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THE OBSTACLES OF TIMOR-LESTE TO BE A NEW MEMBER OF ASEAN UNDER PERSPECTIVE OF ASEAN CHARTER

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Abstract

This paper is written from the perspective of ASEAN Charter to explores the obstacles of Timor-Leste to be a new member of ASEAN under perspective of ASEAN Charter. This paper is mainly explored in article 6 of ASEAN Charter which is the provision related to admission of new ASEAN member. To analyze why article 6 could not be activated in reality for Timor-Leste to be a new member of ASEAN, there are five key elements to analyze such as (1) geographic location, (2) recognition by all ASEAN member state, (3) economic and political challenge, (4) institutional limitations, and (5) ASEAN consensus. Hence in order to unlock article 6, the author proposes ASEAN to revise the decision-making mode of ASEAN under article 20(1) of ASEAN Charter by applying the majority vote or negative consensus (reverse consensus) method for ASEAN Summit instead of consultation and positive consensus.

Keywords: Admission of New ASEAN Member State, Timor-Leste, Article 6 of ASEAN Charter, ASEAN Consensus

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Introduction

After Timor-Leste gained independence from Indonesia in 2002, it has been seeking to integrate into the regional and international community (Joseph & Hamaguchi, 2014). It first expressed its desire to join the Association of Southeast Asian Nations (ASEAN) in 2011, and its application was formally submitted in 2016 (Government of Timor-Leste, 2016). However, it had already taken nine years till now with the question of whether Timor-Leste should truly become the tenth ASEAN member. Last bid for ASEAN membership was Cambodia in 1999 as ASEAN Member State (Association of Southeast Asian Nations, n.d.). Interestingly the last bid for ASEAN membership was made before launching ASEAN Charter in 2008. This would mean that Timor-Leste is the first and only applicant country for ASEAN membership under new criteria of ASEAN Charter. ASEAN Charter sets out strict criteria for new member admission under article 6 of ASEAN Charter, and Timor-Leste needs to address some of the challenges and obstacles to meet these requirements.

ASEAN was established in 1967 in the cold war era between the United States and the Soviet Union with their respective allies that developed after World War II. Since 2008 ASEAN Charter was entered into force on 15 December 2008 and made ASEAN to be claimed as the most present successful rule-based regional intergovernmental organization in Southeast Asia region (Association of Southeast Asian Nations, 2007). Many fundamental principles of ASEAN were recognized since the Bangkok Declaration in 1967 and are set through article 2 of ASEAN Charter in 2008 as a key fundamental of the establishment of ASEAN. Article 6 of ASEAN Charter is designed to deal with the admission of new ASEAN member (Association of Southeast Asian Nations, 2015).

Background of Timor-Leste's Bid for ASEAN Membership

Timor-Leste: Timor-Leste or East Timor is a small country located in Southeast Asia. It gained independence from Indonesia in 2002 after a referendum conducted during the United Nations Mission in East Timor (UNAMET) (Government of Timor-Leste, n.d.). The location of Timor-Leste is shown in figure 1 below.



Figure 1 Location of Timor-Leste

Source: United Nations Mission in Timor-Leste (2012)

Timeline of Timor-Leste's Bid for ASEAN Membership and its Current Status

2011-2016: Timor-Leste formally expressed its interest in joining ASEAN during this period. The country started engaging in consultations and discussions with ASEAN member state to explore the possibility of accession. It officially became a participating country in ASEAN Regional Forum (ARF) by 2005 (Government of Timor-Leste, 2005). However, membership of ARF does not ensure ASEAN membership for Timor-Leste.

2017-2021: Discussions and assessments continued during these years, and Timor-Leste actively sought the support of individual ASEAN member state. The accession process involves reaching a consensus among existing ASEAN members, and several factors, including political, economic, and strategic considerations, are taken into account. However specific details about the progress of the accession process were not broadly reported.

Current Status: Timor-Leste is granted observer status during the 41st ASEAN Summits, enabling it to attend all ASEAN meetings (Association of Southeast Asian Nations, 2022).

Main Argument: ASEAN Charter sets out several criteria that must be met by any country seeking to join ASEAN, including geographic location, political stability, economic development, and readiness to contribute to ASEAN's goals and objectives. Even Timor-Leste has improved in a lot of these areas, it still lacks a few crucial ones. For example, it is geographically isolated from other ASEAN member state, has limited economic ties with the region, and lacks the political stability and institutional capacity needed to contribute meaningfully to ASEAN's initiatives. Another argument against Timor-Leste's membership is that admission could pose a threat to regional stability. There are concerns that Timor-Leste's unresolved territorial disputes with neighboring Indonesia could lead to tensions within ASEAN and undermine the organization's unity. Indonesia has expressed reservations about Timor-Leste's membership bid, citing the need to address these territorial issues first (Windraskinasih & Afrianayah, 2018).

In addition to these arguments, there are also practical considerations that make Timor-Leste's membership in ASEAN unlikely. For example, ASEAN operates on a consensus-based decision-making process under article 20 of ASEAN Charter, meaning that all member state must agree on any decision. Given the diversity of views among ASEAN member state on Timor-Leste's membership, getting consensus is exceedingly difficult (Limsiritong, 2016).

A Brief History of ASEAN, ASEAN Membership Admission Process

ASEAN: On 8 August 1967, Indonesia, Malaysia, Philippines, Singapore, and Thailand signed ASEAN Declaration (Bangkok Declaration) to establish ASEAN at Bangkok, Thailand. Then Brunei Darussalam joined ASEAN in 1984. After the end of Cold War in 1991, Vietnam joined in 1995, followed by Lao PDR and Myanmar in 1997 and Cambodia in 1999. ASEAN was reconstructed by ASEAN Charter on 15 December 2008 and mainly presents as the key ASEAN instrument by reorganizing the institutional framework of ASEAN through the rule of law (Wong, 2012; Koh et al., 2009). ASEAN Charter created ASEAN Community (AC) which covering three pillars, namely ASEAN Economic Community (AEC), ASEAN Political-Security Community (APSC), and ASEAN Socio-cultural Community (ASC) (Association of Southeast Asian Nations, n.d.).

ASEAN Membership Admission Process

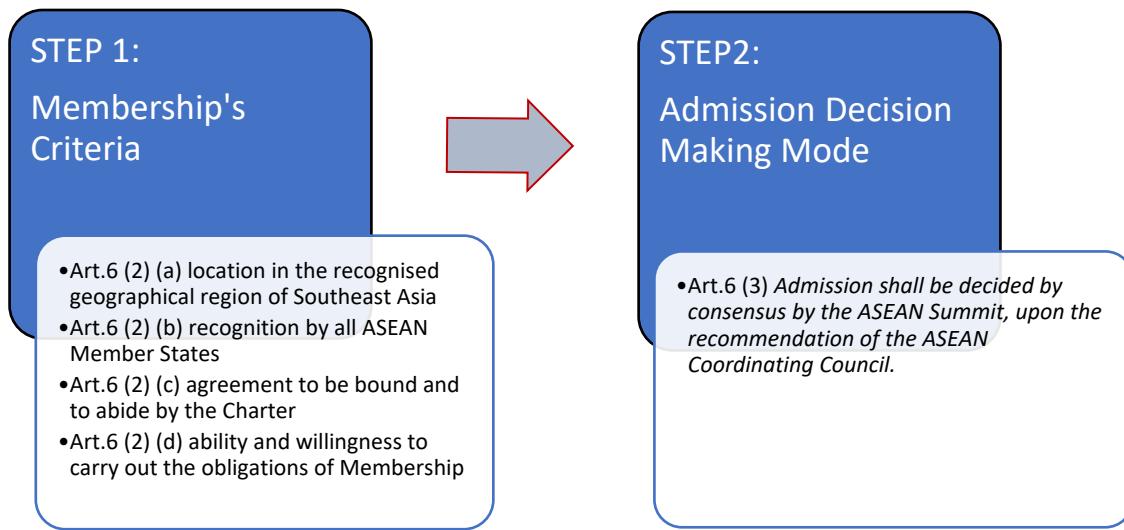


Figure 2 ASEAN Membership Admission Process under Article 6 of ASEAN Charter

Source: Association of Southeast Asian Nations (2015)

According to figure 2, there are two steps to consider such as (1) ASEAN membership criteria under article 6(2) and, (2) Admission decision making mode under article 6(3) of ASEAN Charter. Article 6(2) of ASEAN Charter states that “Admission shall be based on the following criteria: (a) location in the recognised geographical region of Southeast Asia; (b) recognition by all ASEAN Member States; (c) agreement to be bound and to abide by the Charter; and (d) ability and willingness to carry out the obligations of Membership.” (Association of Southeast Asian Nations, 2015). As a result, to become a member of ASEAN, a country must meet several criteria set out in article 6(2) of ASEAN Charter. The criteria include geographical location, political stability, economic development, and readiness to contribute to ASEAN’s goals and objectives. After meet all criteria under article 6(2), the final decision for admission will belong to ASEAN Submit under article 6(3) as it states that “Admission shall be decided by consensus by the ASEAN Summit, upon the recommendation of the ASEAN Coordinating Council.” (Association of Southeast Asian Nations, 2015).

As a result, the admission process involves several stages, including a formal application, review and assessment by ASEAN member state, and negotiations and consultations with the applicant country. To begin the process of becoming a member of ASEAN, a country must submit a formal application to the ASEAN Secretariat. After the application is received, ASEAN Secretariat will review and assess the application based on the criteria set out under article 6(2) of ASEAN Charter as mentioned above. After the initial assessment, ASEAN member state will conduct a more detailed review of the applicant country’s qualifications and authorizations. This review process involves consultations with the applicant country as well as consultations among ASEAN member state to assess the impact of admitting a new member on regional cooperation and integration. If the applicant country meets the criteria for membership under article 6(2) of ASEAN Charter, negotiations will begin to determine the terms of admission. When the negotiations are complete, ASEAN member state will issue an invitation to the applicant country to join ASEAN. The invitation will be formalized through a protocol of accession, which outlines the terms and conditions of membership. The protocol of accession must be ratified by the applicant country and all ASEAN member state before the new member can be formally admitted to ASEAN. In conclusion, the process for new member admission to ASEAN is a thorough and consultative process that involves multiple stages of

assessment, review, and negotiation. The process is designed to ensure that new members meet the criteria for membership and can contribute positively to ASEAN's goals and objectives.

Analysis of Legal Obstacle

Specific institutional and legal barriers were not made clear in publicly accessible data, and Timor-Leste's application for ASEAN membership was still being discussed (Windraskinasih & Afrianayah, 2018). This paper has this limitation. Nonetheless considerations based on the principles listed in article 6 of ASEAN Charter are considered during the admission process for ASEAN membership. There are five sufficient obstacles to consider about:

- 1) Geographic Location: Article 6(2)(a) of ASEAN Charter specifies that only countries in Southeast Asia are eligible for membership. While Timor-Leste is geographically located in Southeast Asia as mentioned in figure 1, however the exact interpretation of the geographical boundaries and whether they include Timor-Leste could be subject to interpretation and discussion which belongs to ASEAN Secretariat under article 51 of ASEAN charter and Rule of Procedure for the Interpretation of the ASEAN Charter (ROP 2012) (Association of Southeast Asian Nations, 2012). The difficulty lies in the fact that the power to interpret ASEAN Charter is restricted under ROP 2012 because ASEAN Secretariat is mainly designed for an administrative body rather than a decision-making one. Finally, ROP 2012 is intended to push a duty to make a final decision to ASEAN Submit, as the ASEAN Secretariat's decision is likewise not legally binding. Lastly it will be submitted to ASEAN Submit for a consensus-based conclusion (Sookhakich & Limsiritong, 2021).
- 2) Recognition by All ASEAN Member State: Article 6(2)(b) of ASEAN Charter stipulates that for a state to become a member, it must recognize Timor-Leste. Nonetheless, the ASEAN Charter is unclear about what qualifies as recognition (Windraskinasih & Afrianayah, 2018). There may be debate and interpretation about this matter. Lastly, as explained in issue (1) above, the duty to interpret this article will belong to ASEAN Secretariat, then it will finally be an unresolve issue and passed to ASEAN Submit to make final decision as well (Sookhakich & Limsiritong, 2021).
- 3) Economic and Political Criteria: Article 6(2)(c) of ASEAN Charter includes criteria related to political stability, economic development, and adherence to democratic principles. Timor-Leste's fulfillment of these criteria would be closely assessed during the accession process (Fundasaun Mahein, 2023; Yusof Ishak Institute, 2023). Hence any concerns about political stability, governance, or economic development could be potential obstacles.
- 4) Capacity Building and Integration: As stated in Article 6(2)(d) of ASEAN Charter, there are still issues with socioeconomic development inequalities, lacking institutional capability, and political instability. Hence Timor-Leste, as a relatively young and developing nation, can face challenges in supporting its institutions and policies with ASEAN standards. The need for capacity building and integration into ASEAN structures might be considered an obstacle.
- 5) ASEAN Consensus: Article 6(3) of ASEAN Charter requires the consensus of all existing ASEAN member state for the admission of a new member (Singapore Institute of International Affairs, 2014; Leviter, 2010). As seen from the case studies of South China sea dispute and Myanmar human rights crisis, the ASEAN consensus is key obstacle for making decision related to economic and political interest of exist ASEAN member state (Limsiritong & Sookhakich, 2023; Limsiritong et al., 2019). This means that any existing member state holds the power to block Timor-Leste's membership bid, whether due to geopolitical interests, historical grievances, or concerns on regional stability. Additionally, ASEAN's principle of non-interference in the internal affairs of member states under article 2 of ASEAN Charter may raise concerns among existing members regarding Timor-Leste's political stability and governance structure. So this is the primary political obstacles to Timor-Leste's accession to ASEAN lies in the consensus-based decision-making mode within ASEAN. Achieving consensus among diverse member states with different political systems, economic structures,

and historical backgrounds can be tough. Objections or reservations from any member state can delay the accession process of Timor-Leste for sure.

Conclusion and Recommendation

To summarize, Timor-Leste's path to ASEAN membership under ASEAN Charter is troubled with criteria under article 6(2). The hardest part is article 6(3) which is required for ASEAN consensus from ASEAN Submit. The nature of fundamental principle of consultation and consensus of ASEAN is mostly a positive consensus which requires all ASEAN Member States in ASEAN Summit to agree with the decision. Because this legal framework was created to uphold and safeguard the ASEAN principle of non-interference, ASEAN Summit is unable to act when a consensus cannot be established. Moreover, this decision-making mode of ASEAN is mostly the prerogative of ASEAN Summit which is the supreme body of ASEAN and is composed of the heads of state of each Member State who generally take decisions based on their own political interests, not ASEAN interests. Hence with these conditions, overcoming these obstacles requires concerted efforts from both Timor-Leste and existing ASEAN member state. For recommendation, to overcome these obstacles as mentioned above, ASEAN need to revise the decision-making mode of ASEAN under article 20(1) of ASEAN Charter by applying the majority vote or negative consensus (reverse consensus) method for the ASEAN Summit instead of consultation and positive consensus (Limsiritong et al., 2019).

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