

Research Article

Identification Relation of Communitarianism Values in ASEAN as an Intergovernmental Organization

Mohammad Husni Syam, Sri Poedjiastoeti*, Arinto Nurcahyono

Law Faculty, Universitas Islam Bandung, Indonesia

ORCID

Mohammad Husni Syam: <https://orcid.org/0000-0001-7916-2894>

Sri Poedjiastoeti: <https://orcid.org/0000-0002-8720-3921>

Abstract.

Tensions after the end of the World War and the struggle for ideological influence between the western and eastern alliances in the Southeast Asia Region, inspired several countries in this region to gather a forum, which was eventually known as ASEAN, to create a prosperous, peaceful, safe, and stable Southeast Asia region.

ASEAN's joint decisions are taken through consensus, which embodies the spirit of togetherness (communitarian) in ASEAN to complete common affairs. Although later in its implementation, it is left to each member country. Communitarianism values have become a foundation that underlies the establishment of ASEAN and have enabled ASEAN to survive well until now. In its development, ASEAN does not count itself into a whole society because ASEAN cooperates with other countries. They raise the question of how far the influence of the value of communitarianism is in ASEAN legal and policy instruments. The research uses normative juridical and hermeneutic approaches as a philosophical method. The problems studied are about the matters contained in communitarianism, value relations in ASEAN, and the implementation of communitarianism values in ASEAN in both text and context.

The result of this research is to know the relationship between communitarianism values in ASEAN and their implementation in the instruments of ASEAN Law. Eventually, they become the basis to reinforce cooperation in ASEAN.

Keywords: communitarianism, ASEAN, intergovernmental organisation

Corresponding Author: Sri
Poedjiastoeti; email:
sri.poedjiastoeti@unisba.ac.id

Published 30 October 2023

Publishing services provided by
Knowledge E

© Syam et al. This article is distributed under the terms of the [Creative Commons Attribution License](#), which permits unrestricted use and redistribution provided that the original author and source are credited.

Selection and Peer-review under the responsibility of the 5th Sores Conference Committee.

OPEN ACCESS

1. Introduction

The conflicts between Russia and America in a world divided into western and eastern alliances also the war of ideological influence between them in the Southeast Asian Region. They inspired several countries in this region to gather themselves in a forum that was eventually known as ASEAN, a platform to create a peaceful, secure, stable and prosperous Southeast Asia region, as stated in the Preamble to the 1967 Bangkok Declaration. In comparison, the detailed objectives are contained in the second part of the Declaration.

To achieve this goal, ASEAN has agreed on various legal instruments, both hard law and soft law. One of these legal instruments is the ASEAN Charter which also confirms that ASEAN is an intergovernmental organization and declares itself a subject of international law.

ASEAN Joint Decisions are taken through consensus, the embodiment of the spirit of togetherness (communitarian) in ASEAN to complete common affairs. However, it is left to each member country later in its implementation. The spirit of togetherness among neighbours and mutually beneficial cooperation in the ASEAN community is recognized as a way to achieve peace, progress and prosperity. It is also seen in the strength of the informal consultation pattern carried out between ASEAN leaders in solving problems. According to Ghazalie Shafei, the spirit of togetherness is part of our shared (ASEAN) cultural heritage as found in the village. [1] Leaders of ASEAN countries also avoid confrontation or conflict between ASEAN member countries and prefer to sit together and have a dialogue to resolve their differences. In carrying out consensus and agreement, they conduct consultations to ensure that their members agree with the deal that has been taken. [2]

ASEAN, in its development, does not make itself an entire society because ASEAN does a lot of cooperation with other countries. It can be seen in the ASEAN Plus Three Conception where the ASEAN Plus Three (APT) cooperation relationship began in 1997 involving three East Asian countries, namely China, Japan and Korea. The 1st APT Summit was held in December 1997 in Kuala Lumpur when the economic crisis hit the Asian region. [3] Besides that, there is also the ASEAN Framework of Comprehensive Economic Partnership, which is a form of economic and trade cooperation in the ASEAN region with its six economic partner countries, namely: China, Japan, South Korea, India, Australia, and New Zealand, known as ASEAN Plus Six.

Based on the background raises questions: What values are in Communitarianism? What is the relation of the matter in ASEAN as an intergovernmental organization? How the implementation of the importance of Communitarianism in ASEAN.

2. method

This research is normative juridical. That is the approach with hermeneutic as a philosophical method. The method supports an understanding of truth and philosophical interpretation regarding the reality of the ASEAN community.

Using hermeneutics liberates legal studies from positivist authoritarianism and turns loose law from structural and behavioral studies that are too empirical. This approach can bridge the problems being studied, responding to the gap in understanding of the ASEAN Way in the ASEAN Community from the perspective of communitarianism, which should unite individuals in society (community) as *Gemeinschaft* is oriented to the interests of everyone. Based on this approach, it can holistically explain the relation of values in communitarianism in ASEAN as an intergovernmental organization.

Data in this study are ready-made, namely in the form of theories or concepts developed by experts and obtained through library research. The data were obtained through a literature review consisting of the works of experts in International Law, Philosophy of Law, as well as some ideas from outside Legal Science.

Existing data is linked with new developments to see the problem more clearly than philosophical analysis is carried out through: First, interpretation, which is trying to break through and capture the hidden philosophy in it, namely the essential structures, and then on that understanding a critical evaluation is carried out and presents a more complete and appropriate alternative view. Second, internal coherence saw the interrelationships of all elements in the hidden philosophy behind the various problems faced to determine which elements are central, dominant, and marginal. Third, Comparison with other different philosophical views. Fourth, in heuristics, researchers will gain a broader and new understanding wherever possible.

3. RESULT AND DISCUSSION

ASEAN, as an organization of countries in the Southeast Asian region, took an important step after the end of the cold war to maintain relevance as a regional organization. The most crucial step is to change the ASEAN organizational paradigm from a state-based

to a people-based organization. These changes include political, economic stability, and socio-cultural community. [2]

Communitarianism believes that an inclusive society must be developed politically, economically, and socio-culturally to protect them from the threat of Liberalism and Authoritarianism that can destroy them. Both Liberalism and Authoritarianism have eroded and will eventually destroy human social instincts, resulting in the destruction of humans.

Communitarianism expresses its views to restore humans as individuals, communities, nations, or countries for the better. Communitarian thinking is so that individuals, communities, and nations or countries are not trapped in the hegemony of Liberalism or Authoritarianism. For example, Liberalism so much emphasis on the individual that an individual can control the voice of society because it has extensive media. Likewise, authoritarianism can ignore the existence of individuals to rule without any agreement between the two. Communitarianism wants to restore and promote them as they should be, such as educational opportunities, job opportunities, or work opportunities which are all carried out by the state. [4]

There are three principles in the view of Communitarianism to build an inclusive society. The three principles are [4].

1. Cooperation Process for Sharing

This principle states that truth cannot be acknowledged alone by a particular individual or group. To recognize the truth cannot only be because of the beliefs or social status of a particular individual or group. Everything concerning the truth must go through investigation and mutual agreement to determine whether something is true or not. That requires the cooperation and participation of individuals or community groups to achieve objectivity. There appear to be no isolated individuals or community groups in this collaboration. All are involved in the collaboration. The truth that has been obtained and acknowledged must be informed to the public.

When the truth that has been recognized can be sued for correction, in this process, individuals and community groups have relevant access to express their views without intimidation from other parties. For example, looking at past experiences, many people are determined or forced by elites (certain groups, countries) who declare the truth without any input or criticism from individuals or society.

Such conditions will only build cohesiveness or forced community bonds. There is no openness and participation of individuals and communities in a society that requires openness, participation, and tolerance as the foundation for healthy community life.

2. Common Values and Shared Responsibilities

This principle relates to shared responsibility. Communitarianism emphasizes that individuals and societies take responsibility for each other in pursuing shared values. This can happen when cooperation has been running and based on human experiences, such as (1) friendship and sympathy; (2) understanding or clear thinking; (3) reciprocity and non-discrimination; (4) realizing and developing the potential of others as achievements. These four things represent shared responsibility.

3. The Power of Public Relations

This principle relates to political knowledge that everything must be evaluated openly and effectively for the common good. Here citizens do not just vote to give power to someone but must be allowed to participate and involve themselves in decision-making processes that can affect their lives.

Article 3 of the ASEAN charter confirms that ASEAN, as an inter-governmental organization, is a result of this conferred legal personality. Based on this Article Asean officially declares itself as an intergovernmental organization. Simon Chestermen argues that ASEAN as an international organization acquires its legal personality based on the "Will Theory," which states that the legal personality of an international organization is given based on the wishes of its founders [5]. This theory is illustrated in Article 3 of the ASEAN Charter.

Intergovernmental organizations have the following essential characteristics:

1) Representatives of countries exercise the decision-making authority. Specific organs consisting of independent parties and experts can act as advisors but do not have the power to make final decisions.

2) Member states cannot be legally bound without their consent in essential matters. Intergovernmental organizations aim to establish cooperation between member state governments and are not superior to member states. Although in certain circumstances intergovernmental organizations may take binding decisions, this can only be done if the decision has the unanimous consent of the members of the international organization concerned. [6]

As an International Organization, ASEAN has the authority to make international agreements with other parties. This is also confirmed in Article 41, paragraph (7) of the ASEAN Charter, which states that ASEAN can sign contracts with countries, organizations, and institutions. Sub-regional, regional and international institutions. The ASEAN Coordinating Council will further regulate the procedure for agreeing in consultation with the ASEAN Community Council.

4. CONCLUSION

ASEAN, as a regional organization, has embodied the values of communitarianism. These values can be seen in the togetherness of ASEAN member countries. Togetherness can occur because the relationship between governments is not only a political community but also to develop the right transformation potential from a global perspective.

References

- [1] Acharya A. Constructing a security community in Southeast Asia: ASEAN and the problem of regional order: Second edition. 2009. <https://doi.org/10.4324/9780203939239>.
- [2] Sani MA, Hara AE. ASEAN Paradigm shift from a state to people-oriented organization: A neo-communitarian perspective. *Jpn J Polit Sci.* 2013;14(3):379–394.
- [3] Kementerian Luar Negeri Republik Indonesia. “ASEAN Plus Three,” https://kemlu.go.id/ptri-asean/id/pages/asean_plus_three/978/etc-menu
- [4] Tam H. The evolution of communitarian ideas: History, theory and practice. Cambridge: Palgrave Macmillan; 2019. <https://doi.org/10.1007/978-3-030-26558-8>.
- [5] Bell S, Morse S. Sustainability Indicators. Routledge; 2012. <https://doi.org/10.4324/9781849772723>.
- [6] Capotorti F. “Supranational organizations.” in *Encyclopedia of Public International Law* Vol. 4, 2000, pp. 738–739.