

EDITORIAL

Revisiting ASEAN Legislation and Its Impact on Regional Governance

How to Cite: Arnakim, L.Y., Karim, M. F., & Mursitama, T. N. (2021). Revisiting ASEAN Legislation and Its Impact on Regional Governance. *Journal of ASEAN Studies*, 9(2), <https://doi.org/10.21512/jas.v9i2.8116>

Keywords: regional governance, foreign policy, transnational issue

Introduction

The founding Members of ASEAN signed The Treaty of Amity and Cooperation in Southeast Asia (TAC) in 1976 during the first ASEAN Summit Meeting in Bali. The Treaty contained some fundamental principles that reflect the peaceful coexistence and friendly cooperation among states in the region of Southeast Asia and beyond (Medina, 2020). Article 2 of the Treaty, for example, mentioned that all parties to the Treaty are guided by:

“...a. Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations; b. The right of every State to lead its national existence free from external interference, subversion or coercion; c. Non-interference in the internal affairs of one another; d. Settlement of differences or disputes by peaceful means; e. Renunciation of the threat or use of force; f. Effective cooperation among themselves” (Secretary of State for Foreign and Commonwealth Affairs, 2012).

The Treaty further stated that conflicting parties shall refrain from using force when disputes arise and resort to friendly negotiations instead. Dispute settlement should be performed through mediation, inquiry or conciliation in order to prevent the dispute from worsening (Secretary of State for Foreign and Commonwealth Affairs, 2012). Despite its growing signatories, many argued that the TAC has been nothing but symbolic, as the region has not experienced any severe incident or dispute that could challenge its regional peace. In fact, ASEAN member states in the past had brought their disputes to the International Court of

Justice (ICJ) to reach a settlement (Yamakage, 2017). Furthermore, TAC was only seen suitable for political and security disputes (Naldi, 2014).

Meanwhile, the Vientiane Protocol on Enhanced Dispute Settlement Procedure 2004 or known as Enhanced Dispute Settlement Mechanism (ESDM), exists to settle disputes related to economic and trade agreements between member states. ESDM was strengthened as members of ASEAN embarked on deepening their economic integration under the ASEAN Economic Community (Naldi, 2014). ASEAN Member States may opt to request the Senior Economic Officials Meeting (SEOM), which acts as a panel to examine or assess a specific matter and then develop a binding report containing findings and recommendations. Nonetheless, this body has been proven ineffective and weak. The member states are still firmly upholding the ASEAN Way for protecting national sovereignty, the norms of non-criticism and non-interference that comes first before everything else. The nature of this mechanism is also optional or voluntary (Shah, 2017).

Since its establishment, ASEAN has adhered to the so-called “ASEAN way” to solve any differences between the member states, including those related to trade. Basic aspects of the ASEAN way includes: “Firstly, a desire to not lose face in public or to make other members lose face. Secondly, a preference for consensus rather than confrontation. Thirdly, a rejection of the notion without consent in the internal affairs of other states” (Koesrianti, 2016). Eventually, these principles of the ASEAN Way were included in the ASEAN Charter that ASEAN leaders adopted at the 13th ASEAN Summit in Singapore in November 2007. Article 20 of the ASEAN Charter states: “Decision-making shall be based on consultation and consensus. Where consensus cannot be achieved, the ASEAN Summit may decide how a specific decision can be made. In the case of a serious breach of the Charter or non-compliance, the matter shall be referred to the ASEAN Summit for decision” (ASEAN Charter, 2007). This shows that decisions shall be made based on consensus among member states, and any breach of the Charter shall be brought to the ASEAN Summit for settlement.

Dispute settlement shall be solved through the use of peaceful means such as dialogue, consultation and negotiation. As Article 22 mentions: “Member states shall endeavour to resolve peacefully all disputed in a timely manner through dialogue, consultation and negotiation” (ASEAN Charter, 2007). Furthermore, conflicting parties may refer to the Chairman or the Secretary-General of ASEAN to help resolve the conflict by providing them good offices, conciliation or mediation. As Article 23 states: “Parties to dispute may request the Chairman of ASEAN or the Secretary-General of ASEAN, acting in an ex-officio capacity, to provide good offices, conciliation or mediation.” (ASEAN Charter, 2007). Hence, it can be said that ASEAN Summit becomes a dispute settlement organ besides being the highest policy-making body of ASEAN.

As the region enters the era of digitalization, the internet has become widely accessible, and the number of social media users are increasing each day. This development has a price to pay, particularly the rise of fake news. Fake news or hoax is not only detrimental to society’s cohesiveness, but it may also destabilize the government. The ASEAN Ministers Responsible for Information (AMRI) held a roundtable discussion on 9 September 2017 to specifically

talk about the proliferation of fake news in the region. The Ministers agreed that there is a need for a multi-sectoral approach involving private sectors, media companies, and educational sectors to help combatting this problem (ASEAN, 2017). A year later, ASEAN adopted a Framework and Joint Declaration to Minimise the Harmful Effects of Fake News to promote cybersecurity awareness and better counter the spread of fake online information (ERIA, 2021).

In the Framework, the Leaders agreed that the member states shall take notice of several key points: Firstly, there is a need to improve digital literacy. Secondly, strengthen national capacity to detect and respond to fake news. Thirdly, encourage stakeholders to build on the existing anti-fake news norms and guides. Lastly, share best practices and experience among member states as being discussed by Smith, Perry, and Smith in this volume. All of these have to be carried out by observing national sovereignty.

The spread of fake news became more alarming during the Covid-19 outbreak. Southeast Asian countries have been challenged with press freedom and more rigid censorship (Mursitama, Karim, and Arnakim, 2021). The limited information from the government had urged the people to seek information from the media (both conventional and non-conventional) and civil society (Lee and Natalegawa, 2021). Many governments feel that the spread of fake news in the media is threatening public order, and thus they have to take down and limit the availability of information (Chairil, 2021).

ASEAN cooperation in the field of environment is envisioned in the ASCC Blueprint 2025 and further outlined in the ASEAN Strategic Plan on Environment (ASPEN). One of the key result areas is the “Conservation and Sustainable Management of Biodiversity and Natural Resources”. The organs to monitor the implementation of ASEAN cooperation on the environment include the ASEAN Ministerial Meeting on the Environment (AMME), ASEAN Senior Officials on the Environment (ASOEN), which are supported by several working groups (ASEAN, 2017b).

The haze problem in Southeast Asia has been in place for years, with the worst case occurring in 1997 and more recently in 2015. The origin of this toxic smog is Indonesia’s forests located mainly in Sumatra and Kalimantan. Illegal land clearing for palm plantations is common in Indonesia. This is no surprise as the country reigns as the world’s biggest palm oil producer (Index Mundi, as cited in Indonesia Investments, 2016). The huge forest fires have produced hazardous air pollutants that cross the national border, reaching Singapore and Malaysia almost yearly. Malaysia and Singapore reported the haze issue as one of the main external challenges to their national security (Guan, 2016; Er, 2016).

Following the transboundary haze problem, ASEAN formed an Agreement on Transboundary Haze Pollution (THP), containing areas of regional cooperation in “monitoring and assessment, prevention, preparedness, national and joint emergency response, procedures for deployment of people, materials and equipment across borders, and technical cooperation and scientific research” (ASEAN, 2015b). All of these have been further reiterated in a roadmap on regional cooperation to tackle the transboundary haze problem in Southeast Asia adopted by member

states of ASEAN to achieve a “haze-free region by 2020” (Hamdan, 2016). Some of the key strategies under the Roadmap include:

“1. Implementation of the ASEAN Agreement on Transboundary Haze Pollution (AATHP); 2. Sustainable Management of Peatlands for Peatland Fires Prevention.; 3. Sustainable Management of Agricultural Land and Forest for Large Scale Forest and/or Land Fires Prevention; 4 Strengthening Policies, Laws, Regulations, and their Implementations Including to Facilitate Exchange of Experience and Relevant Information among Enforcement Authorities of the Parties in Accordance with the AATHP Article 16 (f); 5. Enhancing Cooperation, Exchange of Information and Technology, and Strengthening of Capacity of Institutions at All Levels; 6. Enhancing Public Awareness and Cross-Sectoral and Stakeholders Participation; 7. Securing Adequate Resources from Multi-Stakeholders for Transboundary Haze Prevention; 8. Reducing Health and Environmental Risks and Protection of Global Environment.” (ASEAN, 2017b).

The ASEAN Way, which famously upholds the principle of state sovereignty and non-interference, has been accused of the ineffectiveness of regional cooperation on transboundary environmental issues (Dorman and Olsen, 2019). For instance, in 2016, Singapore requested six Indonesian companies to provide information related to the forest fires on their lands as the country acts in conformation with their national law on Transboundary Haze and Pollution Act 2014. Only a few answered the summons. Commenting on the failure of these companies to turn up for investigation, Indonesia’s Environment and Forestry Minister argued that Singapore has intervened in Indonesia’s domestic problem and that it hurt the state’s sovereignty (Channel News Asia, 2016a; Lian, 2016). As long as there is no legal basis and enforcement procedure for regional agreements, a country would always be able to defend itself under the principle of sovereignty and non-intervention.

As Indonesia has been considered the most frequent original country that causes the transboundary haze in Southeast Asia and a more reluctant country to deal with regional agreements, Indonesia needs to have more initiatives. As such, Indonesia, under SBY’s presidency, helped the country boost its prominence on the international stage, especially in the realm of democracy and human rights (Karim, 2020). SBY adopted his “million friends and zero enemies” foreign policy outlook and acted accordingly by freely exercising policies in all directions (Piccone & Yusman, 2014). Indonesia played a role as a regional leader, mediator, conflict manager among ASEAN member countries, and architect of ASEAN institutions and norms (Karim, 2021). He was actively engaged in matters related to ASEAN by being a mediator and conflict manager. During SBY’s leadership, Indonesia placed ASEAN within its innermost foreign policy circle (Anwar, as cited in Purnama & Mahyudin, 2018). Moreover, playing a role as a dialogue partner for Myanmar over its struggle for democratization amidst the strong pressure from two great powers, i.e. China and the United States, was one of the illustrations of Indonesia’s strong influence in Southeast Asia.

Indonesia's role as a mediator was also visible in the South China Sea (SCS) issue. Indonesia plays an important role in maintaining stability in the region and avoiding conflicts internally within the region and from outside power (Widiatmaja & Albab, 2019).

In the issue of terrorism, SBY promoted Indonesia as the world's largest Islamic country that is against acts of Terrorism and denounced all forms of extremism (Widiatmaja & Albab, 2019). He participated in many global anti-terrorism forums, became the chairman of the Asia-Pacific Economic Cooperation (APEC) Counter-Terrorism Task Force, and also established communication with non-Islamic countries to build trust in Islam (Widiatmaja & Albab, 2019). Furthermore, Indonesia was the one who "initiated the architecture of ASEAN's political and security cooperation". Indonesia was known to maintain close cooperation with its neighbouring countries. The country became a host to the annual Asia-Pacific forum in democracy, took part in the G-20 summits, co-chaired the UN Secretary General's 27 member High-Level Panel on the Post-2015 (Millennium Development Goals) Development Agenda, and many others (Piccone & Yusman, 2014).

As opposed to SBY, President Joko Widodo is seen to adopt an inward-looking policy style. Jokowi implements down-to-earth or pro-people diplomacy, which means that all foreign policies should act to represent the domestic interests or benefit the Indonesians. Indonesia under Joko Widodo is not too focused on shaping a positive image in the international arena like his predecessor. This was shown when the government performed a crackdown on illegal fishers or what some called the "shock therapy" campaign by capturing and "blowing up and sinking" illegal fishing vessels found in Indonesian waters (Weatherby, 2014). Under Jokowi, Indonesia is not as dominant in ASEAN as it was under SBY. There was an argument that claimed "Jokowi sees ASEAN only through profit logic," or in other words, Indonesia acts based on what profit will be obtained from its involvement in ASEAN related matters (Yahya, as cited in Rosyidin and Pattipeilohy, 2020).

As the last volume of the editorial section examines the ASEAN's Challenges and Opportunities during the pandemic (Mursitama, Karim, and Arnakim, 2021), this volume revisits ASEAN legislation and its impact on regional governance. Coincided with the above phenomena, we are pleased to present volume 9 no. 2, 2021, which discusses several issues related to ASEAN legislation and its impact on regional governance from dispute settlement on trade and fake news to environmental issues, from ASEAN countries business governance to country studies on Indonesian leadership contestation in foreign policy. This volume is comprised of seven articles. The first part is on ASEAN legislation, especially on Dispute settlement mechanism, fake news management, and transboundary environmental issues. The first article by Intan Soeparna analyses whether the role of the ASEAN Summit can be a solution for the post-adjudication issue in the ASEAN EDSM. Intan Soeparna inserts that the intervention of the ASEAN Summit to the post-adjudication of ASEAN EDSM is likely to apply political solutions that would, in turn, make legal decisions subject to politically driven scrutiny. However, ASEAN commits that any economic disputes must be resolved to ensure economic stability in the ASEAN.

This has been followed on legal review based on the documentary research concept by comparing the development of legislative responses to fake news spread in Southeast Asia by Smith, Perry and Smith. They analyse anti-fake news legislation, which focuses on the transmission of information by electronic means than print media. The authors suggest it would be better to develop anti-fake news legislation as either a standalone statute or a specific amendment to existing legislation than include fake news in omnibus legislation. Except in the most severe cases, creating, publishing, or distributing fake news illegality should be reduced from a criminal offence to an administrative offence, where the police issue a fine. Given the documented publishing and spreading of disinformation by state actors, their servants and agents, there should be an explicit “fake news” offence associated with the action of such persons.

The third contribution was on transboundary environmental governance, especially contestation hybridity in the biofuels and palm oil regimes between the EU and ASEAN by Helena Varkkey. She argues that it has never been more important to take a transboundary approach to address complex environmental problems. However, it has been argued that hybrid transboundary environmental governance may undermine sustainable development and environmental justice objectives. This paper addresses the complexities of the European Union’s Renewable Energy Directives (EU RED and RED II), contextualizing them within the Southeast Asian palm oil sector. Palm oil is a significant source of biofuel, and the EU is the second-largest importer of palm oil in Southeast Asia. Helena concludes that this transboundary market approach to biofuels and palm oil should be regarded with caution, as it (1) lowers regulatory quality within the biofuels sustainability regime, (2) undermines the sustainable palm oil market, and (3) indirectly bolsters unsustainable practices outside the palm oil sector.

The second part of the volume discusses on good governance of the business. Jonathan, Moch. Doddy Ariefianto, and Rindang Widuri examine the role of financial structure, business drive, and business environment that resulted in external audit service adoption in small and medium-sized enterprises (SMEs) within ASEAN countries. The authors indicated a significant positive correlation between sales, ownership structure (partnership vs sole proprietorship), and external audit adoption for SMEs. From a country-of-origin perspective, they conclude that audit adoption is significantly higher in Malaysia and the Philippines than in Vietnam. However, AUDIT adoption in Indonesia is significantly lower than in Vietnam, both in terms of awareness and implementation. Other points of interest can be seen in the interaction regression between countries, which indicates the degree of complexity associated with audit adoption when Country of Origin is taken into account. One significant policy implication is that SME's can better leverage external auditor services to support their growth and, in turn, the economy of the corresponding country.

Moreover, Mohd Jaffri Abu Bakar, Nanthakumar Loganathan, Asan Ali Golam Hassan and Tirta Nugraha Mursitama examine this asymmetric effect between the interrelationship of the interbank rate on the external competitiveness purchasing power represented by the real effective exchange rate for Malaysia and Thailand using monthly data covering the period of 1994 until 2020. Their empirical findings confirmed an asymmetric effect between the

interbank rate and real effective exchange rate based on the nonlinear autoregressive distributed lag estimates. This study also found a unidirectional asymmetric causal relationship running from real effective exchange rate on interbank rate Thailand, which indicate the monetary policy has a direct relationship on interbank rate volatility. While in Malaysia, there is no causality between both variables since the country has proposed several soft monetary policies and concentrates more on short-term borrowing by improving the tight money supply circulation based on domestic inflation, global economic, and financial market volatility. Therefore, the authors recommend there is a specific need for a monetary stabilizer policy to stabilize both countries' currencies and put more effort to liberalize the foreign exchange rate system in a globalized economy.

The final part of the country study presents contested interpretations of Indonesia's international leadership in foreign policy between presidents Susilo Bambang Yudhoyono and Joko Widodo. Aleksius Jemadu and Floranesia Lantang examine Indonesia's international leadership on foreign policy throughout the period of President Susilo Bambang Yudhoyono and President Joko Widodo, who have developed different conceptualizations of foreign policy. The authors argue that while President Susilo Bambang Yudhoyono tends to make Indonesia's international leadership an essential part of his rigorous effort to build a post-authoritarian identity for a democratic and stable nation, President Joko Widodo prefers to make his foreign policy serve the accomplishment of his domestic priorities. As such, they argue that Indonesia's international leadership is much contingent upon the individual preferences of the presidents in both formulating their policies as well as the implementation. The last part of the country study analyses Indonesian President Joko Widodo's Public Speeches from 2017 to 2018 by Adam Tyson and Stanislaus Apresian. The authors examine the rhetorical style and political priorities in Indonesian President Joko Widodo's public speeches during his first term in office. Their analysis shows that the president's passion extends beyond bureaucratic reform and into contentious political topics, where selective attempts at disruptive truth-telling are made.

Lili Yulyadi Arnakim
Moch Faisal Karim
Tirta Nugraha Mursitama

References

- ASEAN (2017a). ASEAN to cooperate on fighting fake news in the region. <https://asean.org/asean-to-cooperate-on-fighting-fake-news-in-the-region/>
- ASEAN (2017b). ASEAN Cooperation On Environment At A Glance. <https://asean.org/wp-content/uploads/2018/02/50.-December-2017-ASEAN-Cooperation-on-Environment-At-A-Glance.pdf>
- ASEAN Charter (2007). Retrieved from <https://kemlu.go.id/download/L3NpdGVzL3B1c2F0L0RvY3VtZW50cy9BU0VBTi1DaGFyYdGVyLnBkZg==>
- Chairil, T. (2021). Indonesian Government's COVID-19 Measures, January–May 2020: Late Response and Public Health Securitization. *Jurnal Ilmu Sosial Dan Ilmu Politik*, 24(2), 128–152. <https://doi.org/10.22146/jsp.55863>
- Channel News Asia. (2016a, June 17). Indonesia's latest comments on Transboundary Haze Pollution Act a 'good outcome': Masagos. Channel News Asia. Retrieved from <http://www.channelnewsasia.com/news/singapore/indonesia-slatest/2881910.html>
- Er, L. P. (2016). Singapore's Strategic Outlook in 2015: Golden Jubilee Year & Challenges Ahead. The National Institute for Defense Studies (NIDS) joint Research Series No. 14. Retrieved from http://www.nids.mod.go.jp/english/publication/joint_research/series14/index.html
- ERIA (2021). 'ASEAN on Point' Public Forum Fake News: Tackling Disinformation in ASEAN. <https://www.eria.org/events/asean-on-point-public-forum-fake-news-tackling-disinformation-in-asean/>
- Dorman, B. & Olsen, T. J. (2019). The ASEAN Way Out? Toward Cooperative Environmental Governance in Southeast Asia. <https://www.e-ir.info/2019/08/10/the-asean-way-out-toward-cooperative-environmental-governance-in-southeast-asia/>
- Guan, B. T. (Ed.). (2012). Human Security: securing East Asia's Future. Springer Science & Business Media.
- Indonesia Investments. (2016). Palm Oil. Retrieved June 06, 2017, from <http://www.indonesia-investments.com/business/commodities/palmoil/item166?>
- Karim, M. F. (2020). The limits of global human rights promotion: Indonesia's ambivalent roles in the UN Human Rights Council. *Contemporary Politics*, 26(3), 351–370. <https://doi.org/10.1080/13569775.2020.1720065>
- Karim, M. F. (2021). Role Legitimation in Foreign Policy: The Case of Indonesia as an Emerging Power under Yudhoyono's Presidency (2004-2014). *Foreign Policy Analysis*, 17(3), 1–19.
- Koesrianti (2016). Rule-based Dispute Settlement Mechanism for ASEAN Economic Community: Does ASEAN Have It?". *Hasanuddin Law Review Vol 2(2)*. <http://pasca.unhas.ac.id/ojs/index.php/halrev/article/view/303/170>

- Lee, K. & Natalegawa, A. (2021). Fake News Crackdowns Do Damage Across Southeast Asia During Pandemic. Center for Strategic & International Studies. <https://www.csis.org/blogs/new-perspectives-asia/fake-news-crackdowns-do-damage-across-southeast-asia-during-pandemic>
- Lian, K. K. (2016, June 16). Clear agreement for Asean to tackle haze. The Straits Times. Retrieved from <http://www.straitstimes.com/opinion/clear-agreementfor-asean-to-tackle-haze>
- Medina, A. F. (2020). More Countries Join ASEAN's Treaty of Amity and Cooperation. ASEAN Briefing. <https://www.aseanbriefing.com/news/more-countries-join-aseans-treaty-of-amity-and-cooperation/>
- Mursitama, T. N, Karim, M. F., & Arnakim, L. Y (2021). ASEAN and Its Relevance amidst Pandemic. *Journal Of ASEAN Studies*, vol. 9. No.1. <https://doi.org/10.21512/jas.v9i1.7648>
- Naldi, G. J. (2014). The ASEAN Protocol on Dispute Settlement Mechanisms: An Appraisal. *Journal of International Dispute Settlement*, 2014, 5, 105–138. doi: 10.1093/jnlids/idt031
- Piccone, T., & Yusman, B. (2014). Indonesian Foreign Policy: 'A Million Friends and Zero Enemies'. *The Diplomat*. <https://thediplomat.com/2014/02/indonesian-foreign-policy-a-million-friends-and-zero-enemies/>
- Shah, S. (2017). The Asean Enhanced Disputes Settlement Mechanism (Edsm): Functional For Economic Growth Or Protecting National Sovereignty? ASEAN Studies Center. <https://asc.fisipol.ugm.ac.id/2017/10/30/asean-enhanced-disputes-settlement-mechanism-edsm-functional-economic-growth-protecting-national-sovereignty/>
- Yamakage, S. (2017). Evolving ASEAN and Changing Roles of the TAC. In *Building ASEAN Community: Political-Security and Socio-Cultural Reflections*. Economic Research Institute for ASEAN and East Asia.
- Piccone, T., & Yusman, B. (2014). Indonesian Foreign Policy: 'A Million Friends and Zero Enemies'. *The Diplomat*. <https://thediplomat.com/2014/02/indonesian-foreign-policy-a-million-friends-and-zero-enemies/>
- Purnama, W. D. C., & Mahyudin, E. (2018). Indonesian Foreign Policy in the Era of Susilo Bambang Yudhoyono (2004-2014) towards Myanmar in Supporting Democratization. *Jurnal Hubungan Internasional Tahun XI, No. 2, Juli-Desember*.
- Rosyidin, M. and Pattipeilohy, S. C. H. (2020). Regionalism under challenge: Ideas and Joko Widodo's foreign policy towards ASEAN, 2014-2019. *Journal of ASEAN Studies*, 8(2), 147-172. <https://doi.org/10.21512/jas.v8i2.6596>
- Secretary of State for Foreign and Commonwealth Affairs (2012). Treaty Series No. 43 (2012). Published by TSO (The Stationery Office).
- Weatherby, C. (2014). Indonesia's Global Maritime Nexus: Implications for Illegal Fishing. *Stimson*. Retrieved May 25, 2017, from <https://www.stimson.org/content/indonesias-weather-forecast-hazy-with-achance-of-clear-skies>

Widiatmaja, A. & Albab, U. (2019). Indonesia under Susilo Bambang Yudhoyono (SBY) and Joko Widodo: Foreign Policy in the Middle of Regional Strategic Environment Dynamics. *Politica* Vol. 10 No. 1 Mei 2019