



The Transformation of Constitutional Law under Globalization: A Comparative Inquiry of Human Rights in the European Union (EU) and ASEAN

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Abstract. Globalization has brought profound impacts on the dynamics of constitutional law across the globe, notably in the regulation of human rights (HR). Accordingly, the study aims to analyse how globalization has shaped the transformation and adaptation of constitutional law in the EU and ASEAN, and to compare their responses to global demands in regulating and protecting human rights. In this regard, the research questions are formulated as follows: first, in the context of human rights protection in the EU and ASEAN—how globalization influences the development of constitutional law. Second, what are the distinctions and similarities in the approaches of both entities in regulating human rights as a response to current globalization. The study employs qualitative research involving literature study and comparative legal analysis. The findings indicate that the EU has a more integrated and binding legal system in the protection of human rights. It is influenced by universal values and supranational institutions such as the European Court of Human Rights. ASEAN countries, on the other hand, continue to face challenges in harmonizing human rights due to the principle of non-intervention and the diversity of its members' national legal systems. Overall, globalization serves as a catalyst that promotes the integration of human rights values in constitutional law systems. Nevertheless, the political structure, legal culture, and regional commitments strongly influence the responses and the level of adoption of the right.

Keywords: Globalization, Constitutional Law, Human Rights, European Union, ASEAN, Comparative Study.

1 Introduction

1.1 The Background of the Study

Globalization is a phenomenon encompassing various aspects of human life, including the economic, social, cultural, and legal spheres. In the context of constitutional law, globalization brings significant changes, not only in terms of legal harmonization but also in how the law is applied and understood [1]. Globalization drives the creation of an adaptive, consistent, and effective constitutional legal system in protecting human rights in each region. Regional organizations such as ASEAN should learn from the best practices implemented by the European Union, without

neglecting local characteristics. Thus, human rights institutions could be strengthened and the legal standard at the regional level could be harmonized. Ideally, constitutional law should be able to respond to global challenges through inclusive, accountable, and universal values, adding the local wisdom of each state member.

Globalization is a multidimensional phenomenon that significantly affects various aspects of life, including constitutional law. It not only integrates the economies and technologies of different countries but also shapes mindsets, values, and legal principles within nations or regions. In this context, human rights have emerged as a prominent issue, as globalization encourages the incorporation of universal human rights values into national and regional legal systems. Furthermore, globalization has also accelerated the exchange of values, ideologies, and legal frameworks between countries, including human rights protection.

Human rights are a global issue whose recognition has become an international commitment [2]. Human rights are essentially a set of provisions or rules designed to protect citizens from possible oppression, confinement, and/or restrictions on their freedom of movement by the state. In other words, certain restrictions are imposed by the state to protect citizens' most fundamental rights from arbitrary power [3]. In the digital interconnected era, human rights protection becomes a fundamental issue that continually evolves with technological advances. The developments in information and communication technology, which enable interactions between individuals and countries through online platforms, have brought significant changes to the way human rights are respected and protected. Nonetheless, its development raises new challenges, particularly in protecting fundamental individual rights. One key issue is how to ensure that human rights are upheld in the expansive digital space. The appropriate regulations are crucial for addressing the challenge from the perspectives of the state, international institutions, and the private sector. In this context, the law serves as a vital instrument that guarantees the respect, protection, and fulfilment of human rights, even in the virtual realm, which has no geographical boundaries [4].

In response to these global trends, many countries and regional organizations are compelled to harmonize their constitutional legal systems with universal human rights principles. The European Union exemplifies this development through its relatively robust and integrated human rights protection system, demonstrated by the Charter of Fundamental Rights and the prominent role of the European Court of Human Rights. Conversely, ASEAN continues to demonstrate a looser and more declarative approach, as evidenced by the ASEAN Human Rights Declaration, which is not yet legally binding. This difference demonstrates the diverse realities in response to global challenges, particularly in the regulation of human rights [5].

In the Globalization era, the comparative study between the EU and ASEAN is relevant because it provides insight into a more effective model of human rights protection. The EU gives reference for ASEAN about strengthening human rights institutions and legal instruments, with some adaptation to the socio-political context suits in Southeast Asia. By examining these dynamics, the study is expected to enrich theoretical contributions in constitutional law and propose practical measures for

strengthening regional human rights that are more resilient and responsive to globalisation [6].

2 Research Questions

Referring to the aforementioned background, the research questions are formulated as follows: (1) In the era of globalization, how do the EU and ASEAN differ in their approaches and mechanisms in regulating and enforcing human rights within the transformation of constitutional law? (2) What similarities and differences exist in the principles and enforcement mechanisms of human rights between the EU and ASEAN in responding to regional integration and global challenges?

The study aims to examine the fundamental differences between the constitutional legal systems in the EU and ASEAN in regulating and enforcing Human Rights, and to compare the similarities and differences in the principles, mechanisms, and effectiveness. The finding is intended to provide a basis for strengthening the constitutional legal system in the regional area.

3 Methodology

The study applies a normative juridical approach through a comparative analysis of the European Union and ASEAN, focusing on legal norms, constitutional principles, and mechanisms for the protection and regulation of human rights. In addition, the study also adopts a normative legal methodology, drawing upon several complementary approaches. First, the comparative approach is applied to compare legal instruments, institutional mechanisms, and the practices of human rights regulation. Second, the statute approach is employed to examine relevant legislation, international treaties, charters, and regional legal frameworks. Third, the conceptual approach is used to critically investigate the notion of constitutional law transformation in the globalization era. Finally, the historical approach is utilized to trace the evolution of human rights regulation within the EU and ASEAN. The study relies on primary sources, including the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights, the ASEAN Human Rights Declaration, and the ASEAN Charter; secondary sources, such as books, international journals, institutional reports, and prior studies; and tertiary sources, comprising legal dictionaries, encyclopedias, and other supporting references. Meanwhile, data collection was conducted through library research by examining legislation, academic literature, and official documents. The analysis employed a qualitative-comparative approach, focusing on the description and comparison of human rights regulation, principles, mechanisms, and effectiveness in both regions, to conclude constitutional law transformation in the globalization era.

4 Discussions

4.1 The Difference Approaches and Mechanisms in Regulating and Enforcing Human Rights between the EU and ASEAN in the Transformation of Constitutional Law in Globalization

The struggle to uphold human rights continues to face significant challenges, as acts of cruelty to human beings are often normalized in the pursuit of power. In some countries, leaders exhibit extreme ambition and seek to maintain their authority by any means necessary. In others, governments demonstrate only a limited commitment to guaranteeing and protecting the rights of their citizens under legal norms, as doing so may threaten their hold on power. A notable positive development in this context occurred in 1966.

At the United Nations General Assembly, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) were adopted by acclamation [7]. ASEAN has declared its participation in the global agenda to promote and protect human rights at the regional level. This commitment was reaffirmed at the ASEAN Summit in 1993, following the adoption of the Vienna Declaration and Programme of Action in the same year. However, efforts to protect human rights and resolve related disputes in ASEAN remain subject to international criticism, even up to 2020, nearly a decade after the regional human rights declaration [8].

The fundamental differences between the EU and ASEAN in regulating and enforcing human rights can be understood through constitutional and international law perspectives. The EU adopts a supranational legal approach, in which human rights norms are institutionalized through binding instruments, such as the Charter of Fundamental Rights of the EU and the European Convention on Human Rights (ECHR). The principles of direct effect and the supremacy of EU law ensure that human rights norms have immediate legal force within member states. Meanwhile, ASEAN adopts an intergovernmental approach, emphasizing state sovereignty and the principle of non-interference, as reflected in the ASEAN Charter and the ASEAN Human Rights Declaration (AHRD). Consequently, from the outset, the EU's normative approach has been considerably more progressive than that of ASEAN [9]. According to the institutional perspective, the European Union has established the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), both of which possess binding judicial authority. This aligns with the transnational rule of law theory, in which the protection of human rights extends beyond mere declarations and is ensured through effective judicial mechanisms. ASEAN, however, has only the ASEAN Intergovernmental Commission on Human Rights (AICHR), which is primarily consultative and promotional rather than adjudicative. ASEAN's mechanisms resemble a soft law approach, consistent with the theory of compliance through persuasion, whereby compliance is achieved through dialogue and consensus rather than legal coercion [10].

The transformation of constitutional law in globalization also shows significant differences. In the EU, globalization actually strengthens legal integration, with human rights becoming a requirement for membership (the Copenhagen Criteria), requiring each member state to internalize human rights norms into its constitution. This emphasizes the concept of regional constitutionalization, where human rights norms bind across borders. While in ASEAN, globalization has only encouraged human rights declarations and institutions, but the principle of non-interference has hampered the institutionalization of human rights as a shared constitutional norm. The transformation of constitutional law in ASEAN has been more symbolic and slow, as member states continue to prioritize national sovereignty over regional commitments. Referring to international legal theory, the distinction suggests two models of regional human rights regimes. First, the EU's supranational binding regime, which places human rights as a central pillar of integration, with clear legal enforcement. Second, the ASEAN intergovernmental soft regime, which relies on political persuasion without judicial mechanisms. The EU model aligns with the theory of legal positivism, which emphasizes the importance of legal certainty through written norms and courts, while ASEAN aligns more closely with the theory of realism, which emphasizes state interests and political flexibility over legal enforcement.

Overall, differences in approaches and mechanisms reflect various levels of constitutional law transformation in globalization. The EU has achieved a substantive constitutional transformation, in which human rights norms are an integral part of both regional and national legal systems. Meanwhile, ASEAN remains in formal transformation, emphasizing political declarations without binding legal force. The contrasting views demonstrate that globalization can strengthen human rights protection in regions with supranational structures like the EU. Its impact, however, is limited in intergovernmental regions such as ASEAN, where sovereignty is prioritized over normative integration [11].

4.2 Differences and Similarities in Principles and Mechanisms of Human Rights Enforcement between the EU and ASEAN: Regional Integration and Global Challenges

In ongoing globalization, socio-political alteration becomes a phenomenon that influences an extensive and varied aspect of human life [12]. In globalization, Human rights issues are fundamental in constitutional law and interstate relations. Regional integration demands common standards in the principles and mechanisms for enforcing human rights, which in turn serve as a measure of the legitimacy of international organizations before the global community. The EU and ASEAN, as two regional organizations with distinct historical, political, and cultural backgrounds, present contrasting models of human rights protection while also sharing certain points of convergence [13]. The EU operates within a binding supranational framework, whereas ASEAN emphasizes a consensus-based intergovernmental approach and the principle of non-interference. Examining this contrast is crucial to understanding how the similarities and differences in human rights enforcement principles and mechanisms in both regions may contribute to constitutional law

transformation, regional integration, and the capacity to address increasingly complex global challenges.

The differences and similarities between the principles and mechanisms for enforcing Human Rights between the EU and ASEAN can be understood through the integration of a theoretical regional framework [14]. In principle, the EU adheres to a supranationalist legal approach, in which human rights protection is binding and applies directly to member states. This is reflected in the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights (ECHR), which guarantees the supremacy of regional law over national law [15]. In contrast, ASEAN adheres to intergovernmentalism, which places sovereignty and non-interference as the basis of relations between countries, as stated in the ASEAN Charter and the ASEAN Human Rights Declaration (AHRD) [16]. Thus, the EU emphasizes substantive legal integration, while ASEAN highlights political consensus [17]. In terms of enforcement mechanisms, the EU possesses a robust judicial system through the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). These institutions allow both individuals and states to bring cases concerning human rights violations, with decisions that are final and binding. This aligns with the transnational rule of law theory, which posits that the protection of human rights must be ensured through justiciable mechanisms. In contrast, ASEAN only established the ASEAN Intergovernmental Commission on Human Rights (AICHR), whose functions are limited to promotion, education, and dialogue, not law enforcement. This mechanism aligns with the concept of a soft law approach, where member state compliance is achieved through persuasion, not legal sanctions [18].

Nonetheless, similarities appear in principle between the EU and ASEAN [19]. Both recognize human rights as a fundamental value that underpins regional integration. They emphasize human rights as part of their organizations' political legitimacy, particularly in addressing global challenges such as democratization, terrorism, and migration. In addition, the human rights mechanism adopts a regional socio-political context. The EU emphasizes the universality of binding human rights, while ASEAN prioritizes cultural relativity and the principle of "Asian Values". From the perspective of the theory of cultural relativism in international law, they strive to balance the universal value of human rights with their respective regional needs [20].

In regional integration, the EU uses Human Rights as a condition for entry and retention of membership (Copenhagen Criteria), thus it can strengthen regional constitutionalization. ASEAN has also incorporated human rights into its integrated agenda, for example, through the ASEAN Human Rights Declaration and the AICHR forum, although the legal enforcement is nonexistent. The difference indicates that the EU has entered a substantive constitutional transformation phase, while ASEAN is still in a symbolic normative transformation phase. The theory of constitutional pluralism explains this phenomenon, where regions with more advanced institutional structures, such as the EU, are able to place human rights at the core of integration, while ASEAN remains limited to a consensus-based framework. In facing global challenges, both the EU and ASEAN encounter similar pressures: balancing state sovereignty with international obligations to protect human rights. The European

Union confronts issues such as migration, radicalism, and digital security, which demand cross-border human rights protection. ASEAN, on the other hand, faces more traditional challenges, including authoritarianism, ethnic conflicts, and systematic human rights violations in several member states. Consequently, the differences are in the effectiveness and binding force of human rights mechanisms, while the similarity is their shared recognition of human rights as a crucial element of regional integration and a legitimizing instrument for responding to global challenges [21]. Detailed explanation is summarized in the following table:

Table 1. Differences and Similarities in Principles and Mechanisms of Human Rights Enforcement between the EU and ASEAN.

Aspect	EU	ASEAN
Implementation in Member States	Uniform and integrated through the EU legal system and the ECHR	Varies depending on the policies and legal systems of each member country.
Main Principles	Rule of law, protection of the individual, equality, universal principles of human rights	Non-intervention, consensus, respect for national sovereignty
Complaint Mechanism	Available and open to citizens and individuals who have been harmed	There is no mechanism for individual complaints directly to the AICHR.
Integration with Regional Law	Very strong, an integral part of European Union law	Weak, not yet effectively integrated into the regional legal system
Approaches to the Universality	Accepting and promoting	Tends to be selective,

of Human Rights	universal human rights values	considering local and cultural contexts
The main human right documents	Charter of Fundamental Rights of the European Union	ASEAN Human Rights Declaration (AHRD)
Document Properties	Legally binding for EU institutions and member states	Not legally binding, more declarative in nature
Human Rights Institution	European Court of Human Rights (ECHR), Uni Europa (FRA)	ASEAN Intergovernmental Commission on Human Rights (AICHR)

Thus, although both regions demonstrate a commitment to incorporating human rights issues into their regional agendas, the approaches they employ differ significantly. The European Union leans toward an integrative and supranational model, whereas ASEAN remains intergovernmental, with a more flexible and context-specific approach. This comparison illustrates that the success of human rights regulation is strongly influenced by institutional structures, foundational values, and the political commitment of each region to human rights in the era of globalization.

5 Conclusion

The fundamental differences between the European Union and ASEAN in the regulation and enforcement of human rights lie in their normative approaches and institutional structures. The European Union adopts a supranational legal model, in which human rights norms are binding through instruments such as the European Convention on Human Rights *and the* Charter of Fundamental Rights of the European Union, and are enforced through effective judicial mechanisms, including the European Court of Human Rights. In contrast, ASEAN prioritizes the principles of intergovernmentalism and non-interference, with institutions such as the ASEAN Intergovernmental Commission on Human Rights (AICHR) functioning more on the promotional aspect than law enforcement. It demonstrates the substantive

transformation of constitutional law in the EU. In ASEAN, it is normative-formal. In regional integration and global challenges, they share the principle of human rights that must be recognized and promoted. The EU puts human rights as an inquiry membership (Copenhagen Criteria) and an instrument for regional constitutionalization, while ASEAN places human rights as part of political legitimacy and an effort to adapt to global pressures. The similarity is the importance of human rights for a sustainable regional integration, while the difference is the effectiveness of the EU's enforcement mechanisms with binding legal force, while ASEAN is more focused on political consensus and a soft law approach.

In summary, the analysis demonstrates how globalization encouraged both regional organizations to integrate human rights values into their legal frameworks, albeit to varying degrees. The EU has successfully established an institutionalized and constitutional human rights protection system, whereas ASEAN remains on developing a declarative and symbolic framework. These differences highlight the existence of varied models of constitutional law integration in globalization, while also presenting an opportunity for ASEAN to learn from the EU in human rights enforcement mechanisms, without overlooking the distinctive socio-political context of Southeast Asia.

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