the Rohingya issue, for example, ASEAN can use the two

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<sup>29</sup> Diangga, I. M. *Masa Depan Pembangunan Konektivitas ASEAN. Kementerian Luar Negeri Republik Indonesia, Direktorat Kerja Sama ASEAN*. Jakarta: Kementerian Luar Negeri Republik Indonesia, 2016, p. 62.

<sup>30</sup> Hardyant, Winda, and Demeiati Nur Kusumaningrum. *Tantangan Sosial Politik Era Kekinian: Kolaborasi pemikiran Berbagai Perspektif*. Gre Publishing, 2017, pp. 168- 169.

<sup>31</sup> Yumitro, Gonda. "Respon Dunia Internasional Terhadap Tragedi Kemanusiaan Rohingya." *Sospol: Jurnal Sosial Politik*, Vol. 3, No. 2, 2017, pp. 81–100, <https://doi.org/10.22219/sospol.v3i2.4886>.

institutions that have been established, namely the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Humanitarian Assistance (AHA) Center for disaster management.<sup>32</sup> Although the results of the Thailand-Cambodia dispute or the crisis in Myanmar are still being processed and analyzed more deeply. It is undeniable that the encouragement and motivation from other ASEAN member states is very helpful in realizing stability in the Southeast Asian region.

Another challenge in realizing security stability and peace in Southeast Asia is the aspect of neutrality which tends to be questioned. According to the Director General of ASEAN Cooperation, Indonesian Ministry of Foreign Affairs (2006) The ASEAN Community represents ASEAN's effort to encourage member countries to openly discuss regional issues while upholding core principles like mutual respect, non-intervention, and consensus. Despite aiming for full integration, the Community faces challenges due to some ASEAN countries' close political ties with major international powers. For instance, the Philippines hosts US military bases, Thailand collaborates on security with the US, and Malaysia and Singapore maintain special relationships with England. It's essential to scrutinize ASEAN's independence further to promote regional advancement and achieve a united ASEAN community in the future.<sup>33</sup>

ASEAN cooperation in the context of stronger integration in the future basically needs to be improved both in its function as a conflict resolution forum regions and efforts to encourage national economic growth.<sup>34</sup> For this purpose, ASEAN's internal sub-organs should be restructured. Each member country should strive to overcome ideological differences, identify commonalities, and enhance regional cooperation to achieve Southeast Asia's integration within the Community framework. By organizing internal ASEAN sub-organs like the AICHR and ASEAN Political and Regional Security Forum, and enhancing integration among member countries, ASEAN can address its challenges

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<sup>32</sup> Bakker, Felix Ferdin, et al. "Law Versus Humanity: Problems of the Non Refoulement Principle Regarding Refugees in Southeast Asia." *Rechtsidee*, Vol. 10, No.2, 2022, pp. 10-21070, <https://doi.org/10.21070/jjhr.v11i0.784>.

<sup>33</sup> Srisangnam, Piti. "Shaping ASEAN's Future: Strategies for Regional Prosperity and Resilience." *The ASEAN Magazine*, September 4, 2023, <https://theaseanmagazine.asean.org/article/shaping-aseans-future-strategies-for-regional-prosperity-and-resilience/>.

<sup>34</sup> Hill, Hal, and Jayant Menon. "ASEAN Economic Integration: Features, Fulfillments, Failures and the Future." *Asian Development Bank*, No. 69, 2010, p. 8, <http://hdl.handle.net/11540/1581>.



more effectively in the future. Using ASEAN as a forum can help resolve regional issues optimally.<sup>35</sup>

#### **4. EU Law and Mechanism Relevant to ASEAN in Comparison**

EU and ASEAN has established a constructive and significant cooperation in the last few years. On July 14, 2023, the 30th ASEAN Regional Forum (ARF) took place in Jakarta. The event was chaired by Indonesia's Minister of Foreign Affairs, Retno Marsudi, and followed the ASEAN Chairmanship theme "ASEAN Matters: Epicentrum of Growth." The meeting was attended by Foreign Ministers and representatives from ARF member countries, as well as the Secretary-General of ASEAN, H.E. Dr. Kao Kim Hourn.

The meeting was also joined by Josep Borrell, the High Representative of the European Union for Foreign Affairs and Security Policy, who reaffirmed the EU's commitment to ASEAN Centrality and expressed the EU's intention to strengthen dialogue and cooperation with ASEAN in order to promote peace and security in the region. H.E. Borrell further emphasized the growing impact of climate change on peace and security, urging the ARF to give greater attention to the threats posed by climate change and environmental degradation on peace, security, and defense.

Founded in 1994, the ASEAN Regional Forum serves as a key platform for dialogue and consultation on political and security matters in the region. In the Joint Ministerial Statement from the 24th EU-ASEAN Ministerial Meeting held in Brussels on February 2, 2024, ASEAN ministers expressed their appreciation for the EU's active participation in the ASEAN Regional Forum. They also welcomed the EU's commitment to uphold all relevant ASEAN-led security mechanisms, including the East Asia Summit and the ASEAN Defence Ministers Meeting (ADMM)-Plus.<sup>36</sup>

#### **5. Human Rights and Economic Integration as Specific Aspects of EU Law and How They Might be Integrated Within ASEAN's Unique Political and Cultural Context**

There are specific aspects of EU Law which can be integrated within ASEAN's legal framework. Human rights and economic integration are some of the visible aspects

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<sup>35</sup> Netipatalachoochote, Stanati. "The Human Rights Protection System in Southeast Asia and ASEAN." *University of Groningen*, 2020, pp. 193 – 196, doi: 10.33612/diss.126344358.

<sup>36</sup> EU ASEAN Strategic Partnership. *Blue Book 2024-2025*. Global Gateway, 2024, p. 25.

of EU which can be incorporated into ASEAN. In terms of economic integration, In 2022, the EU and the Association of Southeast Asian Nations (ASEAN) signed the Comprehensive Air Transport Agreement (EU-ASEAN CATA), which is the main focus of this article. The agreement addresses key issues such as climate change, enforcement mechanisms to ensure financial transparency, and the promotion of high labor standards within the airline industry. The EU-ASEAN CATA represents the latest effort by the EU to establish a "global benchmark" for the regulation of international air transport.

Following the signing of the EU-ASEAN CATA in 2022, the European Commission declared that “[B]y setting global benchmarks that commit all 37 countries in the two regions to fair competition and to improving social and environmental conditions, it [the EU-ASEAN CATA] represents the latest example of a new generation of international air transport agreements.”

The EU-ASEAN CATA stands out as an exceptional Air Transport Agreement (ATA) due to its broad geographic reach, liberalizing effects, and expanded scope of provisions. As the first bloc-to-bloc agreement between 27 EU member states and 10 ASEAN member states, representing a combined population of 1.1 billion, the EU-ASEAN CATA is poised to make a significant impact not only on stakeholders within the EU and ASEAN but also on the global aviation industry.<sup>37</sup>

Furthermore, EU law on monetary region is also worth considering. It serves as a lesson on how for instance ASEAN Member States could adopt a single regional monetary currency much like the EU. Despite the fact that such move still requires a lot of considerations given the fact that ASEAN member states are still filled with economic gaps.

The concept of a single monetary currency in ASEAN is also linked to the goals of the ASEAN Economic Community (AEC) 2015. While some may assume that economic integration will inevitably lead to monetary integration, as it did in Europe,

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<sup>37</sup> Lee, Jae Woon, et al. “The EU-ASEAN Comprehensive Air Transport Agreement (2022): From Regional to Inter-Regional to Global?” *Journal of Air Law and Commerce*, Vol. 89, No. 3, 2024, p. 20, <https://doi.org/10.25172/jalc.89.3.3>.

recent developments suggest that the European model requires re-evaluation. Any move toward ASEAN monetary integration should therefore be approached with caution.

The primary question surrounding monetary integration is the potential benefits it could offer. The advantages of a single currency are typically seen as lower transaction costs, reduced exchange rate risks, and greater price stability. Moreover, there is a temptation to believe that a single ASEAN currency could emerge as one of the world's major currencies, further strengthening ASEAN's position as a global economic player.

While the benefits of trade integration can be reaped with relatively few conditions, the advantages of monetary integration—particularly a single currency—are more difficult to achieve. When countries join a monetary union, they relinquish control over their own monetary policy. As a result, they must accept the interest rates set by the regional central bank and lose the ability to use interest rates to manage their business cycles.

As a result, one of the key criteria for an optimal currency area (OCA)—a concept introduced by Nobel laureate Robert Mundell—is that the countries within the currency area should have similar business cycles. Other crucial criteria include macroeconomic stability and a comparable level of economic development across the member countries.

The Eurozone clearly does not meet these criteria. There are significant differences between the economically advanced countries like France, Germany, and the Benelux nations, and the less developed economies such as Ireland, Greece, Portugal, and Estonia. The macroeconomic instability of the latter group has become evident in recent years. Additionally, the business cycles of these two groups are not sufficiently aligned, making it difficult for a single monetary policy to effectively address the needs of all member states. Interest rates in the Eurozone have generally been quite low, which suits the economically mature countries well. However, for Ireland, this low rate was problematic, as the country needed higher interest rates to slow down its rapidly growing economy prior to the 2008 crisis.

The same arguments apply to ASEAN, where the differences in economic development are even more pronounced than within Europe. ASEAN countries with a higher share of services and manufactured goods in their GDP experience very different business cycles compared to those more reliant on the production of raw materials. Many ASEAN nations have not yet reached economic maturity, with some still having

significant room for growth, while others are already experiencing rapid economic expansion. These periods of rapid growth are often characterized by instability rather than stability.

In his interview, Stiglitz also pointed out that there was a general acknowledgment when the Eurozone was established that Europe did not meet the criteria of an optimal currency area (OCA). Many hoped that, over time, additional measures would be taken to make the euro work effectively. However, no one at that time anticipated the scale of the actions that would eventually be needed to address the significant challenges Europe now faces.

Nevertheless, the advantages of having a single currency are generally seen as lower transaction costs, reduced exchange rate risk, and greater price stability. This can serve as a valuable lesson for ASEAN. The benefits of a single currency can only be fully realized once the region has developed into an optimal currency area. Trying to implement a single currency before reaching that stage could result in costly challenges down the line.<sup>38</sup>

In terms of human rights, EU Charter of Fundamental Rights and European Convention of Human Rights may also serve as source of reference for ASEAN human rights system. In that regard, through in depth analysis of European's organizational structure, European Court of Human Rights as part of ECHR could also serve as a model on how ASEAN should develop its own human rights dispute settlement body.

In the future, ASEAN may be propelled by both political and economic imperatives toward deeper regional integration. The principles and objectives outlined in the ASEAN Charter suggest that the region could be moving in a direction similar to that of the EU. In this process, the EU has much to offer ASEAN, particularly in terms of promoting and protecting human rights and democracy. However, for the EU to effectively contribute to advancing human rights and democracy in ASEAN, it must: (1) Ensure that the fundamental values of the EU, such as human rights, democracy, and the rule of law, are not compromised in favor of economic objectives; (2) Speak with a unified voice – while larger EU powers, which are more dependent on exports and global economic competitiveness, tend to favor a more pragmatic approach, smaller member

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<sup>38</sup> Ómarsdóttir, Sóley. *Should ASEAN even consider a single currency?*. ASEAN Research and Advocacy (CARI), <https://cariasean.org/news/should-asean-even-consider-a-single-currency/>.

states are generally more inclined to maintain a moral stance; (3) Maintain consistency in EU relations with ASEAN by ensuring that individual member states do not make bilateral agreements with ASEAN or any ASEAN member country in response to slow progress in trade negotiations. This approach requires a strong commitment to multilateralism.

Additionally, since the EU possesses the most advanced and effective regional human rights mechanism, while ASEAN is in the process of developing its own, the EU can serve as an inspiration for ASEAN in its efforts to remain relevant both to the ASEAN people and the international community. The following activities and approaches are recommended: (1) Strengthen the 'track two' dialogue between ASEAN and the EU, placing greater emphasis on issues that are considered too sensitive to be included in the formal agenda; (2) Make a more substantial and long-term contribution to capacity building. ASEAN is being encouraged to explore the establishment of an ASEAN Center for Human Rights and Peace Studies. Any support for this initiative would not only help raise public awareness about human rights and democracy but also enhance the monitoring capacity of locally developed institutions; (3) Identify commonalities and shared priorities with ASEAN, such as addressing trafficking in persons, migration and migrant workers' rights, violence against women and children, and environmental issues; (4) Place greater focus on strengthening judiciaries and empowering civil society; (5) Support the efforts toward establishing an ASEAN Human Rights Body, while acknowledging the value of regional specialized mechanisms like an ASEAN Commission for the promotion and protection of the rights of women and children. Additionally, it is crucial for the EU to contribute to the development of an ASEAN human rights framework, such as an instrument focused on protecting the rights of migrant workers.

Given the significant influence of corporations and business communities in ASEAN, these non-state actors play a crucial role. One effective way to engage with ASEAN is by integrating corporate social responsibility (CSR) into human rights, economic, and trade relations between the two regions.<sup>39</sup>

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<sup>39</sup> Petcharamesree, Sriprapha. *The Human Rights Body: A Test for Democracy Building in ASEAN*. International Institute for Democracy and Electoral Assistance, 2009, p. 17-20.

Human rights and gender equality are two key thematic areas supported by the Enhanced Regional EU-ASEAN Dialogue Instrument (E-READI). On October 3, 2023, the 5th ASEAN-EU Policy Dialogue on Human Rights concluded in Brussels. The event marked another important step in strengthening interregional cooperation to promote human rights in both regions. The dialogue provided an opportunity for the exchange of views on human rights issues, including the rights of women and children, as well as the human rights implications of global developments and challenges faced by both regions. Timor-Leste participated for the first time in this interregional policy dialogue on human rights as an observer, in accordance with established ASEAN guidelines.

The 5th Policy Dialogue on Human Rights (PDHR) was preceded by the 3rd EU-ASEAN Civil Society Forum on Human Rights (CSO Forum) in Brussels on October 2, 2023. During the forum, representatives from civil society organizations presented a joint policy recommendation to be considered in the framework of the dialogue. The event was co-chaired by H.E. Eamon Gilmore, EU Special Representative for Human Rights, and H.E. Yuyun Wahyuningrum, Representative of Indonesia to the ASEAN Intergovernmental Commission on Human Rights (AICHR) and Chair of AICHR in 2023.

After the dialogue, ASEAN delegates traveled to Strasbourg, France, from October 4 to 6, 2023, to meet with representatives from the European Parliament, the Council of Europe (CoE), the European Court of Human Rights (ECHR), and the Delegation of the European Union to the Council of Europe. The discussions focused on recent policy updates regarding human rights challenges and aimed at strengthening cooperation between the various human rights mechanisms of the two regions.<sup>40</sup>

### **III. CONCLUSION**

Adopting aspects of EU law could improve ASEAN's response to global challenges. This requires reforming ASEAN, particularly revisiting the ASEAN Way and non-intervention, to promote stronger regional stability and protect the interests of all members. ASEAN should hold regular ministerial meetings, strengthen cooperation with the EU, and involve NGOs to build legal frameworks and enhance regional security and integration. Due to ASEAN's Way ineffectiveness, in the coming years, Southeast Asian

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<sup>40</sup> Supra Note 36, pp. 25 – 30.

nations must decide whether to uphold traditional notions of sovereignty or embrace deeper regional cooperation. Recent human rights crises in Myanmar and other member states highlight the risks of internal instability which underscores the need for ASEAN to learn from the European Union, a key partner, which could provide valuable insights on strengthening and building a more resilient organization.

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