

RESEARCH ARTICLE

Thai Law Enforcement of Obligations under the ASEAN Agreements on Environment[†]

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Abstract

This research aims to study historical development and basic principles of obligations under the ASEAN agreements on environment in the ASEAN Social and Cultural Community (ASCC) and the measures of Thai law enforcement to comply with the obligations of ASEAN agreements on environment and Multilateral Environmental Agreements (MEAs). Moreover, to analyze the mechanism of Thai law enforcement and ASEAN environmental dispute resolution, comparing that of the European Union, and to recommend policies and measures to develop Thai law improvements for implementing ASEAN agreements on the environment efficiently and effectively in Thailand and the ASEAN Community. The research applied a qualitative research methodology by documentary research methods using the collection of Thai and English documentary data and focus group meeting for the data collection from agencies and experts concerned by in-depth interview 27 key informants, dividing into 3 groups by purposive sampling according to the research objectives: (1) experts of state agencies, (2) experts of private agencies, and (3) experts academic institutions in order to undertake the triangulation of data collection process according to qualitative research methods and then proceeding data analysis by content analysis, logical analysis, and comparative analysis on Thai law enforcement complying to the obligations of

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ASEAN environmental agreements, the mechanism of environmental Thai law enforcement and dispute resolutions, as well as organizing the academic seminar to enquire opinions and suggestions from related experts and agencies, leading to complete research conclusion and recommendations. The results of this research found that Thailand has already implemented its obligations under the ASEAN environmental agreements and cooperation, as well as those of Multilateral Environmental Agreements (MEAs). In case of conflicts on compliance with the obligations of environmental agreements, there are many mechanisms of law enforcement in Thailand and other ASEAN members, of international law and ASEAN dispute resolution on environment, such as Dispute Settlement Mechanism under the 2008 ASEAN Charter, and 2004 ASEAN Protocol on Enhanced Dispute Settlement Mechanism (EDSM), as well as mechanisms of dispute resolution at the global level, such as WTO dispute settlement mechanism, international arbitration or International Court of Justice (ICJ).

Keywords: *Law Enforcement, Thai Law, Obligations, ASEAN Agreements on Environment, Dispute Resolution on Environment.*

บทความวิจัย

การบังคับใช้กฎหมายไทยตามพันธกรณีภายใต้ความตกลง อาเซียนทางด้านสิ่งแวดล้อม

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บทคัดย่อ

การวิจัยครั้งนี้มีวัตถุประสงค์เพื่อศึกษาประวัติพัฒนาการแนวคิดและหลักพื้นฐานของพันธกรณีภายใต้ความตกลงอาเซียนทางด้านสิ่งแวดล้อมในประชาคมสังคมและวัฒนธรรมอาเซียน เพื่ออนุวัติการความตกลงอาเซียนดังกล่าว ศึกษามาตรการของการบังคับใช้กฎหมายไทยตามพันธกรณีตามความตกลงอาเซียนทางด้านสิ่งแวดล้อมและพันธกรณีตามความตกลงสิ่งแวดล้อมพหุภาคี (MEAs) วิเคราะห์กลไกบังคับใช้กฎหมายไทยและกลไกระงับกรณีพิพาททางด้านสิ่งแวดล้อมตามพันธกรณีภายใต้ความตกลงอาเซียนทางด้านสิ่งแวดล้อมของประชาคมอาเซียน เปรียบเทียบกับสหภาพยุโรป รวมทั้งเสนอแนะนโยบายและมาตรการเพื่อพัฒนาปรับปรุงกฎหมายไทยในการอนุวัติตามความตกลงอาเซียนทางด้านสิ่งแวดล้อมให้มีการบังคับใช้ได้อย่างมีประสิทธิภาพและสัมฤทธิ์ผลในบริบทของประเทศไทยและประชาคมอาเซียน การวิจัยครั้งนี้เป็นการวิจัยเชิงคุณภาพ โดยใช้ระเบียบวิธีวิจัยเอกสารในการเก็บรวบรวมข้อมูลเอกสารทั้งภาษาไทยและภาษาอังกฤษ กับวิธีการประชุมสนทนากลุ่มย่อยในการรับฟังความคิดเห็นของหน่วยงานและผู้ทรงคุณวุฒิที่เกี่ยวข้อง โดยใช้แบบสัมภาษณ์เชิงลึกเก็บรวบรวมข้อมูลจากผู้ให้ข้อมูลสำคัญ ซึ่งมีการสุ่มกลุ่มตัวอย่างตามวัตถุประสงค์ของการวิจัยจำนวน 27 คน แบ่งเป็น 3 กลุ่ม คือ (1) กลุ่มหน่วยงานภาครัฐ (2) กลุ่มหน่วยงานภาคเอกชน และ (3) กลุ่มผู้ทรงคุณวุฒิภาควิชาการ ทั้งนี้เพื่อให้เกิดการตรวจสอบแหล่งข้อมูลแบบสามเส้า ในการเก็บรวบรวมจากผู้ให้ข้อมูลสำคัญทั้ง 3 กลุ่มตามระเบียบวิธีวิจัยเชิงคุณภาพแล้วนำมาวิเคราะห์ข้อมูลเชิงเนื้อหา วิเคราะห์เชิงตรรกวิทยา และการวิเคราะห์เปรียบเทียบเกี่ยวกับการบังคับใช้กฎหมายไทยตามพันธกรณีภายใต้ความตกลงอาเซียนทางด้านสิ่งแวดล้อม กลไกบังคับใช้กฎหมาย และกลไกระงับข้อพิพาทสิ่งแวดล้อมให้มีประสิทธิภาพและสัมฤทธิ์ผลในบริบทของประเทศไทยและประชาคมอาเซียน รวมทั้งยังได้จัดการประชุมสัมมนาวิชาการเพื่อรับฟังความคิดเห็นและข้อเสนอแนะจากผู้ทรงคุณวุฒิและหน่วยงานที่

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ข้อความที่ปรากฏทั้งหมดใน
บทความนี้เป็นความคิดเห็นของ
ผู้เขียน มิใช่ความเห็นของหน่วยงาน
วารสารผู้จัดพิมพ์

เกี่ยวข้องเพื่อปรับปรุงสรุปผลการวิจัยและข้อเสนอแนะให้มีความถูกต้องและสมบูรณ์มากยิ่งขึ้น ผลการวิจัยพบว่า ประเทศไทยได้ดำเนินการปฏิบัติตามพันธกรณีภายใต้ความตกลงอาเซียนทางด้านสิ่งแวดล้อมในระดับภูมิภาค และการปฏิบัติตามพันธกรณีภายใต้ความความร่วมมืออาเซียนทางด้านสิ่งแวดล้อมและความตกลงสิ่งแวดล้อมพหุภาคี (MEAs) หากเกิดปัญหาข้อพิพาทสิ่งแวดล้อมตามพันธกรณีก็ยังมีกลไกบังคับใช้กฎหมายภายในของประเทศไทยและสมาชิกอาเซียนอื่น กฎหมายระหว่างประเทศ รวมทั้งกลไกระงับข้อพิพาททางสิ่งแวดล้อมตามพันธกรณีภายใต้ความตกลงอาเซียนทางด้านสิ่งแวดล้อมทั้งในระดับภูมิภาคอาเซียน คือ กลไกระงับข้อพิพาทภายใต้กฎบัตรอาเซียน ค.ศ. 2008 และพิธีสารว่าด้วยกลไกระงับข้อพิพาทของอาเซียน ค.ศ. 2004 รวมทั้งกลไกระงับข้อพิพาทในระดับโลก เช่น กลไกระงับข้อพิพาทขององค์การการค้าโลก อนุญาโตตุลาการระหว่างประเทศ หรือ ศาลยุติธรรมระหว่างประเทศ

คำสำคัญ: การบังคับใช้กฎหมาย, กฎหมายไทย, พันธกรณี, ความตกลงอาเซียนทางด้านสิ่งแวดล้อม

Introduction

The ASEAN Community is a regional organization that integrates the ten ASEAN sovereign states and their people to live together amicably in Southeast Asia. It has a long development history, dating back to the Association of Southeast Asian Nations, established by the 1967 ASEAN Declaration in Bangkok. The ASEAN aims to strengthen the maintenance of peace, stability, and political security; create economic progress including socio-cultural development; eat well based on equality and the common interests of all 10 member countries (Srethasirote 2011), namely Brunei, Cambodia, Indonesia, Lao PDR, Philippines, Malaysia, Myanmar, Thailand, Singapore, and Vietnam. The 2008 ASEAN Charter has reinforced a legal personality and rule-based community divided into three pillars: ASEAN Political and Security Community (APSC), ASEAN Economic Community (AEC), and ASEAN Socio-Cultural Community (ASCC).

Although the ASEAN members still have complete sovereignty in their territory, the exercise of such sovereignty is bound by obligations under the 1967 ASEAN Declaration and 2008 ASEAN Charter, which bind all member states according to international law (Nilprapunt 2014). Any operations related to politics and security, economy, society, and culture, especially the enforcement of environmental laws, ASEAN member states must, therefore, be subject to the framework of the three pillars of commitment of the ASEAN Community. Therefore, the ASEAN Community is a region with rapid economic growth and development rates that is a model of regional grouping with bargaining power in the international political and economic arena. The progress of the ASEAN

Community is driven by mutual trust between member states. This creates a creative and conducive atmosphere for cooperation between them.

Achieving the ASEAN Community in 2015 will result in the integration of ASEAN member countries according to the Bali Declaration in three pillars: APSC, AEC, and ASCC, as ASEAN has announced its motto: “One Vision, One Identity,” which aims to create unity with a single vision-mission and strengthen the ASEAN region by promoting one ASEAN identity. Strengthening this integration will be based on three pillars for driving the operational plan for establishing the ASEAN mission that Thailand and other ASEAN member countries must carry out to succeed. In 2014, the Thai government realized the importance of preparation for Thailand's readiness to enter the ASEAN Community and has set a strategy for entering the ASEAN Community in 2015 regarding the development of laws, rules, regulations, and government requirements to be consistent with various commitments and agreements, which are considered the cornerstones of the ASEAN Community building (Nilprapunt 2014).

In becoming a member of the ASEAN Community, Thailand must comply with the agreements and missions set out in the ASEAN Charter. This includes all treaties, conventions, agreements, declarations, protocols, and instruments of the ASEAN Community. In the third pillar of the ASEAN Socio-Cultural Community, the environmental mission is at the heart of the Sustainable Development Goals (SDGs) of the United Nations (Office of the Permanent Secretary, Ministry of Natural Resources and Environment 2004). The environment has been included in the blueprint of the ASEAN Socio-Cultural Community, but there is still limited awareness and relatively little progress in implementing the blueprint. Lately, there have been calls to separate environmental matters into the “fourth pillar” of the ASEAN Community to raise more critical awareness and recognition (Srethasirote 2011). If there is a follow-up to solve environmental problems or remedy the impacts later, there will be very high costs. Many types of natural resources and environment cannot be restored to their original state. In addition, ASEAN as a whole region has been jointly facing a rise in average and extreme climate change, increases in wet season rainfall, rainfall intensity, and duration, and greater frequency of extreme events such as droughts, floods, forest fires, pollution, and biodiversity loss. Indonesia, Singapore, Malaysia, and Thailand have faced problems with air and haze pollution, declining wildlife populations, deforestation, soil erosion, water scarcity, and waste issues. The origins of ASEAN environmental problems are the increasing population, rapid urbanization, and progressive economic development, which have led to increased demand and

consumption of food, water, and energy.

Thailand and other ASEAN members must urgently enact, amend, and improve laws and regulations for strengthening economic and social development, preventing degradation of natural resources and the environment, and solving transboundary environmental problems, such as water and haze pollution, electronic waste pollution, climate change, biodiversity problems, etc., give more importance to socio-cultural and environmental dimensions along with economic development (Nilpraphan, 2013a). Although Thailand has enacted relevant laws to partially implement the ASEAN agreements on the environment, it is necessary to research the enforcement of Thai law for implementing its obligations under the ASEAN agreements on environment and the Multilateral Environmental Agreements (MEAs) as well as the mechanism of resolution environmental disputes under the ASEAN agreements on Environment. However, the research problem is that despite Thailand having enough ecological laws and regulations for implementing its obligations under the ASEAN agreements on environment and the Multilateral Environmental Agreements (MEAs), the mechanism of Thai law enforcement on environmental laws was not strong enough for implementing them effectively. In addition, Thailand lacked well-coordinated agencies and a strong network of people participating for implementing its obligations under the ASEAN agreements on environment and the MEAs.

Research Objectives

1. To study the evolution and historical development of concepts and principles of obligations under the ASEAN agreements on environment implementation in the ASEAN Socio-Cultural Community;
2. To study the measures of enforcing Thai law for implementing its obligations under the ASEAN agreements on environment at regional levels and the Multilateral Environmental Agreements (MEAs) at regional levels;
3. To analyze the mechanism of Thai law enforcement and environmental dispute resolution under the obligations of ASEAN agreements on the environment and of the Multilateral Environmental Agreements (MEAs);
4. To recommend policies and measures of Thai law enforcement for implementing the obligations of ASEAN agreements on the environment the Multilateral Environmental Agreements (MEAs) efficiently and effectively in the context of Thailand.

Research Questions

1. What are the evolution and historical development of concepts and principles of obligations under the ASEAN agreements on environment implementation in the ASEAN Socio-Cultural Community?
2. What are the measures of enforcing Thai law for implementing its obligations under the ASEAN agreements on environment at regional levels and the Multilateral Environmental Agreements (MEAs) at universal levels?
3. How is the mechanism of Thai law enforcement and environmental governance for implementing the obligations under the ASEAN agreements on environment and the Multilateral Environmental Agreements (MEAs)?
4. What are the measures of Thai law enforcement for implementing the obligations of ASEAN agreements on environment and the Multilateral Environmental Agreements (MEAs) efficiently and effectively in the context of Thailand?

Literature Review

The economic growth and development of ten members of the ASEAN Community was done quickly without taking into account the deterioration of the environment and the sustainable utilization of natural resources. As a result, there is a negative impact on the social and cultural value of the people in exploiting the land and discarding polluted waste, destroying the ecosystem. In James Rush's "**The Last Tree**" documents noted that the human destruction in Southeast Asia through policies of economic growth without any regard for environmental protection (Rush, 1991). It is necessary to review the problems of enforcing the ASEAN agreements on environment in Southeast Asian that Thailand has the obligations in adopting and amending Thai laws to implement 9 major ASEAN agreements on the environment as follows:

The 1983 ASEAN Ministerial Understanding on Fisheries Cooperation (AMAF). The AMAF was adopted in 1983, by the ASEAN Ministers of Agriculture and Food, to foster closer regional cooperation in fisheries management and conservation, exchange of technology, fisheries trade and marketing. The Strategic Plan of Action for ASEAN Cooperation on Fisheries (2016-2020) defines the strategic priority actions of the fisheries sector focusing on enhancing trade and market access, enhancing fisheries production using sustainable technologies, ensuring food security and safety, increasing resilience to climate change, assisting small producers to increase competitiveness, strengthening joint approaches on global and regional issues affecting the fisheries sector. ASEAN members have

made significant progress in reducing tariffs on fishery products and continue to exert efforts on harmonizing standards and technical regulations to improve fisheries production and facilitate trade. The implementation of ASEAN Guidelines of Good Aquaculture Practices for Food Fish, Standards on ASEAN Good Aquaculture Practices for Shrimp Farming, Template on the Arrangement on the Equivalence of Fishery Product Inspection and Certification System, and Regional Guidelines on Traceability System for Aquaculture Products in ASEAN (ASEAN Secretariat 1983). The AMS have adopted the ASEAN-SEAFDEC Joint Declaration on Regional Cooperation for Combating IUU Fishing and Enhancing the Competitiveness of ASEAN Fish and Fishery Products, and continue to implement the Guidelines for Preventing the Entry of Fish and Fishery Products from IUU Fishing Activities into the Supply Chain, Regional Plan of Action for Managing Fishing Capacity and ASEAN Catch Documentation Scheme for Marine Fisheries.

The 1985 ASEAN Agreement in the Conservation of Nature and Natural Resources. The objectives of this agreement are to maintain essential ecological processes and life-support systems, to preserve genetic biodiversity, and to ensure the sustainable utilization of all living resources. ASEAN States Parties agree within the framework of their domestic law to provide, unilaterally or jointly, measures necessary to maintain ecological processes and living support systems for the biodiversity preservation and to ensure sustainable exploitation of natural resources within their jurisdiction. Its duty is to preserve the highest level of biodiversity conservation. Actions must be taken to maintain and conserve them for the survival of various species within their jurisdiction and control. ASEAN States Parties shall maintain a register of endangered species of plants or animals of importance in the region and provide appropriate measures to conserve forest areas covering the forest ecosystem under their jurisdiction, as well as provide necessary measures to maintain and conserve groundwater and surface water resources. As only Thailand, Indonesia and the Philippines ratified this agreement (ASEAN Legal Instruments 1985); it did not enter into force and has no obligation for ASEAN members for adopting their internal law to implement it.

The 1997 Memorandum of Understanding on ASEAN Sea Turtle Conservation and Protection. This MOU is one of the first ASEAN instruments aimed at protecting the marine environment in Southeast Asia in order to promote the protection, conservation, replenishing and recovery of sea turtles and their habitats. Under its proposed mechanism, it recognized that all matters or issues concerning sea turtles conservation and protection shall be subjected to national laws and regulations, but when necessary, parties would harmonize their existing

national laws and regulations, and enact new laws. It also established a Technical Expert Working Group (TEWG) consisting of designated experts from each contracting party (Centre for International Law 1997). It entrusted Malaysia, whom it considered experienced and a role model on sea turtle conservation, to coordinate and implement the proposed mechanism. The TEWG held a critical role to prepare a program and work plan on sea turtle conservation and protection for approval of the Senior Officials Meeting of the ASEAN Ministers on Agriculture and Forestry.

The 2002 ASEAN Agreement on Transboundary Haze Pollution. Initially, Indonesia was the only country that had not yet ratified this agreement. Nine ASEAN member countries including Thailand have signed and ratified the 2002 ASEAN Agreement on Transboundary Haze Pollution that has been entered into force on 25 November 2003 (ASEAN Secretariat 2002). However, Indonesia later ratified this agreement on 14 October 2014 (ASEAN Secretariat 2015). From the facts that appear continuously every year in various media that Singapore, Malaysia, and southern Thailand are more affected by transboundary haze pollution caused by Indonesia than the countries that created this haze. If considering the legal obligations in this Agreement, Thailand has already enacted and enforced the 1992 Environmental Quality Promotion and Preservation Act to control problems of haze pollution in compliance with this agreement. There are also various administrative and public relations measures in Thailand to prevent and control the haze origins, such as measures to prevent forest fires, establishing a forest fire prevention network, and providing knowledge about forest fire prevention, etc. (Office of the Council of State, 2023). Therefore, Thailand has complete measures to comply with its obligations in this agreement. There are only problems in enforcing legal measures and other measures, including the problem of resolving disputes to effectively remedy the damage that Thailand has suffered from neighboring countries that caused the haze.

The 2004 ASEAN Protocol on Enhanced ASEAN Dispute Settlement Mechanism (EDSM) and The 2010 Protocol to the ASEAN Charter on Dispute Settlement Mechanisms. Since the inception of ASEAN Economic Community (AEC) in 2015, it is necessary for the ASEAN members to remove uncertainty and create more formal ASEAN Dispute Settlement Mechanism (DSM). Due to the increase of economic disputes, ASEAN acknowledged the necessity to establish the dispute settlement agreement which covered economic disputes by giving a consistency of procedure, predictable outcomes, precise adoption of the ruling, and the sanctions of non-compliance to the rulings. Currently, the most

important of ASEAN DSM instruments are EDSM, which resembled the model of WTO DSM, but the ASEAN DSM has never been utilized by ASEAN members (Termudomchai 2016). However, under the ASEAN Charter, disputes arising from ASEAN economic agreements are resolved by the EDSM. Disputes relating to specific ASEAN instruments shall be settled through the mechanisms and procedures provided by such instruments. The ASEAN Charter, Article 25 provides that appropriate mechanisms, including arbitration, shall be established for the settlement of disputes relating to the interpretation or application of the ASEAN Charter and other ASEAN instruments. To implement this Article 25, ASEAN Foreign Ministers signed the Protocol to the ASEAN Charter on Dispute Settlement Mechanisms (DSMP) on April 8, 2010. The signing of the DSMP has indicated “the determination of ASEAN in transforming ASEAN into a rules-based organization and serve to facilitate the implementation of the Charter and ASEAN Community building”(Phan 2013). The Protocol provides ASEAN members with a framework enabling recourse in largely optional means of dispute settlement in the form of non-adjudicative diplomatic consultation, good offices, mediation and conciliation, to the quasi-judicial, arbitration, but no court. It steers a middle path between compulsory adjudication and freedom of choice, combining elements of both. (Naldi 2014). The ASEAN achieves therefore to establish its own dispute settlement mechanism which enables member states to solve their disputes by peaceful means. These are a wide range of options that member states commit themselves to settle dispute amicably and peacefully under the 1976 Treaty of Amity and Cooperation in Southeast Asia, the 2004 ASEAN Protocol on Enhanced Disputes Settlement Mechanism and the 2010 Protocol to the ASEAN Charter on Dispute Settlement Mechanism (Adisornmongkon 2016).

The 2005 Agreement on establishing the ASEAN Centre for Biodiversity (ACB). This agreement is a significant step towards preserving natural resources and biodiversity in Southeast Asia. It was signed in 2005 by ASEAN members and aims to promote sustainable development and biodiversity conservation within the region(Centre for International Law 2005). The ACB is a center for biodiversity research, information exchange, and capacity building. It provides a platform for member states to collaborate in conserving their unique and diverse natural resources and ecosystems. It serves for knowledge sharing, technology transfer, and technical assistance. The ACB’s primary function is to facilitate the implementation the 10-year ASEAN Biodiversity Strategic Plan (ABSP) adopted in 2011. It sets out the guidelines and strategies for biodiversity conservation in the ASEAN region to conserve 20% of the ASEAN region’s total land area and marine

resources by 2020. The ACB also oversees the ASEAN Heritage Parks program, which aims to protect critical ecosystems and promote sustainable tourism. Currently, there are 49 ASEAN Heritage Parks, covering a total area of 8.8 million hectares. Moreover, the ACB works closely with other regional and international organizations on climate change, illegal wildlife trade, and sustainable forest management issues. It is also active in capacity building and education programs, providing training and workshops for students, researchers, and government officials. The ACB is an essential milestone in conserving ASEAN's rich biodiversity. With its focus on research and knowledge sharing, it is an instrument for achieving sustainable development and biodiversity conservation in the region (Pak Nam Pran Subdistrict Administrative Organization 2022). Thailand has implemented its obligations under this agreement by the Regulation of the Prime Minister's Office on the Conservation and Utilization of Biological Diversity, B.E. 2000 (amended in 2005), establishing a committee for conserving and utilizing biodiversity and the National Biodiversity Commission.

The 2005 ASEAN Agreement on Disaster Management and Emergency Response (AADMER). The AADMER was signed in 2005 and ratified in 2009 to address concerns of vulnerability to natural disasters, which are increasing in intensity, and to guide regional cooperation on disaster management. Since its inception, it has galvanized ASEAN to take concrete action towards building a safe and united ASEAN Community through disaster risk reduction and climate change adaptation. The AADMER Work Programme 2021-2025 was guided by the AADMER vision to “build a region of disaster-resilient nations, mutually assisting and complementing one another, sharing a common bond in minimizing adverse effects of disasters in pursuit of safer communities and sustainable development.” For 2021-2025, the mission is to “enhance and support ASEAN's disaster risk reduction and disaster management capabilities through inter-sectorial cooperation, capacity building, scalable innovation, resource mobilization, new partnerships, and stronger coordination among ASEAN Member States.” The new work program incorporates the main provisions of ASEAN Vision 2025 on Disaster Management: ASEAN Declaration on One ASEAN One Response (OAOR) ASEAN ICT Roadmap on Disaster Management for 2025 (ASEAN Secretariat 2020). It also goes one step further by aligning itself with relevant global agreements, including the Sendai Framework for Disaster Risk Reduction 2015-2030 (SFDRR), the Paris Agreement on Climate Change, and the 2030 UN Agenda on Sustainable Development Goals (SDGs).

The 2007 ASEAN Statement on Strengthening Forest Law Enforcement and Governance. ASEAN members that have signed the 2007 ASEAN Statement on Strengthening Forest Law Enforcement and Governance (FLEG) are considered appropriate to strengthen the enforcement and management of forest laws in their respective countries for solving the problems of deforestation, especially in preventing and combating illegal logging and its associated trade, consistent with national laws, regional customs, and governance in forest management (**ASEAN Secretariat 2007**). The FLEG has emerged as a significant policy response by national governments and international organizations seeking to promote sustainable forest management practices. It is also being promoted as a means to arrest forest loss and illegal forest activities, such as unlawful forest harvesting; provide a more viable platform for sustainable forest management; capture the loss of forest revenues for the government and thus benefit the poor through higher government expenditure; and improved benefit sharing with communities, especially the Indigenous people, forest dwellers, and forest-dependent communities. In recent years, the FLEG has also gained prominence as the roles played by forests in mitigation and adaptation to climate change are increasingly being recognized.

The 2011 Agreement between the Governments of the Member States of the Association of Southeast Asian Nations and the Republic of Korea on Forest Cooperation. This agreement aims to provide assistance and facilitate the enforcement of good forestry policies and technological assistance to improve degraded forests. Prevent deforestation to achieve sustainable forest management, deal with climate change problems, provide a platform for exchanging experiences, and establish an Asian Forestry Cooperation Organization (AFoCO) (Centre for International Law 2005). The AFoCO is a treaty-based intergovernmental organization that promotes cooperation to achieve shared SDGs and regional and global forestry objectives. AFoCO aims to contribute to the international goals of increasing forest cover and implementing the Paris Agreement on climate change (**AFoCO 2022**) through action-oriented practices. Under this agreement, Thailand can use the AFoCO mechanism to implement its obligations to solve global warming issues.

The auteur applied the theory of practical law and its applications to analyze the Thai law enforcement of obligations under the ASEAN agreements on the environment at the regional levels and the Multilateral Environmental Agreements (MEAs) at the universal levels, as well as the theory of peaceful settlement of disputes under international law to analyze the mechanism of

ASEAN environmental dispute settlement under the 2004 ASEAN Protocol on Enhanced Dispute Settlement Mechanism: EDSM) and Treaty of Amity and Cooperation in Southeast Asia. According to Mallikamarl (1999) and Bryden (1978) , the above theories shall be applied to the law enforcement of obligations under the ASEAN agreements on environment and the MEAs, as well as any mechanisms of peaceful settlement of international environment disputes, such as negotiation, consultation, mediation, arbitration, ASEAN-EDMS and WTO Dispute Settlement Body (DSB): Panel and Appellate Body. The theoretical concept of effective law in international relations refers to law's efficacy (actual observance) as distinguished from the validity (binding force) of law in the legal order. In addition, the principle of people participation and access to information or environmental justice process are also used to analyze the research results, discussion, conclusions, and discussion.

Research Methodology

This research used qualitative research methodology using document research methods for collecting secondary data from various documents such as academic books, research reports, and papers, review articles and newspapers, official government reports, ASEAN, and international organizations. The author also collected primary data and information through in-depth interviews of the 27 key informants, who were exempted from an ethical review of the Institutional Review Board (IRB), divided into three groups: (1) a group of experts in government organizations and public administration (2) a group of qualified experts from judicial organizations and the justice process and (3) a group of experts from academic institutions in law and political science for achieving a triangular examination of data sources. After collecting data from 3 groups of key informants according to qualitative research methods, then analyzing the data by content analysis, logical analysis, juristic method analysis, and comparative analysis, as well as organizing an academic seminar for collecting opinions and suggestions from experts and related organizations for improving the research results and recommendations to be more complete.

Results and Discussion

This research found that ASEAN has already established the institutional cooperation mechanism for implementing the ASEAN agreements on the environment. Thailand has already implemented its obligations under the regional cooperation of ASEAN environmental agreements and those of global Multilateral Environmental Agreements (MEAs). In case of conflicts on compliance with the

obligations of environmental agreements, there are enough mechanisms of internal law enforcement in Thailand and other ASEAN member countries and of ASEAN dispute resolution on the environment, such as the Dispute Settlement Mechanism under the 2008 ASEAN Charter and 2004 ASEAN Protocol on Enhanced Dispute Settlement Mechanism (EDSM), as well as WTO mechanism of trade dispute settlement, international arbitration or International Court of Justice (ICJ). The research results can be summarized and discussed as follows:

Establishing mechanisms to implement the ASEAN agreements on the environment

The institutional mechanism of the ASEAN cooperation for implementing the ASEAN agreements on the environment consists of the ASEAN Ministerial Meeting on the Environment (AMME), ASEAN Senior Officials on the Environment (ASOEN), and seven subsidiary bodies/working groups. AMME meets once every two years, while ASOEN and its subsidiary bodies meet once every year to oversee the implementation of the ASEAN Strategic Plan on Environment (ASPEN) and the ASCC Blueprint 2025, as shown in Figure 1 (ASEAN Secretariat 2018) as follows:

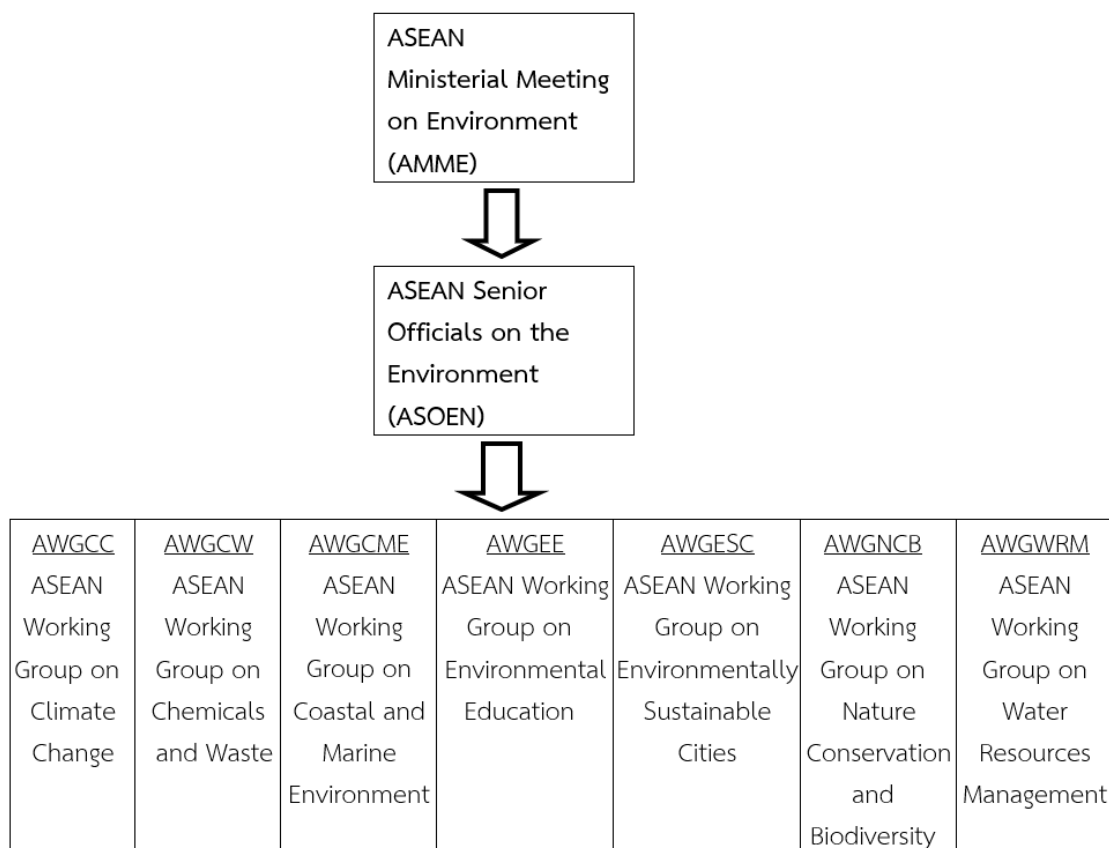


Figure 1 Institutional Mechanism to Implement the ASEAN Agreements on Environment
Source ASEAN Secretariat 2018: p.4

To implement the environmentally-related actions as stated in the ASEAN 2025: Forging Ahead Together roadmap, particularly the ASCC Blueprint 2025, the ASEAN Strategic Plan on Environment (ASPEN) is being developed to serve as a comprehensive guide of ASEAN cooperation on the environment for the next decade that aims to contribute to the promotion of sustainable development in the region. The ASPEN is planned to consist of action plans of 7 strategic priorities: nature conservation and biodiversity, coastal and marine environment, water resources management, environmentally sustainable cities, climate change, chemicals and waste, environmental education, and sustainable consumption and production that cover major thematic areas of cooperation in environmental protection and sustainable development undertaken by ASOEN. Each action plan will contain selected programs based on existing cooperation or emerging needs of ASEAN Member States. These programs can be used as a guide in developing specific projects or activities with partners (ASEAN Secretariat 2018).

Many of the laws in the region provide mechanisms for complaints, investigation of pollution cases, fines, and penalties for violations. Market mechanisms like tax on water utilities, rewards for good environmental performance of organizations, and payment for waste collection services and use of plastic bags are also increasingly used. However, subsidies for polluting sectors like energy are still enjoying subsidies, which may be counterintuitive to safeguarding environmental quality. For post-market intervention, the case of the Pollution Adjudication Board in the Philippines illustrated how environmental pollution cases are resolved outside of courts. This demonstrated that violations can be proven, and fines and penalties can be imposed on polluters. This can be a benchmark case for AMS in establishing procedures for handling environmental cases and investigation protocols (ASEAN Secretariat 2016). As for implementing ecological agreements, the ASEAN mechanism is weaker than the EU mechanism because ASEAN is an intergovernmental organization; in contrast, the EU is a supranational organization whose member states have agreed to pool their sovereignty in this area.

Thai law measures to implement the ASEAN agreements on the environment.

Thailand has internal laws require it to implement its obligations under the ASEAN environmental agreements. It has complied with its obligations under the ASEAN agreements on environment and the Multilateral Environmental Agreements. Most expert key informants agree that it is only enough at a moderate level. However, there is still a lack of strict enforcement of Thai laws.

In addition, corruption among government officials and the private sector is increasing yearly to the point where it is difficult to enforce the law as efficiently and effectively as possible. As for some experts, it is the view that there is still not enough of it in line with the commitments mentioned above. There is also a lack of a mechanism linking local community networks to look after comprehensive environmental protection. No public communication system exists to create sufficient people's awareness of environmental conservation. Many related agencies have not established policies and ecological values for unity. Therefore, it causes problems of redundant work and lack of coordination that efficiently and effectively adheres to ecological governance principles. Thai laws on the management of natural resources and the environment include the 1992 National Environmental Quality Promotion and Preservation Act; for example, following relevant laws governing natural resources and the environment are 1961 National Park Act, 1964 National Forest Reserve Act, 1992 Factory Act, 1992 Navigation in Thai Territorial Waters Act, 1992 Public Health Act, etc.

Mechanism of Thai laws to implement the ASEAN agreements on the environment

In the event of enforcement problems or environmental disputes following the ASEAN environmental agreement obligations, there is a mechanism to enforce the law, including the internal laws of Thailand and other ASEAN members, including ASEAN law and international law, to a certain extent. However, there are still problems with law enforcement because the national, regional, and global law enforcement mechanisms are still very weak and do not have sufficient power to enforce laws or settle environmental disputes promptly and effectively. As in cross-border haze problems between Indonesia, Singapore, Malaysia, and Thailand, they must strive to develop readiness and capacity in the internal law enforcement mechanism and process of ASEAN members with different potentials to support the obligations of ASEAN environmental agreements and MEAs to be achieved continuously. Environmental cooperation must be expanded with the ASEAN dialogue partners that have advanced environmental technology to help develop enforcement mechanisms and environmental agreements and transfer modern environmental technology to ASEAN members to prevent and solve their environmental problems. As for Thailand, Thai government agencies have structural issues enforcing laws and obligations according to the ASEAN environmental agreement and the MEAs. This is because too many agencies responsible for the environment lack coordination.

Dispute resolution mechanism under the ASEAN agreement on environment

The ASEAN Community has institutionalized two environmental dispute resolution mechanisms to enforce the obligations under the ASEAN Agreements on the environment at the regional level in Chapter 8 of the 2008 ASEAN Charter and the 2004 ASEAN Protocol on Enhanced Dispute Settlement Mechanism (EDSM). These mechanisms involve negotiating an agreement between the disputing parties without a third party or with the participation of an intermediary third party in coordinating a non-binding stance, such as good office, mediation, and conciliation, and as a binding decision, such as arbitration, panel, and appellate body. The disputing parties can appeal to the ASEAN Summit, which may decide on non-legal binding considerations. However, they have the right not to use these ASEAN dispute resolution mechanisms and choose to use them in global frameworks, such as the mechanism of WTO trade dispute resolution, international trade arbitration, or the UN International Court of Justice (ICJ). However, these regional and global dispute resolution mechanisms are still weak and do not have supranational power over the sovereign state of ASEAN members in the exact mandate of the European Court of Justice, which has sufficient judicial power to take action to settle any environmental disputes in the European Union.

Results from the in-depth of three expert groups of fifteen key informants

Most experts agree that Thailand's measures of law enforcement of ASEAN agreements on the environment are only moderate, and there is still a lack of strict enforcement of Thai laws. In addition, corruption among government officials and the private sector is increasing every year. It is difficult to enforce the law as efficiently and effectively as it should be. As for some experts, Thailand does not have enough laws for implementing ASEAN agreements on the environment and lacks local community networks to care for the environment holistically. There is no public communication to create enough awareness for environmental protection. Therefore, it causes problems of redundant work and lack of coordination that adhere to the principles of environmental governance for implementing ASEAN agreements on the environment.

Most experts agree that dispute resolution mechanisms for implementing the ASEAN agreements on the environment are still weak. These mechanisms, including those under the ASEAN Charter and 2004 ASEAN Protocol on Enhanced Dispute Settlement Mechanism (EDSM) and the WTO panel and appellate at the global level, do not have a supranational authority over the state, such as the European Court of Justice, which has sufficient and profound power to settle

environmental disputes in the European Union efficiently and effectively.

Conclusion and Recommendations

The transformation of ASEAN's legal status from an association to a community by the ASEAN Charter in 2008 has caused changes within ten ASEAN members in two dimensions: the environment and natural resources. **Firstly**, changes in ASEAN infrastructure physical connectivity, such as the construction of transportation and logistics links across countries, investment in infrastructure development of energy, food, and water resources, etc. **Secondly**, changes in ASEAN legal and institutional connectivity because the internal laws of its member states must be adopted or amended for implementing free trade agreements in goods, services, and investments, concluded within ASEAN and agreements made with the third countries. Both of these changes are intended to facilitate the ASEAN expansion of free trade in goods, services, and investments, leading to changes in land use and the utilization of natural resources for production and consumption. Thailand and other ASEAN members should urgently improve laws and regulations to implement related ASEAN agreements on environment to prevent and solve problems of natural resource and environmental degradation, cross-border ecological problems, such as haze pollution, electronic waste problems, climate change and biodiversity, etc. by giving importance to ecological impacts on economic development according to the UN Sustainable Development Goals (SDGs), such as food security, poverty eradication and conflicts in utilization of natural resources affecting environment at national, regional and global levels, etc. Thailand has already adopted or amended its internal laws to implement its obligations under the ASEAN environmental agreements efficiently and effectively. For future action, ASEAN shall establish a "commission for supervision of the enforcement of the ASEAN agreements" to accelerate the harmonization of standards and environmental protection measures across the region, making it a tool for effectively managing the environment. ASEAN shall enforce a particular agreement to reduce the disparity in natural resource and environment management among the ASEAN members, such as determining quality and emission standards and environmental labeling. Therefore, ASEAN may choose to harmonize and reform laws and regulations relating to enhancing natural resources and environmental management based on the current trends on a global scale.

The research recommends setting priority for implementation in Thailand that the House of Representatives shall adopt legislation to improve and support the mechanism of Thai law enforcement and the implementation of effective

environmental dispute resolution by other executive and legislative agencies as follows:

1. The House of Representatives shall improve old laws or enact new laws to integrate and drive an environmental protection mechanism for implementing the obligation under ASEAN ecological agreements. It shall promote networks of community participation in drafts on the environment due to the possibility of amendment motions for local people to play their roles in protecting natural resources and the environment.

2. The mechanism of law enforcement and environmental dispute resolution in Thailand is not yet in line with its obligations under the ASEAN ecological agreements at the regional level and the MESs at the global level. It is necessary, therefore, to improve and amend its internal law's preventive and corrective measures for solving environmental problems at the world standard levels, as well as amend drafts law on the environment in the Parliament to include dispositions on law enforcement and ecological community justice as alternative dispute resolution (ADR) to strengthen existing national justice mechanisms in the Court of Justice and the Administrative Court.

3. The internal laws of ASEAN member countries implementing ASEAN environmental agreements and MEAs are enormously different and diverse. Therefore, It is necessary to promote more legal cooperation to improve their internal laws in compliance with their obligations under the ASEAN environmental agreements and MEAs.

4. Thailand and other ASEAN members shall utilize Article 50 of the ASEAN Charter for developing the improvement of strong and expressive ASEAN environmental dispute settlement mechanisms than existing ones, such as the ASEAN Community should, in the short run, establish a mechanism of permanent ASEAN arbitration system, or in the long term, establish an ASEAN Court of Justice like the European Court of Justice in the European Union.

5. Thailand shall cooperate with other ASEAN member states to develop a law enforcement mechanism for implementing regional ASEAN environmental agreements and global Multilateral Environmental Agreements (MEAs), harmonizing these countries' different and diverse environmental enforcement mechanisms.

6. The ASEAN Secretariat shall undertake legal research to solve the most urgent and vital priority of environmental problems, such as global warming, transboundary haze pollution, hazardous waste dumping problems, and natural disasters deriving from world environmental problems, etc. to recommend the

House of Representatives to enact new law for implementing ASEAN ecological agreements.

7. Most ASEAN environmental agreements are soft laws compatible with the ASEAN Way traditions and do not emphasize penalty provisions in law enforcement and environmental dispute resolution. We should, therefore, undertake legal economy and behavioral science research on environmental law enforcement in Thailand, compared with other ASEAN member countries.

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