

## **ASEAN as a Subject of International Law: Its Role in the Formation of International Treaties**

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### *Abstract*

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*ASEAN or the Association of Southeast Asian Nations is one of the international organizations that involves several countries, namely countries in the Southeast Asian region. International organizations in International Law act as a very important subject to make and regulate a law and rules to its member countries, ASEAN is certainly a subject of International Law as an organization that regulates and makes agreements in accordance with mutual agreement. Agreements made by ASEAN apply to more than one country, so they are international agreements. It is important to outline ASEAN's role in making international agreements over the years. International treaties address agreements, rules that then bind countries that have agreed to the treaty. Such treaties can be categorized as sources of International Law. One example of an agreement that ASEAN has made to its member states is when the ASEAN Charter was signed at the 13th ASEAN Summit on November 20, 2007 by each head of State or government of ASEAN member states. There is an agreement regarding the reaffirmation of the basic principles of the formation of ASEAN. So this is where the role of ASEAN then acts as a maker of agreements aimed at common welfare.*

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### **INTRODUCTION**

As we know ASEAN or Association of South East Asian Nations is a cooperation organization between countries in Southeast Asia with member countries Singapore, Indonesia, Thailand, Myanmar, Philippines, Brunei Darussalam, Cambodia, Malaysia, Vietnam and Laos. With the founder of the formation of ASEAN together established it among him with Indonesia, Thailand, Singapore, Malaysia and the Philippines. Its representatives signed the declaration that gave birth to the new regional organization in Bangkok at the time. Established there on August 8, 1967. Countries in Southeast Asia have characteristics that are almost similar to each other, both in natural

characteristics, culture and so on. So, there is a sense of commonality that unites these regionally adjacent countries to have the same desires and goals and form this association. However, historically, ASEAN was not born under circumstances conducive to an international organization [1]. At that time, Southeast Asia was a conflict-ridden region. At the beginning of its consolidation period as an international organization. For example, the Vietnam War was a hot battle in the world, which was the time when there was a bloc war in the world (cold war). As well as several other uprisings. Coupled with the Asian financial crisis in 1997, it was realized that there was a need to reform the old ASEAN principles. Thus, the ASEAN Charter was established. Through the ASEAN Charter, ASEAN acquired

international legal personality, and transformed into an international organization that can stand independently. Although there have been both internal and external relations between ASEAN countries and other countries, with the ASEAN Charter, the law for cooperative relations will be reinforced.

The contents of the ASEAN Charter, among others, aim to Encourage greater cooperation in sector-level activities by various stakeholders and strengthen community interaction in political, economic, social and cultural cooperation. For ASEAN to become a rules-based organization, the Indonesian government must implement its commitments; Strengthen interactions among the peoples of ASEAN member states and interactions between the peoples and ASEAN organizations; Encourage ASEAN to establish clearer dispute settlement mechanisms and procedures to ensure that ASEAN goals are achieved. Change the operating mechanism and organizational structure of ASEAN to make it clearer and more efficient; Strengthen ASEAN meeting activities in Indonesia, particularly in Jakarta, by expanding the organization and establishing an ASEAN Watap Committee and appointing ambassadors from ASEAN dialogue partner countries. [2].

Meanwhile, International Law is something that regulates international entities. The point here is that all matters and rules made in international law when implementing a decision and rule, will apply on an international scale. So, it is not limited to just one or two countries. In its development, the notion of international law has also expanded and the relationship between states and international organizations, the relationship between international organizations and other organizations, the relationship between states and individuals in a special context, and so on. The main sources of international law are international treaties, international custom and general principles of law. Which means that the form of agreement between two or more countries can be said to be an international

treaty. Because it is wide range that is international and making them a source of international law.

#### **METHODOLOGY**

In this Article, the role and status of ASEAN as a subject of international law in providing international treaties in its policy of regulating relations between ASEAN member states and outside parties is reviewed. The agreement is included in international law which is a restriction or rule that is international so that it must be obeyed and obeyed by more than one country. This research is conducted with a qualitative method and analyzes the sources of international law contained in the policies implemented by ASEAN. And especially all international treaties that are relevant to the activities of the ASEAN international organization.

#### **ANALYSIS**

##### **ASEAN as an International Organization: An Overview**

In the early history of international law, states were considered to be the primary subjects of international law and other entities were not granted international legal personality. of international law and other entities were not granted international legal personality. However, the world has transformed into a "global village" with the increase in cross-border activities, so that solutions are needed to overcome the problems that arise from these activities. Connectedness makes countries more increasingly in need so that the formation of international organizations becomes a necessity. The paradox arises that to be able to carry out their functions and maintain their independence, countries must cooperate because the effects of the maintain their independence, countries must cooperate because of the effects of globalization. This cooperation is then facilitated by the formation of international organizations. However, this does not mean that state sovereignty is set aside.

The state remains as the main actor in international relations, where it is the state that forms the organization. Who forms the organization. The birth of international organizations is one of the characteristics of modern society that are formed as needed. The term international organization refers to an association of states formed and based on an international treaty. formed and based on an international treaty that contains a common goal, equipped with organs that are objectives, equipped with special organs to carry out certain functions in the organization, and the formation of international organizations. in the organization, and its formation is based on international law. Its constituents are then transformed into the legal part of the international organization. With these constituents, states can give international law personality international law, i.e. the capacity to act as legal subjects! which is separate from the constituent states. Personality can also be seen in terms of the powers granted and the functions of the organization when there is no clause that explicitly provides for explicitly clause expressly granting international personality. In the case of Reparations case, the International Court of Justice held that by having international personality, it does not mean that the organization is equated with a state international personality, the organization is viewed as a legitimate legal subject with rights. the organization is seen as a legitimate legal subject with rights and obligations. Any rights and obligations granted will be in accordance with the attribution of powers and the purpose for which the organization was created and functions [3].

### **ASEAN as an International Treaty Maker**

Since the ASEAN Charter came into force in 2008, it can be said that ASEAN has changed from a loose regional organization to a rules-based organization. As an international organization, it has gained personality exactly as described at the beginning then it must be ASEAN able to demonstrate that its entity is

independent and separate from its member states, particularly in the exercise of its legal acts. This case also explicitly mentioned in Article 41 paragraph (7) of the ASEAN Charter. But in practice, actions carried out by ASEAN tend to be understood as actions by member states collectively, even though it is written in the provisions as an action of ASEAN. The existence of this state is more or less influenced by nature and status the chosen organization of ASEAN is as an organization intergovernmental. This is evident in Article 3 of the ASEAN Charter. The intergovernmental nature of ASEAN is reflected, among other things, in its structure The ASEAN Organization. In the organizational structure of ASEAN, there is a council Coordination. The Coordination Council consists of the foreign ministers of member countries of ASEAN and plays an important role in the process of concluding international agreements by ASEAN. Apart from the position ASEAN's secretary-general is equivalent to a minister and is required to report its activities to the Coordinating Council, even if it is an organization Internationally, the position of the Secretary-General should be equivalent with the head of state and has independent power. There are things This does not make ASEAN independent in its Function as an international organization.

In making international agreements, of course, there is a need for procedures, so then the procedure is divided into two, namely, before the ASEAN Charter and after the ASEAN charter. The procedure for making international agreements by ASEAN before the ASEAN Charter, namely, ASEAN has been granted rights as a subject of international law. obligations under international law. one of these rights ASEAN has the capacity and authority of an international organization that is independent and separate from member states in making international agreements. Is the establishment of the ASEAN Secretariat as evidence of ASEAN's legitimacy as an international organization in 2008 The enactment of the ASEAN Charter, the implementation of the ASEAN Charter the power to make international agreements with

state parties and other international organizations. it's just now.

In practice, ASEAN lacks procedures and mechanisms. Complete, detailed, clear and legally binding international agreements to be concluded by ASEAN as an independent international organization characterized by member states. The absence of clear rules and procedures has made ASEAN play more of a coordinating body than an independent international organization. This is because many of the international agreements made by ASEAN reflect more of a multilateral agreement between its member states and ASEAN as a mere spectator. While after the creation and implementation of the ASEAN Charter, particularly with the inclusion of Article 3 is in conjunction with Article 41, paragraph (7) of the Association of Southeast Asian Nations found its identity as an international organization. In it is clear that ASEAN has been mandated to conclude agreements with other countries or organizations (signatures). other international law. It is just not in these terms Explicitly the status and position of ASEAN. There is still a confusing notion of ASEAN as an organization. An independent international community distinct from its member states and the idea of ASEAN as a collective member. In a These provisions, the procedures for concluding international agreements such as those discussed in the article are further regulated by the ASEAN Coordinating Executive Committee in consultation with the ASEAN Community Council.

Referring to the contents of the provisions of Article 2 of the ROP - while the ROP is the Rules of Procedure - then international agreements subject to the ROP are international agreements that meet the following conditions:

- 1) A written agreement
- 2) Made for any purpose
- 3) Governed by international law

4) It creates rights and obligations for ASEAN as an entity separate and distinct from its member states.

Based on this, it can be seen that an international agreement made by ASEAN must be an international agreement that can create rights and obligations for ASEAN as an entity that is separate and distinguished from its member states. The ASEAN Agreement is only made for and on behalf of ASEAN as an international organization. The legal consequence of these provisions and statements is that collective international agreements of ASEAN member states do not fall into this category and ASEAN agreements as an independent organization cannot be directly binding on its member states [4].

There are many roles and efforts of ASEAN in making international agreements among Southeast Asian countries in the form of Singapore, Thailand, Malaysia, Indonesia, the Philippines, Brunei, Cambodia, Myanmar, Vietnam and Laos. For example, the settlement of the South China Sea dispute, the conflict between Thailand and Cambodia, and so on. But then, this paper will discuss some of the two things, namely the role of ASEAN during the Covid 19 pandemic and its role in the tourism sector in ASEAN countries.

#### **Some examples of ASEAN's role in international agreements during the Covid-19 pandemic**

Since the Covid-19 pandemic hit a number of countries in early January 2020, it was stated that none of the ASEAN member countries were spared or free from the corona virus problem. Therefore, of course the potential and development of cooperation between ASEAN countries has suffered a lot of setbacks, to deal with this condition, ASEAN then synergizes with each other to reduce the adverse effects of this pandemic. The various collaborations discuss a number of things, including mitigation in the health sector, the economy, and also in the field of tourism and travel. This is a new

thing for all of us, the need for new habits, new policies and so on is definitely being implemented. Taking care of the people, making sure the country is safe, also making sure all conditions run well is the most important thing for all at this time. The Covid 19 pandemic is a serious problem and phase that we must face together.

Therefore, with the understanding of international cooperation above, when looking at the current situation, namely the Covid-19 pandemic outbreak, of course all sectors are affected by this incident. All get modifications, changes in their aspects, including bilateral relations between countries. The need for restrictions in a country, and the need to supply to a country will cause one of the many problems that come. Indonesia is also implementing some reforms in its foreign policy rules and customs. In its bilateral cooperation, it is also doing new things, such as strengthening, focusing and so on. Indonesia's main focus at this time is definitely to build bilateral relations between countries with the closest region as well, namely the Southeast Asian region, therefore as stated at the ASEAN Health Ministers Meeting which fell on August 28-30, 2019, that cooperation with ASEAN countries must be strengthened. The Vietnamese Minister of Health also emphasized that the developed areas of cooperation could benefit both countries and ASEAN. While the Lao Minister of Health stated that the cooperation between the two countries could inspire the development of cooperation within the ASEAN framework.

An example can be taken from the case, when the Covid-19 pandemic hit Indonesia as well as Singapore, these two countries often made various agreements in several fields. As in the case of post-Pandemic economic development carried out in March 2021, Retno L.P. Marsudi as the representative of the Indonesian Minister of Foreign Affairs and Vivian Balakrishnan as the representative of the Singapore Minister of Foreign Affairs held a bilateral meeting to

discuss cooperation between the two countries. During the meeting, two things were discussed. One of them is the preparation to discuss the Leaders' Retreat meeting between President Jokowi and PM Lee Hsien Loong and exchange views on regional/international issues. Singapore is one of the main investors in Indonesia. Singapore's direct investment in Indonesia in 2020 amounted to 9.8 billion dollars, an increase of 50 percent from the previous year despite the pandemic.

After the signing of the Indonesia-Singapore bilateral cooperation document, Coordinating Minister Luhut said that this also shows the commitment of both sides of the country in following up the 2019 Leaders' Retreat agreement through policy-level coordination led by the Coordinating Ministers of the two countries. Regarding investment cooperation, the Indonesian Foreign Minister emphasized the Bilateral Investment Agreement (BIT) whose ratification instruments were exchanged in early March 2021. "The PIB is expected to strengthen investment inflows by creating certainty and trust. It also reflects our strong commitment to open and fair economic cooperation, and signals strengthened optimism for an immediate economic recovery. We hope the Leaders' Retreat will further encourage investment," the Indonesian Foreign Minister said [5].

In addition to the economic sector, Indonesia-Singapore also made regulations and agreements in the tourism sector. Namely the closure of tourism access in the border area of Bintan Regency during the Covid-19 Pandemic. Bintan Regency has a sea border with Singapore, so when you want to cross there, you need approval from both sides of the country. Because this border is often used in various community activities, one of which is in the tourism sector. However, due to the covid-19 pandemic that hit, tourism in this district has decreased the amount of income and has collapsed. Because access to pass through this border has been agreed to be limited during the

Covid-19 pandemic. The latest bilateral cooperation between Indonesia and Singapore is in January 2022, on the issue of adjusting the boundaries of Indonesia's air navigation services, to agreements on extradition and defense. The signing of the Indonesia-Singapore bilateral negotiation agreement for Flight Information Region (FIR) realignment in accordance with international law. The FIR itself has also been ongoing by Indonesia-Singapore since the 1990s. However, a comprehensive settlement has only been implemented in the last few years.

Or in the case, an example will be taken from bilateral relations between Indonesia and Malaysia. Namely in the collaboration agreement in the field of palm oil. For Indonesia, Malaysia is one of the main economic partners in terms of investment and trade. In the first semester of 2021, foreign investment (FDI) from Malaysia reached 706.8 million USD and was spread across 1,32 projects. Regarding trade in goods, the bilateral trade turnover between the two countries will reach US\$15.03 million in 2020 and US\$13.3 million in January to October 2021. This shows the importance of bilateral relations between the two countries. "It is important that we stress the importance of CPOPC member countries in stepping up efforts to ensure sustainable palm oil prices." [6] The programs include advocacy campaigns in the EU, social media campaigns in member countries, and communication and promotion strategies in palm oil consuming countries. "We hope that the committee can work for the best interests of its member countries, including in efforts to combat negative palm oil campaigns," Airlangga said. I believe that amid the ongoing pandemic, there are many opportunities that both countries should take advantage of in the coming years," Airlangga concluded. In addition, Indonesia and Malaysia are certainly improving in economic recovery during the pandemic, and also in terms of national borders.

#### **ASEAN's role in International Agreements concerning the Tourism sector**

The Tourism sector is one of the fields that has been greatly impacted by the Covid-19 pandemic. So, it is necessary to have an international agreement to regulate it. Countries in Southeast Asia have characteristics that are almost similar to each other, both in natural characteristics, culture and so on, so that their tourism objects also vary with their respective characteristics. With this attention, ASEAN member countries are trying and trying to maximize and utilize the tourism sector as an effort to preserve culture, economic growth and so on. Mentioned by CNN that, Tourism is a very important sector for ASEAN because it is one of the sectors that contributes to the economic growth of countries in ASEAN which is quite large. The tourism and travel sector contributes at least 12.6 percent to the ASEAN economy. Then in the 2015 data, the contribution of the tourism industry to GDP attached that Cambodia ranks first with 29.90 percent, Thailand with 20.80 percent is second, then Indonesia is there with 9.6 percent [7]. Therefore, we can see the importance of the tourism industry for economic growth in Southeast Asian countries. One of ASEAN's efforts in increasing the growth of tourism rates between ASEAN countries that we can currently feel is that we do not need to use a visa to be able to visit relatives and family in ASEAN countries. With this visa-free travel, of course Indonesia can also attract more ASEAN tourists for the tourism industry.

The concept of ASEAN Connectivity, also makes ASEAN countries more aggressive in building infrastructure and transportation to facilitate connectivity between nations, so that traveling between ASEAN countries is easier and safer. In addition to making it easier for citizens of ASEAN countries to travel to each other's countries, ASEAN is also trying to increase visits from foreign tourists. For example, Indonesia and Thailand are mentioned by the Central Statistics Agency (BPS) in 2019 to reach 16.1 million and 39 million visits by foreign tourists respectively. One of the things that Indonesia is

doing is promoting "Wonderful Indonesia" in Southeast Asia. Which then efforts to introduce the culture were also carried out by Southeast Asian countries, thus attracting more foreign tourists. The existence of restrictions in the aviation sector also has a major impact on the rate of significant decline in tourism. It can be calculated, the loss of potential income from the aviation sector by the countries of Indonesia and Thailand reached 8.2 billion US dollars [8]. Such a large amount, can be imagined if the Covid-19 pandemic did not hit the world, how much potential would be obtained with increasing development. A very unfortunate thing, but this is the problem we need to face and find solutions together. To overcome this on February 13, 2020, the ASEAN National Tourism Organization declared a joint statement on tax reduction policies in the tourism and aviation sectors. Then, it was continued with a meeting by the tourism ministers of ASEAN countries which resulted in seven agreements which were then listed in the records of the Ministry of Tourism and Creative Economy of the Republic of Indonesia.

The following seven agreements then contain, agreed to foster ASEAN coordination in accelerating the exchange of information on travel, agreed to intensify the collaboration of ASEAN National Tourism Organizations (NTOs) with other relevant ASEAN sectors, agreed to enhance closer cooperation, implementation of appropriate policies and measures to increase confidence among foreign visitors and domestic visitors coming to Southeast Asia, agreed to accelerate the implementation of micro and macroeconomic policies, and agreed to accelerate cooperation with ASEAN speech partners, international organizations and relevant industries so that ASEAN countries can jointly rise and re-manage the tourism sector after the crisis period.

## **CONCLUSION**

ASEAN as a regional International Organization located in the Southeast Asia

region which functions as a means of connecting between member countries and initially had a common goal in the economic field. Currently, the function of ASEAN has become even broader and ASEAN in international law is a subject of International Law. ASEAN as a maker of rules and agreements to ASEAN member countries. International treaties themselves are decisions and agreements regarding an issue by two or more countries. This agreement can be found in various fields. No exception in bilateral relations between two ASEAN countries. Because in solving the problem there is a process of making an agreement which is then approved by both parties. In other international agreements as well, ASEAN will declare its statement to then create the contents and values in the agreement.

ASEAN's legal personality within the realm of international law is evidenced by its participation in the negotiation and conclusion of international treaties. As an intergovernmental organization, ASEAN possesses the capacity to enter into treaties and assume obligations under international law. The ASEAN Charter, adopted in 2007, further solidified ASEAN's legal personality by establishing its institutional framework and providing for the legal basis of its activities.

One of the key roles of ASEAN in the formation of international treaties is facilitating the negotiation process among its member states. ASEAN acts as a platform for dialogue, cooperation, and consensus-building, enabling its member states to coordinate their positions and present a unified front in international negotiations. This unified approach enhances the bargaining power of ASEAN member states and strengthens their

ability to shape the provisions and outcomes of international treaties.

ASEAN's role in treaty formation is characterized by its ability to foster consensus and coordination among member states. This unity strengthens their bargaining power and allows for a more influential role in shaping the provisions and outcomes of international treaties. Additionally, ASEAN has successfully established regional treaty frameworks such as AFTA and AEC, promoting economic integration and development within the ASEAN region. Furthermore, ASEAN actively engages in treaty implementation and compliance monitoring, ensuring that its member states fulfill their obligations under international agreements. Through mechanisms such as the ASEAN Secretariat and the ASEAN Coordinating Council, ASEAN maintains its commitment to upholding the principles and objectives set forth in international treaties.

ASEAN's contributions as a subject of international law extend beyond Southeast Asia, as its efforts foster peace, stability, and prosperity in the wider international community. By promoting cooperation, integration, and dialogue, ASEAN acts as a catalyst for regional development and plays a pivotal role in maintaining diplomatic relations among its member states and with external partners. ASEAN's active engagement in the formation, implementation, and monitoring of international treaties showcases its significance as a subject of international law. Its ability to facilitate negotiations, establish regional agreements, and ensure compliance demonstrates its instrumental role in shaping the regional and global legal landscape. ASEAN continues to play a vital

part in promoting peace, stability, and economic progress in Southeast Asia and beyond.

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