



ASEAN CHARTER AND LEGAL EDUCATION IN THAILAND¹

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Introduction

Due to globalization, trade between two parts of the world, which once was almost impossible, became easier more than ever. With trade, not only goods and services flow from place to place, but laws of different countries also cross paths and at times conflict with one another. ASEAN Charter is one answer to cope with such result of globalization since it can help foster cooperation between ASEAN countries in order to bring about harmonization and standardization of laws, and consequently further facilitate trade. Our role as legal educators within ASEAN is thus to develop a teaching model which will help produce such harmonization and standardization of laws. In this paper, I will discuss the effect of the ASEAN Charter to the legal education in Thailand. However, before doing so, I would first give a brief history of legal education in Thailand and its influences on the existing legal education in Thailand. I would then proceed to explain the degrees and programs and curriculum thereof as well as their teaching methodology. Finally, I would explore potential problems in implementing certain issues stipulated in the ASEAN Charter with respect to Thailand and our actions to cope with such challenges.

History of Legal Education in Thailand

Legal education in Thailand started in 1897 with the establishment of the first law school by Prince Rapee, the Father of Modern Thai Law, with Prince Rapee himself as the key instructor. Later, His Majesty King Rama VI raised the status of such law school as a royal school and attached it to the Ministry of Justice. It was not until 1933 that such law school attained a university-level status. Replacing the law school under the Ministry of Justice, the "Faculty of Law and Political Science" was inaugurated at Chulalongkorn University in 1933, but shortly thereafter, transferred to Thammasart University as the first Faculty of Thammasart University.

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The main purpose for setting up the law school in 1897 was to produce personnel to the bench. The areas of law taught were confined only to civil and commercial law, criminal law, civil procedure law and criminal procedure law, or also known as “the four corner laws”. Once completed their studies and appointed as judges, these judges in turn became law instructors at the school. Such concept is followed for many years, thereby producing a judge-teach-law pattern. This pattern still exists today as many law schools invite judges to teach certain legal courses which require their expertise from experience in deciding cases.

At present, there are over fifty law schools in Thailand, four-hundred full-time law instructors, having produced no less than fifteen thousand lawyers a year to enter into both law and non-law careers.

Degrees and Programs

Unlike that in the United States and Japan, the current legal education in Thailand starts as a first degree study. Students who finish high school will enroll themselves in the faculty of law in either a public or a private university. The program length is four years consisting of eight semesters and at the end of the program, the students earn their Bachelor of Laws (LL.B.) degrees. Thereafter, the students who wish to further their studies may choose to pursue a Master of Laws (LL.M.) degree either in Thailand or abroad. The length of study varies depending on the program. Regarding LL.M. programs in Thailand, the students may choose a program conducted in Thai or the one conducted entirely in English, such as an LL.M. in Business Law (International) Program at Chulalongkorn University. This program is an example of a program offered by a local law school in partnership with other foreign law schools. Finally, few may decide to pursue a Doctor of Laws (LL.D.) degree (which is currently only offered in Thailand by three public universities, namely, Chulalongkorn University, Thammasart University and Ramkhamhaeng University, and one private university, Dhurakit Bundit University).

With globalization, Thailand’s present legal market is moving towards a type of market where not only law graduates with general knowledge are needed, but those with specialized knowledge are also high in demand. As a result, at the end of their third year, students in the LL.B. program at Chulalongkorn University are asked to choose one out of four specialized areas, namely, business law, public law, international law and civil and criminal law. Similarly, in the Thai LL.M. program at Chulalongkorn University and Thammasart University, the entering students are also asked to choose a specialization.



This new development is hoped not only to equip students with deeper legal knowledge and practicality but also to produce better legal scholars. Specialization is not the only trend, but with increasing number of students going abroad for LL.M. programs, more Thai universities are also starting to establish an international LL.M. program taught entirely in English in partnership with other law schools abroad. It can be expected that many more law schools will follow this trend.

As to their professional training, the LL.B. graduates who wish to become litigators will have to pass an exam for a lawyer license and be registered with the Lawyers Council of Thailand. For those who wish to become judges or public prosecutors, the LL.B. graduates will have to pass the Bar exam at the Institute of Legal Education of the Thai Bar Association. Without successfully passing the Bar exam, the law graduates will not be qualified to take examinations to be judges or public prosecutors.

At present, there are more than fifty universities and colleges offering legal education to students around the country. Out of this number, there are eight public universities that formally establish the Faculty of Law. Among these public universities, six, including Chulalongkorn University (re-established in 1958) and Thammasart University (established in 1934) are close universities, whereas Ramkhamhaeng University (established in 1971) and Sukhothai-thammathirat University (established in 1980) are open universities. Due to a limited number of students to be admitted each year at Chulalongkorn and Thammasart Universities, students who finish their high school education and want to enroll in Chulalongkorn University and Thammasart University have to compete among themselves to enter. Apart from the eight public universities that have formally established law faculties, another three universities provide legal education at the department level within relevant faculties, some of which are in the process of establishing themselves as faculties. Moreover, a number of former teacher-training colleges have been transformed into universities. Interestingly, one of the programs that these universities wish to offer is law study program. These public institutions are oriented in providing higher education to the local people in regions mainly outside Bangkok. Finally, there are twenty-six private universities and colleges that offer law course to the public as well. Almost half of them are scattering around the country.

All together, more than one hundred and fifty thousand students a year enroll in universities and colleges, public or private, to study law with the majority of the students enrolling in Ramkhamhaeng University and Sukhothai-Thammathirat University, the two open universities.



Other than a regular LL.B. program, some Thai universities have adopted an American concept that law should be studied as a second degree. A person with prior knowledge from other fields will have a better vision in the application of laws. This is the root behind another LL.B. program that is offered only to those with non-law degrees who wish to study law. The curriculum is exactly the same as that of the regular LL.B. program with two main differences: students are waived from the general educational requirements and the program is taught during non-business hours. This type of program is becoming more and more popular year by year as there is a trend for people to study law either to pursue law as a profession or as a complement to their own careers.

Teaching Methodology

Although it is accepted that most students learn best through active learning atmosphere, most law faculties and departments in Thailand are still employing traditional teaching method, i.e. classroom lecture. There are several reasons for employing such methodology: class size, facility and the number of law instructors. With over two hundred and fifty incoming first year law students for each LL.B. program and rising, and even after splitting the class into sections, the university is limited by the class size to adopt an interactive teaching method. The university also faces a facility constraint. In some universities, classrooms are shared between different faculties and thus the inflexibility of meeting the needs of the law faculty in employing active learning atmosphere for some classes. Lastly, the limited number of law instructors restricts the number of seminar-style classes.

However, to compensate for such limitations, some instructors adopt a simulation method, especially for courses involving litigation or business planning. Negotiation and drafting skills are at times inserted in certain courses taught by practicing lawyers. In some classes, field trips are involved in order to help students understand the interactions between law and society. Comparative law study is also offered as a separate course as well as incorporated in regular classes. Law instructors usually inform students of what other countries do on the legal issues at hand.

ASEAN Charter as a Factor Driving Changes in Legal Education in Thailand

Legal education in Thailand has lasted for over a hundred years now. So long as law is the rule to govern our society, legal education plays a major role in developing personnel to serve in the legal profession of various fields. We can see that legal education in Thailand has continued to evolve to meet globalization needs whether it be the development of different degrees and programs or their teaching methodology.



However, since the world is still turning, legal education in Thailand cannot stop evolving. The key changing landscape of legal education in Thailand in the past year has been the ASEAN Charter. With the ASEAN Charter coming into force in December 2008, Thailand should face challenges and at the same time gain opportunities to further develop legal education in Thailand.

ASEAN Charter was formally introduced as a result of the 11th ASEAN Summit held in December 2005 in Kuala Lumpur, Malaysia, when the ASEAN leaders issued the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter and set up the Eminent Persons Group (EPG) on the ASEAN Charter to make recommendations on the framework in which the ASEAN Charter was to be drafted. In the 12th ASEAN Summit held in January 2007 in Cebu, the Philippines, the meeting issued the Cebu Declaration on the Blueprint of the ASEAN Charter which made public several basic proposals to be included in the Charter. The meeting also set up a High Level Task Force (HLTF) on the Drafting of the ASEAN Charter consisting of experts from different member states who were responsible for the drafting of the ASEAN Charter based on the Kuala Lumpur Declaration and the Cebu Declaration as well as recommendations from the EPG.²

The draft of the ASEAN Charter was completed and adopted at the 13th ASEAN Summit on November 20, 2007 in Singapore. The ASEAN Charter designates ASEAN as a legal person under the international law. It reorganizes the existing structure of ASEAN to better serve member states in coping with the changing environment and enhance the effectiveness of ASEAN in proceeding with different tasks so that eventually ASEAN can achieve an EU-style community by the year 2015. Although ASEAN Charter is often referred to as the constitution of ASEAN, unlike the European Union, the ASEAN Charter does not make ASEAN a supranational body.³

The provisions in the ASEAN Charter which are relevant to our role as legal educators mainly lay in Article 1 Paragraph 10 “To develop human resources through *closer cooperation in education and life-long learning*, and in science and technology, for the empowerment of the peoples of ASEAN and for the strengthening of the ASEAN community,” Article 1 Paragraph 5 “To create a single market and production base which is stable, prosperous, highly competitive and economically integrated with *effective facilitation for trade and investment* in which there is free flow of goods, services and investment; facilitated movement of business persons, professionals, talents and labour

² Kajit Jittasevi. International Organizations. Bangkok: Winyuchon, 2009, page 243-247.

³ *ibid.*



and; and freer flow of capital,” and Article 1 Paragraph 11 “To enhance the well-being and livelihood of the peoples of ASEAN by *providing them with equitable access to opportunities for human development, social welfare and justice*”.

From the above provisions, we can see that our role as legal educators does not involve merely producing law practitioners, but also ones with deep understanding of laws of other ASEAN members in order to assist and facilitate international transactions among different ASEAN member states so as to bring about justice and peace within the region.

Potential Problems in Implementing Certain Issues Stated in the ASEAN Charter and Actions to Cope with the Changing Landscape

A Language Barrier

With the aim of bringing closer cooperation in education, it is expected that many more seminars among legal educators of ASEAN members will be held. Through such meetings, legal educators will be able to share information and tips on the degrees and programs and teaching methodology and eventually result in the harmonization and standardization of laws. For Singapore, Malaysia, Brunei and the Philippines where English is one of the country’s official languages or recognized languages, communication or exchange of information may not pose a problem, but for a country like Thailand, language barrier is one problem we have to overcome to better bring about closer cooperation with respect to legal education among ASEAN members.

Thailand has attempted to remove such barrier by offering legal courses or even programs in English (such as the LL.M. Business Law (International) Program at Chulalongkorn University) as well as to make the study of a foreign language a compulsory part of the curriculum. In a regular LL.B. program, four courses of a foreign language are made compulsory in the curriculum. On top of that, introductory English legal courses are offered for each specialization which at the end of their third year, students in the LL.B. program at Chulalongkorn University are asked to choose. Although, these courses may not be sufficient for students to develop English communication skills, they at least familiarize students with legal terms and jargons as well as practice reading and drafting legal documents. With this background, some students will be able to further their knowledge later on in their post-graduate studies or legal profession.

Chulalongkorn University has also introduced two International Economic Law and one Competition Law courses, all conducted in English in the regular LL.B. program.



Moreover, Chulalongkorn University also develops a Copyright Law and an International Trade Law courses in English which are to be implemented in the following academic year.

In addition to academic courses, students who are interested in developing their English skills can participate in Asian Law Students' Association (ALSA) and moot court. Since ALSA is an international organization, most activities, even organized domestically, are carried out in English. As for moot court, students compete in an international competition, so students have many opportunities to practice English.

As for the LL.M. in Business Law (International) Program, all courses are taught in English. This program is offered by Chulalongkorn University in partnership with the University of Kyushu, the University of British Columbia, and the University of Victoria. Even though the program is categorized as a coursework program, each student must complete an independent research paper in English. The program also annually organizes an all-inclusive overseas research trip of one to two weeks to visit partner institutions in either Canada or Japan. Students have the opportunity to visit the campuses, meet up with faculty members and attend special lectures on each country's business law and related topics.

With the ASEAN Charter already coming into effect, similar partnership programs can be set up among universities in different ASEAN member states. The programs will significantly foster cooperation in legal education among ASEAN members which is in accordance with the ASEAN Charter. This can include the exchange of legal knowledge, teaching methodology or any improvement in legal education in different ASEAN countries.

A Lack of Qualified Full-Time law Instructors

As mentioned earlier, another important issue is the lack of qualified full-time law instructors. With this problem, cooperation in legal education between ASEAN members according to the ASEAN Charter may prove to be slow and not as effective as expected.

At present, there are slightly over four hundred full-time law instructors. Out of these four-hundred, approximately two hundred and twenty law instructors are in the four public law schools. This means that the remaining two hundred full-time law instructors are with the eight public institutes and more than thirty private universities and colleges, making the law instructor-law school ratio five to one. Without sufficient full-time law instructors, it is difficult to provide a good legal education to law students. What these institutes and private universities and college do is to invite "outside law instructors".



These “outside law instructors” are either full-time law instructors from public universities or from other legal professions such as judges, public prosecutors, practicing lawyers or others.

There are several reasons behind the lacking of qualified full-time law instructors in Thailand, but the main reason is the willingness of qualified law graduates to enter into the teaching career. At present, there are many alternatives for law graduates and these alternatives offer such graduates not only higher remuneration, but also better social recognition. For an example, a judge or a public prosecutor, once appointed, will obtain almost four times higher salaries than a law instructor, and as they grow within their field, although the salaries in monetary term is still four times as much as that of a law instructor, the real term of money is much widened.

At present, for a graduate who becomes a law instructor in a public university, he/she will receive approximately ten thousand Baht per month of salary without any fringe benefit other than a regular social security benefit. A judge or a public prosecutor, once appointed (which may take four to five years after graduation), will obtain a salary of approximately forty thousand Baht per month. Ten years along the road, a law instructor may obtain approximately twenty thousand Baht per month while a judge will obtain approximately eighty thousand Baht a month excluding other benefit such as provided cars.

As for law graduates who are interested in private practice, the law graduates with good academic records and opportunities to study abroad can usually obtain much higher salaries in private practice compared with that from being law instructors. Their salaries may even be much higher than those of judges and public prosecutors as time progresses.

Thus, not surprisingly, many qualified law graduates opt for a legal profession with much higher remuneration and left only few qualified graduates in the academia. Either that or many qualified law graduates choose to enter a law teaching career right after graduation and then leave to become a judge or a public prosecutor once they are qualified to do so. Law schools not only lose valuable law instructors, but also lose the resources and time to train such law graduates. Such cycle is repeated. Thus, for every law instructor a law school retains, the law school loses many more, and with rising incoming law students, the law schools cannot make up for such high demand of law instructors. Despite the fact that attempts have been made to the government to realize the seriousness of the problem, no effort on the part of the government to correct this problem is yet adopted.



On the part of private universities, it is cheaper for them to invite outside law instructors than to recruit full-time law instructors of their own. Thus, rarely an effort to recruit full time instructors occurs. Most outside law instructors so invited are those full-time law instructors in the public universities. However, with increasing number of law schools, particularly those in the up-country, the total number of full-time law instructors is not sufficient to serve them all. In addition, the cost of inviting full-time law instructors from public universities in Bangkok to teach in the up-country law schools becomes much more expensive. Consequently, such law schools in the up-country choose to invite judges, public prosecutors and lawyers in the local area to teach law instead of trying to produce their own law instructors. Since most of these invitees are not trained to teach, the standard of legal education becomes questionable notwithstanding supervision by the Ministry of Education.

This problem remains the most pressing and challenging task to be tackled in order to improve the legal education and legal profession in Thailand. Undeniably, qualified law graduates are difficult to be produced without qualified law instructors. Currently, universities have to work closely with each respective university's alumni association in raising funds to send full-time law instructors to study abroad in order to produce better legal scholars and law instructors. There is also a plan to hopefully hire more full-time law instructors with such funds (if enough). This is, however, the universities' long-term plan. As to a short-term plan, universities still have to rely on part-time law instructors from other legal professions. Moreover, even if the problem on the lack of qualified full-time law instructors is corrected, there is a need to continuously improve the quality of those law instructors, whether it be their academic knowledge or their teaching skills. However, a long-term solution to this program still lies in the government's hand. The government must create incentives to draw law graduates, especially qualified ones, back into the academia. Law instructors should be provided more opportunities to learn new developments in their specializations, in the domestic or international arena. New technology should also be offered to law instructors to assist them in better managing their courses and teaching materials.

A Lack of Legal Materials, Buildings and Equipment

The lack of qualified full-time law instructors lead to another major problem: a lack of legal materials whether it be legal materials on domestic laws or foreign laws or Thai translations of legal materials of foreign languages. Together with a shortage of funding, law schools are also lacking of classrooms and equipment. This leads to another type of



problem which is mentioned earlier in the Teaching Methodology part of the paper. Certain layouts of classrooms also play a role in inducing active learning environment. For example, a lecture theatre is not suitable for and does not induce participation in seminar-style classes. At present, the universities rely heavily on state funding in constructing new buildings and buying teaching-related equipment. Thus, if the university's alumni association can further expand its alumni network and better advertise the association's projects, the association will be able to raise more funds and help with such construction or expenses of buying equipment. Another source of funding which cannot be overlooked is the university's copyright of legal research and projects. This will not only help with the funding problem, but will also help with the problem of the lack of legal materials and develop skills for legal scholars. However, this leads us back to our previous issue of the lack of qualified full-time law instructors. If there are more law instructors, more qualified legal research and materials can be produced and further develop Thailand's legal education.

A Lack of Interactive Learning Environment

As explained above, with the traditional teaching methodology, the students rarely have a chance to discuss legal issues arising in class or on the subject. Instead, they are mostly lectured at and are often spoon-fed. Very little attention is paid to train students to be able to think with a "legal mind". The research, writing, and oral skills, which are most important skills for any legal professions, are not sufficiently trained in law schools. Other than the reasons stated above (the lack of law instructors, buildings and equipment), a part of the reason most law courses are lecture-based depends on the readiness of entering students. Although student inputs for law schools are very good since increasing number of highly abled high school students choose to study law, most Thai students have never been trained to participate in discussion-based classes. This lack of training together with the lack of interactive learning environment means students are often led to believe that they are only supposed to memorize whatever is thrown at them in lecture halls and should not challenge the existing theories or the law instructors' opinion and come up with their own propositions.

In an attempt to solve this problem, as discussed briefly earlier, some instructors adopt a simulation method in classes such as litigation and moot court class. In a class like a consumer protection law class, students divide themselves into groups and create their own business plan and with such plan they are to identify all laws involved in every step of production as well as write legal opinions on setting up and operate such project.



Other new methods of teaching inserted in each course in order to improve students' legal presentation skills include oral presentation, research assignment or group discussions. These methods are held in line with those in western universities since most Thai law lecturers are educated in the United States or European countries in their post-graduate studies.

For first year students in the regular LL.B. program at Chulalongkorn University, students are divided into small sections and have weekly workshops where junior lecturers lead the discussion on the legal issues studied. In such workshops, students have more interactions with law lecturers and also have chances to practice legal writing. From our initial observation, the workshops do help students better understand the legal issues at hand as well as encourage students to ask questions or hypothetical questions relating to such legal issues. To take this idea further, clinical education may be provided for them. Through clinical programs, not only will students obtain practical skills, but will also gain social concerns.

The Need of Multi-disciplinary Program

Since law is taught as a first degree in Thailand, many law practitioners only look at the matters from a legal perspective without considering the long-term consequence of their legal action. This leads to many social and economic problems. Therefore, it has been widely accepted in Thailand that our legal education needs a multi-disciplinary program to help law students (who will later on be law practitioners) understand that law is not, cannot be and will never be a stand-alone subject. Law will always, in some ways, interact with other discipline.

Chulalongkorn University plays a leading role in this area. Chulalongkorn University offers a Master of Arts in Economic Law program to those graduated from other disciplines as well as law. The students enrolled in this program will have an opportunity to study in a multi-disciplinary manner. Lecturers are not only law lecturers, but also lecturers from other disciplines. Most of the courses are in fact taught by lecturers of different disciplines. This program has a more pragmatic approach rather than a theoretical approach.

Another program that is offered by Chulalongkorn University and Thammasart University that may not be obvious as a multi-disciplinary study is the LL.B. (Graduate) Program. Since legal study is interrelated with other disciplines, legal scholars would practice law better with knowledge of other disciplines. This is the idea that originates this law program which is offered to those who already possess non-law undergraduate



degrees. The curriculum is the same as that of the regular LL.B. program, but students are exempted from taking general educational courses. The students can, therefore, complete their studies within three years from normally four years. This program is becoming more and more popular as people realize the importance of multi-disciplinary learning in studying law.

As to the regular LL.B. program, students are required to take general educational courses consisting of at least one course from each of the following categories: social science, humanity, and science and mathematics.

In addition, the Faculty of Law and the Faculty of Commerce and Accountancy are contemplating setting up a combined program at the bachelor degree level, for example, a bachelor of law combined with a bachelor of commerce from which students will be able to earn two bachelor degrees within a period of five to six years. Students from such program will be able to apply their legal knowledge in the commercial context.

Conclusion

Although legal education in Thailand has continuously evolved and improved to better serve the needs of the current society under globalization, with the ASEAN Charter coming into effect at the end of 2008, legal education in Thailand once again faces challenges in order to bring about the realization of relevant provisions in the ASEAN Charter. The challenges have been explained and some solutions to potential implementation issues of the ASEAN Charter have already been put into action. However, there is still much room for improvement. With a close cooperation of ASEAN members, there is no other outcome but a hopeful conclusion that the legal education of each member will grow and advanced together.

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