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**Master's Thesis**

**“Rowing Between Two Reefs”:  
ASEAN's Strategy of Legalization**

아세안 (ASEAN)의 법률화 전략에 관한 연구

**August 2015**

**Graduate School of International Studies**

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**International Cooperation Major**

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**“Rowing Between Two Reefs”:  
ASEAN’s Strategy of Legalization**

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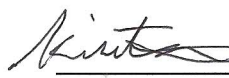

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# 아세안 (ASEAN)의 법률화 전략에 관한 연구

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이 논문을 국제학 석사학위 논문으로 제출함

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## **ABSTRACT**

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The study of legalization in ASEAN was considerably underdeveloped in the past because, in fact, legal instruments in ASEAN were very limited. Even if they exist, the contribution was so little to increase ASEAN's level of legalization. ASEAN remained largely informal for the first thirty years since its establishment. However, since the late 1990s, ASEAN has been rapidly increasing the number legal instruments, aiming to strengthen intramural relations and cooperation. Notwithstanding, ASEAN leaders notoriously hold the informal approach, manifested as the ASEAN Way, as main strategy of diplomacy not only among its members, but also to neighboring countries and regions. Since then, both formal and informal approach has been utilized as part of institutionalization process in ASEAN. Nowadays, it is hard to argue that ASEAN is an informal organization, yet the idea of ASEAN as a highly formal institution is hardly true. ASEAN is somewhere in between. There are some issue-areas that have highly sophisticated legal instruments, while some others are left under-legalized due to the level of sensitivity. This study attempts to showcase the spectrum of legalization in ASEAN in different issue-area. By looking at the degrees of legalization, we will discover that ASEAN's readiness in embracing full formalization and institutionalization is still varied, although it is still on the right direction.

**Keywords:**

**ASEAN, the ASEAN Way, formal and informal approach, degrees of legalization, sovereignty costs, uncertainty**

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## **LIST OF ABBREVIATIONS**

ACB	ASEAN Compliance Body
ACT	ASEAN Consultation to Solve Trade and Investment Issues
AEC	ASEAN Economic Community
AFTA	ASEAN Free Trade Area
APSC	ASEAN Political Security Community
ARF	ASEAN Regional Forum
ASC	ASEAN Security Community
ASCC	ASEAN Socio Cultural Community
ASEAN	Association of Southeast Asian Nations
CEPT	Common Effective Preferential Tariff
EC	European Community
EEC	European Economic Community
EPG	Eminent Persons Group
EU	European Union
OSCE	Organization for Security and Co-operation in Europe
SALT	Small Arms Limitation Talk
SEOM	Senior Economic Officials Meeting
TAC	Treaty of Amity and Cooperation
TRIPs	Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
WTO	World Trade Organization
ZOPFAN	Zone of Peace, Freedom, and Neutrality

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# **I. INTRODUCTION**

## **1.1. Background**

Most political and law scientists and students will likely agree that the most legalized regional institutions in the world are concentrated in North America and Europe. High degree of formalization and numerous legal instruments help to keep the members from deliberate and intentional defection, thus helping those institutions become more organized and legally binding, as we can witness today. Some argue that legalization plays an important role in regional integration and cooperation, especially for its enforcement of rules and implementation of agreed agreements. The aforementioned regions are said to have set the standard for an effective regional integration, taking into account a high degree of legalization as its key element.

On the other hand, quite the contrary, Asia has been notorious for its low level of legalization. Many experts and scholars express their frustration to the lack of institutionalization and legalization in Asia's regional organizations, which are often criticized as the main reason for its institutional ineffectiveness. Asia is not lack of regional institutions in terms of number. In fact, even before the end of the Cold War, the region had "produced few multilateral institutions, given the region's growing economic and security interdependence" (Kahler, 2000, p. 549). However, the region has the tendency for informal approach in managing regional issues. One of them is the Association of Southeast Asian Nations (hereafter, ASEAN or the Association) which was established on 8 August 1967 by five countries located in Southeastern part

of Asia (Indonesia, Malaysia, Thailand, Singapore, and Philippines). ASEAN is widely known for its informal and less institutionalized approach; a trait that is “uniquely Asian” although this is still highly debatable<sup>1</sup>. It is one of the characteristics of the jargonized ASEAN Way, which promotes pacific settlement of disputes, non-intervention principle, and mutual respect to sovereignty. Given its informal and less institutionalized nature, the ASEAN Way is often criticized for leaving the legal obligations unanswered most of the time by the members. Furthermore, given the historical context at the time (the Cold War and Indochina conflict), ASEAN was always seen more as a political arrangement than a formal organization.

However, in recent decades, especially after the Asian financial crisis in 1997 ASEAN has shown increasing interest in institutionalizing itself and creating path to have more degree of legalization. While it is true that ASEAN’s legal instruments in early years were very limited, the number is increasing in recent years. In 2001 Rodolfo C. Severino, then Secretary General of ASEAN, at the *International Law Conference on ASEAN Legal Systems and Regional Integration*<sup>2</sup> gave his insight about this development of ASEAN:

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<sup>1</sup>There has been a growing interest to the utilization of informal approach in European Union (for more, see Mareike Kleine (2013), Randall W. Stone (2013), and Barbara Koremenos (2013), making it is hard to argue that informality is a unique characteristic of Asia generally, and ASEAN specifically.

<sup>2</sup>Rodolfo C. Severino, “The ASEAN Way and the Rule of Law”, address by Rodolfo C. Severino, Secretary-General of the Association of Southeast Asian Nations, at the International Law Conference on ASEAN Legal Systems and Regional Integration, Kuala Lumpur, 3 September 2001, accessed from <http://www.asean.org/resources/2012-02-10-08-47-56/speeches-statements-of-the-former-secretaries-general-of-asean/item/the-asean-way-and-the-rule-of-law>

“I believe that it is about time that people looked upon ASEAN in terms of legal obligations and norms. People are not used to doing so, because ASEAN has never been associated with international law and treaties...This is a bit of an oversimplification, of course...Southeast Asians' way of dealing with one another has been through manifestations of goodwill and the slow winning and giving of trust ... [However] Southeast Asians can and do engage in hard bargaining and exchanges of concessions.”

As Rodolfo Severino expressed in the speech, by generalizing that ASEAN's mechanism is entirely informal is an oversimplification and we tend to ignore the existence of legal instruments which has been supporting cooperation within ASEAN members, albeit its relative small number. Ever since the establishment of Treaty of Amity and Cooperation (hereafter, TAC) in 1976, ASEAN members realized that they need to bring closer relations and deepen the integration of the Association. The conclusion and ratification of TAC marked the first legal instrument that ASEAN has, and it has served as the basic guideline of ASEAN cooperation in various sectors until today. Prior to TAC, ASEAN was a very loose organization without strong legal identity and enforcement of the agreed agreements was very weak. Geoffrey B. Cockerham (2010) wrote an article about the institutional design of ASEAN 2010 and he pointed out that from late 1960's to late 1970s, there were only three and eight principal agreements achieved by the members respectively (p. 171). However, as the Cold War ended in the late 1980s and ASEAN could no longer serve its original objectives, demand for greater cooperation was increasing. Therefore, to facilitate this new objective ASEAN leaders have been trying to provide stronger legal mechanisms. Several other prominent treaties and agreements were concluded during 1990s to

2000s, such as ASEAN Free Trade Agreement (AFTA) in 1992, Treaty on the Southeast Asian Nuclear Free Zone in 1995, and the breakthrough was the conclusion of ASEAN Charter in 2007.

For the first forty years since its establishment, ASEAN did not have legal personality like other international organizations. The intention and goal to become a more formalized and integrated region had been expressed since 1990s. Regionalism became a trend during that period and ASEAN realized that they needed to become stronger as a regional organization. The establishment of ASEAN Free Trade Area (AFTA) in 1992 and the launching of “ASEAN Vision 2020” in 1997 which included the initiative to establish ASEAN Community were among the efforts to bring a closer integration to the Association. In 2005, during the Eleventh ASEAN Summit, ASEAN formally expressed its desire to create a Charter for ASEAN and tasked the Eminent Persons Group (EPG) to study the ideal form of an ASEAN Charter. Finally, in Thirteenth ASEAN Summit, the members fully adopted the ASEAN Charter which would provide ASEAN with a basis for its legal personality. The establishment of ASEAN Charter marked another turn in ASEAN’s path to institutionalization.

However, after closer examination at the provisions of the Charter, scholars have some doubts on its effectiveness, since it still carries out many of the principles in the ASEAN Way, including non-interference, discussion and consensus style of negotiation, and lack of legally binding agreements. One cannot deny that having the Charter as the basis for its legal personality gave a sound impact for ASEAN as regional organization. We also have to admit that ASEAN has been producing

regional agreements that have been increasingly high in terms of legalization. They are still lacking in terms of implementation and enforcement, but the path to greater institutionalization is starting to be clearer.

While we may have agreed that the institutionalization process of ASEAN is inevitably happening, it is probably wise to acknowledge that in some areas, the Association seems to be reluctant to completely rule out the ASEAN Way. In recent decades, ASEAN's achievements in terms of its legal personality and rule enforcement have been highly increasing. However, most of the institutionalization process takes place in the economy related areas, especially with the current development in establishing the ASEAN Economic Community (AEC) as one pillar of the ASEAN Community. Political and security areas remain as sensitive issues to the members, although recent development in human rights and democracy shows that powerful ASEAN members are at least open to the idea of institutionalizing the political and security issues.

In this study, we are going to see how far the institutionalization in ASEAN by considering three main issues reflected in the three pillars of ASEAN Community. It is true that ASEAN still heavily relies on the comfort of using the principles of the ASEAN Way in most of its intramural relations. However, overgeneralization on ASEAN's informality has been misleading, as each of issue-area has different degree of institutionalization. While in the economic issue ASEAN has been advancing its integration and legal mechanisms, the same progress could hardly be seen in the political-security and social-cultural issue. Here, institutionalization will be seen in its



relation to legalization process. Abbott et al. (2000) argued that legalization is a particular form of institutionalization and through legalization states materialize its commitments in legally binding agreements, treaties, or charters. In this concept, legalization consists of three elements, which are obligation, precision, and delegation. We are going to elaborate these three elements later in Chapter III, but in brief, *obligation* means that a sense of commitment that is legally bound by law; *precision* refers to unambiguous rules and conducts; *delegation* means the involvement of third party in the rule enforcement. (Abbott et. al, 2000, p. 401). These three elements have a wide spectrum from low to high and theoretically, the differences will reflect different level of legalization.

For Abbott and Snidal (2000), international institutions have several political reasons for choosing what degree of legalization they should have in different issue-area, namely sovereignty costs and uncertainty about the outcome of legal arrangements. Likewise, ASEAN as an international institution also has the liberty to choose the extent of its legalization, and different level of sovereignty costs and uncertainty will be reflected in its degree of legalization. Legal agreements that have been concluded by the ASEAN members will be the main source of this research and they will be investigated in two steps. First, we are going to define the level of legalization that each agreement has by analyzing the level of obligation, precision, and delegation. Then, we need to determine the level of sovereignty costs and uncertainty for each agreement. As the result, we are going to see in which conditions that ASEAN chooses to have high degree or low degree of legalization.

There is wide consensus among scholars that despite its recent attempts to institutionalize itself, ASEAN is still informal in nature. Nevertheless, by taking Abbott and Snidal's hypotheses as departure point, this study will seek to prove that ASEAN has different degree of legalization in different issue-area. Here, informal approach will be closely linked to softer form of legalization. Conversely, harder form of legalization on par with a more formal approach. Formal and informal approach would not be seen in a simple white and black, but in a range of spectrum that shows the mixing of formal and informal approach, especially in terms of legalization. By taking into account the sovereignty costs and uncertainty, we may be able to see that ASEAN's readiness for a deeper institutionalization is varied across issue-areas.

## 1.2. Research Question

Against the backdrop that has already been discussed in the previous section, at the end of this thesis, I would like to address one main question about institutionalization in ASEAN:

“How does different issue-area affect the degree of institutionalization in ASEAN?”

## 1.3. Purpose and Significance

As the research question suggests, this study aims to see the formal and informal approach in ASEAN through various degrees of legalization. The traditional definition of informality in ASEAN often neglects the emergence of legal instruments in ASEAN in the last few decades. On the other hand, critics of ASEAN always blame

the informality as the stumbling block for more effective ASEAN. It is undeniable that the ASEAN Way has been maintaining some level of flexibility in intramural relations and it fits well with the culture and history of Southeast Asian countries. Forcefully removing the principle of informality in ASEAN would only create discomfort, but leaving the Association with so little legal mechanism could delay the development of a closer cooperation in the region. By taking into account the level of legalization (whether hard or soft form of legalization), as well as the concepts of sovereignty costs and uncertainty, we will be able to see that ASEAN's choice in legalization is influenced by certain conditions.

#### 1.4. Hypotheses

In order to answer the research question, I would like to propose two hypotheses. To begin with, we have to establish the assumption that legalization is a particular form of institutionalization, as Abbott et al. (2000) argue in their article. Therefore, we can further say that in order to see the degree of institutionalization, we can take into account the degree of legalization in international arrangements (agreements, treaties, charters, etc). Based on the concept provided by Abbott and Snidal (2000) about harder and softer form of legalization, I will proceed to prove the following hypotheses.

**Hypothesis:**

- Softer forms of legalization are more attractive to ASEAN member states when sovereignty costs increase and circumstances are highly uncertain.  
Vice versa.
- The degree of legalization in economic issues is higher than the political-security and socio-cultural issues because both sovereignty costs and uncertainty are high.

## **II. LITERATURE REVIEW**

To date, there are hundreds of academic writings, articles, and research done by scholars about ASEAN as a regional institution and the ASEAN Way as the normative framework adhered by its members. From Michael Leifer's classic to Amitav Acharya's breakthrough works, many are taking into account the theoretical debate between rationalists (or realists, to be more precise) and constructivists' approach. While the enormous academic contributions given by these two schools of thought with regard to ASEAN seem to leave no room for new perspective, the still-ongoing process within the Association always creates challenge for academic community to look from a new angle. In this literature review, first I will present the nature and rationalization of ASEAN informal mechanism which is summarized in the ASEAN Way and the defense from its supporters. It is important to revisit this debate as ASEAN was born without any legal personality or instrument and ASEAN owes much of its current system to those principles. Second, as both external and internal pressures force ASEAN to embrace more formal mechanism, we will see that both informal and formal combo has been utilized in ASEAN, especially since the late 1990s. Even though informal mechanism is still preferred by the ASEAN members, the increasing number of legalization has proved that ASEAN is not as under-legalized as we thought. ASEAN is on its way to a higher institutionalization.

## 2.1. Explaining the ASEAN Way

The studies on ASEAN as an institution have been increasing quite enormously especially since the end of the Cold War and ASEAN expansion in the late 1990s. However, the results have been very limited as the convenient conclusion that scholars often opt is that ASEAN's mechanism is informal and the principles of the ASEAN Way still persist even after the Association acquired its legal personality in 2007. This is true to some extent and constructivists often come to defend this slow progress of the institutionalization of ASEAN.

For constructivist like Amitav Acharya, Nikolas Busse, and Timoti Kivaki, ASEAN's adherence to the ASEAN Way should not be shaded in negative light. For us to understand how the regional cooperation in Southeast Asia works, constructivists remind us not to think that the ASEAN Way is given. Instead, it is socially constructed by the actors involved and have experienced a long process before finally appears as what we see today. As Amitav Acharya argued in his article *The 'ASEAN Way' and Regional Order* in 1998, "... the ASEAN Way emerged not only from the principles of inter-state relations agreed to by the founders of ASEAN, but also from a subsequent process of interaction, socialization, compromise, and adjustment." (p. 57). It is widely agreed that Southeast Asia is a region that has high level of diversity. Therefore, it is difficult to achieve what the elite leaders have envisioned in the motto "One Vision, One Identity, One Community". However, Acharya further argued that the ASEAN Way's "primary" goal is to manage diversity. Southeast Asia is home for

varied political ideologies, races, and religions, and in the past, they became source of conflict in the region. However, for the last forty-eight years ASEAN has managed to not only survive and slam doubtful comments from pessimists, it also successfully manages to become one of the prominent regional institutions in the world.

Before getting back to constructivist' view on the ASEAN Way, first we need to outline what constitutes the ASEAN Way<sup>3</sup>. Amitav Acharya contended that there are four key elements of the ASEAN Way which are: informality, non-interference and non-confrontation, consultations and consensus, and the preferable bilateral cooperation over multilateralism. Those who are pessimistic about the ASEAN Way always attack informality and non-interference principles of ASEAN as the cause of the lack of coerciveness to make the members compel to agreed legal framework. However, in one of his earlier works on ASEAN, Acharya (1998) defended the informality as the feature that is supposed to raise the "level of comfort" among the participants. He also argued that even though informality is preferred to formality, ASEAN still has "permanent institutional structures"<sup>4</sup> and the members "does not equate institutionalization with effectiveness" (p. 59). This means that constructivists believe that the most important thing for ASEAN is that those principles are suitable

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<sup>3</sup> There is no official definition of the ASEAN Way and for every scholar, their understanding of what constitutes the ASEAN Way is also different, albeit minor. For example, Hiro Katsumata (1999) identified at least four elements of the ASEAN Way: "the principles of non-interference in the internal affairs of other members, quiet diplomacy, the non-use of force, and decision-making through consensus" (p. 106)

<sup>4</sup> What he means by "permanent institutional structures" are the formal summit, annual ministerial meetings, and other meetings involving senior officials and parliamentarians. At the time he wrote the article, ASEAN only had Treaty of Amity and Cooperation (TAC) as the legal institutional framework hitherto, which was signed in February 1976. The existence of TAC only strengthened the non-interference as the core principle of ASEAN.

for them and it should be celebrated as the achievement of ASEAN, not a failure. It worked *effectively* in favor of the complicated background of ASEAN regional politics, at least until the late 1990s when almost all original member countries swept by the financial crisis.

With a slightly different conceptual framework, Taku Kimaki (2006), a sociologists, defended the ASEAN Way as an “emergence”, and the reason why the ASEAN Way seems to be a hindrance for effectiveness is because it is still “under construction via a series of negotiation and socialization between and among the ASEAN member states and its regional partners” (p. 2). He criticized neofunctionalist approach, stating that “ASEAN members seem to have had no intention of constructing a security community, and instead, any semblance of institutionalism was a result of accumulating momentum and exogenous factors ...” (p. 5). His analysis on the ASEAN Way from sociological constructivist perspective drew an ontological explanation, which is useful to some extent, in understanding the uniqueness the ASEAN Way. He suggested that the ASEAN Way is an “easy-to-use grammar” that enabling the member states to share the “we-feeling” even without any formal, material framework.

However, while trying to defend the existence of the ASEAN Way, we often forget that ASEAN has been evolving since the end of the Cold War. The Association has been developing numerous legal instruments since then and it affected the traditional mechanism of ASEAN. Many scholars argue that the institutionalization process of ASEAN has been moving towards a more EU-like institution. There is



meaningful progress towards a greater integration despite the seemingly attempt to retain the principles of the ASEAN Way. In the next sections, we will see that ASEAN is not as under-legalized as many of us would think and those principles are gradually changing to fit the needs of ASEAN as an organization. In addition, it has developed relatively advanced mechanisms in recent years and it may lead us to think that ASEAN's path to institutionalization may not be different to other international and regional organization in the world.

## 2.2. Formal and Informal Approach in ASEAN

In 2005, Mely Caballero-Anthony published a book titled *Regional Security in Southeast Asia: Beyond the ASEAN Way*, which has the similar spirit as this thesis is trying to deliver. Her main argument throughout the book is that in managing the conflicts within itself, ASEAN has developed several important mechanisms which can be classified into two types: formal mechanism and informal or normative mechanism. The formal mechanism can be sub-divided into three types. First is the institutionalized framework of discussions and consultations on matters of mutual interest, second is the institutionalized bilateral mechanisms and processes, and third is the legal instruments that are meant to prevent and manage disputes (p. 55).

Caballero-Anthony further argued that despite having various types of formal mechanism, they have not been used at all in managing disputes in ASEAN. They offer no flexibility but another reason why ASEAN is reluctant to use formal mechanisms is because it prefers to limit its role in managing conflict and to avoid any

future conflict as hard as they can. ASEAN member states' emphasis on self-restraint and acceptance the practices of *musyawarah* and *mufakat*, agreeing to disagree, are several elements that can be found in the ASEAN way of managing conflicts (Caballero-Anthony, 2005, p. 65). Thus, after analyzing many cases of conflict management in ASEAN such as Cambodia conflict, the ASEAN Regional Forum, bilateral disputes between member states, as well as the Asian crisis, she concluded that ASEAN's mechanisms of conflict management are multi-faceted, embodying both formal and informal processes (p. 197). The two mechanisms are closely interlinked with formal mechanisms encourage cooperation in several areas and informal mechanisms that emphasize the need and desirability for cooperation. However, in the many cases of ASEAN, informal mechanisms emerged triumphant.

Writing the book from constructivist perspective, Caballero-Anthony followed the tradition of emphasize the utility of norm-building in the conflict management in ASEAN. Yet, she also admitted that ASEAN has been working under formal and informal mechanisms this whole time and if in the end ASEAN's preference of informal mechanisms, it was not only "due to the lack of capacity within ASEAN. The reason for this was primarily due to the overriding objectives of instilling trust and building confidence among members that were getting to know each other during the formative years of ASEAN" (Caballero-Anthony, 2005, p. 258).

### 2.3. Is ASEAN Under-legalized?

The institutionalization of an international organization is often compared to the benchmark set by the West European and North American regional institutions, as argued by Miles Kahler in his article titled *Legalization as Strategy: The Asia-Pacific Case* (2000). If Europe and North America set the standard for high degree of legalization, Asia-Pacific would be at the lower end. Kahler argued that ASEAN's (and other institutions in Asia-Pacific) choice of low level of legalization and informality may be an "instrumental and strategic choice on the part of the governments" (Kahler, 2000, p. 550). ASEAN opted for this strategy in terms of its relations to other international actors and its capacity as an institution. He described ASEAN as one of the institution in Asia which has been increasingly embracing legalization, especially in the area of economic cooperation. He argued that "a modest increase in obligation and precision was not accompanied by any increase in delegation from member states to the organization" (Kahler, 2000, p. 552). He offered several reasons for why institutions in the Asia-Pacific opt for low level of legalization which are (1) low demand of legalization due to reliance to the institutions outside the region, (2) legal culture and institutions, which show some distrust towards Western legalization, (3) different domestic conditions in terms of diverse political ideology, despite the existence of the seemingly shared history of colonialism. The final explanation is that, as previously mentioned, these institutions choose low level of legalization for instrumental and strategic reasons, where they benefit from a greater

cooperation without deepening the cultural, ideological, and historical differences. The result comes out as a rational choice from the institution.

Therefore, Kahler argue that ASEAN's willingness to embrace a greater legalization is very strategic. ASEAN adopted a dispute-settlement mechanism in 1996 and it has marked ASEAN's step into a more legalized approach. Although this dispute-settlement mechanism was designed for economic agreements, at least it has provided ASEAN "a more predictable and rules-based free trade area" (Kahler, 2000, p. 566). Here, we have to look closer at his arguments saying despite the slow start, ASEAN has been increasingly legalized by referring to numerous agreements achieved by ASEAN just in two decades. Jose E. Alvarez (2007), although expressing his disagreement over Kahler's general argument of low legalization in Asia-Pacific, found it hard to argue against the strategic reasoning of legalization. He further argued that "some Asian/Pacific governments may sometimes, *on some issues*, find it in their interests to legalize" (Alvarez, 2007, 27).

In 2010, Geoffrey B. Cockerham conducted a research on the institutional design of ASEAN by examining regional agreements achieved by the members. He used the content-analysis approach to analyze the agreements in order to assess the "pattern of institutionalization" in the Association. His argument used the intergovernmentalism approach which assumes that the motivation for regional integration of each member is different according to their goals and interest, which serves to maintain each state's autonomy. This is similar to Kahler's argument that in Asia, legalization is seen more as a strategic choice. His initial findings show that

from 1967 to 2007 there are at least 95 number of agreements with binding obligations achieved by ASEAN (including all principal agreements, supplementary protocols, and protocol that amend other agreements); the end of the Cold War in the late 1980s and financial crisis in the late 1990s contributed a lot to the active expansion of ASEAN's cooperation and legalization.

**Table 1. Types and number of ASEAN agreements with binding obligation 1967-2007**

<b>Type of agreement</b>	<b>Number of agreement</b>
Principal agreements	54
Supplementary protocols	24
Protocols that amend other agreements	95
<b>Total</b>	<b>95</b>

*Source: Cockerham (2007), p. 170*

**Table 2. ASEAN agreements by decade 1976-2007**

	<b>Principal agreements</b>	<b>Supplementary protocols</b>	<b>Protocols with amendments</b>
1960s	3	0	0
1970s	8	0	0
1980s	9	5	7
1990s	14	6	9
2000s	20	13	5
<b>Total</b>	<b>54</b>	<b>24</b>	<b>21</b>

*Source: Cockerham (2007), p. 171*

From his analysis, we may be able to see that ASEAN is hardly under-legalized, in terms of the number of agreements achieved by members. While Cockerham's study only provides a general overview of ASEAN's legal agreements (both that have been in force and not in force) and its development, it could give us the idea of how extensive the legalization that ASEAN has achieved. This study will provide a closer and deeper look into ASEAN's legalization, by focusing more on the agreements that have been into force, and find the variations of legalization within those existing agreements. It has been discussed in the beginning of this Chapter that despite the informal nature of ASEAN, ASEAN has been embracing more institutionalized and legalized approach in recent years. Today, both informal and formal approaches have continuously been utilized by ASEAN members in its intraregional cooperation, and how ASEAN utilizes both of them will be elaborated further below in the next chapters.

### **III. ANALYTICAL FRAMEWORK**

In the first chapter, I offered several propositions that need to be analyzed using some conceptual and theoretical frameworks. Previously, we have already discussed about how ASEAN has been more institutionalized in the past several decades and evolved into an international organization equipped with a more formal and legal instruments. It has been argued by several scholars that ASEAN's decision to create more legal mechanisms was to increase legitimacy, to deepen its regional integration, and to make the organization more effective. However, despite already creating those legal bases, ASEAN still prefers to utilize informal approach. In this chapter, I will re-introduce several concepts and theory which will become the analytical tool for this study.

The development of formal mechanism in ASEAN shows that the organization has undergone some degree of institutionalization. Scholars still debate about the appropriate definition and there is still no agreement on general definition, however, Heidi Hardt (2013) tried to summarizing institutionalization as "the ongoing process of building rules, norms, and structures that together reflect a blending (Levitsky, 1998, p. 80) of members and organizations toward the evolution of a 'social space' (Stone Sweet et.al., 2001, p. 12)" (Hardt in Reinalda, 2013, p. 341). By building rules and norms, especially the formal ones (which could be standard operating procedures, voting rules, organizational chains of command, or written policies), it is expected that stable and predictable policy outputs are likely to follow. Institutionalization in

international relations is difficult to measure but in this context, as ASEAN is actively pursuing a more legally binding mechanism, the concept of *legalization* would be useful to determine the degree of institutionalization within ASEAN. As Judith Goldstein et.al (2000) argued, legalization is a particular form of institutionalization which “represents the decision in different issue-areas to impose international legal constraints on governments”. It has been repeatedly mentioned before that even with the institutionalization process happening in ASEAN, informality is still a preferable approach in managing intraregional relations in the regional organization. Therefore, the concept of informality should also be pertinent. In the section to follow, I will elaborate the concepts of legalization and informality.

### 3.1. Conceptualization

#### 3.1.1. Legalization as Part of Institutionalization

Legalization is often strictly seen as a subject limited in international law discourse. This view has been gradually shifting and scholars have begun to actively link legalization and world politics.<sup>5</sup> It is easy to neglect the fact that the process of legalization itself is full with politics and bargaining among participants, but creating legally binding instruments usually requires political interests and power in the process. In the study of institutionalization, legalization is a part or indicator of institutionalization (Goldstein et al., 2000, Acharya, 1998, 2001). In this sense, we understand legalization has a broad spectrum with extreme case at both ends. Abbott

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<sup>5</sup> Judith Goldstein, Miles Kahler, Robert Keohane, Andrew Moravcsik, and Anne-Marie Slaughter together have produced a seminal book that elaborates the close link between legalization and world politics. See Goldstein et al. (2000)



et al (2000) therefore defined legalization as characterized within three components: obligation, precision and delegation. For the purpose of this study, I will not go into detail about each of these components but use this working definition provided by Abbott et.al to determine the degree of legalization on several legal instruments in ASEAN. From this perspective, we can see that even legalized international laws may not always refer to hard legalization, but may as well include a softer form of legalization in its rules and procedures.

#### 3.1.1.1.Obligation

Legal obligations are indeed different with a more general definition of obligation in practice, but they share similar traits. In a general term, obligation is defined in Oxford Dictionary as “something you must do because of law, rule, or promise”. It is something that has to be done by whoever that makes commitment in the name of law, rule, or promise. In legal terms, obligation means that states (or other actors) are bound to rule(s) and commitment(s) (Abbot et al, 2000, p. 401) with some “legal responsibilities” in the case of non-compliance. The existence of obligation implies that states make commitments that are legally binding and they have duty to act according to those commitments.

The sense of duty in obligation should be seen in interpersonal and social context. When we are saying that we have obligation *to*, there should be something (or someone) at the other end to which the obligation is owed. (Ladd, 1972, p. 12 in Reus-Smit, 2003, p. 595). There are various reasons for states to recognize obligations,

especially when the obligation is legalized hardly, where there might be sanctions in the case of breaching. When one party breaches the agreement, the injured party will claim its loss through the accepted formal procedure or through diplomatic means. There is always possibility of breaching because states have no ability to predict the future. However, the degree of that possibility will differ according to the degree of obligation states committed when legalization occurs.

In Table 3, we can see the degree of obligation from high to low and its indicators that elaborated by Abbott et al. It is assumed that the hard legal rules are using very detail legal language, which unconditionally will be legally bound in practice; requiring all sorts of formalization such as signature, ratification, and exact timeframe of entry into force. At the other end, we may see that a low degree of obligation tries its best to be minimally committed to any legally binding instruments. The sense of duty to fulfill obligation is very weak at the low-end of spectrum. Most of international laws fall between these spectrums with few cases are at the extreme-end.

***Table 3. Indicators of Obligation***

<b>High</b>
Unconditional obligation; language and other indicia of intent to be legally bound
Political treaty; implicit conditions on obligation
National reservations on specific obligations; contingent obligations and escape clauses
Hortatory obligations
Norms adopted without law-making authority; recommendations and guidelines
Explicit negation of intent to be legally bound
<b>Low</b>

*Source: Abbott et al., 2000, p. 410*

### 3.1.1.2.Precision

Abbott et al. (2000) argued that precision means that rules unambiguously define the conduct they require, authorize, or proscribe (p. 401). When a rule is specified with high degree of precision, different interpretation of a rule is limited if not impossible. To achieve a high level of precision, a set of rules must avoid contradiction to each other, and must be related to one another that should be coherently carried out. A precise rule in international law is important, as Abbott et al. cited Thomas Franck's argument, that precision increases the legitimacy of rules and thus their normative "compliance pull" (p. 413).

However, the perfect precision of rules only appears in theory. Although most of international law is extensively precise, many agreements and treaties are still "vague and general". The closest one to perfect precision would still create a problem in terms of implementation, as the room for interpretation is still open, the state in the end will choose on how to interpret based on international and domestic circumstances (Abbott and Snidal, 2000).

In defining the degree of this component, Abbott et al. also offered a spectrum of precision which range from the very extreme precision of rules to the least precise rules that are difficult, if not impossible, when it comes to the assessment of compliance.

**Table 4. Indicators of Precision**

<b>High</b>
Determinate rules; only narrow issues of interpretation
Substantial but limited issues of interpretation
Broad areas of discretion
“Standards”: only meaningful with reference to specific situations
Impossible to determine whether conduct complies
<b>Low</b>

*Source: Abbott et al., 2000, p. 415*

WTO trade agreements and Strategic Arms Limitation Talks are examples of law with high precisions as they provide a length-full details and elaboration of its provisions. High precision is concomitant with high degree of legalization, as the possibility to breach an agreement due to broad interpretation is limited. Charters of international organizations, as another example, are usually very general due to its political influence. They are made that way so that states could have a wider authority to determine its meaning (Abbott et al. 2000, p. 415).

### 3.1.1.3. Delegation

The last component of legalization is delegation which means the extent to which states and other actors delegate authority to designated third parties – including courts, arbitrators, and administrative organizations – to implement agreements. Abbott et al. argued that the existence of third-party dispute settlement mechanisms is a characteristic form of legal delegation. They are highly legalized when the parties agree to give the third-party a liberty to produce a decision based on précised and

applicable rules. When dispute settlement mechanism is highly involving political bargaining between parties, the degree of delegation is certainly low and the agreement or law is less legalized. However, delegation is not all about dispute resolution, but also in the sense of rule making and its implementation. If delegations create a sort of bureaucracy that could create regulations and fully enforce them, the legalization is considerably high. However, bureaucracy ceased to exist and delegations only interact through low-level forum, then the degree of legalization is low (see Table 5).

**Table 5. Indicators of Delegation**

a. Dispute resolution
<b>High</b>
Courts: binding third-party decisions; general jurisdiction; direct private access; can interpret and supplement rules; domestic courts have jurisdiction
Courts: jurisdiction, access or normative authority limited or consensual
Binding arbitration
Nonbinding arbitration
Conciliation, mediation
Institutionalized bargaining
Pure political bargaining
<b>Low</b>
b. Rule making and implementation
<b>High</b>
Binding regulations; centralized enforcement
Binding regulations with consent or opt-out
Binding internal policies; legitimization of decentralized enforcement
Coordination standards

Draft conventions; monitoring and publicity
Recommendations; confidential monitoring
Normative statements
Forum for negotiations
<b>Low</b>

*Source: Abbott et al., 2000, p. 416*

I have explained the conceptual framework for legalization, which is also part of institutionalization, as which characterized by three components: obligation, precision, and delegation. From the combination of these three components, we can develop variety of international legalization. Originally, Abbot et al. provided eight combinations of obligation, precision, and delegation to provide a typology of legalization from the highest degree to lowest degree of legalization (see Table 6). For the sake of simplicity, I will use Abbott's and Snidal's assumption that higher degree of legalization is in concordance with harder legalization and lower degree of legalization is in concordance with softer degree of legalization.

**Table 6. Typology of international legalization**

<i>Type</i>	<i>Obligation</i>	<i>Precision</i>	<i>Delegation</i>	<i>Examples</i>
<b>Ideal type: Hard Law</b>				
I	High	High	High	EC;WTO—TRIPs; European humanrights convention; InternationalCriminal Court
II	High	Low	High	EEC Antitrust, Art. 85-6; WTO—national treatment
III	High	High	Low	U.S.–Soviet arms control treaties;Montreal Protocol
IV	Low	High	High	UN Committee on Sustainable

			(Moderate)	Development (Agenda 21)
V	High	Low	Low	Vienna Ozone Convention; European Framework Convention on National Minorities
VI	Low	Low	High (Moderate)	UN specialized agencies; World Bank; OSCE High Commissioner on National Minorities
VII	Low	High	Low	Helsinki Final Act; Nonbinding Forest Principles; technical standards
VIII	Low	Low	Low	Group of 7; spheres of influence; balance of power
<b>Ideal type: Anarchy</b>				

*Source: Abbot et al. 2000, p. 406*

Some scholars found this typology problematic as it cannot clearly explain how these three elements are connected to each other. According to Abbot et al. each component is independent to each other and but their weights are different, with obligation weighted most heavily, followed by delegation and then precision (Abbott et al., 2000, p. 405). That explains why Row V and VI are in different level even though each has one High category. In 2012, Louis Bélanger & Kim Fontaine-Skronski reformulated the typology by adding that precision and delegation may not be able to stand independently because they are directly associated with obligation. They provided a formulation that considers precision and delegation as a function of obligation and added some coefficients to weight the components.<sup>6</sup> The result of the formulation could be seen in Table 7a and 7b below.

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<sup>6</sup>For further details of the reformulation, see Bélanger and Fontaine-Skronski (2012)

**Table 7a. An alternative measure of international legalization**

Type	Obligation $\alpha = 2.0$	Precision $\chi = 0.6$	Delegation $\beta = 0.8$	Legalization $O + \min(O, D+P)$
I	High $2 \times 2.0 = 4.0$	High $2 \times 0.6 = 1.2$	High $2 \times 0.8 = 1.6$	6.8
II	High $2 \times 2.0 = 4.0$	Low $1 \times 0.6 = 0.6$	High $2 \times 0.8 = 1.6$	6.2
III	High $2 \times 2.0 = 4.0$	High $2 \times 0.6 = 1.2$	Low $1 \times 0.8 = 0.8$	6.0
IV	Low $1 \times 2.0 = 2.0$	High $2 \times 0.6 = 1.2$	High $2 \times 0.8 = 1.6$	4.0
V	High $2 \times 2.0 = 4.0$	Low $1 \times 0.6 = 0.6$	Low $1 \times 0.8 = 0.8$	5.4
VI	Low $1 \times 2.0 = 2.0$	Low $1 \times 0.6 = 0.6$	High $2 \times 0.8 = 1.6$	4.0
VII	Low $1 \times 2.0 = 2.0$	High $2 \times 0.6 = 1.2$	Low $1 \times 0.8 = 0.8$	4.0
VIII	Low $1 \times 2.0 = 2.0$	Low $1 \times 0.6 = 0.6$	Low $1 \times 0.8 = 0.8$	3.4

Note:

- a. 1 is numerical value for High
- b. 2 is numerical value for Low
- c.  $\alpha = 2.0$  is coefficient for Obligation
- d.  $\chi = 0.6$  is coefficient for Precision
- e.  $\beta = 0.8$  is coefficient for Delegation



**Table 7b. An alternative typology of international legalization**

<b>Types of legalization</b>	<b>Obligation</b>	<b>Precision</b>	<b>Delegation</b>
Very high	High	High	High
High	High	Low	High
	High	High	Low
Moderate	High	Low	Low
Low	Low	High	High
	Low	Low	High
	Low	High	Low
Very low	Low	Low	Low

*Source: Bélanger and Fontaine-Skronski, 2012, p. 257*

Overall, although the hard legalization (represented in Row I, II, and III in Abbott et al.) remains intact, the ranks of several middle rows changed after putting coefficient to weight the components. I will use the reformulation of typology of legalization to later determine the degree of several international laws that exist within ASEAN.

### 3.1.2. Determinants of Softer and Harder Legalization

I have already elaborated above the concept of legalization as a part of institutionalization. Rather than seeing legalization as black and white – simplifying it as a dichotomy between formal and informal rules, or in legal terms, hard and soft law – we have seen that it falls in a continuum or spectrum which will be in different degree. For a long time, international relations scholars have the tendency to focus more on formal institution, hard law, or high level of formalization. They put informality on the back burner and showed little importance of it – in fact, they

ignored it. However, recent studies show that informality is an important aspect in international institutions and organizations (Christiansen and Neuhold, 2013; Stone, 2011; Kleine, 2013), including in the organization with a high level of institutionalization such as European Union (EU), as well as in the realm of international law that traditionally bears a formal and legitimized nature. Nevertheless, in the language of international law, informality is often associated with soft law, as Abbott and Snidal (2000) elaborated in their article. An organization that pursues loose coordination and informal arrangements is well suited with soft law (p. 453).

Informality has been discussed in variety of names and contexts. In this section, I will first explain several definitions in informality and then continue to elaborate informality in the spectrum of harder and softer legalization. It is important to use this conceptual framework for this analysis, as later we will see that ASEAN as an international organization is often criticized for its lack of effectiveness and hard legalization as well as its tendency to maintain most of its agreements as loose as possible. Because it is hard to measure informality in its broader sense, the spectrum of hard and soft legalization will be utilized as another form of formality and informality in international relations.

The studies about informality, informal agreements, informal governance, informal norms, and informalization have been conducted by international relations, politics, and law scholars (Lipson, 1991; Kleine, 2013; Hardt in Reinalda 2013; Stone, 2011; Conzelmann in Christiansen and Neuhold, 2012). Given the broad interpretation of informality, it is difficult to have a single definition of informality. Although they

take different points of view in their analysis, they do agree on one thing – that informality plays an important role in accelerating international cooperation, especially when it gives states flexibility in making legal and formal commitments with their counterparts. In this study, our definition of informality will be closely linked to legalization. Abbott and Snidal (2000) viewed informal rules as one of the spectrum end of legalization. The spectrum ranges from hard law to soft law, and the area between both ends of spectrum consists of different degree of legalization.

As I have already explained in previous section, legalization has various degrees which are the results of combination of three components: obligation, precision, and legalization. Abbott and Snidal (2000) then elaborated that states select specific forms of legalization based on the understanding of benefits and costs of each type of legalization. For Abbott and Snidal (2000) hard law usually refers to legally binding obligations that are precise and that delegate authority for interpreting and implementing the law (p. 421), it means that states can ensure the credibility of their commitments and reduce transaction costs for future cooperation. However, it also means that states have to restrict their behavior accordingly and sometimes they have to give up some degree of their sovereignty as well. On the other hand, Abbott and Snidal used the term soft law to refer to broad categories of deviation from hard law. They argue that softer form of legalization gives advantages to states to avoid the costs of hard law (Abbott and Snidal, 2000, p. 423). Moreover, because in softer form of legalization states usually try to relax one or two components of legalization, agreements could be achieved rather easily than hard law. When the issues touch upon

sensitive area, especially when it concerns sovereignty, softer form of legalization also gives an alternative for states to be able to protect its sovereignty without sacrificing a greater cooperation.

Abbott and Snidal generally argued that states' decision in choosing the levels of legalization is influenced by the contracting costs such as sovereignty costs and uncertainty. Based on their hypothesis, softer forms of legalization will be more attractive to states as contracting costs increase. It means that states will be more inclined to accept softer forms of legalization when sovereignty costs and uncertainty are high. Conversely, states will prefer to choose harder legalization as sovereignty costs and uncertainty level are low. In the following section, I will briefly elaborate about those two independent variables in legalization.

#### 3.1.2.1.Sovereignty Costs

When states agree to make their commitments more credible by joining in international agreement, at the same time states already agree to accept some level of "sovereignty costs" that might be imposed to them. The level of sovereignty costs may be varied according to states' circumstances. States can choose to lessen or heighten their sovereignty costs by expanding or contracting the range of available institutional arrangements. While the term "sovereignty" may have a broad definition, for the sake of this study and – as Abbott and Snidal (2000) argued – "to emphasize the high stakes states often face in accepting international agreements" (p. 437), I will use the

sovereignty costs in terms of its potential for inferior outcomes, loss of authority, and diminution of sovereignty.

When states agree to limit their behavior in particular circumstances by making international legal commitments, sovereignty costs that states should pay are relatively low. It means that states are willing to limit some of their freedom to act in order to achieve greater benefits through cooperation. However, when those arrangements begin to touch upon how states regulate their borders or domestic regulations, the sovereignty costs usually increase.

Furthermore, by accepting to delegate some authority to external parties, states also increase their sovereignty costs in international agreements. The external parties may have the right to enforce the agreements upon the states and/or have the authority to solve the disputes between or among the states. It may be true that in the end, states have the liberty to self-enforce the agreements based on their ability and deny the result of external's dispute settlement mechanism. However, states will likely to consider their reputation in international level as well as other costs when they decide to do so.

Lastly, if international agreements impinge the relations between a state and its citizens or territory, states usually have to bear the highest sovereignty costs. There are several agreements and institutions in which states need to relinquish some of its sovereignty such as International Criminal Court or Law of the Sea Convention. States may recognize both institutions legally and give up some level of their sovereignty.

However, when a state decides to withdraw, states may face the risks of losing some degree of recognition and credibility as a member of certain institutions or agreements.

### 3.1.2.2.Uncertainty

The issue of uncertainty in international agreements is not new. It makes the observation to other states' behavior difficult, especially when states are "reluctant to disclose vital information that could make them more vulnerable" (Koremenos et al., 2004, p. 6). Furthermore, it is impossible for states to anticipate the possible consequences resulting from formal agreements. Therefore, the level of uncertainty could also determine the level of legalization that an individual state will choose.

According to Abbott and Snidal (2000), when states face some circumstances where the distribution of possible outcomes is unknown, or when the provisions are not clearly stated, the uncertainty is usually high. In several circumstances, states usually will avoid making commitments that are not favorable to them, leading them to choose gambling with high uncertainty. On the other hand, when the risks are known and states are willing to share information for the sake of greater cooperation, uncertainty is usually low and states offer high commitments in complying with the agreed provisions.

Even when there is high precision in international agreements, uncertainty is still high when the states refuse to be legally bound to the agreements. States are willing to practice the rules to their own ability, but will retain some flexibility when it comes to avoiding any negative effects from international agreements. Lastly, when

states have delegation in the form of political or administrative bodies, where states retain significant control, uncertainty is usually low. It means that states have the advantage of acquiring some information from their delegation in those bodies and use it for their advantage. On the other hand, when the agreements do not allow states to send their political delegation, uncertainty is usually high; therefore states do not possess the channel to acquire some information, let alone to modify rules based on their needs.

### 3.2. Operationalization

To prove the hypothesis that has been mentioned previously in Chapter I, by utilizing the concepts of legalization, sovereignty costs, and uncertainty. Legalization will serve as dependent variable while sovereignty costs and uncertainty will serve as independent variables. In the following section, I will try to operationalize those variables.

#### 3.2.1. Legalization: Obligation, Precision, and Delegation

Based on the indicators previously mentioned in Table 3, the first three indicators refer to *High* level of obligation and the last three indicators refer to *Low* level of obligation. Therefore, if an international agreement or treaty has at least one of the first three indicators, I will score them as High, and if it is characterized by one of the last three indicators, I will score them as Low.

For precision, I will score them as *High* when an international agreement is characterized by the first two indicators in Table 4, and *Low* when it is characterized by the last three indicators.

For obligation, I will score them as *High* when an international agreement is characterized by one of the first three indicators in Table 5a and one of the first four indicators in Table 5b. *Low* score will be given to an international agreement when it is characterized by the last three indicators in Table 5a and one of the last three indicators in Table 5b.

After scoring each of the components into High and Low, then I will use the reformulated typology developed by Bélanger and Fontaine-Skronski (2012) to determine the degree of legalization of each combination. Then, for the sake of numerical data, I will use the measurements also provided by Bélanger and Fontaine-Skronski in Table 7a. For example, if the obligation is scored as Low, precision is High, and Delegation is Low, then the degree of legalization is Low, and the score would be 4.0. The same rule also applies to other combination.

### 3.2.2. Sovereignty Costs

In determining the sovereignty costs, I utilize the following questions which are based on Abbott and Snidal explanation on sovereignty costs.

- a. Do provisions in the international agreements only limit states' behavior in particular circumstances? If Yes, the sovereignty costs are Low (score 1). If No, the sovereignty costs are High (Score 3).



- b. Is there any loss of authority? Do states accept external authority over significant decision? If Yes, sovereignty costs are High (Score 3). If No, sovereignty costs are Low (Score 1).
- c. Do international arrangements impinge on the relations between a state and its citizens or territory? Do states have to relinquish some of its sovereignty over managing border or its people when they accept the agreements? If Yes, sovereignty costs are High (Score 3). If No, sovereignty costs are Low (Score 1).

### 3.2.3. Uncertainty

The same strategy will be used to determine the degree of uncertainty. In the following paragraph, we will see the questions to conform uncertainty.

- a. Is the distribution of possible outcomes known? Are the provisions stated clearly and precisely? If Yes, uncertainty is Low (Score 1). If No, uncertainty is High (Score 3).
- b. Do agreements contain renegotiation provision? If Yes, uncertainty is Low (Score 1). If No, uncertainty is High (Score 3).
- c. Is there any political or administrative body where states retain significant control? If Yes, uncertainty is Low (Score 1). If No, uncertainty is High (Score 3).

## **IV. ANALYSIS OF THE VARIOUS DEGREES OF LEGALIZATION IN ASEAN**

We have established the concepts and their operationalization in the previous chapter. In this chapter, I will try to analyze the relations between legalization, sovereignty costs and uncertainty. Recalling back to my hypothesis, it says that softer forms of legalization are more attractive to ASEAN member states when sovereignty costs increase and circumstances are highly uncertain and conversely, harder forms of legalization are more attractive to ASEAN member states when sovereignty costs decrease and uncertainty is low.

To date, there are at least 214 legal instruments that ASEAN has concluded, which includes all of the principal agreements, protocols to each agreement, treaties, charter, Memorandum of Understandings (MoUs), and amendments to agreements. However, not all of these agreements have been taken into force and many of them are no longer utilized due to termination or replacement by new agreements. In this study, I only chose 45 agreements in ASEAN that have already been signed by the members and are in force. The agreements presented here are chosen from various issue-areas that range from political and security issues, economic issues, and socio-cultural issues. These 45 agreements are chosen based on several criteria. First, the agreements must be concluded between 1967 and 2015. Second, only principal agreements and their successors are going to be analyzed. I exclude the Memorandum of Understanding (MoU) because of its non-legally binding nature and protocols of

amendments as they only add several provisions without really changing the degree of its legalization. Third, those agreements must have been taken into force within the provide time-frame and it will explain why the agreements provided in Table 8 are only until 2012.

Later in the analysis, we will see that in addition to high correlation between legalization, sovereignty costs, and uncertainty, degree of legalization in ASEAN is also different according to the issue-area.

#### 4.1. ASEAN Degrees of Legalization in Various Agreements: Data

Since 1967, ASEAN has already created numerous agreements among its members. Many of them have already taken into force and some of them have been superseded or replaced by a more précised agreements. Even before ASEAN conceived its legal personality in 2007 through the ASEAN Charter, the degree of legalization of those agreements can give us a hint that in several areas, ASEAN has been trying to become more formalized and legalized as an institution. However, as we will see later in the following data, ASEAN still has tendency to adopt a softer form of legalization.

In this section, the data provided in Table 8 are derived after analyzing the degree of legalization, sovereignty costs, and uncertainty in each agreement. By using these data, in the following section I will try to find the correlation coefficient between those three variables.

**Table 8. Degree of Legalization in Various Agreements<sup>7</sup>**

No .	Legal Instruments	Year	Area	Components of Legalization			Score	Degree	Sovereignty Cost	Score	Uncertainty	Score
				Obligation	Precision	Delegation						
1	Agreement for the Promotion of Cooperation in Mass Media and Culture Activities	1969	Culture	Low	Low	Low	3.4	Very Low	Low	1	High	3
2	Agreement for the Establishment of a Fund for ASEAN	1969	Collective Fund, Political	Low	High	Low	4.0	Low	Low	1	Low	1
3	Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services among the Association of Southeast Asian Nations	1971	Transport, Economy	Low	High	Low	4.0	Low	Low	1	Low	1
4	Agreement on the Establishment of the ASEAN Secretariat	1976	Political	Low	High	Low	4.0	Low	High	3	High	3

<sup>7</sup>Source of raw data: [agreement.asean.org](http://agreement.asean.org)

5	Treaty of Amity and Cooperation in Southeast Asia	1976	Political, Security	Low	Low	High	4.0	Low	High	3	High	3
6	Agreement on the ASEAN Preferential Trading Arrangements	1977	Trade, Economy	High	High	Low	6.0	High	High	3	High	1
7	Agreement on the Establishment of the ASEAN Cultural Fund	1978	Collective Fund, Cultural	High	High	Low	6.0	High	Low	1	Low	1
8	Basic Agreement on ASEAN Industrial Projects	1980	Industrial, Economy	High	High	Low	6.0	High	Low	1	Low	1
9	Basic Agreement on ASEAN Industrial Joint Ventures	1983	Industrial, Economy	High	High	Low	6.0	High	Low	1	Low	1
10	ASEAN Agreement on the Conservation of Nature and Natural Resources	1985	Natural Resources, Economy	Low	High	Low	4.0	Low	Low	1	High	3
11	Agreement on ASEAN Energy Cooperation	1986	Energy, Economy	Low	High	Low	4.0	Low	High	3	High	3

12	ASEAN Petroleum Security Agreement	1986	Energy, Economy	Low	High	Low	4.0	Low	High	3	High	3
13	Revised Basic Agreement on ASEAN Industrial Joint Ventures	1987	Industrial, Economy	High	High	Low	6.0	High	Low	1	Low	1
14	Agreement on Promotion and Protection of Investments	1987	Investment, Economy	High	High	Low	6.0	High	Low	1	Low	1
15	Agreement on the Establishment of the ASEAN Tourism Information Centre	1988	Tourism, Economy	High	High	Low	6.0	High	Low	1	Low	1
16	Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA)	1992	Trade, Economy	High	High	Low	6.0	High	High	3	High	3

17	Agreement for the Establishment of a Fund for ASEAN	1994	Collective Fund, Political	High	High	Low	6.0	High	Low	1	Low	1
18	Charter of the ASEAN University Network	1995	Education, Social	High	Low	High	6.2	High	Low	1	Low	1
19	Treaty on the Southeast Asia Nuclear Weapon-Free Zone	1995	Security	Low	High	Low	4.0	Low	High	3	High	3
20	ASEAN Framework Agreement on Services	1995	Service, Economy	High	Low	Low	5.4	Moderate	Low	1	High	3
21	Basic Agreement on the ASEAN Industrial Cooperation Scheme	1996	Industrial, Economy	High	High	Low	6.0	High	Low	1	Low	1
22	Agreement on the Establishment of the ASEAN Centre for Energy	1998	Energy, Economy	High	High	Low	6.0	High	Low	1	Low	1
23	Framework Agreement on the ASEAN Investment Area	1998	Investment, Economy	Low	High	Low	4.0	High	High	3	High	3

24	ASEAN Framework Agreement on the Facilitation of Goods in Transit	1998	Transport, Economy	High	High	Low	6.0	High	Low	1	Low	1
25	Agreement on the Augmentation of the ASEAN Science Fund	2000	Collective Fund, Education, Social	High	High	Low	6.0	High	Low	1	Low	1
26	ASEAN Tourism Agreement	2002	Tourism, Economy	High	High	Low	6.0	High	Low	1	Low	1
27	ASEAN Agreement on Trans boundary Haze Pollution	2002	Environment, Economy	Low	High	Low	4.0	Low	High	3	High	3
28	ASEAN Framework Agreement for the Integration of Priority Sectors	2004	Economy	Low	High	Low	4.0	Low	High	3	High	3
29	ASEAN Framework Agreement on Multimodal Transport	2005	Trade, Economy	High	High	High	6.8	Very High	Low	1	Low	1
30	ASEAN Agreement on Disaster Management and Emergency Response	2005	Social	High	High	Low	6.0	High	Low	1	Low	1



31	Agreement on the Establishment of the ASEAN Centre for Biodiversity	2005	Social	High	High	Low	6.0	High	Low	1	Low	1
32	Agreement for the Establishment of an ASEAN Development Fund	2005	Political	High	Low	Low	5.4	Moderate	Low	1	Low	1
33	Agreement to Establish and Implement the ASEAN Single Window	2005	Economy	Low	Low	Low	3.4	Very Low	High	3	High	3
34	Agreement on the ASEAN Harmonized Electrical and Electronic Equipment (EEE) Regulatory Regime	2005	Trade, Economy	High	High	Low	6.0	High	Low	1	Low	1
35	ASEAN Convention on Counter Terrorism	2007	Terrorism, Security	Low	High	Low	4.0	Low	High	3	High	3
36	Charter of the Association of Southeast Asian Nations	2007	Political	Low	High	Low	4.0	Low	High	3	High	3

37	Agreement on the Establishment of the ASEAN Co-ordinating Centre for Humanitarian Assistance on Disaster Management	2009	Humanitarian, Social	Low	High	Low	4.0	Low	Low	1	Low	1
38	ASEAN Comprehensive Investment Agreement	2009	Investment, Economy	High	High	High	6.8	Very High	High	3	High	3
39	ASEAN Trade in Goods Agreement	2009	Trade, Economy	High	High	Low	6.0	High	High	3	High	3
40	ASEAN Petroleum Security Agreement	2009	Energy, Economy	Low	High	Low	4.0	Low	High	3	High	3
41	ASEAN Multilateral Agreement on Air Services	2009	Service, Economy	High	High	Low	6.0	High	Low	1	Low	1
42	ASEAN Multilateral Agreement on the Full Liberalisation of Air Freight Services	2009	Service, Economy	High	High	Low	6.0	High	Low	1	Low	1
43	ASEAN Framework Agreement on the Facilitation of	2009	Transport, Economy	High	High	Low	6.0	High	Low	1	Low	1

	Inter-State Transport											
44	ASEAN Multilateral Agreement on the Full Liberalisation of Passenger Air Services	2010	Transport, Economy	High	High	Low	<b>6.0</b>	<b>High</b>	<b>Low</b>	<b>1</b>	<b>Low</b>	<b>1</b>
45	ASEAN Agreement on Customs	2012	Customs, Economy	Low	High	Low	<b>4.0</b>	<b>Low</b>	<b>High</b>	<b>3</b>	<b>High</b>	<b>3</b>

## 4.2. Relationship between Legalization, Sovereignty Costs, and Uncertainty

From the data provided in Table 6, we can calculate the correlation coefficients between those variables. By using SPSS program to calculate the correlation coefficients, the results from the calculation can be seen in the following tables:

**Table9. Correlation Coefficient of Legalization, Sovereignty Costs, and Uncertainty**

The CORR Procedure

3 Variables: Legalization Sovereignty Costs Uncertainty

Variable	N	Mean	StdDev	Sum	Minimum	Maximum
<b>Legalization</b>	45	5.17333	1.08259	232.80000	3.40000	6.80000
<b>Sovereignty Costs</b>	45	1.71111	0.96818	77.00000	1.00000	3.00000
<b>Uncertainty</b>	45	1.80000	0.99087	81.00000	1.00000	3.00000

Pearson Correlation Coefficients, N = 45

Prob> |r| under H0: Rho=0

	Legalization	Sovereignty Costs	Uncertainty
Legalization	1	- 0.52172** 0.0002	- 0.66497** < .0001
Sovereignty Costs	- 0.52172** 0.0002	1	0.818698** < .0001
Uncertainty	- 0.66497** < .0001	0.818698** < .0001	1

From the table above, we can see that correlation coefficient between legalization and sovereignty costs is not close to 1. However, it is somewhere in the middle, which means that the relationship between those two variables is neither strong nor weak. Most importantly, by looking at the minus (-) sign, we can see that the relationship between legalization and sovereignty costs is indeed negative. The p-value showed under the correlation coefficient shows that there is statistically significant correlation between legalization and sovereignty costs.

For uncertainty, the correlation coefficient shows that the relationship between legalization and uncertainty is quite strong and the minus (-) sign shows that their relationship are negative. The p-value also gives us the conclusion that there is statistically significant correlation between legalization and uncertainty

From these results, we may learn that there are statistically significant correlations between degree of legalization, sovereignty costs, and uncertainty. In the case of sovereignty costs, even though the correlation coefficient is not that strong, we can still say that it is still significant. Based on the data, we may be able to see that in most cases, high degree of legalization is characterized by low sovereignty costs. Likewise, in most cases high degree of legalization is also characterized by low uncertainty. In several distinct cases, despite the high sovereignty costs and uncertainty, ASEAN members still agree to have high degree of legalization. This will be elaborated in the next section.

This analysis of coefficient correlation proves that hypothesis that I offered in Chapter I is accepted. The softer forms of legalizations are more attractive to ASEAN member states when sovereignty costs and uncertainty are high; while the harder forms of legalization are more attractive to ASEAN member states when sovereignty costs and uncertainty are low. It is indicated by the negative signs of correlation coefficient in both variables.

In the following section, I will demonstrate how ASEAN's degrees of legalization are varied across issue-area. It is easier to take for granted that by adhering to the principles of the ASEAN Way, ASEAN tends more to informal approach than formal approach. However, by looking at ASEAN's achievement in the last few decades, this notion is highly contested. We might be able to look differently at ASEAN now that the mixture of informal and formal approach becomes clearer.

#### 4.3. Degrees of Legalization in Different Issue-Area

After looking at the data and correlation coefficient between degree of legalization, sovereignty costs, and uncertainty in the previous section, we can see that in different issue-area, the degree of legalization in ASEAN is also different. It means that ASEAN is still difficult to reach hard legalization in more sensitive areas and more open to hard legalization in non-sensitive areas. As previously mentioned, ASEAN's background and history were full with distrust and insecurity, especially as the regional organization was formed to contain the power of strong states from interfering the sovereignty of each individual member states as well as to stop the

frictions among states in the region (for example, the *konfrontasi* between Malaysia and Indonesia). By establishing a group under ASEAN, those weak states in Southeast Asia possessed accumulative power when encounter face to face with stronger power. However, at the same time, the members were fully aware that without retaining their full sovereignty, the emergence of regional hegemonic power was likely arising, and the equilibrium would be broken. Roughly, that is why ASEAN member states still reject the idea of having supranational entity or more legalized and formalized institution, even though it costs them in terms of effectiveness.

However, in the last few decades, ASEAN realized that effectiveness matters in order to increase the cooperation level among member states. Since early 1990s, ASEAN has been trying to embrace more formalized and legalized agreements, and finally in 2007 the member states reached an agreement to establish a Charter for ASEAN that will serve as the basis for its legal identity. Despite the establishment of the Charter, it still conforms to the softer form of law which means that it is not as legally binding as the West expected it to be.

Despite disappointment on the final product of the ASEAN Charter, it is safe to say that in several issue-areas, ASEAN already have high degree of legalization. From the previous data, we may summarize that as long as the sovereignty costs and uncertainty are low, ASEAN member states are willing to make their commitments more legally binding.

**Table 10. Degree of Sovereignty Costs and Uncertainty in Different Issue-Areas**

		Sovereignty Costs	
		High	Low
Uncertainty	High	Political, Security, Nuclear-Weapon Free Zone, Terrorism, Trade, Investment, Customs, Energy, Environment	Culture, Natural Resources
	Low	-	Transportation, Industrial, Investment <sup>8</sup> , Tourism, Collective Fund, Education, Energy <sup>9</sup> , Multimodal Transport, Emergency Response, Biodiversity, Services

<sup>8</sup>The low degree of sovereignty costs and uncertainty in the Agreement on Promotion and Protection of Investments signed in 1987 was partly due to its status as a pilot agreement in investment. Over time, states realized that investment is a strategic issue in economy, resulting at the increase in sovereignty costs and uncertainty.

<sup>9</sup>The Agreement on the Establishment of the ASEAN Centre for Energy does have low sovereignty costs and low uncertainty because it usually entails that states have similar interests before establishing such centre. However, in other agreements related to energy, the contracting costs are different.



*Table 11. Degree of Legalization in Different Issue-Areas – in numbers*

No.	Issue-Area	High Degree of Legalization (Total Number)	Low Degree of Legalization (Total Number)
1	Political-Security	2	5
2	Economy	21	9
3	Socio-Cultural	4	3
TOTAL		45	

From the two tables above, we can see that in the area of political and security, ASEAN member states are still unwilling to gamble on their sovereignty costs or uncertainty because traditionally, those issues are very sensitive to ASEAN. There are only two agreements in the area of political-security that have high degree of legalization, and both are related to the establishment of fund for ASEAN, which will explain why the member states are willing to give their full commitment in this agreement. After all, the establishment of fund will benefit the administrative works of the Association and to some extent help bridging the cooperation among the member states. In the realm of political-security, ASEAN still tends to use informal approach in the form of softer legalization, and avoid legally binding commitments at large. It is true that in the spirit of establishing an ASEAN Community that is “closely intertwined and mutually reinforcing”, ASEAN created three pillars for community building; one of them is the ASEAN Security Community (or ASC, but later renamed as the ASEAN Political-Security Community or APSC). However, if we look closely

at the blueprint and Declaration of Bali Concord II in 2003, we will see that it is contradicting with each other. Acharya (2012) pointed out that even though “it exhorts member states to ‘regard their security as fundamentally linked to one another and bound by geographic location, common vision, and objectives’”, the Declaration still reaffirms the “sovereignty right of the member countries to pursue their individual foreign policies and defense arrangements” (p. 256). The implication is that no matter how ASEAN expands its area of cooperation in political and security issues, and no matter how the envision of APSC as an overarching mechanism to “strengthen ASEAN commitment to resolve conflicts and disputes through depoliticised means of legal instruments and mechanisms, and through other peaceful means” (Sukma, 2010, p. 114) as long as it still fails to depart from the traditional ASEAN norms, the degree of commitment to formal mechanism in this issue-area would remain low. However, Sukma also celebrated ASEAN’s success in security issues despite the lack of legally binding mechanisms. Especially, when it comes to informality, its preference to manage disputes “outside the parameters of formal structures and institutions” (Mely Caballero-Anthony, 1998, as cited in Sukma, 2010, p. 116) is seen as a “process of conflict avoidance or prevention”. It also helps that ASEAN’s “top-down” or “elitists” culture that is characterizing the security cooperation in ASEAN in particular, became “more effective” when leaders develop closer personal ties and manage to maintain the “quiet diplomacy”. For example, the TAC has already provided the Association with a dispute settlement mechanism in political and security issues, such as the High Council. However, even until now, that mechanism has never been activated or used

by the members (Severino, 2006, p. 20; Sukma, 2010, p. 116). In the end, the high sensitivity on this issue becomes more palpable in the face of legalization and formalization.

Secondly, the degrees of legalization in the economic issues-area are quite high. At least twenty international agreements are considered to have high degree of legalization. The issues are ranging from the agreements related to transportation to agreements related to trade and investment. We have to note that in the case of trade, investment, energy, customs, and natural resources, even though the sovereignty costs over the issues are quite high, ASEAN member states are still willing to cooperate through a more legal system. Why? Abbott and Snidal have stated in their article that such cases may happen when states consider they may benefit more through formal cooperation even when sovereignty costs and uncertainty are high. They argued that the perceived benefits of legalized agreements often outweighed the costs states must bear. Moreover, in those issues, states usually have lesser conflict of interest and sometimes strong domestic support gives incentives for the states to acquire the legalized agreements (Abbott and Snidal, 2000, p. 441).

In the context of economic issues, ASEAN is more open to embrace a more legalized and formalized agreements. As stated in the Declaration of Bali Concord II, it aims to “become a single market and production base which will ensure the flow of goods, services and capital, and in the long run, reduction of poverty and socio-economic disparities” (Acharya, 2012, p. 257; Locknie, 2004, p. 37). But in the process, ASEAN has been mixing the utility of hard law and soft law as means for

integration (Locknie, 2004, p. 38). In 1996, ASEAN adopted and ratified the Protocol on Dispute Settlement Mechanism (later replaced by the ASEAN Protocol on Enhanced Dispute Settlement Mechanism signed in 2004), which listed the agreements that would be subjects to the Protocol. Additionally, through the AFTA provisions, ASEAN Secretariat was tasked to monitor the implementation of AFTA and report to the Senior Economic Official Meeting (SEOM). Within the ASEAN Secretariat, a legal unit had been set up and furthermore, ASEAN Consultation to Solve Trade and Investment Issues (ACT) and ASEAN Compliance Body (ACB) were also established in 2004. These mechanisms were already established and ASEAN has the liberty to use it whenever they have dispute with each other. Furthermore, the provisions on the agreements show that the member states have a high degree of obligations to be fulfilled. The economic area has become the engine to harder legalization in ASEAN. The nature of its issue-area and the benefits that member states could gather from legally binding cooperation have put aside the high sovereignty costs that could arise when the states agree to adopt some high degree of legalization.

Lastly, for the Socio-Cultural issue-area, six out of eight agreements in ASEAN have high degree of legalization. The number of agreements that fall into this category is quite small despite its broad range of issue and expansive scope. Mostly, the agreements have low sovereignty costs and low uncertainty, which will automatically attract the states to create more legalized agreements. Moreover, the issues regulated in the agreements related will give more benefits to the individual member states when

they have deeper and closer cooperation. However, unfortunately, this issue-area received the least amount of attention from ASEAN leaders. Socio-cultural issue remains underdeveloped compared to the other two issue-areas. In the case of political-security issue area, although there is only limited number of international agreements that fall into its category, ASEAN leaders still often address the issue through more informal approach. However, the lack of attention to this issue-area is palpable when many of its cooperation are based on projects rather than policy-initiatives (ISEAS, 2004, p. 15). Moreover, the socio-cultural issues are to a great extent related to economic problems such as poverty, labor, natural resources, education, human resources, environmental problems, narrowing the development gap, and so on. Sadly, due to the top-down nature of ASEAN, citizens and grassroots organizations are rarely engaged by the states, even though many of those problems need more involvement from community and society level.

Throughout this section, we have seen that despite a general claim about ASEAN's tendency towards less legalized and more informal approach, a breakdown on the issue-areas suggest that it might not be as severe as we thought. In the economic issue-area, ASEAN indeed had developed a high degree of legalization through its regional agreements. Despite having a high degree of sovereignty costs and high uncertainty, trade area is highly legalized due to greater benefits that member states can reap from cooperation. Other issues such as transportation and industry impose less sovereignty costs because interests of the states are closely aligned. In addition, agreements related to socio-cultural issues also have high degree of

legalization, despite the lack of number of agreements in this issue-area. Conversely, the agreements in political and security area are still poorly legalized due to the high sensitivity of such issues. ASEAN leaders seem to be reluctant to relinquish some of their authority in managing the political and security issues. However, this is highly contested in since there were times when ASEAN acted in a more formal approach and breached its non-interference principle, as we have witnessed in the case of Myanmar and East Timor.

## V. CONCLUSION

The achievement of ASEAN as a regional organization has been witnessed by its own people and international society for the past forty eight years. It had brought not only a relatively peaceful time among Southeast Asian countries – which at the time of the Cold War was on the verge of serious regional conflict – but also has transformed into one of the most important regional economy in the world. The existence of ASEAN is very significant to each member as it boosts their leverage and position vis a vis other great powers in the world.

However, those achievements are not without any critic. The region is full with diversity and it is almost hard to imagine what kind of regional grouping that could be established at the time. Motivations behind the establishment of ASEAN were much related to the regional security context during the Cold-War, when the Indochina crisis was almost spread into a region-wide conflict and Indonesia-Malaysia's *konfrontasi* was on the brink of war. Therefore, ASEAN developed a mechanism allowing those countries to build a platform for cooperation without too much pressure on becoming a strictly formal organization. The ASEAN Way – which has become the norm and code of conduct for intra-mural relations – mainly consists of non-interference and consensus-driven principles. Many scholars and commentators criticized the ASEAN Way as a hindrance for ASEAN to build a more effective organization but there is also a lot of support coming from the academic field, arguing that the ASEAN Way fits the

culture and background of Southeast Asia as a region, where it plays a significant role in maintaining regional stability.

Responding to all critics regarding its lack of legally binding instruments, as well as realizing the fact that a more institutionalized ASEAN is important to bolster its position in international level, ASEAN has been putting serious efforts to build formal and legal mechanism since 1976. Yet, the enthusiasm was usually short-lived because the leaders always decided to refer to informal mechanism manifested in the ASEAN Way and failed to gather commitment for a more legally binding mechanism.

Nevertheless, from the perspective of legalization, ASEAN has successfully produced international agreements that are legally binding. From the study that has been conducted over 45 international agreements, treaties, and charters in ASEAN, we found out that almost half of the agreements actually have high degree of legalization. Earlier in this thesis, I offer a hypothesis saying that softer forms of legalization are more attractive to ASEAN member states when sovereignty costs and uncertainty are high; harder forms of legalization are more attractive to ASEAN member states when sovereignty costs and uncertainty are low. We found out that the correlation coefficients are quite high, proving a strong relationship between those three variables, which means that the hypothesis is true.

We also found out that the degree of legalization in ASEAN is varied depending on the issue-area. High degree of legalization is found in the economic and socio-cultural issue-area while political-security has the lowest degree of legalization. The



sensitivity over political and security issues makes ASEAN leaders reluctant to have more legalized and formalized approach.

This study has offered some new perspectives of informal approach in ASEAN. We have the tendency to accept that in ASEAN, informal mechanism is more effective in the intra-mural relations. However, from this study we might be able to see that there is a wide spectrum which has formal approach in one end and informal approach in the other. Here, we closely link the spectrum with the degrees of legalization and after almost five decades ASEAN surely has variety in the degrees of legalization. However, this study does not touch upon the implementation or enforcement process of those international agreements. How they are applied at the national level and whether the member states fully comply with the provisions in each agreement should be further analyzed.

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## ABSTRACT (IN KOREAN)

### 국문초록

성명 :디안 노비크리스나  
학과 및 전공 : 국제학과 국제협력전공  
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제한적인 법적 수단으로 인해 아세안의 법률화는 그동안 큰 성과를 이루지 못했다. 설령 여러가지 방법들이 존재하더라도 그것은 법률화에 큰 도움이 되지 못했기 때문에 아세안의 결성 후 첫 삼십년 동안은 주로 비공식적인 방식으로 활동했다. 그러나 90년대 후반부터 아세안은 법적 수단을 늘려가면서 내부적인 발전과 협력을 강화했다. 그럼에도 불구하고 아세안의 리더들은 비공식적 접근을 놓으려 하지 않았는데 흔히 '아세안 방식' (The ASEAN Way) 으로 불리는 외교적 전략을 아세안 국가와 또 그 주변 국가에 적용했다. 이후 공식적 그리고 비공식적 접근이 아세안의 법률화를 추진하는데 동시에 사용되었다. 따라서 오늘날 아세안은 비록 높은 수준의 정식적인 기구라고 판단하기 어렵지만 비공식적 기구라고 주장하기도 힘들다. 아세안은 그 중간쯤에 있는 것으로 보인다. 어떤 관심영역에선 상당히 정교한 법적 수단이 존재하는 반면 정치적 민감성에 의해 법률화가 이루어지지 않은 영역도 있다는 것이다. 아세안의 법률화는 옳은 방향으로 가고 있으나 제도화나 공식화되기엔 아직 부족한 것으로 보인다

핵심어 :  
아세안, 아세안 방식, 공식적 그리고 비공식적 접근, 법률화, 주권비용, 불확실성

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