

Jose Duke Bagulaya

*ASEAN as an International Organization:
International Law and Region-Building in
Southeast Asia (2022)*

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Abstract

This review focuses on a book by Jose Duke Bagulaya titled *ASEAN as an International Organization: International Law and Region-Building in Southeast Asia*. This book offers interesting observations about ASEAN from the vantage point of legal scholarship by pointing out important legal issues. However, overall, the book is critical in the discussion of the issues even as it tried to build awareness of them among the stakeholders of ASEAN's future. Interestingly, the book cover uses the character of Wayang Kulit (shadow puppet) to illustrate the book's substance, although it discusses Wayang Kulit only in Chapter 3. But Wayang Kulit is meant to reinforce the justification for how Member States have control over ASEAN as may be gleaned from the rest of the book. This book is recommended to all relevant stakeholders to read for two reasons. First, the book offers state-of-the-art analysis in legal scholarship of ASEAN as an international organization until recently. Secondly, a better understanding of ASEAN from the legal perspective could improve the way ASEAN might play a more significant role in achieving its three pillars: economic, political-security, and socio-cultural communities.

Keywords

ASEAN, legal personality, Wayang Kulit, international law, organization

ASEAN as an International Organization

International Law and Region-Building in Southeast Asia

Jose Duke Bagulaya (2022)

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260 pp.

There have been many books and articles that have discussed ASEAN as an international organization. With interesting historical background, the establishment of ASEAN today still keeps so many mysteries in its legal evolution. This includes this current book's author, who uses pessimistic words to discuss aspects of the ASEAN organization. ASEAN Charter was hailed as the primary reference document of the ASEAN legal establishment. However, the expectation for ASEAN to be an independent international organization and works on rule-based operation seems far from reality. Even with this condition, scholars still study ASEAN in all areas, especially the legal aspect.

One of the newest contributions to this scholarship is the book titled *ASEAN as an International Organization: International Law and Region-Building in Southeast Asia*, authored by Jose Duke Bagulaya. Coming from one of the respected law schools in the region, the University of the Philippines Diliman, the author, interestingly, chose the silhouette of Wayang Kulit as the main picture for the book cover design. This first impression has given the reader an interesting perspective. Instead of using a formal common picture or at least the resemblance of the ASEAN logo, the Wayang Kulit silhouette certainly attracts readers' curiosity from their first impression.

Wayang Kulit is a traditional puppet shadow play mainly found in Java and Bali Islands in Indonesia. The Dalang (shadow artist) narrates and controls the play of Wayang Kulit. This performance is conducted all night long with the typical stories of the fight between good and evil. However, the

stories can also be adjusted by the main message that needs to be delivered to specific audiences.

This background information on Wayang Kulit is undoubtedly the original contribution of a legal scholar who uses this analogy to understand ASEAN as an international organization. Despite only a chapter that discusses the analogy of Wayang Kulit in Chapter 3, the rest of the chapters reinforces the justification of how Member States have control over ASEAN instead of the latter becoming an independent legal actor in international relations. In the author's words, these fetter conditions have prevented ASEAN from being a fully functional rule-based international organization in the region.

From the book cover, we may infer that the author is delivering his thoughts and research findings to particular audiences interested in the ASEAN legal development. The author rightly describes the main character of Wayang Kulit as ASEAN's condition controlled by states member instead of becoming an independent organization.

The author begins with an analysis of how the study about ASEAN has changed from a primarily international political view to a legal nature since the re-birth of ASEAN in 2007. As a new international legal entity, ASEAN has attracted various studies about its existence in normative dimensions. As the author argues, this legal scholarship on ASEAN "clarifies and problematizes the legal dimensions of ASEAN's actorness, international practices, centrality, and rule-based regionalism." This chapter thoroughly studies the current landscape of literature focusing on the legal aspects of ASEAN as an international organization. In this chapter, the author reiterates the problem of applying "soft law" to ASEAN practices as a common trend in the literature.

Following Chapter 1, the author observes the practical issue of ASEAN as an organization and the involvement of the people. Since it came into being in 1967, ASEAN has been the arena of elites of politicians in Southeast Asian countries. The chapter rightly illustrates how the reading of the ASEAN Charter as the constitution does not necessarily reflect how the people of ASEAN experience on the ground. With a "utopian" reflection of the ASEAN constitution, the author hilariously mocks the spirit to achieve

“a people-oriented ASEAN” by suggesting to the “peoples of Southeast Asia how to play golf.” Nevertheless, the chapter comprehensively analyzes the ASEAN Charter’s legal wording and how ASEAN tries to improve itself as a norm-based organization.

Chapter 3 reveals the author’s intention to use Wayang Kulit on the book’s cover. The author argues that ASEAN member states are the main actors and ASEAN serves as “a sidekick.” The author also asserts that the ASEAN Charter forged further member states’ control instead of making ASEAN an independent legal organization. With the analogy of Wayang Kulit, the observation in this chapter illustrates how ASEAN could not operate independently from the control of member states as the master control (Dalang). This is an ironic fact because the constitutionalization of ASEAN is supposed to give birth to an independent organization in accordance with its establishment Charter. Despite having a legal personality, ASEAN is fettered by the actual control power of member states. This is evident when ASEAN has never signed a treaty as a single actor but as “collectively ASEAN.” The author finally reiterates that the treaty-making power of ASEAN still rests on member states and thus clearly limits ASEAN’s international legal personality.

In Chapter 4, the author continues to question ASEAN’s projection of its community. He observes that the ideal dream of the “ASEAN community” has become a widely used fiction within ASEAN’s discourse for the present and future self. With the three pillars of the community (political-security, economic, socio-cultural), the author views them with findings of many legal challenges to each pillar. With some analogies to previous development of other entities to build up “community,” ASEAN is found to have its version of community which the author has analyzed. This unique version has been seen as a utopian paradigm to build communities based on the three pillars concretely.

Chapter 5, as the final discussion of the book, traces the history of the legal development of ASEAN. This part interestingly re-examines the legal forms of the region by starting the analysis of the 1824 Anglo-Dutch Treaty. The observation continues to see nations of Southeast Asia colonized by some

European states, which then gained independence and became sovereign states post-World War II. With common goals to maintain stabilization in the region, states started to discuss the cooperation conducted by the elites and prominent persons from Indonesia, Malaysia, Thailand, the Philippines, and Singapore. Uniquely, this distinguished group of people had been “close friends on the golf course.” As new states, they found the collaboration based on solidarity with each other and highly respected domestic affairs. The present stage of ASEAN as an international organization is still viewed as a working progress objectification of ASEAN’s international juridical nature.

Having discussed all of the legal problems and/or issues regarding ASEAN as an international entity, the author concludes by pointing out that many had to be observed by legal scholars in the future.

This book offers an interesting discussion of ASEAN’s legal issues. Even though the chapters came from stand-alone published articles, the author could weave them into a nice flow of cohesion. In this way, the reader can easily understand how ASEAN seems yet to perfect itself as a norm-based organization. At the same time, the book gives so many hints by ASEAN diplomats about how they have failed to implement the fundamental objective of this organization. As for scholars, they could not ask more as they have been provided with a comprehensive list of relevant bibliographies to further investigate ASEAN in the future.

Finally, this book will undoubtedly enrich the legal scholarship for understanding ASEAN as a prominent regional organization. I strongly recommend this book to all relevant stakeholders for two reasons. First, the book offers state of the art observation of legal scholarship of ASEAN as an international organization until recently. Most references illustrate that this book’s currency comes from leading article journals from around the world. Many relevant monographs and edited books then support them. Secondly, a better understanding of ASEAN from the legal perspective will improve how ASEAN will play a more significant role in achieving its three pillars: economic, political-security, and socio-cultural communities.