

INVESTIGATING THE EFFICIENCY OF ENVIRONMENTAL LAW FOR A SUSTAINABILITY IN ASEAN

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Abstract

The development of the ASEAN economy can be done through an attainment of simultaneous growth in economic, social and environment. In this regard, it is absolutely essential to employ environmental laws as one of driving forces. Therefore, this article aims to study the efficiency of the environmental laws for sustainable development in the ASEAN community. The study has illustrated that standardizing a regulatory process, standards and measures in the environmental quality control in ASEAN would be a great initiative to effectively manage the pollution in the region. By doing so, it can possibly help to solve cross-border pollution problems, resulting in sustainable development, especially Thailand, Myanmar and Laos are ASEAN member states with the least strict environmental laws compared to other states in ASEAN. Thus, the environmental laws addressing the quality control and treatment over deterioration based on precautionary principles, participation and Polluter pays principle, are needed to support in the integration of ASEAN member states.

Keywords: Sustainable Development, Polluter pays principle law, Carrying capacity

INTRODUCTION

Environmental law is a type of law enacted for environmental conservation. The law covers a protection and treatment aspect in the degradation of both human and non-human wellbeing (animals and objects, etc.). Often, it mentions various customary laws, treaties, agreements, obligations, rules and policies. Some environmental laws may define environmental quality and restrict conditions for certain types of human activities, such as determining the certain amount of pollution that can be tolerated or requiring the planning

and monitoring of certain businesses, like precautionary principles and polluter pays principle. However, although many countries in the world have enacted environmental laws, but the mechanism of such laws is often ineffective. At present, environmental laws are seen as a tool in promoting sustainable development. Later, Richardson reformed environmental laws in order to develop effective environmental measures functioned based on Command and Control rule. As a result, for example, Environmental taxation and certain Standards like ISO 14001 were put in place due to this reform.

RELATED LAWS IN THE MANAGEMENT OF NATURAL RESOURCES AND THE ENVIRONMENT OF THAILAND

One of many laws relating to the management of natural resources and the environment of Thailand is the National Environmental Quality Promotion and Preservation Act 1992. The following list is the relevant laws governing natural resources and the environment of Thailand.

1. The National Park Act 1961 is specifically enacted to manage and maintain national parks of the nation. When the government sees any possible areas found to be appropriate to preserve, that particular areas will be protected and remained in the original natural state for the benefit of people in the education and enjoyment.

2. The National Forest Reserve Act 1964 is enacted to protect forests and other natural resources in areas designated as National Reserved Forests. This is special for the preservation of forests and other natural resources.

3. The Factory Act 1992 is a law governing factory operations, especially the discharge of wastage in water or other waste from the factory to the surrounding outside the factory. For instance, the ministerial regulations are to establish rules for controlling the discharge of waste from the factory and determine certain types of waste that can be possibly discharged from the factory.

4. The Navigation in Thai Territorial Waters Act 1913 and 1992 have been enacted to control and organize navigation in water with extra provisions regarding the prevention of pollution.

5. The Public Health Act 1992

- 5.1 Protecting people in term of hygiene and environmental health.

- 5.2 Localizing the enforcement of law

5.3 Authorizing public health officials to inspect and act as academic advisors to local officials.

5.4 Establishing a Public Health Supervision Committee

5.5 Extending the public a right to lodge an appeal

INTERNATIONAL COOPERATION AGREEMENTS

There are many international cooperation agreements made to advocate in the area of environmental protection. Those agreements may include as follows.

1. The Kyoto Protocol is a legal obligation drawn up in 1997 at the United Nations Framework Convention on Climate Change (UNFCCC). This protocol aims to lower greenhouse gas (GHG) emissions in six categories. Accordingly, Thailand has signed the endorsement of the Protocol on 2 February 1999 but has not yet ratified.

2. The Commission on Sustainable Development (CSD) is established in accordance with the resolution of the United Nations Conference in 1994. The CSD is created to operate as described in Agenda 21 and report the outcomes directly to the United Nations General Assembly via the Economic and Social Council (ECOSOC).

WAYS FORWARD TO THE SUSTAINABLE ENVIRONMENT

As the fact lightens, ASEAN is a region with abundance of natural resources and important food production source of the world. Due to the major change in the region with the opening of the ASEAN Community, it has imposed risks and challenges on the natural resources and environmental management of the region. The ASEAN Community is composed of three main pillars.

1. The ASEAN Political-Security Community or ASC aims to allow countries in the region to live together in peace, security and stability.

2. The ASEAN Economic Community or AEC aims to achieve economic integration, as well as to facilitate in the inter-trade and increase competitiveness.

3. The ASEAN Socio-Cultural Community or ASCC aims to achieve coexistence under the concept of a caring society, social stability, improved well-being and good environment.

ASEAN COOPERATION ON ENVIRONMENT

ASEAN is again a region with abundant natural resources that permit the sustainability of ecosystems within the region and the world. Besides, being a source of water, foods and energy, these natural resources also play an important role in supporting economic activities and human ways of life.

ASEAN environmental cooperation is made and launched the first environmental cooperation project in 1977. Currently, the ASEAN Senior Official on the Environment or ASOEN has chaired the responsibility to supervise and maintain the environmental quality of ASEAN. ASEAN cooperation on the environment is currently guided by the ASCC Blueprint 2025 which envisions an ASEAN Community that engages and benefits the peoples and is inclusive, sustainable, resilient, and dynamic. Guided by the Vision, the ASEAN cooperation on environment particularly focuses on the following key result areas under the characteristic Sustainable of the ASCC Blueprint 2025.

An ASEAN strategic plan on environment is currently being developed to translate the ASCC Blueprint 2025 into a more detailed plan of actions which shall serve as a guiding document for ASEAN in promoting ASEAN cooperation on environment until 2025. Seven strategic priorities have been identified under the strategic plan:

1. Nature conservation and biodiversity
2. Coastal and marine environment
3. Water resources management
4. Environmentally sustainable cities
5. Climate change
6. Chemicals and waste
7. Environmental education and sustainable consumption and production

The institutional framework of the ASEAN cooperation on environment consists of the ASEAN Ministerial Meeting on the Environment (AMME), ASEAN Senior Officials on the Environment (ASOEN), and 7 subsidiary bodies / working groups, following the identified strategic priorities:

1. ASEAN Working Group on Climate Change (AWGCC)
2. ASEAN Working Group on Chemicals and Waste (AWGCW)
3. ASEAN Working Group on Coastal and Marine Environment (AWGCME)
4. ASEAN Working Group on Environmental Education (AWGEE)

5. ASEAN Working Group on Environmentally Sustainable Cities (AWGESC)
6. ASEAN Working Group on Natural Resources and Biodiversity (AWGNCB)
7. ASEAN Working Group on Water Resources Management (AWGWRM).

AMME meets once every two years, while ASOEN and its subsidiary bodies meet once every year to oversee the implementation of ASPEN and the ASCC Blueprint 2025.

PROMOTING ENVIRONMENTAL SUSTAINABILITY

ASEAN will focus on sustainable development, including promoting a green and clean environment by protecting natural resources for economic and social development while improving water quality and air for the ASEAN. Besides, ASEAN will participate in the global efforts to solve global environmental challenges, including climate change and the protection of the ozone layer while deploying technology.

1. Managing the world's environmental issues.
2. Managing and preventing cross-border environmental pollution problems.
 - 2.1 Cross-border smog pollution
 - 2.2 Pollution from cross-border polluted waste
3. Promoting sustainable development by environmental education and public participation
4. Promoting environmental technology (EST)
5. Promoting quality of living standards in various cities of ASEAN and urban areas
6. Implementing environmental policy and database coordination
7. Promoting the use of coastal resources and sustainable marine resources
8. Promoting sustainable management of natural resources and biodiversity
9. Promoting the sustainability of freshwater resources
10. Responding to climate change and managing its impacts
11. Promoting sustainable forest management (SFM)

Cooperation and Managerial Mechanism for the Association of Southeast Asian Nations

1. International Natural Resources and Environmental Management Mechanism in ASEAN is originated from the ASEAN Charter, which is the highest constitution as prescribed in Article 9 ASEAN Community Councils, consisting of 3 Council; (1) ASEAN Political Security Community Councils (2) ASEAN Economic Community Councils and (3) The ASEAN Socio-

Cultural Community Councils. There are also the ASEAN Ministerial Meeting on Environment and the ASEAN Senior Officials on Environment (ASOEN) along with ASEAN Working Group (AWG) in 8 areas. As of the ASEAN Agreement on Transboundary Haze Pollution, there are 8 participating members, namely Malaysia, Singapore, Brunei, Myanmar, Vietnam, Laos, Cambodia and Thailand. Yet, Indonesia is not listed as it still contributes in the cross-border smog at large

2. Issues and scope of implementation on natural resources and the environment of ASEAN

The Blueprint under the ASEAN Socio-Cultural Community (ASCC) 2009-2015 has highlighted the issues and scope of the ASEAN environmental performance towards sustainable development by giving priority to 11 main issues and assigning each country for a leadership role.

Greater Mekong Sub-region: GMS

GMS Natural Resources and Environmental Management Mechanism is an economic cooperation program between the six member countries, namely Cambodia, China (Yunnan Province and Kwang Ssi District), Laos, Myanmar, Vietnam and Thailand. This mechanism is run through GMS Strategic Framework 2012-2022 to promote trade expansion, investment, agriculture industry and employment support services, as well as enhance the well-being of people to better promote and develop technological cooperation and education between each other.

The GMS Ha Noi Action Plan 2018–2022 provides directions and operational focus to the Greater Mekong Subregion (GMS) Program for the remaining 5 years of the GMS Strategic Framework 2012–2022.

The GMS Ha Noi Action Plan 2018–2022 (HAP) addresses the unfinished and expanded agenda of the Greater Mekong Subregion (GMS) Economic Cooperation Program for the remaining 5 years of the GMS Strategic Framework 2012–2022. The HAP provides directions and operational focus to the GMS program and guides identification of projects in transport, urban development, energy, agriculture, environment, tourism, trade facilitation, human resource development, and information and communication technology. The HAP's key elements are spatial strategy focused on economic corridors; refinements in sector strategies

and priorities; improvements in planning, programming, and monitoring systems and processes; and enhancements in institutional arrangements and partnerships.

Strategic Environmental Assessment for power sector planning in greater Mekong Subregion.

Over the past decade, strategic environmental assessment (SEA) has emerged as an increasingly important planning tool in the Greater Mekong Subregion (GMS). SEAs help policy makers better understand and integrate the environmental, social, and economic dimensions of strategies, plans, and programs. They are particularly important for power sector planning because the social and environmental impacts of such plans can be very significant and are often a major concern for governments and communities. Experience in the GMS, as well as further afield, shows that more sustainable and successful planning choices are made when these impacts are properly considered.

The further uptake of SEAs in power sector planning in the subregion is needed to help seize opportunities that are emerging in the evolving energy landscape. Technological and economic transformations are making renewable energy an increasingly attractive and viable energy option for the GMS countries as elsewhere in the world. This trend aligns well with the national development policy priorities of all six countries as they increasingly emphasize green growth, climate change mitigation, and sustainable development.

Indonesia-Malaysia-Thailand Economic Cooperation Development Zone (Indonesia-Malaysia-Thailand Growth Triangle or IMT-GT)

The Natural Resources and Environmental Management mechanism and the scope of framework implementation for cooperation between Indonesia, Malaysia and Thailand is the development of economic cooperation to promote the sharing of economic resources with efficiency and maximum benefits to enhance economic competitiveness. In addition, it focuses on the development of infrastructure. At this level, the Working Groups on Agriculture, Agro Based Industry and Environment (WG-AAE) will coordinate and facilitate the implementation of the IMT-GT measures and oversee periodically, and that later will be reported to the Senior Officials Meeting (SOM) via the Ministerial Meeting: MM. Also, they will work closely with the Joint Business Council (JBC).

Mekong River Commission (MRC)

Managerial mechanisms on natural resources and the environment

The Mekong River Commission (MRC) is a cooperative organization between the governments of Mekong member states, consisting four countries, namely Cambodia, Laos, Thailand and Vietnam. This cooperation is under the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, 1995), which defines the rights and responsibility over the use of Mekong river. Currently, the key framework of the MRC is based on four principles.

1. Use the water reasonably and fairly.
2. Use the river for maximum benefit.
3. Reduce poverty
4. Maintain ecological system

Issues and scope of operation of natural resources and the environment of MRC

The Mekong River Commission has an obligation to support in the Basin wide Planning process under the principles of integrated water resources management (IWRM) covering nice main issues in operation.

1. Agriculture and irrigation
2. Water planning
3. Climate change
4. Environmental quality
5. Fisheries
6. Flood and drought
7. Population quality
8. Water transport
9. Water development

NATIONAL RULES AND REGULATIONS

ASEAN Member States have established rules, regulations, laws and policies relating to natural resources and the environment held the states responsible in solving problems and managing natural resources and the environment. The legal and environmental quality

standards, conservation and protection of natural resources of each country can be observed as follows.

1. Thailand

Thailand has initiated a policy on the management of natural resources and the environment. This includes the enactment of water quality standards for consumption. In fact, the National Environmental Quality Promotion and Preservation Act 1992, Cleanliness and Orderliness Act 1992, and the Royal Wildlife Conservation and Protection Act 1992, are enforced as well in order to preserve the best quality of environment.

2. Cambodia

Cambodia sets the framework for environmental management in Section 58 defining that natural resources are state property. Thus, the control and management must be under the law. In addition, Section 59 specifies the government responsibility to protect and preserve the environment.

3. Laos

Laos announces a number of environmental laws and regulations into force. They include forest law, water and resource law, land law, mining law and environmental protection law.

4. The Philippines

The Philippines announces the use of air quality law. Laws regulating chemicals, toxins and pollution Environmental Impact Assessment Law.

5. Myanmar

Myanmar enforces Factory Control law, Public Hygiene law, Forest law, and other laws. At the same time, Myanmar also emphasizes the environmental policy formulation.

6. Malaysia

Malaysia also announces a number of environmental legislations, including Water Pollution law, Marine law and many other laws, like wildlife, land and water conservation laws.

7. Singapore

Singapore announces a number of environmental laws, including laws that control pollution and the public health. Moreover, water, air, waste transport, toxic traffic and other areas are all included in the state laws as to ensure the best environment conservation.

8. Brunei

Brunei does not have a direct environmental legal framework, making the enforcement incomprehensive. However, there are environmental requirements inserted in laws relating to economic activities. Since 1993, the state has given priority on the matter through the establishment of an environmental fund to determine standards on the quality of air, sound and water. Besides, it also aims to control the toxic wastage.

9. Vietnam

Vietnam gives priority to environmental issues by setting up various policy measures. These measures focus on the management of natural resources and the environment.

10. Indonesia

Indonesia begins to give priority to environmental management in the 3rd National Development Plan (1976-1980), and proposed a draft on environmental legislation in 2004. The Ministry of Environment of Indonesia has further established a policy on the development of natural resources and the environment, such as Water Management Policy, Pollution Control Policy and many more.

Conclusion

The economic integration of the ASEAN community creates a new organization, and it has been successfully formed. However, there are still some issues that require laws for the member states to adhere. Particularly, it is essential for Thailand to emphasize in the implementation of internal laws. This is because such integration has a direct impact on the country and the people. In fact, ASEAN law is known as a legal system in transition, or as part of the rules under international laws, distinguishing itself to another separate law. Due to this, it causes an inability to define fixed rules. This is, therefore, varying in the amendment of laws. In addition, it has found that regulatory framework is problematic, especially in the area of environmental laws, which prevents the realization of sustainability in economic, social and environment. This is because such laws cannot be easily amended at a later stage compared to other economic laws or social laws. In fact, the economic integration of ASEAN tends to focus on economic growth more than any other two areas. Such concentration with social growth does give a negative impact as it may destroy the environment. Hence, harmonizing in the regulatory action, measures and standards in the environmental quality control of the

ASEAN community can be a great tool to cooperate among members for the effective pollution management. In addition, it does help to eradicate cross-border pollution issue in order to attain the sustainable development. Especially, Thailand, Myanmar and Laos are ASEAN member countries with the least strict environmental laws compared to other ASEAN countries. Therefore, such environmental laws are considered to be the core precautionary principles.

The environmental law is a law enacted to conserve the environment. It is a key principle that must come with comprehensive protection and treatment for the degradation of any subjects, including animals and other objects. The quality environmental law must be structured based on the principles of precautionary, participation and Polluter pays, making a significant contribution in the ASEAN integration.

Under the ASEAN Economic Community, an economic liberalization is realized, creating an ideal market and production bases. This creation has made different production factors transferable between member states, and increases in the production growth with higher rate. Consequently, it leads to a greater destruction of the natural resources and the environment. For instance, some areas of forests are transformed for agriculture, mangrove areas are exploited for fisheries, and Petroleum drilling expedition increases chemical emission from various industries. Although the ASEAN agreement on cross-border haze pollution was signed in the past, the legal framework on the environment is still different from all 10 countries. As of Thailand, the environmental law from 1992 Act amended again in 2018 has made no distinctive features compared to previous version. Therefore, such law is not appropriate to apply in the current context. In fact, there are many other legal articles that fall under the same condition and treatment. Having said that, ASEAN should enhance the environmental laws, as well as harmonize them across the member states by applying 3Ps principles, in particular. If the principles are not correctly utilized, it will further create a complexity in the future, and it is hard to correct it. Therefore, considering to make an amendment in the regulatory framework is essential for ASEAN member states as a whole. If the proposed law is appropriately implemented, it will effectively and efficiently contribute in the sustainable development of Thailand and other ASEAN countries.

ACTION GUIDELINES FOR FUTURE ASEAN ENDEAVOR

ASEAN may choose to accelerate in the harmonization of standards and environmental protection measures across the region, making as a tool for an effective pollution management. ASEAN shall enforce a certain agreement to reduce the disparity in natural resource and environmental management among ASEAN Member States, such as the determination of quality and emission standards and Environmental labeling. In the meanwhile, ASEAN may choose to reform of laws and regulations relating to the enhancement of natural resource and environmental management based on the current trends in the global scale.

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