

Legal analysis of Timor Leste's accession to ASEAN based on the perspective of international legal principles and the ASEAN charter

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Abstract

This study aims to (1) analyze the process and criteria for Timor Leste's accession as the 11th member of ASEAN. (2) to identify and evaluate the compliance of the accession process with the principles of International Law, particularly the sovereignty and equality of states, as well as the normative framework set out in the ASEAN Charter, particularly Article 6 (Membership Criteria) and Article 7 (Membership Procedures). The type of research used in this study is normative-juridical research. By using a statute approach and a conceptual approach. The results of the study indicate that (1) The decision in principle to admit Timor Leste (agreed at the 40th and 41st Summits) has been formally in accordance with the principles of International Law regarding state sovereignty and meets geographical prerequisites. However, substantially, this study found significant normative gaps in the ASEAN Charter. First, the ASEAN Charter does not explicitly detail measurable criteria for institutional and administrative readiness, so that the evaluation is dominated by political-diplomatic considerations rather than legal-administrative capacity. Second, the principle of consensus in accession decision-making (Article 7) has the potential to create normative ambiguity in the operationalization of ASEAN institutions post-accession, especially regarding resource allocation and positions in committee structures. (2) Timor-Leste's integration requires adaptation to various ASEAN instruments, the legal harmonization process of which does not yet have a binding timeframe and normative support. This study recommends the development of detailed, transparent protocols or guidelines to evaluate the substantive readiness of future prospective members.

Keywords

ASEAN accession, Timor Leste, ASEAN charter, International law

Introduction

The dynamics of Timor-Leste's accession to the Association of Southeast Asian Nations (ASEAN) have become a major concern in the discourse of international law and

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Southeast Asian regionalism. Since Timor-Leste's official application to join in 2011, various debates have emerged regarding the country's institutional and economic readiness, as well as the compatibility of its legal system with the principles set out in the ASEAN Charter. The main concern of the international legal community lies in how the process of accession of a new country to a regional organization such as ASEAN must fulfill the international legal principles of sovereignty, equality, and *pacta sunt servanda*, in addition to the obligation to comply with regional norms codified in the ASEAN Charter of 2007 [1]. This debate concerns not only the political and economic aspects, but also the legal dimension regarding the validity of the procedure for admitting new members, the commitment to the principle of non-intervention, and collective responsibility for regional peace and stability [2].

The various ASEAN membership mechanisms and normative challenges faced by Timor Leste in the accession process, which raise and highlight that the main problem lies not only in Timor Leste's administrative readiness, but also in the legal ambiguity in the ASEAN Charter regarding the accession procedures for new members, which gives room for broad interpretation to member states. Meanwhile, ASEAN's existence in implementing a consensus-based decision-making approach makes the accession process slow due to its dependence on collective political agreement. From the international law perspective, it emphasizes that the right to join a regional organization is not automatic, but must be based on the conformity of principles and compliance with the objectives of the organization as stipulated in Articles 1 and 2 of the ASEAN Charter [3]. Thus, the current situation shows that Timor Leste's accession process faces normative challenges between the principles of inclusiveness and ASEAN's institutional integrity, which until now remains a matter of legal debate.

Referring to previous studies, they tend to focus on political and foreign policy aspects, while the international legal dimensions and the application of the principles of the ASEAN Charter in the context of accession have not been analyzed in depth. Several previous studies have also not systematically described the synchronization between general international legal principles such as sovereign equality, non-intervention, and consent to be bound with the normative provisions in the ASEAN Charter, particularly in Articles 5 and 6 which regulate the membership mechanism [4]. Scientific criticism of previous studies shows that most studies use a descriptive-political approach, rather than a normative-judicial approach that emphasizes the validity of norms and legal consequences of the accession. The weakness lies in the minimal exploration of the legal implications of Timor-Leste's acceptance of the ASEAN legal structure, including how the principles of international law can play a role in balancing national sovereignty with regional commitments.

The concept analyzed and examined in this research is the analysis of normative transformation and convergence of international legal principles with the principles of the ASEAN Charter in the context of Timor Leste's accession. This approach seeks to explain that the success of accession is not solely determined by political factors, but

also by the consistency between international legal norms of a *jus cogens* nature and ASEAN regional provisions, thereby creating legal certainty in the mechanism for accepting new members. This approach provides a scientific contribution by offering an integrative conceptual framework, which assesses the reciprocal relationship between Timor Leste's international legal personality and the ASEAN legal system as a regional organization. Thus, this research seeks to fill a conceptual gap that has not been addressed by previous research, namely how the basic principles of international law function as legal parameters in assessing Timor Leste's suitability as a candidate for ASEAN membership.

Therefore, the proposed concept shifts the focus from analyzing the applicant country's readiness to analyzing the validity and normative interpretation of the ASEAN Charter in the context of accession. This concept proposes the Regional *Ius Cogens* Principle, which states that new membership criteria in a regional organization must not conflict with fundamental principles of customary international law, such as the prohibition on excessive discrimination based on level of economic development.

The concept of the Regional *Ius Cogens* Principle has compelling scientific merit as it seeks to bridge the law of international organizations with public international law, providing a basis for progressively interpreting the ASEAN Charter. This idea allows for a re-evaluation of Article 6 of the ASEAN Charter and the mechanism for adopting new members, offering stronger normative guidance to ensure that future accession processes are based on consistent legal principles, rather than solely on the economic interests of dominant member states.

Method

This research uses a normative legal research method (normative juridical), namely research that focuses on applicable positive legal norms and legal principles that form the basis of the international legal system and ASEAN regional law. According to Soerjono Soekanto, normative legal research is research that aims to examine law as a written norm (law in books) that originates from statutory regulations, treaties, international conventions, and legal doctrine [5].

The main approaches used in this research are the statute approach and the conceptual approach. The statutory approach is carried out by examining relevant legal instruments, both at the international and regional levels. At the international level, this research examines the legal principles contained in the Charter of the United Nations (1945) and the Vienna Convention on the Law of Treaties (1969), which regulate the basis of interstate relations, sovereignty, and legal obligations in international agreements. At the regional level, this research examines the 2007 ASEAN Charter, particularly Articles 5 and 6, which regulate the mechanism for admitting new members, as well as other ASEAN documents relevant to Timor-Leste's accession process. Meanwhile, the conceptual approach is used to understand the legal concepts underlying the relationship between international legal principles and the principles of

ASEAN regional integration. This approach is important because the issue of Timor Leste's accession to ASEAN concerns not only the normative aspects of the ASEAN Charter, but also the synchronization of international legal values such as sovereign equality, non-intervention, and *pacta sunt servanda* with the principles of ASEAN regionalism which are consensual and based on cooperation. By using this approach, the study seeks to build an integrative conceptual framework that explains how the principles of international law are internalized into the ASEAN membership mechanism, and how this affects the legal validity and legitimacy of Timor Leste's accession. The legal materials used consist of primary, secondary, and tertiary legal materials. The legal materials collection technique uses the literature study technique. The analysis of legal materials is carried out using a descriptive-analytical method, namely systematically describing the legal norms governing accession to ASEAN and then analyzing the suitability and relationship between international norms and regional norms.

Results and Discussion

Results

The process of Timor Leste's accession to ASEAN, both formally and substantively, reflects the dynamic relationship between the principles of international law and the principles of ASEAN regional law. Formally, the decision to accept Timor Leste as the 11th member of ASEAN, announced at the 40th and 41st ASEAN Summits in Phnom Penh, Cambodia in 2022, has fulfilled the provisions of Article 6 of the ASEAN Charter, which requires that prospective members must be located in the Southeast Asian region and recognize the ASEAN Charter and are willing to comply with membership obligations [6]. This confirms that Timor Leste has fulfilled the geographical prerequisites and full sovereignty as a state, as stipulated in Article 2 of the 1945 UN Charter concerning sovereign equality of states. Therefore, from an international legal perspective, this accession is valid and has a strong legal basis based on the principle of *pacta sunt servanda* which binds states to respect international treaty commitments.

However, this study found that substantial normative gaps remain in the ASEAN Charter that affect the clarity of procedures and the legal validity of accession. First, the ASEAN Charter does not explicitly regulate the indicators of administrative, institutional, and economic readiness that must be met by prospective members, so the evaluation process tends to be determined by political-diplomatic considerations rather than juridical-administrative ones. In the context of Timor-Leste, the assessment process conducted by the ASEAN Coordinating Council Working Group (ACCWG) and Fact-Finding Missions primarily assesses political and economic capacity, without clear legal parameters as is commonly applied in other international organizations such as the European Union.

Second, the principle of consensus-based decision-making as stipulated in Article 7 of the ASEAN Charter creates normative ambiguity because it does not explain the

resolution mechanism in the event of differences of opinion between member states regarding the acceptance of new member candidates. This principle, which is rooted in the diplomatic tradition of the “ASEAN Way,” does emphasize political harmony and stability, but in a legal context, it has the potential to create uncertainty regarding the legitimacy and speed of the accession process [7]. In the case of Timor-Leste, although all ASEAN members finally approved the accession, the process took more than a decade from the first application in 2011 due to differing levels of confidence in Timor-Leste’s institutional readiness. This suggests that the ASEAN Charter needs to be revised or supplemented with additional protocols that establish more transparent legal procedures based on objective indicators.

The ASEAN Charter affirms its commitment to economic and social integration through the ASEAN Community Blueprint, but it does not provide specific legal guidance on how new states should align their national regulations with existing ASEAN agreements (ASEAN legal instruments). An analysis of the ASEAN Economic Community Blueprint 2025 and the ASEAN Political-Security Community Blueprint reveals that there is no binding timeframe or compliance monitoring mechanism for the new state. Consequently, Timor-Leste’s legal harmonization process is projected to take a long time without an adequate normative basis for measuring its integration progress.

From the perspective of international legal principles, it shows that Timor Leste’s accession has respected the principles of state sovereignty (sovereign equality), non-intervention, and equality of status in international organizations, as stipulated in Articles 2(1) and 2(7) of the UN Charter. ASEAN in this case cannot reject Timor Leste’s membership arbitrarily, because the principle of non-discrimination is also part of *jus cogens* in international law. However, this study identifies a tension between the universal principles of international law and the consensual regional principles of ASEAN, which often place political considerations above legal certainty [8]. Thus, a reinterpretation of the ASEAN Charter is needed to be more in line with the universal principles of international law without eliminating the distinctive characteristics of Southeast Asian regionalism.

Regarding the concept of the “Regional *Ius Cogens* Principle,” a normative framework that places basic principles of international law (such as non-discrimination and *pacta sunt servanda*) as the legal boundaries in decision-making regarding membership in regional organizations. This principle offers a two-tier legal integration model in which universal norms of international law serve as the foundation, while ASEAN regional norms serve as contextual implementation instruments. This concept is expected to bridge the normative gap in the ASEAN Charter and serve as a reference in the formation of a new, more legally consistent membership protocol. Thus, overall, it confirms that Timor-Leste’s accession to ASEAN is in principle in accordance with international law, but there are still normative ambiguities in the ASEAN membership mechanism that require strengthening institutional law.

Discussion

From an international legal perspective, the process of a country's accession to a regional organization such as ASEAN must be subject to the basic principles of the Charter of the United Nations (1945), especially the principles of state sovereignty (sovereign equality), non-intervention, and respect for the right to self-determination. The principle of sovereign equality as stipulated in Article 2 paragraph (1) of the UN Charter guarantees that every country, regardless of its size, economy, or political power, has the same legal standing before international law. In the context of Timor-Leste's accession, this principle means that the country has the same right to apply for membership in ASEAN without discrimination, as long as it meets the criteria set out in the ASEAN Charter [9].

The application of the principle of sovereign equality in the ASEAN context is relative due to the consensus-based decision-making principle stipulated in Article 7 of the ASEAN Charter. This principle, although intended to maintain regional solidarity and stability, has the potential to create de facto inequality between existing member states and prospective new members. Decisions to accept new members are often influenced by the political and economic considerations of major countries in the region, such as Indonesia, Singapore, and Malaysia. Therefore, legally, the consensus principle can create normative uncertainty in the accession process, due to the lack of clear legal parameters for assessing prospective members' conformity to ASEAN values.

Furthermore, the principle of consent to be bound, as stipulated in the Vienna Convention on the Law of Treaties (1969), is also an important aspect in assessing the validity of Timor-Leste's accession. According to Article 11 of the Vienna Convention, accession is one way for a country to express its willingness to be bound by an international agreement. In this context, Timor-Leste's admission to ASEAN is not only a political event but also a legal event that has consequences for its international obligations. This means that Timor-Leste must recognize and accept all rights and obligations stipulated in the ASEAN Charter and its derivative legal instruments, such as the Treaty of Amity and Cooperation (TAC) and the ASEAN Charter Implementation Framework.

Article 6 of the 2007 ASEAN Charter stipulates that ASEAN membership is open to countries in the Southeast Asian region that recognize the Charter and are committed to the organization's objectives. However, there are no clear legal parameters regarding the intended "readiness," whether from an institutional, administrative, or economic perspective. [10] This ambiguity has caused the evaluation process for Timor-Leste's accession to be predominantly political rather than legal.

An analysis of the ASEAN Coordinating Council Working Group on Timor-Leste Membership (2022) shows that the evaluation of Timor-Leste's readiness focuses more on administrative capabilities and participation in ASEAN forums, rather than on the conformity of domestic law with ASEAN Legal Instruments. [11] From an international

legal perspective, this condition indicates a normative gap, as the ASEAN Charter does not provide objective guidelines for assessing the legal eligibility of prospective members. However, in other international organizations such as the European Union, there are Copenhagen Criteria that specify in detail the legal, economic, and political requirements for candidate countries.

Thus, the provisions of Article 6 of the ASEAN Charter remain soft law, containing no binding legal obligation, but merely political guidelines. Consequently, Timor-Leste *de jure* meets the normative requirements for membership (due to its location in Southeast Asia and its recognition of the ASEAN Charter), but *de facto* faces interpretive obstacles due to the lack of a measurable legal mechanism for assessing its institutional and administrative readiness. As a result, the accession process becomes not only a matter of fulfilling formal legal conditions, but also of navigating institutional expectations that are not explicitly codified within the Charter.

Although in principle, Timor Leste's accession is in line with international law, particularly in terms of self-determination and sovereign equality, its implementation at the regional level does not reflect legal equality between countries. The consensus mechanism within ASEAN creates the potential for political domination by large countries, which could hinder accession without a clear legal basis [12]. In this context, the principle of non-intervention, which is a hallmark of ASEAN, actually has a dual function: on the one hand, maintaining regional stability, but on the other hand, creating legal stagnation in accession decision-making.

Furthermore, ASEAN does not yet have a protocol of accession as expressly stipulated in other regional organizations such as the African Union and the European Union. The absence of this protocol resulted in Timor-Leste's accession process being carried out based on high-level political decisions (the 40th and 41st ASEAN Summits, 2022) without a comprehensive legal assessment of Timor-Leste's national legal readiness. [13] Thus, it can be concluded that this accession process is a declarative recognition, reflecting more political recognition than legal acceptance.

The concept of *Ius Cogens Regional* serves as an interpretive framework for assessing the conformity of the accession process with international law. This principle asserts that regional organizations such as ASEAN should not apply discriminatory or disproportionate membership criteria to new states. *Ius Cogens Regional* serves to bridge the gap between universal international legal norms and the particular norms of regional organizations.

The implementation of this concept could encourage ASEAN to adopt a more transparent and objective rule-based accession protocol mechanism. For example, by establishing minimum administrative legal standards, procedures for harmonizing domestic regulations with ASEAN instruments, and a timeline for institutional adjustments. In this way, Timor-Leste's accession could be carried out within a definite legal framework, not solely based on political agreement. Furthermore, the

implementation of *Ius Cogens* Regional would also strengthen ASEAN's legal legitimacy as an international organization that respects the principles of legal equality and non-discrimination among member states.

The absence of a definite legal mechanism could create an imbalance in Timor-Leste's participation in ASEAN forums, particularly in decision-making and the division of responsibilities among member states. Therefore, ASEAN needs to establish an Accession Protocol or Guidelines on Membership Readiness Assessment to ensure that every prospective member is treated fairly and in accordance with the principles of international law [14].

Conclusion

Based on the results of a legal analysis of Timor Leste's accession to ASEAN from the perspective of international legal principles and the ASEAN Charter, it can be concluded that the process of accepting Timor Leste as the 11th member of ASEAN reflects the complex relationship between international legal legitimacy and regional political dynamics. Formally, ASEAN's decision to accept Timor Leste has fulfilled the principles of international law such as state sovereignty (sovereign equality), non-intervention, and the principle of equality in relations between states as stipulated in the Charter of the United Nations and the Vienna Convention on the Law of Treaties (1969). However, from a normative substance perspective, legal gaps are still found in the ASEAN Charter, particularly regarding the criteria and procedures for accession of new members as stated in Articles 6 and 7 of the ASEAN Charter. This study finds that Timor-Leste's accession process is dominated by political-diplomatic considerations rather than objective and transparent legal measures. ASEAN does not yet have a normative instrument that explicitly regulates the institutional, administrative, or economic readiness standards for prospective new members. As a result, the accession process is subject to wide interpretation and relies on the principle of consensus (consensus-based decision-making), which has the potential to slow the integration process and create normative uncertainty in the implementation of membership obligations. Furthermore, this study emphasizes that international legal principles such as *pacta sunt servanda* and good faith need to be used as a reference in strengthening the legitimacy of the ASEAN accession process. Ambiguity in ASEAN membership arrangements can have legal implications for the status and responsibilities of new member states, including Timor-Leste, in carrying out their binding obligations under the ASEAN legal framework. Therefore, harmonization of international legal norms and ASEAN regional legal norms is needed to ensure that the admission process for new members is conducted fairly, transparently, and in accordance with universally applicable legal principles.

The concept of the Regional *Ius Cogens* Principle emphasizes that every regional organization, such as ASEAN, must ensure that its membership criteria do not conflict with the fundamental norms of imperative international law. By implementing this principle, ASEAN can strengthen its legal legitimacy as a regional organization while

maintaining the harmony between institutional integrity and the sovereignty of its member states. This concept is expected to form the basis for the formation of the ASEAN Accession Protocol, which regulates in detail the readiness indicators for prospective members, evaluation procedures, and the obligation to harmonize domestic laws with ASEAN legal instruments.

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