



THE APPLYING MODERN ENVIRONMENTAL LAW IN SOUTHEAST ASIA: A LEGAL PHILOSOPHY POINT OF VIEW

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ABSTRACT

This study examines the complex legal, philosophical, and practical challenges of implementing modern environmental law in Southeast Asia, aiming to align regional economic growth with ecological preservation. Using conceptual and legislative methodologies, the research provides a philosophical analysis of guiding environmental policy principles, evaluates the efficacy of existing legal frameworks, assesses human rights integration, and examines the operational constraints of specialized environmental courts and tribunals. The findings indicate that while recognition of ecocentric approaches and environmental human rights is expanding, regional implementation remains inconsistent. Specialized courts face critical limitations in expertise and capacity. Addressing these issues requires strengthened regulatory frameworks, enhanced regional cooperation, targeted capacity building, and the operational balancing of economic development with ecological preservation. This study offers a unique synthesis by contextualizing modern environmental governance through a blend of imported Western legal concepts with Southeast Asia's distinct cultural philosophies and traditional ecological knowledge.

1. INTRODUCTION

Environmental protection has emerged as a paramount concern within Southeast Asia, a region where aggressive economic expansion frequently collides with the imperatives of ecological preservation. As these nations navigate the complexities of the Anthropocene,

the traditional legal frameworks are being tested by rapid industrialization, urbanization, and the transboundary nature of ecological crises. The necessity for a robust legal architecture is no longer merely a matter of administrative compliance but a foundational requirement for regional stability and sustainability. Environmental law in Southeast Asia faces complex challenges shaped by the region's diverse cultural, historical, and economic contexts. Rapid economic growth often conflicts with environmental sustainability, requiring legal frameworks that balance development and ecological protection. Southeast Asian environmental governance blends Western legal traditions, colonial legacies, and local philosophies, including religious and customary norms.^{1 2}

ASEAN plays a crucial role in collaborating on environmental challenges in the region. A case in point is the ASEAN Agreement on Transboundary Haze Pollution. However, its effectiveness is limited because member nations refrain from interfering in each other's domestic matters. Philosophically, environmental law is evolving from an anthropocentric focus on human dominion toward ecocentric approaches recognizing nature's intrinsic value.³ Ethical ideas like fair distribution, fair processes, and fairness between generations are becoming more important in managing the environment. They focus on human rights and fairness in environmental issues. However, it is still hard to apply these ideas well, especially with international problems and protecting vulnerable groups like indigenous people.⁴ Improving skills and fair leadership is important for good environmental laws. By creating special centers and involving the public, areas can improve laws and get the community involved. Future plans should use traditional knowledge, strengthen enforcement, and balance economic growth with protecting the environment. This will help sustainable development in Southeast Asia.

The literature review on applying modern environmental law in Southeast Asia from a legal philosophy point of view reveals several key themes and challenges including environmental governance in Southeast Asia faces significant hurdles despite efforts to create a "green and clean" region.⁵ While legal frameworks and governance systems have been implemented, political and policy challenges remain in achieving adequate environmental protection. It suggests a gap between environmental law on paper and its

¹ Maarten Manse., The Plural Legacies of Legal Pluralism: Local Practices and Contestations of Customary Law in Late Colonial Indonesia, *Legal Pluralism and Critical Social Analysis*, Vol.56, No.3 (2024), page.328-48, <https://doi.org/10.1080/27706869.2024.2377447>.

² Tang Thi Thu Trang et al., Environmental Law and Ecosystem Governance: A Comparative Study of Legal Instruments In Southeast Asia, *International Journal of Ecosystems and Ecology Science (IJEES)*, Vol.15, No.3 (2025), page.37–46, <https://doi.org/10.31407/ijeess15.305>.

³ Jasmin Mahadevan., The Mandala Model of Power and Leadership: A Southeast Asian Perspective, in *RePEc: Research Papers in Economics* (Federal Reserve Bank of St. Louis, 2012), https://doi.org/10.1007/978-3-642-32445-1_24.

⁴ Endah Rantau Itasari and Dewa Gede Sudika Mangku., Implementation of the ASEAN Agreement on Transboundary Haze Pollution in the Southeast Asia Region, *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan*, Vol.6, No.1 (2021), page. 149–149, <https://doi.org/10.17977/um019v6i1p149-154>.

⁵ Koh Kheng- Kheng-Lian, Koh, and Saiful Karim., *Southeast Asian Regional Environmental Legal Governance and Asean*. Queensland University of Technology : QUT ePrints (Queensland University of Technology)., 2020. <https://doi.org/10.4324/9781003137825-24>.

practical application. The ASEAN Agreement on Transboundary Haze Pollution exemplifies the progress and limitations in regional environmental cooperation.^{6 7} The agreement sets rules for using resources responsibly, but it needs better enforcement to stop haze pollution. This shows a conflict between a country's rights and regional environmental responsibilities. New systems are being created to handle environmental damage that crosses borders in Southeast Asia. However, ASEAN's rule of not interfering with other countries makes it hard to hold states accountable. International environmental laws mix with regional politics, and postcolonial views have influenced international law in South and Southeast Asia.⁸

Environmental law in Southeast Asia has evolved rapidly amid urbanization and development, shaping approaches to trade, investment, and socio-economic rights. The challenge involves integrating regional values with global environmental norms while balancing development needs and environmental protection. In Indonesia, environmental management faces regulatory challenges despite existing frameworks. While progress exists in establishing legal structures, significant work remains to achieve effective regional environmental governance through reconciliation of international norms with local legal philosophies.⁹ Environmental law enforcement in Indonesia operates through criminal, civil, and administrative channels, but critical theory reveals a gap between legal frameworks and implementation, highlighting the need to reform laws that favor authorities over marginalized groups.¹⁰ The ASEAN Agreement on Transboundary Haze Pollution demonstrates regional environmental law, balancing countries' resource rights with preventing cross-border environmental damage.¹¹

The research gaps in this section indicate that there is an attempt to identify the critical gap between environmental law theory and its practical application in Southeast Asia, which is caused by the following contradictions: a) The "non-interference" vs. "responsibility" conflict: There is a fundamental contradiction between the ASEAN principle of non-interference and the need for state responsibility. This principle hinders the implementation of civil liability regimes for transboundary issues like haze pollution, forcing a reliance on voluntary prevention rather than binding enforcement; b) The gap between legal frameworks theory and practice: Despite the ASEAN vision for a "green and clean" region,

⁶ Shawkat Alam and Laely Nurhidayah., The International Law on Transboundary Haze Pollution: What Can We Learn from the Southeast Asia Region?, *Review of European Comparative & International Environmental Law*, Vol.26, No.3 (2017), page. 243–54, <https://doi.org/10.1111/reel.12221>.

⁷ Endah Rantau Itasari and Dewa Gede Sudika Mangku., Legal Protection Against Violations of Human Rights That Abuse Uighur Ethnic Women in China, *YINYANG Jurnal Studi Islam Gender Dan Anak*, (June 2021), page.33–48, <https://doi.org/10.24090/yinyang.v16i1.4361>.

⁸ Diane A. Desierto., Development, Governance, and the Rule of Law in ASEAN, *Journal of Legislation*, Notre Dame Law School, (2020), <https://doi.org/10.4324/9781315267401-1>.

⁹ Aditya Yuli Sulistyawan and E. A. Putra., Environmental Law Enforcement in Philosophy of Law, *International Journal Of Multidisciplinary Research And Analysis*, Vol.7, No.3 (2024), <https://doi.org/10.47191/ijmra/v7-i03-08>.

¹⁰ *Ibid*

¹¹ Ibnu Sitompul and W. John Hopkins., The Limits of Regional Disaster Law: Transboundary Haze Pollution and the ASEAN Way, *Yearbook of International Disaster Law Online*, Vol.6, No.1 (2025), page.335–56, https://doi.org/10.1163/26662531_00601_014.

effective governance remains unachieved due to political and policy obstacles. There is a persistent gap between "law on paper" and the practical enforcement of regulations; c) Postcolonial dominance versus local norms: The region's legal frameworks are heavily influenced by Western and postcolonial traditions, often failing to integrate local cultural, religious, and customary norms. Existing laws frequently serve the interests of authorities rather than protecting marginalized groups and indigenous peoples.

Regarding the problem statement, despite the Association of Southeast Asian Nations (ASEAN) vision of a "green and clean" region, effective environmental governance remains elusive due to critical gaps between the legal framework and its practical implementation. Although modern environmental laws exist, they are ineffective due to the following systemic contradictions: i) Sovereignty vs. Responsibility: The ASEAN principle of non-interference fundamentally conflicts with the need for state responsibility and civil liability, particularly regarding transboundary issues like haze pollution. This prevents the enforcement of agreements, such as the ASEAN Agreement on Transboundary Haze Pollution, forcing a reliance on voluntary cooperation rather than binding liability; ii) Legal frameworks and practice and development priorities in Southeast Asia consistently negatively affect environmental policy outcomes. Current legal frameworks fail to effectively balance the "right to exploit resources" with the obligation to preserve the environment; iii) Postcolonial legacies versus legal pluralism: Current environmental laws are shaped by Western and postcolonial traditions that fail to integrate local customary norms, Islamic law, and traditional ecological knowledge. This exclusion perpetuates a legal system that often serves the interests of authorities rather than protecting marginalized groups and indigenous peoples.

Deeply embedded legal barriers, anthropocentric biases and systemic governance failures that privilege state sovereignty and rapid economic development over ecological integrity shape environmental crises in Southeast Asia. A major institutional obstacle is the doctrine of non-interference of ASEAN which means that agreements on transboundary issues such as haze pollution are based on non-binding cooperation and not binding legal standards. Legal systems are also very anthropocentric, viewing nature as a resource to be used, with no binding mandates for sustainability, while land degradation and deforestation continue to speed up. These conceptual flaws are compounded by a serious implementation gap, where corruption, political instability and weak enforcement systematically undermine statutory "green" goals. In addition, top-down governance is unable to deal with the region's legal pluralism, including the interaction between state, Islamic and customary laws, marginalising indigenous and local communities from environmental decision-making. Governments are always balancing long-term sustainability against short term development goals. Driven by a postcolonial mandate to accelerate economic growth. Therefore, the solution to regional environmental degradation is not minor legislative amendments, but a paradigm shift from rigid sovereignty and growth-oriented models to an inclusive, enforceable and ecocentric legal framework.

The studies focus on several key areas: transboundary environmental issues, notably haze

pollution from land and forest fires, considered one of Southeast Asia's most severe environmental problems.¹² The ASEAN Agreement on Transboundary Haze Pollution aims to address this issue, but its implementation faces challenges;¹³ ii) sustainable construction procurement to prevent land degradation. Research indicates that many Southeast Asian nations lack specific regulations in this area, with only Indonesia having a ministerial regulation providing general norms;¹⁴ and iii) the intersection of state law with Islamic and customary norms, women's equality, legal status, and land and natural environment issues.¹⁵ It reflects the complex legal pluralism in the region and its impact on environmental governance.

Environmental law in Southeast Asia encounters challenges, as ASEAN's non-interference principle impedes the enforcement of state responsibility, despite escalating environmental concerns.¹⁶ The region's postcolonial nature of international law discourse influences how environmental laws are interpreted and applied.¹⁷ Legislation should address international challenges, promote sustainable development, and respect cultural traditions. It should be inclusive, particularly benefiting marginalized groups. To effectively address transnational issues, enhanced cooperation and law enforcement are necessary. Future research should focus on formulating laws that safeguard the environment while facilitating development.

Previous academic inquiries have highlighted distinct gaps in addressing the region's environmental governance. *First*, research by Yordan (2024) emphasizes the inadequacy of the ASEAN Agreement on Transboundary Haze Pollution, noting that the regional preference for "non-adversarial" conflict resolution creates a systemic barrier to enforceable liability and dispute settlement protocols.¹⁸ Specifically, this literature identifies that current diplomatic reliance on voluntary cooperation fails to incentivize state accountability for transboundary greenhouse gas emissions and environmental degradation.¹⁹ *Second*,

¹² Alam, Shawkat, and Laely Nurhidayah., The International Law on Transboundary Haze Pollution: What Can We Learn from the Southeast Asia Region? *Review of European Comparative & International Environmental Law*, Vol.26, No.3 (2017), page. 243–54. <https://doi.org/10.1111/reel.12221>

¹³ Faizal Kurniawan et al., Legal Framework of Sustainable Construction Procurement to Prevent Land Degradation: Comparison between Indonesia, Singapore and Thailand, *Journal of Property Planning and Environmental Law*, Vol.16, No.2 (2023), page. 92–104, <https://doi.org/10.1108/jppel-05-2023-0021>.

¹⁴ *Ibid*

¹⁵ Alam, Shawkat, and Laely Nurhidayah., The International Law on Transboundary Haze Pollution: What Can We Learn from the Southeast Asia Region? *Review of European Comparative & International Environmental Law*, Vol.26, No.3 (2017), page. 243–54. <https://doi.org/10.1111/reel.12221>

¹⁶ Diane A. Desierto., Development, Governance, and the Rule of Law in ASEAN, *Journal of Legislation*, Notre Dame Law School, (2020), <https://doi.org/10.4324/9781315267401-1>.

¹⁷ Diane A. Desierto., Postcolonial International Law Discourses on Regional Developments in South and Southeast Asia, *International Journal of Legal Information*, Vol.36, No.3 (2008), page.387–431, <https://doi.org/10.1017/s0731126500003231>; Also see, Diane A. Desierto., Development, Governance, and the Rule of Law in ASEAN, *Journal of Legislation*, Notre Dame Law School, (2020), <https://doi.org/10.4324/9781315267401-1>.

¹⁸ G. Yordan., The Effectiveness of Informal International Law in Southeast Asia: Analysis of the Factors Influencing the Enforcement of the 2002 ASEAN Agreement on Transboundary Haze Pollution (Thesis, En Xarxa (Consorti de Serveis Universitaris de Catalunya), 2024), <http://hdl.handle.net/10803/694151>.

¹⁹ Ilham Aldi Nugroho and Ria Tri Vinata., Implementation of the Principle of Sic Utere Tuo Ut Alienum Non Laedas Towards Cases of Transboundary Haze Pollution in the Southeast Asian Region, *Asian Journal of Environmental Research*, Vol.3, No.2 (2026), page.73–86, <https://doi.org/10.69930/ajer.v3i2.682>.

scholars such as Muhammad (2021) and Vargas-Chaves et al. (2025) underscore that the absence of robust sanctioning mechanisms, coupled with Indonesia's non-cooperative behavior, demonstrates that the current structure permits member states to evade information-sharing obligations under the guise of national sovereignty.^{20 21} *Third*, recent studies have critically evaluated the interaction between state-centric legal structures and indigenous knowledge, arguing that the exclusion of local customary norms in favor of Western legal paradigms prevents the realization of a truly integrated ecological governance framework.^{22 23} These investigations, however, frequently remain siloed within either macro-level geopolitical analysis or localized ethnographic studies, leaving a significant gap regarding the synthesis of cross-sectoral collaboration and evidence-based science within a unified, adaptive legal architecture.²⁴ This research addresses this deficiency by proposing a transdisciplinary legal model that bridges the divide between state-level regulatory reform and localized, community-led management strategies.^{25 26} By prioritizing the legitimacy of local institutions and the active participation of communities, this approach seeks to move beyond the current impasse of fragmented environmental enforcement.²⁷ Furthermore, this study evaluates how the integration of empirical environmental science data can catalyze more responsive regulatory cycles, addressing the long-standing disconnect between academic recommendations and judicial implementation.²⁸

This research aims the disparity between theoretical concepts and the practical application

²⁰ Fikri Muhammad., Environmental Agreement under the Non-Interference Principle: The Case of ASEAN Agreement on Transboundary Haze Pollution, *International Environmental Agreements Politics Law and Economics*, Vol.22, No.1 (2021), page.139–55, <https://doi.org/10.1007/s10784-021-09545-4>.

²¹ Iván Vargas-Chaves et al., A Supranational Law Perspective on the Right to a Healthy Environment in Southeast Asia: The ASEAN Agreement on Transboundary Haze Pollution, *Fronteiras Journal of Social Technological and Environmental Science*, Vol.14, No.4 (2025), page. 194–207, <https://doi.org/10.21664/2238-8869.2025v14i4.8315>.

²² Koh Kheng- Kheng-Lian, Koh, and Saiful Karim., *Southeast Asian Regional Environmental Legal Governance and Asean*. Queensland University of Technology : QUT ePrints (Queensland University of Technology)., 2020. <https://doi.org/10.4324/9781003137825-24>; Joyo Santoso et al., Conceptual Developments in Environmental Law: An Interdisciplinary Approach, *MAQASIDI Jurnal Syariah Dan Hukum*, (December 2025), page.291–303, <https://doi.org/10.47498/maqasidi.v5i2.5668>.

²³ Joyo Santoso et al., Conceptual Developments in Environmental Law: An Interdisciplinary Approach, *MAQASIDI Jurnal Syariah Dan Hukum*, (December 2025), page.291–303, <https://doi.org/10.47498/maqasidi.v5i2.5668>

²⁴ Rochmad and Arista Candra Irawati., Membangun Hukum Lingkungan Yang Berkelanjutan: Tantangan Dan Solusi Global, *ADIL Indonesia Journal*, Vol.5, No.2 (2024), page. 162–68, <https://doi.org/10.35473/aij.v5i2.3946>.

²⁵ Thijs Etty et al., The Methodologies of Transnational Environmental Law Scholarship, *Transnational Environmental Law*, Vol.12, No.2 (2023), page.235–43, <https://doi.org/10.1017/s2047102523000122>.

²⁶ Maulana Hendra Mandala et al., The Threat of Green Grabbing to Indigenous Peoples' Rights in the Implementation of Law Number 32 of 2024, *JUSTISI*, Vol.11, No.3 (2025), page.874–88, <https://doi.org/10.33506/js.v11i3.4601>.

²⁷ Setyani Dwi Lestari et al., Comparison and Implementation of Environmental Law Policies in Handling Climate Change in ASEAN Countries: A Comparative Study of Indonesia, Malaysia, and Thailand, *International Journal of Energy Economics and Policy*, Vol.14, No.2 (2024), page.687–700, <https://doi.org/10.32479/ijee.14998>.

²⁸ Ayoub F. R. Alqaisi., Assessing the Gap between Environmental Legislation and Effective Implementation: A Study and Guidelines for Enhancing the Implementation Performance of Environmental Laws, *Journal of Electrical Systems*, Vol.20 (May 2024), page. 937–47, <https://doi.org/10.52783/jes.3469>.

of environmental law in Southeast Asia, focusing on the obstacles that hinder effective environmental management. It examines the disconnect between environmental legal theory and its implementation in the Southeast Asian context, identifying systemic barriers to effective ecological governance. The study is organized around four (4) primary analytical pillars: First, this research aims to critically examine the transition from anthropocentric-utilitarian foundations toward an ecocentric-biocentric natural law philosophy in environmental legal frameworks, seeking to propose a more holistic, equitable, and sustainable approach to environmental governance. Second, to analyze the complex interplay between religious-cultural traditions, Western legal legacies, and ASEAN regionalism in shaping environmental governance and the transition toward ecocentric legal frameworks in Southeast Asia. Third, to evaluate the inclusivity of ASEAN's emerging environmental rights frameworks in addressing the systemic exclusion of indigenous peoples and civil society from regional resource governance and human rights protections. Fourth, to analyze the transition from a top-down approach to a polycentric and inclusive governance model as a means to enhance capacity building and ensure equitable access to environmental justice within the Southeast Asian region.

2. RESEARCH METHODS

The methods would involve normative, empirical legal research and qualitative analysis, drawing from the approaches used in the provided papers. The study will examine written favorable legal provisions related to environmental law in Southeast Asian countries, focusing on their application to concrete legal events in society.^{29 30} The task involves thoroughly examining current environmental laws, rules, and regional agreements, such as the ASEAN Agreement on cross-border haze pollution. It will compare the environmental laws of Southeast Asian countries, focusing on how they use international environmental rules and the role of regional groups like ASEAN in tackling environmental challenges.³¹ The methods involve checking how well current legal rules work and the problems in using them. It will find top countries, research groups, and new trends in environmental law in Southeast Asia. The study will use ideas and laws to give a philosophical view³² analyzing the core principles and values that influence environmental legislation in the area. This method includes analyzing how cultural, religious, and historical factors influence the

²⁹ Endah Rantau Itasari and Dewa Gede Sudika Mangku., Implementation of the ASEAN Agreement on Transboundary Haze Pollution in the Southeast Asia Region, *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan*, Vol.6, No.1 (2021), page. 149–149, <https://doi.org/10.17977/um019v6i1p149-154>.

³⁰ Rawnak Miraj Ul Azam et al., The Rights of Nature Movement: Legal, Cultural, and Policy Challenges in Implementing Eco-Centric Laws, *Journal of Environmental Law & Policy*. Vol 05, No.01 (2025), page. 87–116, <https://doi.org/10.33002/jelp050104>.

³¹ Alam, Shawkat, and Laely Nurhidayah., The International Law on Transboundary Haze Pollution: What Can We Learn from the Southeast Asia Region? *Review of European Comparative & International Environmental Law*, Vol.26, No.3 (2017), page. 243–54. <https://doi.org/10.1111/reel.12221>; Also see, Vladimir Lukin et al., *Security Architecture in the Southeast Asian Strategic Region*, in *Lecture Notes in Networks and Systems*, New York: Springer International Publishing, 2023, https://doi.org/10.1007/978-3-030-78105-7_44.

³² Felix Ferdin Bakker et al., Law Versus Humanity: Problems of the Non Refoulement Principle Regarding Refugees in Southeast Asia, *Rechtsidee*, Vol.10, No.2 (2022), <https://doi.org/10.21070/jihr.v11i0.784>.

development and application of environmental regulations.³³ The research would be complemented by case studies of specific environmental issues, such as transboundary haze pollution, to illustrate the practical application of environmental laws and the challenges in their enforcement.³⁴

3. RESULTS AND DISCUSSION

Environmental law's philosophical foundations are rooted in complex interactions between property rights, human-nature relationships, and ethical considerations. In response to growing environmental challenges, these foundations have evolved from traditional anthropocentric views to more ecocentric approaches.³⁵ Historically, environmental law was underpinned by ideas about property rights and human dominion over nature.³⁶ This anthropocentric paradigm, focused on unlimited material progress, has been identified as a critical reason for the "destruction of Nature" and the ineffectiveness of modern environmental law.³⁷

However, there is a growing recognition that more than this approach is needed to address current environmental crises. More recent developments in environmental legal philosophy emphasize the need for an ecocentric construction of nature to achieve its resurrection. This shift is reflected in the proliferation of environmental principles such as the polluter pays principle, precautionary principle, and principles of integration and sustainability.³⁸ These principles are shaping innovative bodies of environmental law and contributing to the evolution of its philosophical foundations. The emerging ecocentric legal philosophy calls for a new "law of nature" based on ecocentric ontology and ethics.

This approach recognizes nature's intrinsic value and balances human needs with environmental protection. It is complemented by incorporating international environmental legal principles into climate change instruments, such as inter- and intragenerational equity and common but differentiated responsibility.³⁹ These principles provide a foundation for

³³ Ton Viet Thao., Religious Movements in Some Southeast Asian Countries at The Beginning of the 20th Century, *International Journal of Religion*, Vol.5, No.11 (2024), page.422–30, <https://doi.org/10.61707/kf62ev69>.

³⁴ Alam, Shawkat, and Laely Nurhidayah., The International Law on Transboundary Haze Pollution: What Can We Learn from the Southeast Asia Region? *Review of European Comparative & International Environmental Law*, Vol.26, No.3 (2017), page. 243–54. <https://doi.org/10.1111/reel.12221>; Also see, Koh Kheng- Kheng-Lian, Koh, and Saiful Karim., *Southeast Asian Regional Environmental Legal Governance and Asean*. Queensland University of Technology : QUT ePrints (Queensland University of Technology)., 2020. <https://doi.org/10.4324/9781003137825-24>

³⁵ Fátima Alves et al., The Rights of Nature and the Human Right to Nature: An Overview of the European Legal System and Challenges for the Ecological Transition, *Frontiers in Environmental Science*, Vol.11 (July 2023), page.1175143, <https://doi.org/10.3389/fenvs.2023.1175143>.

³⁶ Joakim Zander., Book Review: EU Environmental Law. Challenges, Change and Decision-Making, the Philosophical Foundations of Environmental Law. Property, Rights and Nature, *Maastricht Journal of European and Comparative Law*, Vol.13, No.1 (2006), page.144–52, <https://doi.org/10.1177/1023263x0601300107>.

³⁷ Senko Pličanič., Foundations of Ecocentric Law, *Russian Law Journal*, Vol.9, No.4 (2021), page. 72–98, <https://doi.org/10.17589/2309-8678-2021-9-4-72-98>.

³⁸ Eloise Scotford., Environmental Principles and the Evolution of Environmental Law, *Environmental Principles and the Evolution of Environmental Law* (2017), <https://doi.org/10.5040/9781474201230>.

³⁹ R. Maguire., Incorporating International Environmental Legal Principles into Future Climate Change

developing more equitable and ethical environmental regulations. In conclusion, the philosophical foundations of environmental law are shifting from a purely anthropocentric, property-based approach to a more holistic, ecocentric point of view. This evolution reflects the growing understanding of human activities, environmental health interconnectedness, and the need for legal frameworks that effectively address complex global environmental challenges. Environmental law's philosophical foundations are rooted in complex historical and jurisprudential ideas about the relationship between humans and nature, extending beyond legislative responses to modern environmental problems.⁴⁰ These foundations are underpinned by property acquisition and use tenets, tracing back to seventeenth-century political philosophy and early nuisance law. The field of responsibility towards the natural world marks a shift in ethics.^{41 42}

However, there is a tension between anthropocentric and ecocentric values in environmental law. Despite attempts to incorporate ecocentric values in international regimes, environmental jurisprudence has primarily maintained an anthropocentric focus. Earth jurisprudence further explores this tension, promoting a "mutually enhancing human-Earth relationship" rather than exploitation.⁴³ Environmental law's legal philosophy is multifaceted, incorporating elements of property law, ethics, and evolving concepts of human-nature relationships. It reflects a complex interplay between anthropocentric and ecocentric values, with ongoing debates about the extent to which environmental law should prioritize human interests versus the intrinsic value of nature. This philosophical foundation continues to shape the development and interpretation of environmental law at both domestic and international levels.⁴⁴

Moreover, the philosophical foundations of environmental law also intersect with broader debates about justice, equality, and human rights. Environmental justice movements have emphasized the disproportionate impact of environmental harm on marginalized communities and the need for legal protections that promote equity and inclusivity. In light

Instruments, *Carbon & Climate Law Review*, Vol.6, No.2 (2017), <https://doi.org/10.21552/cclr/2012/2/210>.

⁴⁰ Joakim Zander., Book Review: EU Environmental Law. Challenges, Change and Decision-Making, the Philosophical Foundations of Environmental Law. Property, Rights and Nature, *Maastricht Journal of European and Comparative Law*, Vol.13, No.1 (2006), <https://doi.org/10.1177/1023263x0601300107>.

⁴¹ Shoko Yamada et al., Sustainability as a Moral Discourse: Its Shifting Meanings, Exclusions, and Anxieties, *Sustainability*, Vol.14, No.5 (2022), page.3095–3095, <https://doi.org/10.3390/su14053095>.

⁴² Shoko Yamada et al., Sustainability as a Moral Discourse: Its Shifting Meanings, Exclusions, and Anxieties, *Sustainability*, Vol.14, No.5 (2022), page. 3095–3095, <https://doi.org/10.3390/su14053095>; Viorica-Torii Caciuc., Reflections on the Ways to Build up Responsibility towards Nature in Primary School, *Procedia - Social and Behavioral Sciences*, Vol.149 (September 2014), page.136–41, <https://doi.org/10.1016/j.sbspro.2014.08.177>.

⁴³ Jérémie Gilbert et al., Understanding the Rights of Nature: Working Together Across and Beyond Disciplines, *Human Ecology*, Vol.51, No.3 (2023), page.363–77, <https://doi.org/10.1007/s10745-023-00420-1>.

⁴⁴ Lavanya Rajamani and Jacqueline Peel., Reflections on a Decade of Change in International Environmental Law, *Cambridge International Law Journal*, Vol.10, No.1 (2021), page.6–31, <https://doi.org/10.4337/cilj.2021.01.01>; Also see, Sandra Cassotta., The Development of Environmental Law within a Changing Environmental Governance Context: Towards a New Paradigm Shift in the Anthropocene Era, *Yearbook of International Environmental Law*, Vol.30, No.1 (2019), page.54–67, <https://doi.org/10.1093/yiel/yvaa071>.

of these concerns, legal scholars and practitioners have increasingly recognized the importance of incorporating principles of distributive justice, procedural fairness, and intergenerational equity into environmental law frameworks. By embracing a rights-based approach to environmental protection, legal systems can better address environmental challenges' social, economic, and political dimensions. Moreover, integrating human rights frameworks into environmental law can enhance accountability mechanisms, facilitate public participation, and promote transparency in decision-making processes.

Utilitarianism has been a dominant philosophical framework in various fields, including environmental law. This ethical theory, which emphasizes maximizing happiness or well-being for most people, has significantly influenced policy-making and legal decisions related to environmental issues.⁴⁵ In environmental law, utilitarianism provides a basis for evaluating the costs and benefits of environmental policies and regulations. It encourages decision-makers to consider the overall impact of their actions on society and the environment rather than focusing solely on individual rights or specific interests. This approach aligns with the need to balance economic development with environmental protection, a key challenge in environmental law.⁴⁶

However, utilitarianism's application in environmental law is not without criticism. It may not adequately account for nature's intrinsic value or future generations' rights. Additionally, the difficulty of quantifying certain environmental benefits and the potential for long-term consequences can complicate utilitarian calculations in environmental decision-making.⁴⁷ ⁴⁸ While utilitarianism has influenced environmental law and policy, its application faces challenges and limitations. As the field evolves, there is a growing recognition of the need to incorporate other ethical frameworks and considerations to address complex environmental issues comprehensively.⁴⁹ In examining the legal and philosophical foundations that underpin environmental law, it becomes evident that the principles guiding this area of law are deeply rooted in ethical considerations regarding the protection of the natural environment. Environmental law is not merely concerned with regulating human behavior for legal compliance; it embodies a broader commitment to safeguarding the planet for present and future generations. The jurisprudential basis for environmental law draws upon various ethical theories, such as consequentialism, deontology, and virtue ethics, to justify the imposition of legal obligations to preserve the environment. These philosophical underpinnings highlight the intrinsic value of nature and the interconnectedness between human activity and the planet's health.

⁴⁵ Prasanta K. Pattanaik., Limits of Utilitarianism As The Ethical Basis of Publicaction, *The Handbook of Rational and Social Choice* (2009), <https://doi.org/10.1093/acprof:oso/9780199290420.003.0014>.

⁴⁶ Robert P. Merges., *Philosophical Foundations of IP Law: The Law and Economics Paradigm*, Amerika: Edward Elgar Publishing, 2019, <https://doi.org/10.4337/9781789903997.00010>.

⁴⁷ Peter J. Smith and John J. Hardt., Ethics, *Developmental-Behavioral Pediatrics: Expert Consult*, April 2009, page. 985–88, <https://doi.org/10.1016/B978-1-4160-3370-7.00100-0>.

⁴⁸ Sepehr Khajeh Naeeni., *The Utilitarian Approach to Environmental Law: Balancing Costs and Benefits*, Vol.2, No.1 (2023), page. 4–15, <https://doi.org/10.61838/kman.isslp.2.1.2>.

⁴⁹ Christopher Woodard., *Taking Utilitarianism Seriously*, in *Repository@Nottingham (University of Nottingham)* (University of Nottingham, 2019), <https://doi.org/10.1093/oso/9780198732624.001.0001>.

By recognizing the moral imperative to protect the environment, legal frameworks can be developed to address pressing environmental concerns comprehensively and sustainably. Moreover, the philosophical foundations of environmental law also intersect with broader debates about justice, equality, and human rights. Environmental justice movements have emphasized the disproportionate impact of environmental harm on marginalized communities and the need for legal protections that promote equity and inclusivity. In light of these concerns, legal scholars and practitioners have increasingly recognized the importance of incorporating principles of distributive justice, procedural fairness, and intergenerational equity into environmental law frameworks.

By embracing a rights-based approach to environmental protection, legal systems can better address environmental challenges' social, economic, and political dimensions. Moreover, integrating human rights frameworks into environmental law can enhance accountability mechanisms, facilitate public participation, and promote transparency in decision-making processes. Ultimately, the convergence of legal philosophy with environmental law enriches the normative foundations of environmental governance and strengthens the legal frameworks designed to protect the natural world. Our experience living in Indonesia underscores the gritty realities of daily life intertwined with environmental law, illustrating the difficulties of balancing economic growth with environmental preservation. In contrast, we argue for a shift towards a biocentric natural law philosophy to address the limitations of utilitarian thinking in the International Court of Justice's environmental protection decisions. Beyond suggests that reevaluating philosophical underpinnings is crucial for advancing effective environmental protection strategies in Southeast Asia and beyond. By critically examining the implications of utilitarianism in environmental law alongside alternative philosophical frameworks, policymakers can develop more holistic and sustainable approaches to environmental governance.

Utilitarianism in environmental law aims to balance economic development with ecological preservation by maximizing overall welfare. However, this approach faces significant challenges, including the potential to overlook social inequities, difficulties in quantifying long-term ecological impacts, and a tendency to value nature solely for its utility to humans.⁵⁰ Alternative ethical frameworks provide valuable insights that address some of these limitations. For instance, ecocentric and biocentric approaches emphasize the intrinsic value of nature, while rights-based and deontological ethics focus on moral duties and fair distribution of environmental benefits and burdens.

Applying these frameworks in forest health management, for example, demands increased prior analysis and inspection efforts, potentially leading to different outcomes compared to the utilitarian approach.⁵¹ A pluralistic and integrative approach to environmental

⁵⁰ Naeeni., *The Utilitarian Approach to Environmental Law: Balancing Costs and Benefits*.

⁵¹ Norman Dandy et al., Environmental Ethics of Forest Health: Alternative Stories of Asian Longhorn Beetle Management in the UK, *The Human Dimensions of Forest and Tree Health: Global Perspectives* (2018), https://doi.org/10.1007/978-3-319-76956-1_16.

governance, drawing on the strengths of both utilitarian and alternative ethical frameworks, can lead to more nuanced, just, and sustainable environmental laws and policies. It is exemplified in international climate law, which borrows from utilitarian-inspired 'economic efficiency' and liberal-egalitarian-inspired 'climate justice' frameworks.⁵² Such an approach necessitates ongoing dialogue among diverse stakeholders to reconcile economic development with moral obligations to present and future generations and the non-human world.

Furthermore, ecological jurisprudence emphasizes the need for harmony with nature in legal frameworks. It recognizes the interconnectedness of human society and the natural environment, advocating for a more holistic understanding of law and its relationship to the Earth. By grounding legal principles in ecological values, such as sustainability, biodiversity, and interdependence, ecological jurisprudence seeks to promote a more balanced and respectful relationship between humans and the environment. This point of view challenges traditional legal paradigms that often prioritize human interests over the well-being of the planet as a whole. Through the lens of ecological jurisprudence, legal systems can evolve to address pressing environmental issues and foster a more harmonious coexistence between human societies and the natural world, ultimately leading to a more sustainable future for all. The philosophical foundations of environmental law in Southeast Asia are deeply rooted in a complex interplay of religious, cultural, and legal traditions. This unique blend has shaped the region's environmental protection and sustainable development approach.

3.1. Western Legal Philosophies into International Environmental Law

Religious and cultural traditions in Southeast Asia have long emphasized the interconnectedness of humans and the natural world. These beliefs have significantly impacted environmental protection efforts in the region. Buddhist teachings have shaped environmental point of views in countries with large Buddhist populations, such as Cambodia, Sri Lanka, and Thailand. The principle of 'non-harm' (ahimsa) and the belief in the sacredness of all life have influenced how these societies approach environmental issues. There is a strong connection between national identity and Buddhist values in Cambodia, Sri Lanka, and Thailand, where Buddhism is the predominant religion. A 2022 Pew Research Center survey revealed that over 90% of Buddhists in these countries consider their Buddhist identity essential to being truly part of their nation. This deep-rooted connection has led to incorporating Buddhist principles into environmental laws and policies.

International environmental law addresses transboundary environmental issues in Southeast Asia, mainly through the Association of Southeast Asian Nations (ASEAN). ASEAN has actively shaped regional environmental governance since 1978, implementing policies,

⁵² Fergus Green., *The Normative Foundations of Climate Legislation*, Amerika : Edward Elgar Publishing, 2017, <https://doi.org/10.4337/9781786435781.00014>.

plans, programs, and legal instruments to tackle various environmental challenges.⁵³ The organization has also facilitated the implementation of multilateral environmental agreements, such as the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change.

One of Southeast Asia's most pressing environmental issues is transboundary haze pollution from land and forest fires. While international law, particularly the State responsibility principle, plays a vital role in pushing States to exercise due diligence, the non-interference principle in the ASEAN Charter hinders the implementation of State responsibility and civil liability regimes in Southeast Asia.⁵⁴ As a result, improving cooperation has become the primary approach for addressing environmental problems in the region. Despite ASEAN's vision for a green and clean region, effective environmental governance has yet to be fully achieved.⁵⁵

The rapid economic growth in Southeast Asia has led to severe environmental degradation and depletion of natural resources. ASEAN countries need to take determined political steps to address these challenges, which are supported by international cooperation, to prevent further deterioration of the environment. The process of environmental regionalism in Southeast Asia is still developing, with a lack of mutual identity among ASEAN members preventing advancement to a more integrated phase of regionalism.⁵⁶ However, further progress is possible as ASEAN continues to evolve and address emerging environmental issues. Similarly, Islamic teachings have shaped environmental discourse and activism in Malaysia and Indonesia. The concept of *Khalifah* (stewardship of the Earth) and maintaining the balance and harmony of the natural world are fundamental to Islamic environmental ethics. In Malaysia and Indonesia, where Islam is the majority religion, these principles have influenced the development of environmental laws and policies.

Western legal traditions have significantly influenced the environmental law in Southeast Asia, primarily due to the region's colonial history and ongoing international cooperation. This influence is evident in several aspects of the ASEAN member states' legal systems and environmental governance. Many Southeast Asian countries have inherited legal systems from their former colonial rulers. For instance, Brunei, Malaysia, Myanmar, and Singapore adopted standard law systems from British rule, while Vietnam, Laos, and Cambodia followed civil law systems based on French colonial influence.⁵⁷

⁵³ Koh Kheng-Lian et al., *ASEAN Collaboration towards Environmental Sustainability*, Cambridge: Cambridge University Press, 2016, <https://doi.org/10.1017/cbo9781316575451.008>.

⁵⁴ Alam, Shawkat, and Laely Nurhidayah., The International Law on Transboundary Haze Pollution: What Can We Learn from the Southeast Asia Region? *Review of European Comparative & International Environmental Law*, Vol.26, No.3 (2017), page. 243–54. <https://doi.org/10.1111/reel.12221>.

⁵⁵ Kheng- Kheng-Lian, Koh, and Saiful Karim., *Southeast Asian Regional Environmental Legal Governance and Asean*. Queensland University of Technology : QUT ePrints (Queensland University of Technology)., 2020. <https://doi.org/10.4324/9781003137825-24>

⁵⁶ Gema Ramadhan Bastari., Regionalisme Isu Lingkungan Asia Tenggara (1997-2000), *Andalas Journal of International Studies (AJIS)*, Vol.5, No.1 (2016), <https://doi.org/10.25077/ajis.5.1.42-60.2016>.

⁵⁷ Andrew J. Harding., *Legal Traditions of Southeast Asia*, International Encyclopedia of the Social & Behavioral Sciences: Second Edition (2015), <https://doi.org/10.1016/B978-0-08-097086-8.86141-3>;

The Philippines uniquely blends civil and common law traditions from Spanish and American rule. These Western legal foundations have shaped the development of environmental laws in these countries. Interestingly, despite the shared colonial legacies, there are significant disparities in environmental legislation among ASEAN member states. This is due to varying historical and developmental factors and differing national priorities. For example, Indonesia's legal system incorporates elements of Roman-Dutch civil law alongside customary (*adat*) law, resulting in a distinct approach to environmental governance. Western legal traditions have undoubtedly influenced environmental law in Southeast Asia; the region's diverse cultural, historical, and developmental contexts have led to unique adaptations and implementations. Due to these differences, the ASEAN countries face challenges harmonizing their environmental laws. However, they also have opportunities to collaborate through international environmental agreements and regional frameworks to address shared ecological concerns.⁵⁸

Western legal traditions have significantly influenced environmental law in Southeast Asia, mainly through the legacy of colonialism and the adoption of international legal frameworks. The region's legal systems, shaped by indigenous customs, colonial influences, and modern developments, have incorporated Western environmental protection and governance concepts.⁵⁹ The ASEAN Agreement on Transboundary Haze Pollution exemplifies this influence, as it adopts principles reminiscent of Western environmental law, such as the right to exploit resources while maintaining responsibility for environmental protection.⁶⁰ This agreement reflects the region's attempt to address transboundary environmental issues using a cooperative approach, a common feature in Western international environmental law. However, the implementation of Western-inspired environmental laws faces challenges in Southeast Asia. The region's legal pluralism, rooted in diverse cultural and religious traditions, can sometimes conflict with Western legal concepts.⁶¹ Additionally, the ASEAN principle of non-interference has hindered the effective implementation of state responsibility and civil liability regimes for environmental harm, which are common in Western legal systems. Despite these challenges, ASEAN continues to work towards a "green and clean region," indicating an ongoing process of adapting Western environmental legal principles to Southeast Asia.⁶² Western legal philosophies and

Andrew Harding., Multi-Level, Recursive Law and Development: Singapore's Legal Role in ASEAN, *Asian Journal of Law and Society*, Vol.5, No.2 (2018), <https://doi.org/10.1017/als.2018.33>.

⁵⁸ Alam, Shawkat, and Laely Nurhidayah., The International Law on Transboundary Haze Pollution: What Can We Learn from the Southeast Asia Region? *Review of European Comparative & International Environmental Law*, Vol.26, No.3 (2017), page. 243–54. <https://doi.org/10.1111/reel.12221>

⁵⁹ Harding, Andrew J., Legal Traditions of Southeast Asia. In *International Encyclopedia of the Social & Behavioral Sciences: Second Edition.*, 2015. <https://doi.org/10.1016/B978-0-08-097086-8.86141-3>.

⁶⁰ Itasari, Endah Rantau, and Dewa Gede Sudika Mangku., Implementation of the ASEAN Agreement on Transboundary Haze Pollution in the Southeast Asia Region. *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan*, Vol.6, No.1 (2021), page.149–149. <https://doi.org/10.17977/um019v6i1p149-154>.

⁶¹ Harding, Andrew J., Legal Traditions of Southeast Asia. In *International Encyclopedia of the Social & Behavioral Sciences: Second Edition.*, 2015. <https://doi.org/10.1016/B978-0-08-097086-8.86141-3>. "Legal Traditions of Southeast Asia."

⁶² Koh Kheng- Lian, Koh, and Saiful Karim., *Southeast Asian Regional Environmental Legal Governance and Asean*. Queensland University of Technology : QUT ePrints (Queensland University of

ASEAN legal philosophies exhibit distinct characteristics and approaches to law and governance. Western legal systems, primarily influenced by civil and common law traditions, emphasize democracy, science, and individual rights.⁶³ In contrast, ASEAN legal philosophies are more diverse and complex, reflecting the region's unique historical and cultural contexts. ASEAN integration aims to unite political-security and economic communities under the rule of law, focusing on development and regional governance.⁶⁴

The legal systems in ASEAN countries occupy various points along a continuum, ranging from civil law to common law influences, with many hybrid systems incorporating indigenous or customary law.⁶⁵ Interestingly, the path to harmonizing or transferring laws within ASEAN faces significant challenges due to methodological nationalism, legal endemism, and diverging epistemological assumptions. This complexity is further highlighted by the three types of law identified in ASEAN: indigenous law, imported colonial law, and development law arising since independence.⁶⁶ These diverse legal traditions reflect regional values and experiences rather than simply adopting Western legal principles. In conclusion, while Western legal philosophies emphasize universal principles of democracy and individual rights, ASEAN legal philosophies are more diverse and context-specific. The ASEAN approach to law and governance seeks to balance regional integration with respect for national sovereignty and cultural diversity, presenting a unique model of legal development that differs significantly from Western paradigms.

Additionally, international environmental law principles, such as sustainable development and the precautionary principle, have been widely adopted in the region. These concepts have helped shape environmental policies and legal frameworks, encouraging a more holistic approach to balancing economic development with environmental protection. In recent years, there has been a growing recognition of the need for more ecocentric approaches to environmental protection in Southeast Asia. This shift in point of view acknowledges the inherent rights of nature, moving beyond a purely anthropocentric view of environmental law.

3.2. Human Rights and the Environment in Southeast Asia

The intersection of human rights and environmental protection has gained significant attention across Southeast Asia, where rapid economic development frequently pressures both ecological integrity and the rights of vulnerable populations, including indigenous

Technology)., 2020. <https://doi.org/10.4324/9781003137825-24>

⁶³ Zhangrun Xu., The Western Legal Spirit: An Observation from the Perspective of Confucianism, *The Confucian Misgivings--Liang Shu-Ming's Narrative About Law* (2017), https://doi.org/10.1007/978-981-10-4530-1_10.

⁶⁴ Diane A. Desierto., Development, Governance, and the Rule of Law in ASEAN, *Journal of Legislation*, Notre Dame Law School, (2020), <https://doi.org/10.4324/9781315267401-1>.

⁶⁵ Jonathan P. Sale., Harmonisation of Labour Laws: An Arduous Journey for ASEAN, *Labour & Industry a Journal of the Social and Economic Relations of Work*, Vol.30, No.1 (2020), page. 34–65, <https://doi.org/10.1080/10301763.2020.1723392>.

⁶⁶ Nobuyuki Yasuda., Law and Development in ASEAN Countries, *Southeast Asian Economies*, Vol.10, No.2 (1993): 144–54, <https://doi.org/10.1355/ae10-2b>.

peoples, ethnic minorities, and frontline environmental defenders.⁶⁷ Yet the region lacks a single dedicated regional instrument that fuses environmental and human-rights obligations in the way the African Charter or the Escazú Agreement does in Latin America. Instead, what exists is a fragmented architecture composed of an evolving (but institutionally weak) regional human-rights body, sectoral environmental agreements, and highly divergent national legal frameworks. The discussion below examines this architecture in turn, with particular emphasis upon a comparative reading of how selected ASEAN member states — Indonesia, Malaysia, the Philippines, Singapore, and Vietnam — recognise (or fail to recognise) the human-rights dimensions of environmental governance.

3.2.1 The Regional Institutional and Emerging Environmental Rights Work

The principal regional human-rights mechanism in Southeast Asia is the ASEAN Intergovernmental Commission on Human Rights, which was established by ASEAN Heads of Government on 23 October 2009 at the 15th ASEAN Summit in Cha-Am Hua Hin, Thailand, pursuant to Article 14 of the ASEAN Charter.⁶⁸ AICHR subsequently guided the adoption of the ASEAN Human Rights Declaration on 18 November 2012, an instrument that has been criticised for the breadth of its balancing clauses but that nevertheless constitutes the first formal regional human-rights framework for ASEAN citizens.⁶⁹ Article 1 of AICHR's Terms of Reference commits the body to "promote and protect the human rights and fundamental freedoms of the ASEAN people," yet nowhere in its mandate is AICHR given an explicit, exclusive competence over environmental rights, in contrast to the more specialised mandates of national human-rights commissions in Europe or the Inter-American system.⁷⁰

Gogoi and Sarmah observe that "climate change and environmental degradation are the two most pressing concerns faced by the world today for which regional cooperation is necessary," underscoring the urgency of integrating these concerns into ASEAN's regionalism.⁷¹ At the same time, Elliott demonstrates that for most of its history ASEAN's regional environmental structures have resembled "invited spaces" transplanted onto

⁶⁷ Lorraine Elliott., ASEAN and Environmental Governance: Strategies of Regionalism in Southeast Asia, *Global Environmental Politics*, Vol.12, No.3 (2012), page. 38–57, https://doi.org/10.1162/glep_a_00122.

⁶⁸ Rika Kurniaty et al., Revitalization of the ASEAN Inter-Governmental Commission of Human Rights (AICHR): A Pathway to Strengthen Human Rights in ASEAN, *Atlantis Highlights in Social Sciences, Education and Humanities/Atlantis Highlights in Social Sciences, Education and Humanities* (Atlantis Press, 2024), https://doi.org/10.2991/978-94-6463-352-8_8.

⁶⁹ Yung-Ming Yen., The Formation of the ASEAN Intergovernmental Commission on Human Rights: A Protracted Journey, *Journal of Human Rights*, Vol.10, No.3 (2011), page.393–413, <https://doi.org/10.1080/14754835.2011.596070>; Rika Kurniaty et al., Revitalization of the ASEAN Inter-Governmental Commission of Human Rights (AICHR): A Pathway to Strengthen Human Rights in ASEAN, *Atlantis Highlights in Social Sciences, Education and Humanities/Atlantis Highlights in Social Sciences, Education and Humanities* (Atlantis Press, 2024), https://doi.org/10.2991/978-94-6463-352-8_8.

⁷⁰ Khoo Ying Hooi., National Human Rights Institutions and ASEAN Intergovernmental Human Rights Commission (AICHR): Are They Complementary?, *Malaysian Journal of International Relations*, Vol.5, No.1 (2017), page. 66–75, <https://doi.org/10.22452/mjir.vol5no1.5>.

⁷¹ Bhaskar Gogoi and Jayanta Krishna Sarmah., Climate Change and Regional Cooperation in South-East Asian Countries, *India Quarterly A Journal of International Affairs*, Vol.80, No.2 (2024), page.252–68, <https://doi.org/10.1177/09749284241241597>.

existing institutional landscapes, and have generally failed to offer effective channels of communication for, or democratic representation of, a wider range of stakeholders, including civil society groups and local communities.⁷² This critique applies to AICHR itself: while Article 1.13 of the ASEAN Charter envisages "a people-oriented ASEAN in which all sectors of society are encouraged to participate," civil-society organisations report that participation in ASEAN-sanctioned spaces is strictly controlled, prompting them to develop "created spaces" — parallel conferences organised adjacent to official summits that, although independent, remain structured in relation to ASEAN practices and therefore have limited influence on formal decision-making.⁷³

More constructively, Collins and Soon show that AICHR's convening power has, in specific instances (such as the elaboration of the ASEAN Enabling Masterplan 2025 on the rights of persons with disabilities), created participatory space that incorporates outside expertise and internal ASEAN decision-makers.⁷⁴ Asplund and Chaney, however, dispute this characterisation, noting ongoing debate over whether civil society was in fact "a crucial component in the establishment of AICHR" or whether its creation was chiefly an intergovernmental exercise.⁷⁵ The unresolved contest suggests that for environmental rights to gain traction at the regional level, advocates must navigate a normative environment in which both "invited" and "created" spaces coexist uneasily.

3.2.2 The Comparative Recognition of Indigenous Peoples' Rights

The greatest human-rights stresses associated with environmental governance in Southeast Asia fall upon indigenous communities whose customary territories contain forests, mineral resources, and waters targeted for extraction. A comparative reading of five ASEAN member states illustrates the wide legal variance within the region. The Philippines operates the most codified framework. Republic Act No. 8371, the Indigenous Peoples Rights Act of 1997, recognises the cultural integrity of indigenous peoples, their rights to ancestral territories, and the right to self-development within those territories; implementation is administered by the National Commission on Indigenous Peoples, which has been commended internationally as one of the more advanced institutional arrangements in the region.⁷⁶

⁷² Lorraine Elliott., ASEAN and Environmental Governance: Strategies of Regionalism in Southeast Asia, *Global Environmental Politics*, Vol.12, No.3 (2012), page. 38–57, https://doi.org/10.1162/glep_a_00122.

⁷³ Laura Allison and Monique Taylor., ASEAN's 'People-Oriented' Aspirations: Civil Society Influences on Non-Traditional Security Governance, *Australian Journal Of International Affairs*, Vol.71, No.1 (2016), page.24–41, <https://doi.org/10.1080/10357718.2015.1135870>; David Camroux, *Conclusion* (2023), 361–79, <https://doi.org/10.4324/9780367422080-26>; Kelly Gerard., ASEAN and Civil Society Activities in 'Created Spaces': The Limits of Liberty, *The Pacific Review*, Vol.27, No.2 (2014), page.265–87, <https://doi.org/10.1080/09512748.2014.882395>.

⁷⁴ Alan Collins and Edmund Bon Tai Soon., The AICHR as a Participatory Space: Contesting the Secretive Face of Power, *Australian Journal Of International Affairs*, Vol.76, No.4 (2021), page.359–78, <https://doi.org/10.1080/10357718.2021.2016610>.

⁷⁵ Paul Chaney., Civil Society Perspectives on Rights and Freedoms in the Association of Southeast Asian Nations, *European Journal of East Asian Studies*, Vol.22, No.3 (2023), page.193–228, <https://doi.org/10.1163/15700615-02203005>.

⁷⁶ Dolly Cajés Torrejas et al., The Indigenous Peoples In ASEAN: Critical Analysis On Development Aggression,

Indonesia combines constitutional recognition of customary-law communities (masyarakat hukum adat) with statutes that, in practice, often fail to operationalise Free, Prior, and Informed Consent. Government Regulation No. 22 of 2021 on the Implementation of Environmental Protection and Management contains the spirit of FPIC: Article 28 requires businesses to involve affected communities through announcements and public consultations, and Article 33 requires that indigenous communities specifically be invited to such consultations.⁷⁷ Nonetheless, case analysis of the Awyu and Moi customary-forest cases has shown that developers and licensing agencies frequently advance environmental-impact assessments without inviting the affected adat communities, thereby excluding them from the very consultation mechanism that PP PPLH mandates.⁷⁸

Comparative scholarship concludes that Indonesia has "not explicitly adopted [FPIC] in its national legal system," creating a legal gap that allows mining and plantation permits to be issued in indigenous territories without genuine consent.⁷⁹ Indonesia's broader framework — the 1945 Constitution and the 2009 Law on Environmental Protection and Management — coexists with a low Environmental Performance Index rating and weak inter-agency coordination, contrasting sharply with Singapore, which ranks fourth globally for environmental quality and relies upon a common-law system and specialised legislation such as the Environmental Protection and Management Act enforced by dedicated regulatory agencies.⁸⁰

Singapore, frequently overlooked in indigenous-rights scholarship because of its urban profile, nonetheless constitutionally acknowledges the Malays as indigenous to the country, a group constituting approximately 15 per cent of the population. Article 152 of the Singapore Constitution obliges the Government to "constantly care for the interests of the racial and religious minorities" — a comparatively elaborate minority-protection clause

IKAT The Indonesian Journal of Southeast Asian Studies, Vol.6, No.2 (2023), page. 101–101, <https://doi.org/10.22146/ikat.v6i2.84609>; Yahya Ahmad Zein et al., Indigenous, Diversity, and the Future of Human Rights in Regional Legal Systems, *Journal of Human Rights Culture and Legal System*, Vol.5, No.2 (2025), page. 581–607, <https://doi.org/10.53955/jhcls.v5i2.573>.

⁷⁷ Saher Remal Agungta Ketaren and M. Rizki Yudha Prawira., Unheard Voices: Analyzing Non-Compliance with the FPIC Principle in Protecting Indigenous Peoples' Rights in Indonesia, *Law Development Journal*, Vol.6, No.4 (2024), page. 478–478, <https://doi.org/10.30659/ldj.6.4.478-502>.

⁷⁸ Wulandari Marcelyna Ayuningrum and Noprita Herari., Comparative Analysis of Government Communication Strategies in Environmental Law Enforcement: A Case Study of Indonesia (DKI Jakarta) and Singapore, *Journal of Communication & Public Relations*, Vol.3, No.2 (2024), page.83–101, <https://doi.org/10.37535/105003220245>; Ketaren and Prawira., Unheard Voices: Analyzing Non-Compliance with the FPIC Principle in Protecting Indigenous Peoples' Rights in Indonesia. *Law Development Journal*, Vol.6, No.4 (2024), page. 478–478, <https://doi.org/10.30659/ldj.6.4.478-502>.

⁷⁹ La Ode Dedihasriadi et al., Strengthening Indigenous Peoples' Rights: Integrating The Fpic Principle Into Indonesia's Mining Legal Framework, *Cepalo*, Vol.10, No.1 (2026), page.1–12, <https://doi.org/10.25041/cepalo.v10no1.4899>; Radhityas Kharisma Nuryasinta and Cholidah Cholidah, The Principle of Free, Prior, and Informed Consent in Preventing Deforestation in Indigenous Forests, *Hang Tuah Law Journal*, (October 2025): page.459–81, <https://doi.org/10.30649/htlj.v9i1.301>.

⁸⁰ Ayuningrum and Herari., Comparative Analysis of Government Communication Strategies in Environmental Law Enforcement: A Case Study of Indonesia (DKI Jakarta) and Singapore. *Journal of Communication & Public Relations*, Vol.3, No.2 (2024), page.83–101, <https://doi.org/10.37535/105003220245>

among ASEAN constitutions.⁸¹ Vietnam, by contrast, classifies indigenous groups as "ethnic minorities" who are full citizens of the state and constitutionally enjoy guaranteed rights; the legal architecture is in place but is mediated through state-defined development priorities rather than through autonomous indigenous institutions. Malaysia's approach, situated between these poles, delegates land management to the constituent states and federal territories, producing a patchwork of land-tenure regimes which — although not framed around a single IPRA-equivalent statute — intersects with indigenous customary claims through state-level Native Customary Rights jurisprudence.⁸²

Beyond formal recognition, Southeast Asia exhibits a persistent implementation gap between paper and practice. The Sarjana comparative thesis on Indonesia, Malaysia and the Philippines identifies "immature political systems, lack of political will, weak social and economic capacity, and overly rigid implementation of the concept of the 'ASEAN way'" as the principal triggers of weak protection for both the environment and human rights in ASEAN member states. Procedural rights — to information, to participation, and to justice in environmental matters — are the connective tissue linking human rights and environmental governance. Yet in ASEAN they have been only erratically adopted, even though the Aarhus-style triad exists in embryonic form in PP PPLH and in scattered sui generis arrangements elsewhere.

3.3. The Environmental Justice and Capacity Building

Ensuring access to environmental justice is critical to environmental dispute resolution in Southeast Asia. This concept encompasses the availability of legal mechanisms and the ability of affected communities to engage meaningfully in environmental decision-making processes. Despite progress in some areas, challenges remain in ensuring equitable access to environmental justice across Southeast Asia. These include geographical barriers, limited resources, and the need for capacity building among legal professionals and community advocates. Addressing these challenges will be crucial for developing effective regional environmental dispute resolution mechanisms.

Environmental justice and capacity building in Southeast Asia are complex issues that involve multiple stakeholders and governance structures. The ASEAN framework has been instrumental in shaping regional environmental policies, but challenges remain in achieving effective environmental governance and justice. ASEAN's approach to environmental governance has been characterized by "invited spaces" that often fail to provide adequate channels for communication or democratic representation of civil society groups and local communities.⁸³ This top-down approach has limited the participation of diverse

⁸¹ Dolly Cajés Torrejas et al., *The Indigenous Peoples In ASEAN: Critical Analysis On Development Aggression*, *IKAT The Indonesian Journal of Southeast Asian Studies*, Vol.6, No.2 (2023), page. 101–101, <https://doi.org/10.22146/ikat.v6i2.84609>

⁸² Ridho Aulia Husein and Zainal Arifin Hoesin., *Comparative Study of The National Agrarian Legal System With Countries in Asean (Study of Law Number 5 of 1960 and Government Regulation Number 18 of 2021)*, *Advances In Social Humanities Research*, Vol.3, No.1 (2025), page.60–73, <https://doi.org/10.46799/adv.v3i1.333>.

⁸³ Lorraine Elliott., *ASEAN and Environmental Governance: Strategies of Regionalism in Southeast Asia*, 854

stakeholders in environmental decision-making processes.

However, there is a growing recognition of the need for more inclusive and participatory forms of regionalism to address environmental concerns effectively. Capacity building for environmental justice in Southeast Asia requires a multifaceted approach. The polycentric environmental governance model, which involves multiple actors across scales, has shown potential in achieving Sustainable Development Goal 16 (peace, justice, and strong institutions).⁸⁴ This approach emphasizes four key elements: political will, legal framework, support from higher-level governance, and capacity building. By incorporating these elements, Southeast Asian countries can work towards more effective environmental governance and justice.

Therefore, capacity building for Southeast Asian environmental justice necessitates shifting from the current top-down approach to a more inclusive, participatory model. It involves strengthening legal frameworks, enhancing regional cooperation, and empowering local communities and civil society groups. By adopting a polycentric governance approach and addressing corruption issues.⁸⁵ Southeast Asian countries can work towards achieving their vision of a green and clean region while ensuring environmental justice for all stakeholders. Environmental justice and capacity building in Southeast Asia are complex issues that involve various philosophical and practical considerations.

Environmental justice in Southeast Asia is rooted in the broader concept of equity and fairness in environmental decision-making. Environmental justice encompasses procedural and distributive justice, with equity usually referring to the latter. The paper emphasizes the need for a unifying framework to map environmental justice's theoretical and conceptual aspects in environmental ethics, as the inconsistent use of these constructs can hinder effective policy formulation and scholarly discussions.⁸⁶ In Southeast Asia, capacity building is crucial for addressing environmental challenges and achieving the Association of Southeast Asian Nations (ASEAN) vision of a green and clean region. However, effective environmental governance has yet to be fully realized due to various political, policy, and other challenges.

This region's philosophy behind capacity building focuses on developing local expertise and first resources to tackle environmental issues and foster sustainable development. Interestingly, Southeast Asia's approach to environmental justice and capacity building is not uniform across the region. For instance, in addressing wildlife crimes, there are marked differences in how each country frames the problem, designs laws, and enforces them. This

Global Environmental Politics, Vol.12, No.3 (2012), page. 38–57, https://doi.org/10.1162/glep_a_00122.

⁸⁴ Sacha Amaruzaman et al., Polycentric Environmental Governance to Achieving SDG 16: Evidence from Southeast Asia and Eastern Africa, *Forests*, Vol.13, No.1 (2022), page.68–68, <https://doi.org/10.3390/f13010068>.

⁸⁵ Giovanni Broussard., Building an Effective Criminal Justice Response to Wildlife Trafficking: Experiences from the ASEAN Region, *Review of European Comparative & International Environmental Law*, Vol.26, No.2 (2017), page.118–27, <https://doi.org/10.1111/reel.12203>.

⁸⁶ Jekwu Ikeme., Equity, Environmental Justice and Sustainability: Incomplete Approaches in Climate Change Politics, *Global Environmental Change*, Vol.13, No.3 (2003), page.195–206, [https://doi.org/10.1016/s0959-3780\(03\)00047-5](https://doi.org/10.1016/s0959-3780(03)00047-5).

approach to diversity highlights the need for a more cohesive regional response to environmental challenges.

3.4. Novelty of the Contribution

The novelty of this research lies along four interrelated axes, each of which advances the conversation beyond what existing scholarship has typically offered. *First*, the study bridges environmental rule of law with environmental justice philosophy in a regional context that has rarely been examined through this combined lens. While global literature has long debated the relationship between legal enforcement fairness and distributional outcomes, regional scholarship on ASEAN has tended to treat rule-of-law promotion and justice claims as parallel rather than mutually constitutive agendas. By integrating them, the research demonstrates that the AICHR, the AHRD, and emerging environmental rights work cannot be evaluated solely on formal compliance metrics; their legitimacy depends on whether they distribute environmental goods and burdens fairly across populations, including groups historically excluded from decision-making.⁸⁷

Second, the thesis contributes a philosophical reframing of the well-documented "implementation gap" in Southeast Asian environmental law. The implementation gap is usually described in institutional terms — lack of capacity, weak political will, fragmented mandates. The novelty here is to read that gap philosophically: as evidence that procedural rights to information, participation, *Fourth* and remedies are not merely technical levers but constitutive elements of environmental citizenship. The research therefore argues that closing the gap requires not only stronger institutions but also the normative recognition of procedural environmental rights as expressions of human dignity.⁸⁸

Third, the study advances the comparative recognition of indigenous peoples' rights to natural resources by reading this recognition through a justice-oriented philosophy of law. Where much of the existing comparative literature catalogues the presence or absence of constitutional and statutory protections, this research interrogates the underlying moral premises — sovereignty over resources, intergenerational obligations, plural legal orders — that condition whether such rights are meaningful in practice. The philosophical lens exposes tensions between state-centric resource sovereignty doctrines and the relational ontologies through which indigenous communities understand their relationship with nature.⁸⁹

Fourth, the contribution is methodological. By drawing on environmental ethics education literature, the research demonstrates how the long-standing tension between academic

⁸⁷ Katrien Van Poeck et al., *Sustainable Development Teaching* (2019), <https://doi.org/10.4324/9781351124348>.

⁸⁸ C. Jung and Bernice S. Elger., *Teaching Sustainable Development and Environmental Ethics: The IBMB-Concept of Bringing Theory and Practical Cases Together*, Wageningen Academic Publishers eBooks, 2012, https://doi.org/10.3920/978-90-8686-753-0_76; Van Poeck et al., *Sustainable Development Teaching*. (2019), <https://doi.org/10.4324/9781351124348>.

⁸⁹ C. Jung and Bernice S. Elger., *Teaching Sustainable Development and Environmental Ethics: The IBMB-Concept of Bringing Theory and Practical Cases Together*, Wageningen Academic Publishers eBooks, 2012, https://doi.org/10.3920/978-90-8686-753-0_76.

standards and real-world application can be reframed as a philosophical problem about the relationship between theory and practice, rather than merely a pedagogical challenge. Teaching methods that integrate team teaching, external expertise, and case studies are shown to be vehicles for embedding philosophical reflection into professional formation — an argument with direct implications for the environmental rule of law in Southeast Asia, which depends on a new generation of practitioners able to reason across disciplines.⁹⁰

Taken together, the research contributes a normatively grounded, philosophically inflected reading of environmental law in Southeast Asia that links three traditionally siloed fields: the philosophy of environmental justice, the legal doctrine of rights and institutional design, and the ethics of capacity-building practice. Its novelty is not the discovery of new data on AICHR or AHRD outputs, but the demonstration that these outputs — and the gaps between them — become intelligible only when read through the philosophical questions the region has largely left unaddressed: what kind of just environmental order is ASEAN moving toward.⁹¹ This positioning carries implications for both scholarship and policy. For scholarship, it provides a transferable framework that can be applied to other regional intergovernmental bodies confronting similar legitimacy deficits. For policy, it suggests that progress toward ASEAN's green and clean region vision will be shallow unless accompanied by philosophical work that articulates the ends environmental law should serve and the rights that give those ends standing.

4. CONCLUSION

This study confirms that its three objectives have been addressed coherently: diagnosing the law-on-paper-versus-practice gap, mapping the dynamics of legal pluralism, and interrogating the philosophical foundation of regional environmental governance. The empirical investigation revealed a persistent gap in which regional instruments such as the ASEAN Agreement on Transboundary Haze Pollution articulate sound principles yet routinely fail because of weak enforcement mechanisms and the entrenched doctrine of non-interference, which shields state sovereignty at the expense of collective ecological security. The analysis of legal pluralism showed that governance in the region cannot be read through a single Western-derived lens but is instead shaped by colonial legacies, Islamic and Buddhist ethics, and customary norms, while the philosophical inquiry demonstrated that environmental law is undergoing a transition from a purely anthropocentric, utility-based paradigm toward a more holistic ecocentric jurisprudence grounded in moral resources such as Khalifah and Ahimsa. Building on these findings, the study offers three novel contributions aligned with its purposes: reframing the implementation gap as a structural symptom of methodological nationalism; articulating an ecological jurisprudence grounded in indigenous religious ethics rather than transplanted

⁹⁰ Sheezan Farooq et al., *Balancing Environmental Sustainability and Privacy Ethical Dilemmas in AI-Enabled Smart Cities*, Advances in Environmental Engineering and Green Technologies Book Series, IGI Global, 2023, <https://doi.org/10.4018/979-8-3693-0892-9.ch013>.

⁹¹ Farooq et al., *Balancing Environmental Sustainability and Privacy Ethical Dilemmas in AI-Enabled Smart Cities*, Northeast India and India's Act East Policy, 2019, <https://doi.org/10.4324/9780429285790>.

ecocentrism; and advancing a normative proposition for moving beyond invited spaces toward inclusive platforms that operationalize the ASEAN vision of a green and clean region. Overall, this study carries the analysis beyond.

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