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LEGAL INSTRUMENTS ON MARINE PLASTIC LITTER IN THE EU AND ASEAN

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Abstract

Marine plastic litter represents a transboundary and oceanic health concern that has emerged as a collective responsibility of all countries. Consequently, all countries, including regional member states, must collaborate to assume an active role in developing solutions to this challenge. Regional agreements play a pivotal role in facilitating the implementation of policies and initiatives. However, there is currently no comprehensive global treaty in place to address the issue of marine litter and plastic pollution. With regard to the European Union, the European Commission has adopted a legislative framework with the objective of reducing the pollution of the marine environment caused by plastic. Furthermore, ASEAN Member States have expressed concern regarding marine plastic pollution and have continued to enhance their comprehension of the pertinent issues. Nevertheless, the current legal instruments employed to combat plastic waste in the Southeast Asia region are not legally binding. This paper therefore focuses on exploring the ASEAN approach to marine plastic debris based on ASEAN legislative and policy documents. Regional policies tend to adopt a holistic approach to the problem, focusing on the causal stages of the plastic waste emergency. However, binding regional policies in the EU are more targeted. This paper compares the strategies adopted by ASEAN and the policies adopted by the EU to address marine plastic debris. Therefore, every chairman of ASEAN must be a consistent advocate for the resolution of the marine plastic debris problem in Southeast Asia.

Keywords: Marine, Plastic, Litter, ASEAN, EU.

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I. INTRODUCTION

International efforts against plastic litter have been massive since the United Nations called for a “war on ocean plastic” and launched the #Cleanseas campaign in 2017.¹ Marine plastic litter is a transboundary environmental problem that has gained international attention. Thus, a number of efforts have been made to address marine plastic pollution. These efforts are carried out at every level of governance, from local, national to regional and global, involving various public and private sectors. In addition, the actions taken also vary (multiple sectors), ranging from prevention to mitigation, control

¹ Rachel Karasik, Tibor Vegh, Zoie Diana, et. al., “20 Years of Government Responses to the Global Plastic Pollution Problem: The Plastics Policy Inventory,” Duke University, 2020, 16.

and recovery.²

The United Nations Environmental Assembly (UNEA) as the world's highest-level decision-making body on the environment, has as its main priority to develop international law and environmental policy. The UNEA has established 4 resolutions on marine plastic and microplastic that aim to identify problems, to create solutions, to encourage action and cooperation, including finding challenges.³ In 2014, UNEA-1 resolution focused on waste-solutions approaches and encouraged regional, international agreements-making, promoted action plants at the national and regional levels to combat marine litter. In addition, the UNEA-2 resolution in 2016 contributed to the creation of standards on international governance strategies to address the crisis and marine plastic pollution. UNEA-3 Resolution mandates the creation of an Ad Hoc Open-ended Expert Group to explore the barriers to and identify potential options response for combating marine plastic pollution and microplastics from any kind of sources.⁴ Meanwhile, UNEA-4 resolution called Member States to address the problem of marine litter was also addressed to other actors at various levels, including in the private sector, civil society, and academia.⁵

Marine plastic litter is a transboundary problem and ocean health, is a shared responsibility for all countries. Therefore, it will need all countries working together to play an active role in finding solutions to this ordeal, including regional member states.⁶ Regional arrangements play a vital role in accelerating the uptake of policies and initiatives, while there is no single global treaty to reduce marine litter and plastic pollution.⁷ At the European Union level, the European Commission adopted a legal framework focusing on reducing plastic pollution in the ocean environment on 5 June 2019, namely the EU on the reduction of the impact of certain plastic products on the environment (Single-Use Plastics Directive). However, the Single-

² Torbjørn Graff Hugo, "The Case for a Treaty on Marine Plastic Pollution," *Norwegian Academy of International Law*, 2018, 7, available at <http://intl.law.no/wp-content/uploads/2018/11/The-case-for-a-TMPP-Nov-2018-WEB.pdf>.

³ Heidi Stockhaus, Anurodh Sachdeva, Stephan Sina, et. al., "A New Treaty on Plastic Pollution – Perspectives from Asia," WWF Singapore, 2021, 13.

⁴ Giulia Carlini and Konstantin Kleine, "Advancing the international regulation of plastic pollution beyond the United Nations Environment Assembly resolution on marine litter and microplastics" *Review of European, Comparative & International Environmental Law* 27 (2018): 235, <https://doi.org/10.1111/reel.12258>.

⁵ Stockhaus, et. al., "A New Treaty on Plastic Pollution."

⁶ Abigail Smith, "Managing Plastic Marine Litter in Asia and The Pacific," Policy Brief, Economic and Social Commission for Asia and The Pacific (ESCAP), United Nations, 2021, 14.

⁷ "From Pollution to Solution: A global assessment of marine litter and plastic pollution," United Nations Environment Programme, accessed 23 May 2023, https://www.unep.org/interactives/beat-plastic-pollution/?gad_source=1&gclid=Cj0KCQjw4MSzBhC8ARIsAPFOuyWoIMFGhG_9c2g1CWfPn3T-mu497MSieaoPbjtjbpccscY_UqV9txsaAgDCEALw_wcB.

Use Plastics Directive is not aiming to tackle all marine litter, nor all plastic pollution. It should only be limited to single-use products, fishing gear made from plastic, as well as oxo-degradable plastic products.⁸

ASEAN governments are also concerned with marine plastics pollution and are carrying on for better knowing of the problems. In this region, there have been a number of policy and legislative responses for the reduction of plastic litter. In addressing marine plastic debris problems, the ASEAN has the ASEAN Framework of Action on Marine Debris and the Bangkok Declaration on Combating Marine Debris.⁹ These two legal documents are the foundation for combating plastic debris in the Southeast Asian Region, however, by their nature, they are not legally binding. Thus, the main legal instruments are the absence of legal obligations for the ASEAN member states.¹⁰ Besides the EU and ASEAN, other regions have also established policies and strategies to reduce marine plastic debris pollution, for example, the Pacific Region.¹¹

This paper focuses on investigating the approach taken by ASEAN in combating marine plastic debris based on ASEAN's legislative and policy documents. Regional policies usually take a holistic approach towards the issue and focus on the causal stages of the plastic waste emergency, although in some cases the binding regional policies of the EU and East African Community are more targeted. Those were only a few agreements targeting exclusively to microplastics and focusing specifically on plastic bags.¹² This paper is written by comparing the strategies undertaken by ASEAN and the policies taken by other regional organizations in combating marine plastic debris, especially the EU. The investigation is carried out by literature and statute studies.

Most countries chose to adopt more lenient measures to support plastic waste prevention. Most of the identified preventive measures refer to voluntary

⁸ Torbjørn Graff Hugo and Steinar Andresen, "Towards a new treaty on plastic pollution: Assessing the relevance of the EU Directive on single-use plastics," WWF Norway - Fridtjof Nansen Institute, 2021, 31.

⁹ Nguyen Thi Xuan Son, "Policy on Marine Plastic Waste in ASEAN and Viet Nam," *Environmental Claims Journal* 33, no. 1 (2021): 44, DOI: 10.1080/10406026.2020.1775347.

¹⁰ Hanim Kamaruddin, Maskun, Farida Patittingi, et.al., "Legal Aspect of Plastic Waste Management in Indonesia and Malaysia: Addressing Marine Plastic Debris," *Sustainability* 14, no. 12 (2022): 6985. <https://doi.org/10.3390/su14126985>

¹¹ Jacqueline Peel, Lee Godden, Alice Palmer and Rebekkah Markey-Towler, "Regional Solutions: Export Measures for Plastic Recyclables to Reduce Marine Plastic Pollution in the Pacific," in *Marine Plastic Pollution and the Rule of Law*, Linda Yanti Sulistiawati, and Rose-Liza Eisma-Osorio, eds. (Konrad-Adenauer-Stiftung, Ltd., Korea Legislation Research Institute, Asia-Pacific Centre for Environmental Law-National University of Singapore, and University of Cebu School of Law).

¹² Karasik et al., "20 Years of Government Responses to the Global Plastic Pollution."

laws and informative instruments. These mainly aim to enhance cooperation among stakeholders across the plastics value chain and exchange information. Some agreements even set targets and monitoring schemes. There are some stricter measures that focus on banning certain types of plastics such as micro beads and there are some other measures that have been adopted by countries to prepare new laws on single-use plastic products.¹³

This article focuses on the regional regulations used to address plastic pollution. Although, the regional legal instruments adopted can only be applied within a specific geographical scope. However, it can still serve as a crucial platform for standards, guidelines or good practices to prevent marine plastic litter.¹⁴ At the regional level, the European Union (EU) has taken the initiative to establish a legal instrument on plastic bag bans since 2015. So, on this occasion, the author needs to compare the legal systems of the European Union and ASEAN in dealing with plastic waste pollution. Meanwhile, 11 ASEAN member countries are among the top 20 contributors to plastic waste with a total of 1.4-3.54 million metric tonnes (MT) per year.¹⁵ As a region that contributes more than a quarter of the world's plastic pollution, ASEAN is considered late to respond to this issue.¹⁶ There is a stark contrast between the European Union and ASEAN in addressing plastic waste in their respective regions.

Therefore, it is necessary to further examine the legal systems of the European Union and ASEAN, especially regarding the handling of the chronic problem of plastic waste in the sea. Lawrence M. Friedman, explains that the legal system consists of legal structure, legal substance, and legal culture.¹⁷ A strong legal system is required to achieve legal objectives, such as justice, order and benefit for human civilization.

¹³ Henning Wilts and Ioannis Bakas, "Preventing plastic waste in Europe," European Environment Agency, 2019, 17.

¹⁴ Dawoon Jung, "An International Legal Framework for Marine Plastics Pollution: Time for a Change to Regulate the Lifecycle of Plastics," in *The Environmental Rule of Law for Oceans: Designing Legal Solutions*, Froukje Maria Platjouw and Alla Pozdnakova, eds. (Cambridge: Cambridge University Press, 2023), 50.

¹⁵ Febryani Sabatira, "Southeast Asia Regional Cooperation on Tackling Marine Plastic Litter," *Lampung Journal of International Law* 2, (2020): 70.

¹⁶ Rizky Anggia Putri and Maula Hudaya, "The Establishment of ASEAN Framework of Action on Marine Debris: The Role of Shared Knowledge," *Global: Jurnal Politik Internasional* 24, no. 1 (2022): 63.

¹⁷ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russel Sage Foundation, 1975), 6.

II. EU LEGAL SYSTEM TO HANDLE MARINE PLASTIC LITTER

A. LEGAL SUBSTANCE ON MARINE PLASTIC LITTER IN EU

The substance of the law is the entire rule of law, both written and unwritten. Including legal principles and norms as well as court decisions that are used as a guide by the community and government resulting from the legal system. There is a transformation of the EU's efforts in dealing with this issue, from political initiatives to legislation initiatives. European Union's well-developed common environmental policy could be an example for other regional environmental cooperation initiatives. The 7th Environmental Action Program of the European Union includes the issues of proper waste management and prevention of marine pollution. The 7th Environmental Action Program was adopted in 2013 and defines the EU's environmental policy until 2020. The main objective of the program is to protect, preserve and enhance the natural capital of the European Union. This political initiative has been followed by legislation.¹⁸

1. The Directive (EU) 2015/720 (the Plastic Bags Directive)

The Directive on Packaging and Packaging Waste of 20 December 1994 (Directive, 1994) has been amended by Directive (EU) 2015/720 (Plastic Bags Directive). An obligation to reduce the number of lightweight plastic carrier bags was introduced, with a limit of 90 bags per person per year by 2019, and a further reduction to 40 bags per year by 2021 (article 4). This shows that the EU has taken the most effective path to eliminate marine plastic pollution - reducing the production and use of plastic products to limit marine plastic pollution.¹⁹

The Packaging and Packaging Waste Directive was amended in 2018 by Directive (EC) 2018/852 to include the following targets:²⁰

- a. recycling targets for municipal waste of 50% by 2020, 55% by 2025, 60% by 2030 and 65% by 2035;
- b. recycling targets for all packaging of 65% by 2025 and 70% by 2030;

¹⁸ Maciej Nyka, "Legal approaches to the problem of pollution of marine environment with plastic," *Scientific Journals of the Maritime University of Szczecin* 59, no. 131 (2019): 162.

¹⁹ *Ibid.*

²⁰ Olivia Jamison, Agnieszka Skorupinska, Celine Cloche-Dubois, Laura Gunn and Siobhan Kahmann, "Plastics and Packaging Laws in the European Union," CMS, accessed 21 May 2023, <https://cms.law/en/int/expert-guides/plastics-and-packaging-laws/european-union>.

- c. recycling targets for plastics of 50% by 2025 and 55% by 2030;
- d. recycling targets for specific packaging materials: Paper and cardboard: 85%; Ferrous metals: 80%; Aluminium: 60%; Glass: 75%; Plastic: 55%; and Wood: 30%;
- e. a binding landfill target to reduce landfill to maximum of 10% of municipal waste by 2035; and
- f. separate collection obligations are strengthened and extended to hazardous household waste (by the end of 2022), bio-waste (by the end of 2023), textiles (by the end of 2025).

2. Directive (EU) 2019/904 (the Single-Use Plastics Directive)

Directive (EU) 2019/904 (Single-Use Plastics Directive) was adopted on 5 June 2019, targeting 10 single-use plastic products reportedly most prevalent on European beaches and oceans. The Directive sets separate collection targets for plastics for recycling (90% separate collection target for plastic bottles by 2029 (and 77% by 2025)), achievable through deposit return systems or separate collection targets for extended producer responsibility systems.²¹ Article 8 of the Directive extends the responsibility of producers to clean up waste. For example, the cost of collecting fishing nets lost at sea will be borne by producers of fishing gear rather than fishermen. The law requires industries to label their products to indicate that disposal of the products can be harmful to the environment.

Other measures under the Single-Use Plastics Directive include:²²

- a. plastic cotton buds, cutlery, plates, straws, beverage stirrers, balloon sticks and all products made from oxo-degradable plastics will be banned in the EU from 3 July 2021;
- b. tethered bottle caps for plastic bottles will become mandatory on 3 July 2024; and
- c. PET drinks bottles will be required to contain at least 25% recycled plastic from 2025 and 30% recycled plastic from 2030;

²¹ *Ibid.*

²² *Ibid.*

The SUP Directive uses market-based instruments to achieve its goals, which are relatively modern and popular in recent international environmental agreements.²³ These measures include a trade ban (effective mid-2021) on popular single-use plastic products with non-plastic alternatives.

Directives are one of the types of acts that the EU can adopt, alongside regulations, decisions, recommendations and opinions. The legal acts of the Union are listed in Article 288 of the Treaty on the Functioning of the European Union (TFEU). The Article states “A Directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods”. Nonetheless, in principle, directives are not directly applicable. Nevertheless, the European Court of Justice (ECJ) has ruled that certain provisions of a directive may, exceptionally, have direct effect in a Member State even though that Member State has not adopted a transposition measure in cases where (a) the directive has not been transposed into national law or has been transposed incorrectly; (b) the provisions of the directive are essential and sufficiently clear and precise; and (c) the provisions of the directive confer rights on individuals.²⁴

In contrast to regulations, Directives require a legislative procedure in two stages.²⁵ First, the power of the European Commission and the Council with the European Parliament to issue Directives. Second, the member States obligate to dissolve Directives into Domestic Law.²⁶ Unlike in the case of regulations or decisions, the member state must first transform the directive into its national law and only then can it enforce it against individuals.²⁷

B. EU’S LEGAL STRUCTURES IN IN CONTROLLING PLASTIC LITTER

The EU institutions can only adopt such acts if they are authorized to do so by the Treaties.²⁸ The Treaties authorize the Council and the Commission to

²³ Nyka, “Legal approaches to the problem of pollution.”

²⁴ European Union, “Sources and Scope of European Union Law,” Accessed 23 May 2023, https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.2.1.pdf.

²⁵ Bartłomiej Nowak, “Implementation of Directives into Domestic Legal System. The Case of Poland,” *Journal of Interdisciplinary Economics* 17, no. 3 (2006): 294.

²⁶ *Ibid.*

²⁷ Michal Bobek, “The Effects of EU Law in the National Legal Systems,” in *European Union Law*, Catherine Barnard and Steve Peers, eds., (New York: Oxford University Press, 2014), 167.

²⁸ European Union, “Sources and Scope of European Union Law”.

issue directives.²⁹ A directive is secondary legislation of the European Union. Articles 289, 290 and 291 The Treaty on the Functioning of the European Union (TFEU) establish a hierarchy of secondary legislation between legislative, delegated and implementing acts. Legislative acts are legal acts adopted by ordinary or special legislative procedure.

Article 289 paragraph 1 states that “The ordinary legislative procedure consists of the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission. This procedure is defined in Article 294.” The EU legislative process involves key institutions, such as:

1. the European Commission: the central administrative and policy-making body of the EU. It is made up of 27 Commissioners (nominated by the Member States and approved by the European Parliament), one of whom acts as President. The Commission formulates legislative proposals, implements Council decisions, negotiates international agreements on behalf of the EU and supervises compliance with, and implementation of, EU law by the Member States.
2. the European Parliament: a democratically elected body with members (MEPs) elected directly from each of the Member States and grouped according to political, rather than national, affiliation. It shares with the Council the power to legislate and it exercises democratic supervision over the Commission.
3. the Council of the European Union: the EU’s principal decision-making body. At the top level it comprises government ministers or state secretaries of all the Member States. The European Council, a twice-yearly meeting of the Heads of State or Government of the Member States, reviews and decides on the overall policy of the EU.
4. the European Court of Justice: The European Court of Justice is a supranational court, which is responsible for interpreting and enforcing EU law.

The institutions mentioned above are already playing an active role in dealing with potential threats to the health of the environment. The European Union began regulating packaging and packaging waste management in the 1980s. The first legislation, contained in Council Directive 85/339/EEC,

²⁹ Bobek, “The Effects of EU Law.”

concerned liquid containers for human consumption. This directive aimed to harmonize existing national policies, but the Commission indicated that the rules had not been effective. Therefore, in 1994, the European Parliament and Council adopted new EU legislation, Directive 94/62/EC on packaging and packaging waste (PPWD). This legislation has been the subject of a number of amendments over the years. The most important amendment was in 2015. Among other things, it introduced a requirement to reduce the use of lightweight plastic carrier bags.

The main institutions of the EU are involved in the monitoring of the implementation of the PPWD. Since the adoption of the Directive, the Commission has published a number of studies on different aspects of the design and implementation of the Directive. In 2020, the Commission published an externally drafted scoping study, which was prepared specifically in support of the legal obligation for a revision of the PPWD set by its Article 9(5) (i.e. reinforcement of the ‘essential requirements’ (ERs)).

In addition, the European Parliament also passed several resolutions as a means of evaluating the implementation of the PPWD. In its resolution of September 13, 2018 on the European strategy for plastics in a circular economy, the European Parliament urged the Commission to fulfil its obligation to revise and strengthen the ERs PPWD (in accordance with Article 9(5)) by the end of 2020. It called on the Commission to present clear, workable and effective ERs, including on “cost-effective reusable and recyclable plastic packaging” and on over-packaging. In its resolution of 15 January 2020 on the European Green Deal, the Parliament supported the development of legislation to tackle excessive packaging and to ensure that all packaging that cannot be reused or recycled in an economically viable way is not allowed on the EU market by 2030 at the latest, while ensuring food safety.³⁰ Packaging and packaging waste are specifically addressed in the European Parliament Resolution of 10 February 2021 on CEAP 2.0. The resolution supports the objective proposed by the plan, namely that all packaging should be economically reusable or recyclable by 2030. Parliament called on the Commission to present a legislative proposal immediately.³¹

The Council addressed packaging and packaging waste in its conclusions on CEAP 2.0 of 17 December 2020.³² The Council welcomed the Commission’s

³⁰ “European Parliament resolution of 15 January 2020 on the European Green Deal,” European Parliament, accessed 30 May 2023, https://www.europarl.europa.eu/doceo/document/TA-9-2020-0005_EN.html.

³¹ *Ibid.*

³² “Council approves conclusions on making the recovery circular and green,” European Council, accessed 30 May 2023, <https://www.consilium.europa.eu/en/press/press-releas->

intention to propose a revision of the PPWD to ensure that all packaging is economically reusable or recyclable by 2030 and to reduce packaging, over-packaging and thus packaging waste. Ministers noted that hygiene and food safety standards must be maintained. The evaluation documents of the abovementioned bodies will be used by the Commission for the preparation of a report on the outcome of the review of the implementation of the Directive (Article 7 of the Directive).

The Commission also has a central role to play in the implementation of Directive (EU) 2019/904. Article 15 paragraph 1 confirms that the Commission shall carry out an evaluation of this Directive by 3 July 2027. Member States shall provide the Commission with the necessary additional information for the purposes of the evaluation and the preparation of the report referred to in paragraph 2 of this Article. Article 15 paragraph 2 provides that the Commission shall submit a report on the main findings of the evaluation carried out in accordance with paragraph 1 to the European Parliament, the Council and the European Economic and Social Committee. The report shall be accompanied by legislative proposals, where appropriate. Such proposals shall, where appropriate, set binding quantitative consumption reduction targets and establish binding collection rates for waste fishing gear.

The Commission's critical role in the implementation of the Directive was highlighted when the European Commission announced on 29 September 2022 that it was taking legal action against 11 EU Member States - Belgium, Denmark, Estonia, Ireland, France, Croatia, Latvia, Poland, Portugal, Slovenia and Finland - for non-compliance with the provisions of the Single-Use Plastic Directive (SUPD).³³ The 11 member states can be fined for not changing their laws on single-use plastics. SUPD was introduced to address the environmental impact of plastic waste by introducing restrictions on the 10 most commonly found single-use plastics. SUPD came into force on 3 July 2019, and Member States have two years to convert the legislation into national law. These key institutions not only played an active role in creating the Packaging and Packaging Waste Directive and the Single-Use Plastics Directive, but also in ensuring their enforcement.

Initially, 16 EU Member States were sent letters of formal notice in January 2022, but five of these cases were closed because the necessary steps had been taken. However, the Commission found that nine Member States - Belgium, Estonia, Ireland, Croatia, Latvia, Poland, Portugal, Slovenia and

es/2020/12/17/council-approves-conclusions-on-making-the-recovery-circular-and-green/.

³³ "EU takes legal action over failure to implement the Single-Use Plastics Directive," Osborne Clarke, 26 October 2022, accessed 1 June 2023, <https://www.osborneclarke.com/insights/eu-takes-legal-action-over-failure-implement-single-use-plastics-directive>.

Finland - had still not completed the transposition of the SUPD and therefore took the next step in the infringement procedure by issuing reasoned opinions. These Member States have until 29 November 2022 to respond and take the necessary steps to comply, or risk having their case referred to the Court of Justice of the European Union and face financial sanctions.³⁴

Legal substance and structure are the real components of the legal system, but they only act as a blueprint or design. Legal culture is the ideas, values, thoughts, opinions, and behaviour of community members in the application of law. This is related to public awareness, understanding, and acceptance of the law. The level of awareness of European society has been formed due to the existence of a solid legal system, both from the legal substance and institutions that guarantee the implementation of legislative documents regarding the alleviation of the impact of plastic waste. Further evidence of Europe's strong awareness can be seen in Eurobarometer survey data, which shows that 72% of Europeans have reduced their use of single-use plastic bags.³⁵

III. ASEAN REGIONAL POLICY ON PLASTIC LITTER

On 8 August 1967, the Association of Southeast Asian Nations (ASEAN) was established as a regional international organization. Over the past decade, it has focused on cooperation through three pillars: the political-security, economic, and socio-cultural communities. Since its inception, ASEAN has had a significant impact on the progress and prosperity of Southeast Asia and has played a key role in building cooperation with other partners in the region and the world.³⁶ ASEAN can be a great venue for negotiation and order. However, there are still challenges and threats to ASEAN's stability, one of which is environmental issues, particularly plastic waste.

The issue of marine debris has received widespread attention from ASEAN member states. According to calculations conducted in 2010, five ASEAN member countries are among the top 20 countries with poor waste management, resulting in plastic waste leaking into the oceans.³⁷ The study found that Indonesia (10%), the Philippines (6%), Vietnam (6%), and Thailand (3%), together with China (28%), accounted for more than half

³⁴ *Ibid.*

³⁵ "Single-use plastics: New EU rules to reduce marine litter," European Commission, 28 May 2018, accessed 1 June 2023, https://ec.europa.eu/commission/presscorner/detail/en/IP_18_3927.

³⁶ Son, "Policy on Marine Plastic Waste in ASEAN and Viet Nam."

³⁷ Jenna R. Jambeck, Roland Geyer, Chris Wilcox, et. al., "Plastic waste inputs from land into the ocean," *Science* 347, (2015): 768.

of the world's total plastic pollution.³⁸ Meanwhile, recent data shows that Malaysia and Singapore are also considered to be the biggest plastic polluters. Malaysia is ranked tenth and Singapore is still among the top twenty marine debris polluters in the world.³⁹ Therefore, there is a need for ASEAN to raise awareness among its member countries to take national action to clean up marine debris, especially in the country's territorial, contiguous and exclusive economic zones.⁴⁰

A. THE 2019 BANGKOK DECLARATION

On 22 June 2019, ASEAN enacted the Bangkok Declaration on Combating Marine Debris, held at the 34th ASEAN Summit in Bangkok. The Bangkok Declaration reaffirms and strengthens the previous commitments made by the AMS. It emphasizes the ASEAN Community Vision 2025, particularly the ASEAN Socio-Cultural Community (ASCC) Blueprint 2025 on Conservation and Sustainable Management of Biodiversity and Natural Resources.⁴¹ This Blueprint promotes the protection, restoration and sustainable use of coastal and marine environments and responds to and addresses pollution risks and threats to these ecosystems. The blueprint's objectives are also in line with Sustainable Development Goal 14 of the United Nations (UN) 2030 Agenda for Sustainable Development, which is to conserve and sustainably use the oceans, seas and marine resources for sustainable development. Meanwhile, the protection of the marine environment is specifically emphasized in Target 14.1, as follows "prevent and significantly reduce all forms of marine pollution, especially those from land-based activities, including marine litter and nutrient pollution".⁴² The Bangkok Declaration is also one of ASEAN's goals as stipulated in Article 1 paragraph 9 of the ASEAN Charter, which is to promote sustainable development that protects ecological and natural resources, preserves cultural heritage, and enhances human well-being.

ASEAN regional effort to deal with the marine plastic litter stipulated in the Bangkok Declaration, which emphasises several priority points, including:⁴³

³⁸ Hannah Ritchie, Veronika Samborska, Max Roser, "Plastic Pollution," Our World in Data, accessed 5 June 2023, <https://ourworldindata.org/plastic-pollution>.

³⁹ Sabatira, "Southeast Asia Regional Cooperation."

⁴⁰ Putri and Hudaya, "The Establishment of ASEAN Framework."

⁴¹ Kamaruddin, Maskun, Patittingi, et.al., "Legal Aspect of Plastic Waste Management."

⁴² Son, "Policy on Marine Plastic Waste in ASEAN and Viet Nam."

⁴³ "Bangkok Declaration on Combating Marine Debris in ASEAN Region," ASEAN, accessed 7 June 2023, <https://asean.org/bangkok-declaration-on-combating-marine-debris-in-asean-region/>.

1. Strengthening actions at the national level and among ASEAN member countries and related parties to prevent and reduce marine waste, including plastics;
2. Promote intersectoral coordination;
3. Improve coordination and cooperation of various stakeholders;
4. Promote private sector involvement and investment;
5. Strengthen research capacity and application of scientific knowledge
6. Accelerate advocacy and action to increase public awareness and participation and improve education about the protection of the marine environment.

The Bangkok Declaration outlines key issues such as strengthening joint action among ASEAN member states and partners to prevent and reduce marine litter. Promote integrated land-to-sea efforts to prevent marine debris by strengthening national laws and regulations. Then, encourage private sector participation in efforts to prevent and reduce marine plastic debris, including prioritizing approaches such as circular economy, the 3Rs (reduce, reuse, recycle). In addition, strengthen research capacity and application of scientific knowledge in marine debris prevention. Finally, increasing public awareness and education with the goal of changing behaviour to prevent and minimize marine debris. It also highlights the urgent need for increased knowledge of the levels and impacts of microplastics and nanoparticles on marine ecology, food safety and human health.⁴⁴

B. REGIONAL ACTIONS THROUGH ASEAN FRAMEWORK

The initiative was announced in November 2017 at the ASEAN Conference on Reducing Marine Debris in the ASEAN Region in Phuket, Thailand.⁴⁵ The four areas of action are policy support and strengthening, capacity building, R&D and innovation, private sector engagement, and public awareness and communication.⁴⁶ The establishment of the ASEAN framework is a result of the recognition that marine debris is a transboundary problem, the solution to which requires integrated regional cooperation. The framework is divided

⁴⁴ Son, "Policy on Marine Plastic Waste in ASEAN and Viet Nam".

⁴⁵ Kadarudin, Ahsan Yunus, Andi Muhammad Aswin Anas, et. al., "Bangkok Declaration And Awareness Of ASEAN Member Countries: The Regional Law Of Cleaning Our Oceans," *Journal Of Critical Reviews* 7, (2020): 902.

⁴⁶ Kamaruddin, Maskun, Patittingi, et.al., "Legal Aspect of Plastic Waste Management."

into four priority areas, each of which includes different actions and proposed activities to combat the pollution caused by marine debris.⁴⁷

An important pillar to be highlighted is the involvement of the private sector. Promote joint action with the private sector and industry associations to implement measures to address the problem of marine litter. In addition, encourage private sector investment and contribution to the fight against marine litter. Engage the private sector in efforts to reduce the risk of marine plastic pollution through producer responsibility schemes. Producer responsibility for managing waste from the packaging they produce is not impossible to implement in Southeast Asia. The ASEAN Framework suggests that ASEAN member states develop and implement Extended Producer Responsibility (EPR) schemes. One significant principle that has recently developed rapidly in the international environmental law regime is the EPR Principle. The Organisation for Economic Co-operation and Development (OECD) defines EPR as an environmental policy approach in which producer responsibility, either physical and/or financial, is extended to the post-consumer or post-consumption stage of the product life cycle.⁴⁸ One suggested alternative is to include a producer responsibility scheme for the risk of plastic waste from business activities as one of the conditions for obtaining an environmental permit.

The ASEAN framework also encourages developing and promoting sustainability criteria and product circularity. Therefore, On 18 October 2021, the ASEAN Circular Economy Framework for the ASEAN Economic Community (AEC) was released at the 20th ASEAN Council Meeting. This shows the importance of circular economy (CE) within the framework of AEC. The basic principles of CE are reduction, reuse and recycling, sometimes with other additions such as repair, refurbish, remanufacture and repurpose.⁴⁹

That declaration and the framework look like more political commitment than legal sense. In addition, Declaration and Framework are sort of soft law, is typically embodied within non-binding legal instrument. The legal system in ASEAN is still fragile, so the effectiveness of handling plastic waste is still far from expectations. However, ASEAN's Bangkok Declaration and Framework on Marine Pollution are valuable movement of how to achieve regional

⁴⁷ Son, "Policy on Marine Plastic Waste in ASEAN and Vietnam."

⁴⁸ OECD, *Extended Producer Responsibility: A Guidance Manual for Governments* (Paris: OECD Publication, 2001), 18.

⁴⁹ Muhammad Rasyid Ridho, "Circular Economy in ASEAN: A Brief View on Plastics Harmonization and Micro, Small, and Medium-Sized Enterprises Inclusion," ASEAN Studies Center, 23 August 2022, accessed 12 June 2023, <https://asc.fisipol.ugm.ac.id/2022/08/23/circular-economy-in-asean-a-brief-view-on-plastics-harmonization-and-micro-small-and-medium-sized-enterprises-inclusion/>.

action on a common issue.⁵⁰ ASEAN's path in dealing with plastic waste is on the right track. However, ASEAN is still far behind the European Union in dealing with plastic waste, especially in dealing with single-use plastic waste. In addition, ASEAN needs a special institution as a legal structure to ensure the implementation of policies to deal with plastic waste in Southeast Asia can run effectively. For now, the legal system in ASEAN is still fragile, so the effectiveness of handling plastic waste is still far from expectations.

C. STRENGTHENING PLASTIC WASTE LEGISLATION UNDER INDONESIA'S CHAIRMANSHIP OF ASEAN

On 29 January 2023, President Joko Widodo held a symbolic inauguration of Indonesia's chairing of ASEAN. However, Indonesia took over from 1 January until 31 December 2023. As mandated by Article 7 of the ASEAN Charter, Indonesia must host two ASEAN summits during this period. In this way, Indonesia has the opportunity to repeat the success of the G20 summit, not only in terms of ceremony, but also in terms of substances.

Indonesia successfully hosted the G20 Bali Leaders' Declaration in 2022. In paragraph 11 of the declaration, a commitment was agreed to combat the effects of climate change as one of the fundamental issues. Meanwhile, in Southeast Asia, one of the most important issues brought to the ASEAN Summit forum during 2023 is the problem of plastic waste in the sea. Indonesia as an ASEAN member country needs to strengthen the legal system in dealing with plastic waste. Every level of government, from local, national to global, work together to implement efforts that are believed to be able to be a solution to plastic waste pollution in the sea. The public and private sectors also participate in various efforts, ranging from prevention, supervision and regulation.

IV. CONCLUSION

There is a stark difference between the European Union and ASEAN in dealing with plastic waste in their respective regions. This is natural, considering that the EU already has a solid legal system, even the EU has too many binding legal products, for example in the field of human rights. In contrast, ASEAN does not yet have clear legislative procedures, so phenomena with high urgency cannot be transformed into binding legal products, such as the human rights of foreign workers and of course the problem of marine plastic waste.

⁵⁰ Son, "Policy on Marine Plastic Waste in ASEAN and Viet Nam."

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