

ISSUE FOCUS

Rule of Law as a Framework within the ASEAN Community

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As the ASEAN moves towards its vision of a 'Community,' enforceability and consistency of legal standards, broadly the "rule of law," have drawn attention due to their impact on the predictability of social environments, with consequences for markets, people, and policy makers. This paper draws together recent findings and suggests ASEAN States have made significant progress but remain in a state of transition. These findings support Barry Weingast's prediction that developing countries are more likely to create consistent rules and move to "open access orders" in line with requirements for development, rather than install artificial enforcement mechanisms before growth.

Keywords

Rule of Law, ASEAN, Predictability, Human Rights, World Justice Project, ASEAN Community Vision

I. Introduction

The rule of law has drawn increasing attention in Southeast Asia from a variety of sources both internationally and domestically. This is due not only to the differing notions of the concept itself, but also because of the extensive applicability of the concept to a variety of multilateral and domestic programmes with fundamental

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implications for human security. John Rawls posited that the rule of law was the fundamental principle that rational people needed in order to create a predictable system that guided behavior, and this implies benefits for economic decision-making, transparent outcomes and justice.¹

At the regional level, achieving the ASEAN Community vision will depend on implementation of agreements and success of the ASEAN in impressing upon local authorities the importance of adhering to the goals of the ASEAN's Economic, Socio-Cultural and Political-Security pillars. This is particularly important because of the ASEAN's stance of non-interference in domestic affairs of member States, yet requiring actions that would regulate internal socio-economic activities. Domestically, adherence to the rule of law by individual countries is an important factor for producing regularity and predictability with which each State treats its citizens, organizations and businesses, and thus underpins the very notion of human security.²

The growing attention to the nature of the rule of law reflects its prominence in the ASEAN Charter and recognition of its importance in mature market-driven economies. This paper seeks to formulate the right idea of the rule of law within the framework of the ASEAN. Part II will discuss competing conceptions of the "rule of law," particularly between 'thick' and 'thin' formulations. Despite these differences, broad consensus will be found with measurable parameters of the "rule of law" outlined in Part III. Part IV will look at country evidence along four broad categories within the rule of law, namely: (a) accountability of government officials; (b) clear, stable and fair laws with due process; (c) fair and equitable enactment, application and enforcement of the law; and (d) administration by independent and competent judicial officials. The paper concludes that the ASEAN is still in a state of transition towards open access orders which place increasing importance on the rule of law, and suggests avenues for future research.

II. Conceptions of the "Rule of Law"

The idea of the "rule of law" has been debated by governments and academia; it has been also used by the public in a variety of ways that have eroded some of the clarity around the concept. At its most basic, the "rule of law" implies that the law should be obeyed.³ Indonesia's Suharto declared its use of the 'law-State' (*negara hukum*) as a

¹ J. RAWLS, A THEORY OF JUSTICE 207 (Rev. ed. 1999).

² See, e.g., UN, GUIDANCE NOTE OF THE SECRETARY-GENERAL: UN APPROACH TO RULE OF LAW ASSISTANCE (2008), Guiding PRINC. at 2-4.

³ T. BINGHAM, THE RULE OF LAW 3 (2010).