

**“Diversity of Legal Culture in Southeast Asian Countries (ASEAN)”**

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**Summary:** Each ASEAN country has its own characteristics of history, tradition, geography, population composition, economic, political and religious development levels ... which are the foundation for creating diversity of social and legal system for this area. However, in that diversity there are certain similarities. The exchanges and acculturation between cultures, historical similarities, ethnic traditions of countries in the region have created favorable conditions for the legal systems in this region to have same points. Moreover, we not only find many similarities between these legal systems, but also many similarities between them and the legal systems outside of Southeast Asia. Based on the classification of comparative law scholars in the world, we will find it quite interesting to identify the lineages of the legal systems in ASEAN countries Accordingly, most of the legal system of the The country contains elements of two or more different legal cultures. In other words, the laws of ASEAN countries contain all the cultural elements of the legal systems in the world.

**Keywords:** Cultural diversity; legal culture; Southeast Asia; ASEAN law.

**1. Civil law culture in ASEAN countries**

Civil law adopted in many ASEAN countries is mainly associated with the process of colonization by continental European countries for these countries. Except for Thailand, the laws affected by Civil law are Vietnam, Laos, Cambodia, Indonesia and the Philippines, which were all colonies of European continental countries of France, the Netherlands, and Spain.

Vietnam, Laos and Cambodia were French colonies for a long time before gaining independence. The French colonial policy in Indochina made the legal systems of these three countries receive French law in a mandatory manner. For example, in Vietnam during the French colonial period, in addition to the legal system of the southern dynasties, the French courts still applied French law to *"the French and the aliens were treated with special treatment such as French, Vietnamese were born in colonial land no matter where they lived in Vietnam"*<sup>1</sup>. Even after gaining independence and even having built a legal system following the socialist law model like in Vietnam and Laos, elements of the French legal system of legal techniques, conceptual systems Basic concepts and structure of the law continue to be maintained. Indonesia is a country in the region under the Dutch rule for more than 300 years

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<sup>1</sup> Hanoi Law University, textbook of Vietnamese history and law, People's Police Publishing House, Hanoi, 2008, p. 398.

(from the end of the XVI century to the end of the eighteenth century). The Dutch first colonized the Indonesian archipelago in about 200 years. The land was later transferred to the French when Napoleon's Bonaparte army overthrew the Dutch government. After nearly 10 years under French rule and 4 years under British rule in the early 19th century, Indonesia was again under Dutch control for more than 100 years (1816-1942) until Japanese troops invaded this area during World War II. The colonization process of these countries has made Indonesia's laws strongly influenced by continental European law, especially Dutch law. Many Indonesian laws are based on Dutch laws, such as the Indonesian commercial law greatly influenced by the Dutch Commercial Code<sup>2</sup> in 1847.

For nearly four centuries (between 1521 and 1898 as a Spanish colony, the Philippine legal system was strongly influenced by the civil law of the continental European legal system. have been applied in the Philippines through Royal Spanish decrees or through the enactment of laws specific to the islands or laws that apply them to all Spanish colonial regions. Many Spanish laws take effect in the Philippines, such as the Criminal Code of 1870, Commercial Code of 1886, Law of Marriage of 1870 ... Thailand is the only country among ASEAN countries. Under the colonial rule, however, during the nineteenth century, to maintain its territorial sovereignty, Thailand signed the series of bilateral agreements with Western countries to develop trade relations. These bilateral agreements have helped Thailand open its market to Western countries. The change in trade has brought about social and legal changes. Therefore, the Thai legal system is strongly influenced by the laws of Western countries, especially the laws of continental Europe. In the early twentieth century, Thailand carried out a reform of the legal and judicial system. The Thais adopted the system of legal philosophy, judicial organization and procedure of European law and saw the laws of France, Germany, Switzerland, England, Italy and Japan as models for building his law. A series of Thai laws were enacted in accordance with the legal models of these countries, such as the Criminal Code of 1908, the Civil and Commercial Code of 1925; Civil Procedure Code, 1933, Criminal Procedure Code, 1935.

## **2. Common law culture in ASEAN countries**

ASEAN countries with the legal system influenced by the Common law family include: Malaysia, Singapore, Brunei, Myanmar, Philippines. Like many other countries and territories in the world, the influence of the Common law in Southeast Asian countries is mainly associated with British colonization or American influence.

The British colonization process for the territories of Malaysia has facilitated English law to be applied here. In 1786 the British established their first control in Penang - a fairly large territory of Malaysia. After that, the British gradually took control of the other lands. Treaties entered into between England and the Netherlands (1824 and 1891), along with treaties signed with other Muslim kingdoms in the land, helped the British gradually control the entire

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<sup>2</sup> <http://www.llrx.com/features/Indonesia.htm> ngày 1/1 1/2009.

region. territory of Malaysia. Associated with the process of controlling Malaysian territories, British laws are admitted into Malaysia in various forms, mainly through judges and legislators. Accordingly, judges apply British legal principles in the process of hearing cases, lawmakers when drafting and enacting laws have brought the legal principles applied by judges into the laws<sup>3</sup>. In addition, the fact that lawyers are trained in the tradition of English and English is considered a common language in the operation of the state apparatus are also factors that make Malaysia easy to accept English law. Singapore's legal system, bearing the characteristics of the Common law legal system, originates from the history of this country. From 1919, Singapore began to be influenced by English law. Before the British Colonial Office in London took complete control of Singapore territory in 1867, the island nation was under the control of the British colonial government in Bengal<sup>4</sup> and India (the British colony's territory). Therefore, the British legal system has been adopted both directly and indirectly into the Singapore legal system. Although, in the Second Declaration on the Judiciary of the British Royal on November 27, 1826 regarding the dissolution of the courts with jurisdiction in Penang and the establishment of a new court with jurisdiction For all of the Straits colonies including Singapore, there is no provision that will be applied by the Court of the Straits Colony but based on the rulings of this Court, from 1835 to year In 1890, the lawyers of Singapore determined that all British laws including common law, righteous law and written law in effect on England on 11/27/1826 would apply in Singapore. Even after becoming an independent nation in 1963, Singapore still accepted British law in its own way. In addition to common law, many British laws were still applicable in Singapore under certain conditions. Article 5 of the Civil Code of Singapore enacted in 1970 replacing the Ordinance in 1809 has determined that some areas of commerce such as companies, banks, maritime insurance, etc. of Singapore would apply British law; Singapore's Criminal Procedure Code also identified British laws under certain circumstances that continue to apply in Singapore. On 12/11/1993, Parliament of Singapore enacted the Law on the application of English law. This law specified British laws, common laws and British righteous principles that would apply in Singapore provided they were appropriate to Singapore's circumstances<sup>5</sup>.

Brunei began to be strongly influenced by the English legal system in 1888 when the then-King of Brunei, Hashim Jalilul Alam Aqamaddin, signed a treaty with the British government that placed Brunei under British auspices, though before that, Britain and Brunei has many different treaties. By 1908, a British document was issued to amend regulations relating to the organization and jurisdiction of civil and criminal courts as well as procedural laws to be applied in Brunei. This has made the British legal system an increasingly powerful influence on Brunei. Today, according to the Brunei Applicant Law enacted in 1951, amended in 1984 and 2009, it is still determined that Brunei continues to apply the common law, the righteous law and the generally applied English laws if they are not contrary. with conditions and

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<sup>3</sup> Abdul Aziz Bari, British Westminster System in Asia - The Malaysia Variation, *Us-chinese Law Review*, Vol 4. Nol. p. 4.

<sup>4</sup> British colonial government in India for the entire region of Bengal. Wendy Chang Mun Linh, *Law of Singapore*, [www.aseanlawassociation.org/papers/sing\\_chpl.pdf](http://www.aseanlawassociation.org/papers/sing_chpl.pdf).

<sup>5</sup> Section 2, Chapter 2, Application of laws Act of Brunei Darussalam.

circumstances of Brunei. Thus, both in history and present, the Brunei legal system is greatly influenced by the British legal system.

The Myanmar legal system began to be strongly influenced by the British common law in 1824 at the end of the first war between England and Myanmar (then the country was called Burma). After this war, the two territories of Myanmar, Rakhine and Taninthayi, were annexed by the British and under British control. After the second war with Myanmar in 1852, the British took control of two other territories, Bang and Moat. In order to govern the land that was occupied by the British, it established the British management system and the laws of England applied in the management of the city where the last royal palace of Myanmar<sup>6</sup>. By 1886, all parts of Myanmar were under British control and in order to govern this area, the British established Myanmar as an Indian province (then British colony) under the control of the Governor General of India. English law in India has been applied to Myanmar's "province". This situation lasted until 1935 when Myanmar was separated from India and the British colonial government established Myanmar as a territory under direct British rule through the Governor-General of Myanmar. Myanmar was a British colony until independence in 1948. During this period, like many other British colonies, the Privy Council was considered Myanmar's highest judicial body. . Therefore, the decisions of this agency strongly influence Myanmar's laws. The influence of the British legal system during the first half of the nineteenth century allowed elements of the common law to permeate Myanmar's legal system in its historical development to this day<sup>7</sup>.

US control over the Philippine archipelago under the Spanish and American agreements signed in Paris on December 10, 1898, gradually changed the legal system of the Philippines even though before that, the legal system Spain has quite a profound influence on the country's legal system. Filipinos' laws were gradually abolished, and Spanish laws regarding this territory and its practices were also replaced if its provisions were contrary to the US Constitution, the rules laws and American institutions. A series of state organizational laws have been enacted ... US control of the Philippines has made the country's legal system influenced by the US legal system. The basic elements of the Common law family have gradually been adopted into the Philippine legal system. The application of the case law, the role of the Philippines Constitution, is very similar to the American legal system in addition to the characteristics of the Spanish legal system that was adopted in the country during nearly 400 years earlier under the rule of the Spaniards.

### **3. Socialist legal culture (socialist) in ASEAN countries**

Socialist law and culture is also present in ASEAN countries right after World War II. In addition to Vietnam and Laos, two other legal systems, Myanmar and Indonesia, have also had certain elements of the socialist law family in their development history.

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<sup>6</sup> John Southalan, Burma and the Common Law? An unconlmon question, Legal Issues on Burma. Journal, December 2006 (No.25), p. 14 - 24

<sup>7</sup> Hanoi Law University, Vietnamese law in the process of integration and sustainable development, People's Police Publishing House, Hanoi, 2009, p. 53.

Vietnam is considered a typical representative of the socialist legal system that has existed in Southeast Asia. After gaining independence from 1945 and especially after the victory of Dien Bien Phu in 1954, Vietnam began to build a model of the socialist legal system in the North with the study of Soviet legal model. and socialist countries at this stage, *"along with the inheritance of wartime law of the previous period with a few factors influenced by France, socialist law ideology and socialist law model gradually applied in the construction of social awareness in the North"*<sup>8</sup>. The concept of building a socialist legal system continues to be implemented after the completion of the country's reunification in terms of territory.

Laos legal system has many similarities with the Vietnamese legal system. Especially since 1975, after the people's democracy was built to replace the previous monarchy, the Laos legal system was built according to the legal model of the Soviet Union and Vietnam. In the late 80s and early 90s of the last century, the Lao State implemented reform policies, including the reform of the legal system. However, the basic elements of the socialist legal system are still maintained in the legal system of the Laos People's Democratic Republic. Recent legal reforms of Laos have also been carried out on the basis of Vietnam's legal reform experience.

In the development history of Myanmar, after gaining independence since 1948, the period from 1962 to 1988, Myanmar leaders advocated building a socialist model for this country. Although not quite the same with other socialist legal systems, many government policies, led by General Ne Win, have been implemented following the socialist law model. Accordingly, General Ne Win created a political system called *"Burma's Road to Socialism"*<sup>9</sup>, a new rule of law state built under socialist ideology. Under the leadership of the Burma Socialist Party, Burma's industrial and commercial system was nationalized. This was shown in the development of the country's legal system. From 1962 - 1974, 182 laws were enacted. *"During this period, statutes incompatible with the socialist regime were abolished and laws that contributed to the orientation of the regime were enacted"*<sup>10</sup>. Notably, the Law on Prevention of Violation of the Establishment of a Socialist Economic System in 1964 and the Law on Empowerment of Establishment of the Socialist Economic System in 1965. In the Preamble and Article 1 of the 1974 Constitution of Myanmar clearly state Myanmar is a socialist state and is placed under the leadership of the Myanmar Socialist Program Party. Indonesia under the leadership of Sukarno (1957 - 1965) also received certain views of the socialist legal system. In particular, President Sukarno after his visit to China in October 1956 declared the concept of new government. Accordingly, his administration "is a combination of three factors: nationalism, religion and communism"<sup>11</sup>. The Indonesian Communist Party and the Indonesian Nationalist Party strongly support this concept. Although the Islamic political

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<sup>8</sup> Tun Myint, Evolution of law and Legal Concept in Burma: Challenges at the Transition. Legal Issues on Burma Journal, No. 20 - April 2005, p. 27.

<sup>9</sup> Burma Lawyers Council. Brief Survey of Development of Laws in Burma, Legal issues on Burma Journal, Vol. 20, April 2005, p. 1 1

<sup>10</sup> Burma Lawyers Council. Brief Survey of Development of Laws in Burma, Legal issues on Burma Journal, Vol. 20, April 2005, tr. 1 1

<sup>11</sup> [http://en.wikipedia.org/wiki/Guided\\_Democracy\\_\(1957-1965\)](http://en.wikipedia.org/wiki/Guided_Democracy_(1957-1965)) ngày 11/11/2009

party protested, with the support of the military forces, he gradually built up his government. Along with building the government in his opinion, President Sukarno with the support of the Communist Party implemented many socialist law policies in Indonesia during this period. Sukarno's administration and legal policies ended with President Suharto's rise to power in 1967.

#### **4. Islamic legal culture in ASEAN countries**

Most modern scholars believe that Islam appeared in Southeast Asia from the end of the 12th century to the beginning of the 14th century. Countries with a large Muslim population are Indonesia Malaysia, the Philippines, Brunei, Singapore and Thailand. The emergence of Islam has had a great influence on the legal development of the countries in this region. The legal systems of ASEAN countries affected by Islamic Law include: Malaysia, Indonesia, Brunei, Thailand, Philippines. In these countries, the Muslim community has its own legal system, *"most of the legal systems, even, Thailand, Philippines, Singapore - countries without the majority of Muslims, still consider Islamic legal education as a separate legal system"*<sup>12</sup>. Many countries have set up separate Islamic courts to hear the disputes of Muslims such as Malaysia, Indonesia, and Brunei on areas prescribed by Islamic law. In Thailand, meanwhile, cases involving Muslims are often heard by regular judges with a Muslim judge (Datoh Yutithum)<sup>13</sup>.

The above general points indicate the diversity of laws in Southeast Asian countries. Each country's legal system contains legal elements of at least two different legal and cultural lines. The above general points also indicate the presence of basic legal and cultural currents in the world in the laws of the 10 Southeast Asian countries that are members of ASEAN. This diversity of laws will also be quite a challenge for lawyers as these countries advance to a community of Southeast Asian nations./.

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<sup>12</sup> Wu Min Aun, *The Malaysian Legal System*, Pearson Longman, 2007, p. 177.

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