Citizen Rights in a Critical Juncture: Comparing the EU and ASEAN Legal Response in the time of the COVID-19 Pandemic

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ABSTRACT *The article's primary objective is to explore and compare the legal instrument adopted by regional organisations, specifically the EU and ASEAN, to impose restrictions on free movement rights during the COVID-19 Pandemic. This article uses hard and soft law classifications to denote the great number of types and forms of legal instruments. Furthermore, this article aims to explain the pattern of regional organisations adopting legal tools to govern restrictions on free movement rights. Legal research methodologies analyse legal instruments from the EU and ASEAN's official legal databases with doctrinal and comparative perspectives. The study's findings revealed two distinct trends of adopting various types of legal instruments by the EU and ASEAN. Additionally, the choice of this type of legal instrument has ramifications for guaranteeing the practical application of citizen rights, particularly the right to freedom of movement.*

KEYWORDS *ASEAN, comparative, EU, free movement right, legal instrument*

1. Introduction

What effect would the COVID-19 Pandemic (hence referred to as the Pandemic) have on human movement? This paper examines the impact on citizens of pandemic-induced movement restrictions on two distinct regional organisations: the European Union (EU) and the Association of Southeast Asian Nations (ASEAN). Free movement is one of the rights granted to EU citizens by Article 3(2) of the Treaty on European Union; Article 20 Paragraph 2(a) and Article 21 of the Treaty on the Functioning of the European Union (TFEU); Titles IV and V of the TFEU; and Article 45 of the European Union's Charter of Fundamental Rights.[1] While ASEAN member states citizens do not enjoy the same freedom of movement as EU citizens, restrictions remain during specific periods of the Pandemic, affecting human migration across the region.

[1] This study will limit the notion of free movement rights under Article 20 Paragraph 2 (a) of the TFEU, namely "the right to move and reside freely within the territory of the Member States".

The study of connections or comparisons between the EU and ASEAN has been extensively researched by scholars, including Jetschke & Murray,[2] Wong,[3] Murray,[4] Yukawa,[5] and Stojković.[6] This article aims to develop comparative legal studies by establishing the EU as a regional organisational model with maturity levels that can serve as a model for other regional organisations. Among others, Wunderlich,[7] Wong,[8] Murray and Moxon-Browne,[9] dan Allison-Reumann[10] did this classical viewpoint research. Although this is a classical stance, it is still relevant today because the EU continues to promote its model of regionalism to ASEAN. Additionally, the adoption of the ASEAN Charter, which came into force in 2008, was partly influenced by EU-style regionalism.[11]

This article was written based on three fundamental concepts: regional citizen, regional integration, and the role of hard and soft law in international government. Shaw,[12] Mantu & Minderhoud,[13] Neuvonen,[14] Cabrera & Byrne,[15]

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[2] Anja Jetschke and Philomena Murray, "Diffusing Regional Integration: The EU and Southeast Asia," *West European Politics* 35, no. 1 (2012): 174–91.

[3] Reuben Wong, "Model Power or Reference Point? The EU and the ASEAN Charter," *Cambridge Review of International Affairs* 25, no. 4 (2012): 669–82.

[4] Philomena Murray, "Europe and the World: The Problem of the Fourth Wall in EU-ASEAN Norms Promotion," *Journal of Contemporary European Studies* 23, no. 2 (2015): 238–52.

[5] Taku Yukawa, "European Integration through the Eyes of ASEAN: Rethinking Eurocentrism in Comparative Regionalism," *International Area Studies Review* 21, no. 4 (2018): 323–39.

[6] Fran Marko Stojković, "Rethinking The Binary Federal Theory: A Search For The EU's and ASEAN's Place In The Confederal-Federal Dichotomy," *Croatian Yearbook of European Law and Policy* 16 (2020): 61–93.

[7] Jens Uwe Wunderlich, "The EU an Actor Sui Generis? A Comparison of EU and ASEAN Actorness," *Journal of Common Market Studies* 50, no. 4 (2012): 653–69.

[8] Reuben Wong, "An EU Model for ASEAN?," *E-International Relations*, no. 2013 (2013), https://www.e-ir.info/2013/01/16/an-eu-model-for-asean/.

[9] Philomena Murray and Edward Moxon-Browne, "The European Union as a Template for Regional Integration? The Case of ASEAN and Its Committee of Permanent Representatives," *Journal of Common Market Studies* 51, no. 3 (2013): 522–37.

[10] Laura Allison-Reumann, "EU Narratives of Regionalism Promotion to ASEAN A Modest Turn," *Journal of Comm* 58, no. 4 (2020): 872–89.

[11] Jetschke and Murray, "Diffusing Regional Integration: The EU and Southeast Asia," 186–87.

[12] Jo Shaw, "The Interpretation of European Union Citizenship," *The Modern Law Review* 61, no. 3 (1998): 293–317.

[13] Sandra Mantu and Paul Minderhoud, "EU Citizenship and Social Solidarity," *Maastricht Journal of European and Comparative Law* 24, no. 5 (2017): 703–20.

[14] Päivi Johanna Neuvonen, "Transforming Membership? Citizenship, Identity and the Problem of Belonging in Regional Integration Organizations," *European Journal of International Law* 30, no. 1 (2019): 229–55.

[15] Luis Cabrera and Caitlin Byrne, "Comparing Organisational and Alternative Regional Citizenships: The Case of 'Entrepreneurial Regional Citizenship' in ASEAN," *Australian Journal of International Affairs* 75, no. 5 (2021): 507–26.

dan Weinrich[16] developed the study of regional citizens, which generally contradicts the concept of a well-known national citizen. Additionally, regional integration has been studied by Spandler,[17] Hooghe & Marks,[18] Schimmelfennig & Winzen,[19] Börzel & Risse,[20] and Jones et al.,[21] who all discuss the EU and ASEAN separately or in comparison. This concept is critical to examine since regional citizens exist due to extensive regional integration. Furthermore, the last concept is hard and soft law in international governance. Analysis of legal instruments adopted by regional organisations is also critical to examine, as these instruments may contain clauses regulating free movement. Additionally, it can refer to the cohesion of regional integration inside organisations such as the EU and ASEAN. Finally, comparisons will be conducted using comparison approaches to analyses of legal instruments and legal documents adopted by the EU and ASEAN in pandemic restrictions in 2020 and 2021.

This article argues that strong regional integration cohesiveness enables rapid response to crises within the institutional framework while respecting citizens' rights. Additionally, this paper contends that regional citizenship guarantees citizens of regional organisations that their rights will be protected during times of crisis. Moreover, the sort of legislative instrument adopted to address the crisis by restricting regional organisations' citizens' rights is highly dependent on the degree of regional cohesion and integration. Thus, the article's research issue is how the EU and ASEAN's legal frameworks respond to restricting free movement as citizen rights during a pandemic? Following that, the EU and ASEAN must determine the types of legal instruments to choose and the ramifications for regional citizens' fundamental rights.

This paper employed legal research methods with doctrinal and comparative approaches to examine the research problems. The study was conducted by inventorying, categorising and analysing legal instruments adopted by the EU and ASEAN with specific categories. These categories are the legal instruments of regional organisations adopted through processes agreed upon by member states, adopted in the framework of pandemic countermeasures and regulating

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[16] Amalie Ravn Weinrich, "Varieties of Citizenship in Regional Organisations: A Cross-Regional Comparison of Rights, Access, and Belonging," *International Area Studies Review* 24, no. 4 (2021): 255–73.

[17] Kilian Spandler, "Regional Standards of Membership and Enlargement in the EU and ASEAN," *Asia Europe Journal* 16, no. 2 (2018): 183–98.

[18] Liesbet Hooghe and Gary Marks, "Grand Theories of European Integration in the Twenty-First Century," *Journal of European Public Policy* 26, no. 8 (2019): 1113–33, doi:10.1080/13501763.2019.1569711.

[19] Frank Schimmelfennig and Thomas Winzen, "Grand Theories, Differentiated Integration," *Journal of European Public Policy* 26, no. 8 (2019): 1172–92.

[20] Tanja A. Börzel and Thomas Risse, "Grand Theories of Integration and the Challenges of Comparative Regionalism," *Journal of European Public Policy* 26, no. 8 (2019): 1231–52.

[21] Erik Jones, R. Daniel Kelemen, and Sophie Meunier, "Failing Forward? Crises and Patterns of European Integration," *Journal of European Public Policy* 28, no. 10 (2021): 1519–36.

free movement rights for citizens of regional organisation members; the period is limited to 2020 and 2021 and applied to all member states (not intended for specific member states). First, legal instruments are traced from official legal databases owned by regional organisations.[22] The next stage is to group the instruments in hard law or soft law. Finally, based on these groupings, the author creates patterns, analyses, discusses, and concludes the research results.

2. Two models of regional integration: EU and ASEAN in comparison

Scholars have been concerned with regional integration since the end of World War II, namely since 1948.[23] The EU is widely considered a leading regional integration experiment that serves as a model for other regional organisations.[24] Economic, social, and territorial cohesion are all mentioned in Article 174 of the TFEU, providing a solid legal foundation for regional integration within the EU. Regional integration is successful in the EU version because of member states' economic interdependence and national leadership that fully encourages it.[25] Numerous theories, including intergovermentalism, neo-functionalism, and postfunctionalism, attempt to explain EU regional integration.[26] Nonetheless, the relevance and interdependence of member states are critical variables in determining the viability of regional integration.

The EU and ASEAN both serve as models of interdependence among member states. Economic factors, the repression of conflict, and the support of national political elites all contribute to the interdependence that underpins strong cohesion between EU member states.[27] The EU reaches regional maturity through a process of political policy adaptation to the crises it encounters

[22] For the EU legal database is https://eur-lex.europa.eu/homepage.html and for ASEAN legal database are https://asean.org/legal-instruments-database/ and https://asean.org/category/statements-meetings/.

[23] Amitav Acharya, "Comparative Regionalism: A Field Whose Time Has Come?," *International Spectator* 47, no. 1 (2012): 3–4.

[24] Börzel and Risse, "Grand Theories of Integration and the Challenges of Comparative Regionalism"; Jetschke and Murray, "Diffusing Regional Integration: The EU and Southeast Asia"; Daniella Da Silva Nogueira de Melo and Maria Mary Papageorgiou, "Regionalism on the Run: ASEAN, EU, AU and MERCOSUR Responses Mid the Covid-19 Crisis," *Partecipazione e Conflitto* 14, no. 1 (2021): 57–78.; Ana Paula Tostes, "Constructing Integration: Resilience and Political Innovation in the EU," in *Regionalism under Stress: Europe and Latin America in Comparative Perspective*, eds. Detlef Nolte and Brigitte Weiffen (London – New York: Routledge, 2021), 67–80.

[25] Börzel and Risse, "Grand Theories of Integration and the Challenges of Comparative Regionalism," 2.

[26] De Melo and Papageorgiou, "Regionalism on the Run: ASEAN, EU, AU and MERCOSUR Responses Mid the Covid-19 Crisis," Hooghe and Marks, "Grand Theories of European Integration in the Twenty-First Century".

[27] Börzel and Risse, "Grand Theories of Integration and the Challenges of Comparative Regionalism," 4.

throughout time.[28] Thus, regional integration is tested when the EU is confronted with a crisis.[29] The EU's history demonstrates that crises can be a critical phase of regional integration. Inability to manage crises effectively will push regional organisation leaders to adapt and evolve to deal with the problem.[30] Recent crises, such as pandemics, have emphasised the importance of the EU responding swiftly and efficiently. Although initially criticised for its tardiness in responding, the EU was able to coordinate regional actions in response to the pandemic crisis.[31]

If the European Union is considered a successful regional integration project, how about ASEAN? The adoption of the ASEAN Charter in 2008 provides a legal impetus for the region's regional integration procedures to be distinct. Desierto asserts that there are five significant distinctions between the period prior to and following the adoption of the ASEAN Charter.[32] First, ASEAN member states decided to establish regional institutions based on charters. Legally, the existence of a charter enhances the legal personality of the ASEAN organisation's entities.[33] Second, the post-Charter establishes a system for developing regional legal instruments and a legal framework for resolving disputes. However, it turns out that the conflict resolution process faces significant challenges during implementation due to structural and substantive concerns.[34]

Additionally, the third structural distinction is the formalisation of ASEAN Chairmanship and the assignment of responsibilities to member nations that

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[28] Ana Paula Tostes, "Constructing Integration: Resilience and Political Innovation in the EU," Federico Maria Ferrara and Hanspeter Kriesi, "Crisis Pressures and European Integration," *Journal of European Public Policy* 29, no. 9 (2022): 1351–1373.

[29] Ferrara and Kriesi, "Crisis Pressures and European Integration," Philipp Genschel and Markus Jachtenfuchs, "From Market Integration to Core State Powers: The Eurozone Crisis, the Refugee Crisis and Integration Theory," *Journal of Common Market Studies* 56, no. 1 (2018): 178–96.; Simon Otjes and Alexia Katsanidou, "Beyond Kriesiland: EU Integration as a Super Issue after the Eurocrisis," *European Journal of Political Research* 56, no. 2 (2017): 301–19.

[30] Jones, Kelemen and Meunier, "Failing Forward? Crises and Patterns of European Integration," 1525.

[31] Martin Rhodes, "'Failing Forward': A Critique in Light of Covid-19," *Journal of European Public Policy* 28, no. 10 (2021): 13.

[32] "Pre-Charter and Post-Charter ASEAN: Cross-Pillar Decision-Making in the Master Plan for ASEAN Connectivity 2025," in *ASEAN Law and Regional Integration: Governance and The Rule of Law in Southeast Asia's Single Market*, eds. Diane A. Desierto and David Cohen (New York: Routledge, 2021).

[33] Shaun Narine, "ASEAN in the Twenty-First Century: A Sceptical Review," *Cambridge Review of International Affairs* 22, no. 3 (2009): 369.

[34] Nattapat Limsiritong, "The Deadlock of ASEAN Dispute Settlement Mechanisms and Why ASEAN Cannot Unlock It?," *RSU International Journal of College of Government* 3, no. 1 (2016): 18–25.; Nattapat Limsiritong, "The Problems of Law Interpretation under ASEAN Instruments and ASEAN Legal Instruments," *MFU Connexion* 5, no. 2 (2016): 136–55.

hold the position.[35] Nonetheless, member nations serving as ASEAN Chair retain the authority to select the agenda for a particular year.[36] Fourth, the ASEAN Charter requires member states to enact national legislation to implement the agreed 'ASEAN Law.' However, Limsiritong asserts that there is confusion about the definition of ASEAN Legal Instruments and ASEAN Instruments, so the form of 'ASEAN Law' is not yet evident.[37] The final distinction in the post-ASEAN Charter is the term 'ASEAN Centrality' in member states' relations with other countries. According to Acharya,[38] the 'ASEAN Centrality idea has strategic and normative implications. ASEAN is strategically significant since it serves as the focal point for global interactions between key countries such as China and Japan and the Asia Pacific area. Additionally, the principle's normative interpretation is inextricably linked to the peaceful diplomacy known as 'the ASEAN ways.'[39]

Regional integration in ASEAN is often stagnant, but significant progress is made occasionally.[40] This fact cannot be disconnected from the adoption of the ASEAN Charter, a significant step toward regional integration. However, as with the EU, the situation is inextricably linked to the dynamics of ASEAN as a regional organisation founded more than five decades ago. The most severe crisis to strike ASEAN occurred during the 1997 'Asia Financial Crisis.'[41] Additionally, the most recent catastrophe is the Pandemic, to which ASEAN responded with 'business as usual' and without integration. [42]

3. Regional citizenship from the EU and ASEAN perspective

Regional citizenship exists due to solid regional integration, implying that the two ideas are interdependent and related. [43] As a result, the primary source of information for evaluating this notion is the legislative instrument established

[35] Article 32 ASEAN, "The ASEAN Charter," The ASEAN Charter § (2008).

[36] Sanae Suzuki, "Can ASEAN Offer a Useful Model? Chairmanship in Decision-Making by Consensus," *Pacific Review* 34, no. 5 (2021): 7.

[37] Limsiritong, "The Problems of Law Interpretation under ASEAN Instruments and ASEAN Legal Instruments," 141–42.

[38] Amitav Acharya, "The Myth of ASEAN Centrality?," *Contemporary Southeast Asia* 39, no. 2 (2017): 275.

[39] Amitav Acharya, *The Making of Southeast Asia*, *The Making of Southeast Asia* (Singapore: Institute of Southeast Asian Studies (ISEAS) Publishing, 2012), 206, https://doi.org/10.7591/9780801466359.

[40] Koichi Ishikawa, "The ASEAN Economic Community and ASEAN Economic Integration," *Journal of Contemporary East Asia Studies* 10, no. 1 (2021): 25.

[41] Iwan J. Azis, "ASEAN Economic Integration: Quo Vadis?," *Journal of Southeast Asian Economies* 35, no. 1 (2018): 2–12.

[42] Jürgen Rüland, "Covid-19 and ASEAN: Strengthening State-Centrism, Eroding Inclusiveness, Testing Cohesion," *International Spectator* 56, no. 2 (2021): 15.

[43] Neuvonen, "Transforming Membership? Citizenship, Identity and the Problem of Belonging in Regional Integration Organizations," 232.

by each regional body. A significant indicator of how far regional citizenship has progressed within a regional organisation is the perspective of rights, access, and belonging.[44] Another criterion utilised is the significant level of regional citizenship, as evidenced by membership, rights, identity, and involvement.[45] Nonetheless, this study will adopt the first frame because it is more pertinent to the circumstances and developments of regional citizens in various regional organisations.

The concept of EU citizenship originated in the post-World War II era and the consolidation of European economic progress through establishing a single market.[46] Furthermore, EU citizenship is a necessary component of its development and cannot be separated from the European integration agenda.[47] Regional citizenship is defined in the EU by Article 20 (1) TFEU. Each citizen of the EU member state automatically becomes an EU citizen. Therefore, citizen rights in the EU perspective are interpreted as rights granted by the EU to everyone who is a citizen of an EU member state.[48] EU citizenship became legally established with the signing of the Maastricht Treaty, and during its evolution, this notion grew stronger and became incorporated into EU legislation.[49] Although explicitly incorporated in the Maastricht Treaty, EU citizenship is a complex and multifaceted term.

Nonetheless, some researchers regard the regional vision of the EU citizen model as the most mature of the alternative models.[50] One of the reasons the EU regional citizenship model is more mature is the Union citizen's rights under Article 20 (2) of the TFEU. Nonetheless, the argument concerning the rights of EU citizens continues to be relevant. The presence of rights results from Union citizens being viewed as subjects of regional law.[51] Meanwhile, Ferrera asserts

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[44] Weinrich, "Varieties of Citizenship in Regional Organisations: A Cross-Regional Comparison of Rights, Access, and Belonging," 259–60.

[45] Espen D.H. Olsen, "The Origins of European Citizenship in the First Two Decades of European Integration," *Journal of European Public Policy* 15, no. 1 (2008): 40–57.

[46] Willem Maas, "The Origins, Evolution, and Political Objectives of EU Citizenship," *German Law Journal* 15, no. 5 (2014): 797–819.; Olsen, "The Origins of European Citizenship in the First Two Decades of European Integration".

[47] Dimitry Kochenov, "The Right to Have What Rights? EU Citizenship in Need of Clarification," *European Law Journal* 19, no. 4 (2013): 502–16.

[48] Article 20 (2) European Union, "Consolidated Version of The Treaty on The Functioning of The European Union," The Treaty on The Functioning of The European Union § (1957), http://data.europa.eu/eli/treaty/tfeu_2012/oj.

[49] Martijn Van Den Brink, "EU Citizenship and (Fundamental) Rights: Empirical, Normative, and Conceptual Problems," *European Law Journal* 25, no. 1 (2019): 21–36.

[50] Cabrera and Byrne, "Comparing Organisational and Alternative Regional Citizenships: The Case of "Entrepreneurial Regional Citizenship" in ASEAN," Weinrich, "Varieties of Citizenship in Regional Organisations: A Cross-Regional Comparison of Rights, Access, and Belonging".

[51] Shaw, "The Interpretation of European Union Citizenship," 294.

that, in addition to rights, establishing EU citizenship entails a set of responsibilities.[52]

As indicated earlier, the TFEU guarantees the rights of EU citizens. This article will discuss the right to free movement as defined in Article 20(2a) of the TFEU. At the outset of the EU integration process, it was critical to agree on free movement rights. However, this condition is inextricably linked to the European Coal and Steel Community (ECSC) requirement to employ people from across Europe. Therefore, the free movement rights are being developed to include employees and all EU citizens and their families and the free movement of products and services guaranteed by Article 45 TFEU. The term "free movement" refers not only to physical travel but also to the right of all EU citizens to access sources of welfare or social benefits in all EU member states.[53]

This article argues that access and belonging are included in the right to free movement from a rights viewpoint. Because this privilege entitles EU citizens to live and work in all member states, reducing the national citizenship barrier, as a result, EU residents will have a sense of belonging to their country.[54] However, all EU citizens (not only employees) rights to free movement are further restricted by various legal instruments such as laws and directives. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of Union citizens and their family members to freely travel and reside within the territory of the Member States is the complete EU directive on free movement rights.

If the EU is recognised with the concept of Union citizens, then what about ASEAN? As an organisation undergoing a gradual and informal regional integration process, the term 'ASEAN citizen' is not defined officially under the ASEAN Charter.[55] Nonetheless, some scholars use a set of indices to establish the existence of the 'ASEAN citizen.' Weinrich, for example, finds that ASEAN citizenship is informal, changing, and unconventional via the lens of rights, access, and belonging.[56] In their study, Cabrera & Byrne added another characteristic when they proposed six elements (agents, something binding, rights, duties, substance, and institutional status), concluding that ASEAN citizenship arises due to social responsibility and entrepreneurial ties between

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[52] Maurizio Ferrera, "EU Citizenship Needs a Stronger Social Dimension and Soft Duties," in *Debating European Citizenship*, ed. Rainer Bauböck (Springer Open, 2019), 182.

[53] Michael Blauberger and Susanne K. Schmidt, "Welfare Migration? Free Movement of EU Citizens and Access to Social Benefits," *Research and Politics* 1, no. 3 (2014).

[54] Weinrich, "Varieties of Citizenship in Regional Organisations: A Cross-Regional Comparison of Rights, Access, and Belonging," 261.

[55] Neuvonen, "Transforming Membership? Citizenship, Identity and the Problem of Belonging in Regional Integration Organizations," 235.

[56] Amalie Ravn Weinrich, "The Emerging Regional Citizenship Regime of the Association of Southeast Asian Nations," *Journal of Current Southeast Asian Affairs* 40, no. 2 (2021): 201–23.

its member states.[57] Finally, Neuvonen sought to define citizenship by examining the ASEAN Charter terms' people-oriented ASEAN' and 'ASEAN identity.[58]

Scholars are examining this research to identify patterns or develop criteria for ASEAN citizenship. Although there is no formal definition of an ASEAN citizen like a Union citizen in the EU, from a human rights viewpoint, ASEAN is a regional organisation, and each member state acknowledges the idea of an ASEAN citizen. Additionally, the author will discuss free movement rights in light of the ASEAN Human Rights Declaration and the ASEAN Agreement on Natural Persons Movement. The ASEAN Human Rights Declaration emphasises in Article 15 that freedom of movement is a component of civil and political rights.[59] However, the Declaration's human rights provisions have been frequently criticised for being overly generic and failing to reflect ASEAN individuals' identities.[60] Additionally, the ASEAN Agreement on the Movement of Natural Persons regulates free movement rights, particularly for workers and the business world.[61] However, this Agreement is more concerned with business issues than granting ASEAN citizens access or rights. Therefore, the concept of citizen rights in the ASEAN perspective is defined in a limited way as the rights of citizens of ASEAN member states. In addition, there are additional other rights adopted by ASEAN member states based on the organisation's legal instruments. The article contends that ASEAN's responses to the issue are influenced by a lack of wholly defined regional citizenship. The COVID-19 epidemic exemplifies the argument. ASEAN's approach to the pandemic problem is to convene meetings to facilitate coordination between member nations and other countries in the region or adjacent to it.[62] In addition to establishing rules for travel bans inside the region, ASEAN also establishes guidelines for travel bans between member nations and other regions, such as the EU.[63] Before proceeding, the author should first clarify the hard and soft law

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[57] Cabrera and Byrne, "Comparing Organisational and Alternative Regional Citizenships: The Case of 'Entrepreneurial Regional Citizenship' in ASEAN".

[58] Neuvonen, "Transforming Membership? Citizenship, Identity and the Problem of Belonging in Regional Integration Organizations".

[59] ASEAN, "ASEAN Human Rights Declaration," 2012.

[60] Mathew Davies, "An Agreement to Disagree: The ASEAN Human Rights Declaration and the Absence of Regional Identity in Southeast Asia," *Journal of Current Southeast Asian Affairs* 33, no. 3 (2014): 107–29.; Laura Allison-Reumann, "ASEAN and Human Rights: Challenges to the EU's Diffusion of Human Rights Norms," *Asia Europe Journal* 15, no. 1 (2017): 39–54.

[61] ASEAN, "ASEAN Agreement on the Movement of Natural Persons," *Invest in ASEAN*, 2020.

[62] Riyanti Djalante and al., "COVID-19 and ASEAN Responses: Comparative Policy Analysis," *Progress in Disaster Science* 8 (2020); Rüland, "Covid-19 and ASEAN: Strengthening State-Centrism, Eroding Inclusiveness, Testing Cohesion".

[63] De Melo and Papageorgiou, "Regionalism on the Run: ASEAN, EU, AU and MERCOSUR Responses Mid the Covid-19 Crisis," 64.

concepts in the next section. Conception plays a significant role in this paper's arguments and hypotheses.

4. Soft and hard law in regional organisation governance

Scholars have frequently employed the distinction of hard and soft law.[64] Additionally, the perspective and categorisation employed are highly varied. The most frequently used indicators of hard law include a legally binding perspective, a precise production process, and the presence of a delegation of authority to interpret and implement the law.[65] In contrast, soft law is defined as a feeble arrangement of obligations, details, delegation, and the presence of ambiguous ambiguity or substance associated with it.[66] Hard and soft laws appear to be poles apart, easily distinguishable. However, some researchers attempt to define soft law to avoid being naive about the distinction between the two sorts of laws.

Blutman classified soft law into three categories. The first category includes non-binding judgments made by international organisations and institutions; this instrument may take the form of guidelines, declarations, resolutions, or recommendations.[67] The second type of soft law document is bilateral or multilateral cooperation that imposes no responsibilities on the participating countries, with joining statements, letters of intent, or memorandums of understanding typically serving as the preferred form of this type of soft law instrument.[68] Finally, the recommendations made by Non-Governmental

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[64] Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," *International Organization* 54, no. 3 (2000): 421–56.; Sylvia Karlsson-Vinkhuyzen and Antto Vihma, "Comparing the Legitimacy and Effectiveness of Global Hard and Soft," *Regulation & Governance* 3 (2009): 400–420.; Fabien Terpan, "Soft Law in the European Union-The Changing Nature of EU Law," *European Law Journal* 21, no. 1 (2015): 68–96.; Barnali Choudhury, "Balancing Soft and Hard Law for Business and Human Rights," *International and Comparative Law Quarterly* 67, no. 4 (2018): 961–86.; Elizabeth Ferris and Jonas Bergmann, "Soft Law, Migration and Climate Change Governance," *Journal of Human Rights and the Environment* 8, no. 1 (2017): 6–29.; Anna Di Robilant, "Genealogies of Soft Law," *American Journal of Comparative Law* 54, no. 3 (2006): 499–554; László Blutman, "In the Trap of a Legal Metaphor: International Soft Law," *International and Comparative Law Quarterly* 59, no. 3 (2010): 605–24.

[65] Abbott and Snidal, "Hard and Soft Law in International Governance"; Choudhury, "Balancing Soft and Hard Law for Business and Human Rights"; Fabien Terpan and Sabine Saurugger, "Soft and Hard Law in Times of Crisis: Budget Monitoring, Migration and Cybersecurity," *West European Politics* 44, no. 1 (2021): 21–48.

[66] Abbott and Snidal, "Hard and Soft Law in International Governance"; Harsh Mahaseth and Karthik Subramaniam, "Binding or Non-Binding: Analysing the Nature of the ASEAN Agreements," *International and Comparative Law Review* 21, no. 1 (2021): 100–123.; Karlsson-Vinkhuyzen and Vihma, "Comparing the Legitimacy and Effectiveness of Global Hard and Soft".

[67] Blutman, "In the Trap of a Legal Metaphor: International Soft Law," 607.

[68] Blutman, 607.

Organisations (NGOs) have a tangible effect on world politics.[69] Bluntman's method is predicated on the label of the legal instrument in question. However, the type of instrument does not necessarily indicate the nature of law, whether hard or soft.[70] Terpan argues a variety of perspectives when he categorises soft law into three categories: norms that are not legally binding but have legal relevance, norms that are legally binding but have soft characteristics, and finally, a combination of the two.[71] Additionally, it is stressed that there is a distinction between soft law and non-legal norms, which their legal relevance or absence can determine.[72] An instrument must first be declared a legal action by an authorised organisation before it can be classed as hard or soft.

This article distinguishes hard and soft law based on legally binding, which is the essential factor that distinguishes it from hard law,[73] its determination mechanism, and the sanctioning aspects available in legal instruments because it will be more relevant to the studies conducted.[74] The focus of this study is one of them, it is the choice of legal instrument forms adopted by regional organisations in the crisis period caused by the Pandemic. Therefore, the aspect of the substance is more appropriate to determine whether the law used is hard or soft. Nonetheless, the authors recognise that the EU and ASEAN have inconsistent nomenclature naming adopted legal instruments.[75]

5. EU free movement restrictions in times of COVID-19 Pandemic: from soft law to hard law

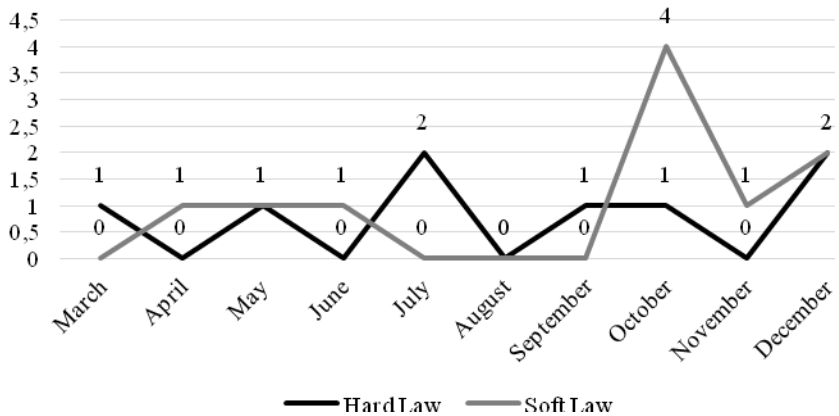
Article 288 TFEU specifies the form and content of appropriate legal instruments within the EU. On the one hand, regulations, directives, and decisions have binding legal effects, whereas recommendations and opinions do not.[76] On the other hand, the three legal instruments stated at the outset are hard law, whereas the latter two are soft law. The EU's legislative approach to the

[69] Blutman, 608.
[70] Choudhury, "Balancing Soft and Hard Law for Business and Human Rights," 964.
[71] Terpan, "Soft Law in the European Union– The Changing Nature of EU Law," 70–72.
[72] Terpan, 72.
[73] Ramses A. Wessel, "Normative Transformations in EU External Relations: The Phenomenon of 'Soft' International Agreements," *West European Politics* 44, no. 1 (2021): 74.
[74] Terpan and Saurugger, "Soft and Hard Law in Times of Crisis: Budget Monitoring, Migration and Cybersecurity"; Mahaseth and Subramaniam, "Binding or Non-Binding: Analysing the Nature of the ASEAN Agreements"; Ferris and Bergmann, "Soft Law, Migration and Climate Change Governance".
[75] Limsiritong, "The Problems of Law Interpretation under ASEAN Instruments and ASEAN Legal Instruments".
[76] Bruno de Witte, "Legal Instruments and Law-Making in the Lisbon Treaty," in *The Lisbon Treaty: EU Constitutionalism without a Constitutional Treaty?*, ed. Stefan Griller and Jacques Ziller (Vienna: SpringerWienNewYork, 2008).

COVID-19 pandemic crisis is thus inextricably linked to legal tools, both hard and soft. Unfortunately, the EU reacted slowly and incoherently at the outset of this crisis.[77] This condition exists because Article 168 TFEU establishes the EU's competence in public health to complement member states' national policies. As a result, when the COVID-19 Pandemic began affecting member states, the EU lacked the capacity and authority to respond promptly.[78]

The first legal instrument adopted by the EU to address the COVID-19 Pandemic, particularly in terms of restrictions on free movement rights, is Council Decision (EU) 2020/430 of 23 March 2020, authorising a Temporary Derogation from the Council's Rules of Procedure in light of the travel difficulties caused by the COVID-19 Pandemic in the Union. Additionally, between March and December 2020, the EU enacted 18 legal instruments regulating or restricting free movement rights. The legal instrument comprises eight instruments containing hard laws and ten instruments containing soft laws (recommendations). Council Decision, Council Implementing Decision, Commission Delegated Regulation, Commission Implementing Regulation, and Commission Implementing Decision are the hard law instruments used in 2020. In contrast, Council Recommendation and Commission Recommendation are utilised as soft law mechanisms. The following figure illustrates the EU's adoption of legal instruments in 2020:

Figure 1. Legal instruments adopted by EU on free movement rights in times of pandemic (2020)



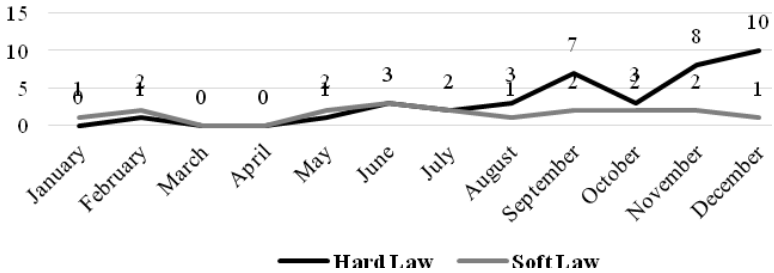
Sources: Data compiled by the author based on EUR-Lex (2022)

[77] Sarah Wolff and Stella Ladi, "European Union Responses to the Covid-19 Pandemic: Adaptability in Times of Permanent Emergency," *Journal of European Integration* 42, no. 8 (2020): 1025–40.; de Melo and Papageorgiou, "Regionalism on the Run: ASEAN, EU, AU and MERCOSUR Responses Mid the Covid-19 Crisis".

[78] Eleanor Brooks and Robert Geyer, "The Development of EU Health Policy and the Covid-19 Pandemic: Trends and Implications," *Journal of European Integration* 42, no. 8 (2020): 1058.

In 2021, it demonstrated a trend toward adopting legal mechanisms to manage free movement rights rather than hard law. This statistic reveals that the Inner EU had made significant strides in overcoming the Pandemic. The following figure illustrates the distribution of the EU's adoption of hard law and soft law instruments regulating restrictions on free movement rights in 2021:

Figure 2. Legal instruments adopted by EU on free movement rights in times of pandemic (2021)



Sources: Data compiled by the author based on EUR-Lex (2022)

According to Figure 2, there are 56 legal instruments in use, including 38 hard and 18 soft laws. In addition, three Regulations, 32 Commission Implementing Decisions, one Commission Implementing Regulation, and two Commission Delegated Regulations, were utilised as hard law instruments. At the same time, the soft law instrument is a Council Recommendation. The adoption of hard law tools increased significantly in the second part of 2021, peaking at the year's close. What is notable is that the majority of legal instruments enacted in 2021 concern the relaxation of travel restrictions enacted in 2020.

Additionally, there exist some legal instruments that recognise foreign-issued COVID-19 test documents. The EU's adoption of both hard and soft legislative instruments demonstrates hope for resolving the epidemic at the regional level. The following table summarises the many legal mechanisms that the EU had established to control the restriction of free movement rights in preparation for the Pandemic in 2020-2021:

Table 1. Various legal instruments adopted by the EU 2020-2021

Type of Law	Legal Instruments	2020	2021
Hard Law	Regulation	0	1
	Council Decision	1	0
	Council Implementing Decision	1	0
	Commission Delegated Regulation	3	2
	Commission Implementing Regulation	2	1
	Commission Implementing Decision	1	32
Soft Law	Council Recommendation	5	18
	Commission Recommendation	5	0

Sources: Data compiled by the author based on EUR-Lex (2022)

The EU adopted the hard law instrument as its initial approach to curtailing free movement rights in response to the Pandemic. However, until the end of 2020, soft legislation was designated as the vehicle for regulating people's travel limitations between EU member states. At the start of the Pandemic, the employment of hard law instruments was partly in conformity with Article 168 (5) of the TFEU, which requires the use of non-soft laws to preserve public health in the region.[79] Additionally, until December 2020, soft law is more extensively employed as a legal mechanism for regulating travel limitations that affect free movement rights. The choice of soft legislation is extremely sensible given its adaptable character and capacity to be easily replaced in pandemic situations.[80] The establishment of hard law as a first response to restrict people's travel, followed by soft law, attempts to provide direction and instructions to member states on how to control the coronavirus within their internal borders. This is particularly pertinent given the nature of soft law, which is intended to convey basic guidelines rather than organise them in detail.[81]

The adoption of soft laws restricting people's travel at the beginning of the crisis indicates the EU's inability to anticipate and react to unforeseen events. Nonetheless, the EU's adoption of soft rules is primarily focused on assuring rapid reaction in the public interest and economic recovery.[82] Additionally, it

[79] Mariolina Eliantonio and Oana Ştefan, "The Elusive Legitimacy of EU Soft Law: An Analysis of Consultation and Participation in the Process of Adopting COVID-19 Soft Law in the EU," *European Journal of Risk Regulation* 12, no. 1 (2021): 159–75.
[80] Stefan Oana, "COVID-19 Soft Law: Voluminous, Effective, Legitimate? A Research Agenda | European Papers," *European Papers* 5, no. 1 (2020): 663.
[81] A. E. Boyle, "Some Reflections on the Relationship of Treaties and Soft Law," *International and Comparative Law Quarterly* 48, no. 4 (1999): 901.
[82] David Townend et al., "What Is the Role of the European Union in the COVID-19 Pandemic?," *Medicine and Law* 39, no. 2 (2020): 249–68.

demonstrates the EU's pattern of crisis management, notable continuity and quick change in response to and recovery from calamities. On the one hand, soft law allows for greater flexibility and response time; on the other hand, its use can be viewed as a shortcut that disrupts the rhythm of developing national and regional legislation and regulations.[83] However, the EU's implementation of soft regulations limiting free movement rights during the early stages of the pandemic crisis is a sort of constraint on regional organisations and an attempt to coordinate member states' national policies.[84]

Moreover, adopting soft law mechanisms to govern restrictions on free movement rights is a type of EU caution. The EU Fundamental Rights Charter guarantees the right to free movement as a fundamental right. According to Mantu's research in Romania, EU nationals retain their rights to free movement in a pandemic despite the limits.[85] When the Pandemic began, the EU responded by establishing soft legislation limiting the viral spread and curtailing free movement rights. Additionally, this alternative cannot ignore the historical facts of the EU's experience with the spread of contagious diseases through soft law instruments.[86]

On the other hand, the adoption of soft laws to restrict freedom of movement during the start of the COVID-19 epidemic is also an attempt to provide guidance or instructions to member nations. The EU's lack of binding legal power also allows member states to experiment with restrictions on free movement rights in their separate domains. A crisis in its manifestations can be a litmus test for regional integration, particularly for the EU, renowned for its deep and robust integration. This prudence in limiting free movement rights demonstrates that the stronger regional integration is, the more certain it is that human rights such as free movement will not be eroded even in pandemic conditions. As a result, containing the virus's spread and limiting people's movement inside a territory that has been solidly integrated is not a viable option.

Soft law is increasingly being used at the regional level and within member states. Germany, for example, employs Pandemic Plans, Recommendations, Informal Agreements, and Administrative Directions as soft law instruments to

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[83] Stella Ladi and Dimitris Tsarouhas, "EU Economic Governance and Covid-19: Policy Learning and Windows of Opportunity," *Journal of European Integration* 42, no. 8 (2020): 1041–56.

[84] Alberto Alemanno, "The European Response to COVID-19: From Regulatory Emulation to Regulatory Coordination?," *European Journal of Risk Regulation* 11, no. 2 (2020): 307–16.

[85] Sandra Mantu, "EU Citizenship, Free Movement, and Covid-19 in Romania," *Frontiers in Human Dynamics* 2, no. December (2020): 1–7.

[86] Barbara Boschetti and Maria Daniela Poli, "A Comparative Study on Soft Law: Lessons from the COVID-19 Pandemic," in *Cambridge Yearbook of European Legal Studies*, vol. 23, eds. Emilija Leinarte and Oke Odudu (Cambridge: Cambridge University Press, 2021), 24.

rein in coronavirus spread throughout the country.[87] Meanwhile, Italy is implementing soft law tools as part of the second phase of a pandemic reaction to restore normalcy to its citizens' lives.[88] Guidelines, protocols, circulars, recommendations, and frequently asked questions (FAQs) are all legal instruments available on government websites.[89] The Spanish government followed suit, utilising soft law instruments such as nomenclature standards, protocols, recommendations, and guidance on best practices to aid in the control of coronavirus spread across the country.[90]

The shift from soft to hard law happened in 2021; as illustrated in Figure 2, hard law adoption peaked in the second half of 2021. This fact, the authors assert, implies that the leaders of EU bodies appear to have unified their pandemic preparedness plans with member states. As a result, the instrument type shifted from soft to hard legislation. There are three distinct processes by which hard law becomes soft law or vice versa, namely due to crises, the effectiveness of legal standards, and the decision of actors.[91] The three kinds are decisive regarding limits on freedom of movement during the COVID-19 epidemic. Because crisis conditions affecting all member states might result in instability and uncertainty, there are openings for modifying legal instruments' forms.[92] Restricting free movement rights during the COVID-19 pandemic crisis can be an illustrative case. In terms of effectiveness, the shift in the type of legal instrument from hard law to soft law in 2021 can be understood as an increase in public participation in decision-making. The European Parliament's (EP) viewpoint is critical since it bears on the legitimacy of political parties and the public.[93] The approval of Regulations (EU) 2021/953 and (EU) 2021/954 represents a significant step forward in terms of public interaction. Additionally, the role of players in the transformation of legal instruments is critical to review. Throughout 2020, the European Commission and the Council of the European Union established themselves as institutions and critical actors in the adoption of legal instruments imposing restrictions on free movement rights at the regional level; however, since 2021, other actors have been involved, most

[87] Matthias Knauff, "Coronavirus and Soft Law in Germany: Business as Usual?," *European Journal of Risk Regulation* 12, no. 1 (2021): 45–58.

[88] Flaminia Aperio Bella, Cristiana Lauri, and Giorgio Capra, "The Role of COVID-19 Soft Law Measures in Italy: Much Ado about Nothing?," *European Journal of Risk Regulation* 12, no. 1 (2021): 100.

[89] Aperio Bella, Lauri, and Capra, "The Role of COVID-19 Soft Law Measures in Italy: Much Ado about Nothing?"

[90] Dolores Utrilla Fernandez-Bermejo, "Soft Law Governance in Times of Coronavirus in Spain," *European Journal of Risk Regulation* 12, no. 1 (2021): 114.

[91] Sabine Saurugger and Fabien Terpan, "Normative Transformations in the European Union: On Hardening and Softening Law", *West European Politics* 44, no. 1 (2021): 7.

[92] Terpan and Saurugger, "Soft and Hard Law in Times of Crisis: Budget Monitoring, Migration and Cybersecurity," 4.

[93] Christopher Lord, "How Can Parliaments Contribute to the Legitimacy of the European Semester?," *Parliamentary Affairs* 70, no. 4 (2017): 675.

notably the EP as a representative of the European people and a mechanism for ensuring transparency in public policymaking.[94]

The degree of coherence among regional organisations heavily influences the legislative forms used to restrict fundamental rights such as freedom of movement. From March 2020 to December 2021, the EU's experience revealed the change of soft law acceptance into hard legislation. According to the author, this occurs as a result of three causes. First, freedom of movement is a fundamental right guaranteed by Article 45 of the European Union's Charter of Fundamental Rights.[95] As a result, if the restriction is implemented hastily and abruptly without first determining its efficiency in suppressing virus spread, it will almost surely result in resistance. Imitating China's 'lockdown' strategy on the city of Wuhan after COVID-19 spread for the first time undoubtedly requires strategic initiatives supported by all member states. Second, crises are a natural part of the EU integration process, and each crisis requires a unique response. Third, the COVID-19 epidemic has had an equal impact on all spheres of life and all member states. Thus, the adoption of soft legislation during the early Pandemic is appropriate if the goal is to assess the epidemic's impact and the ability of member states to overcome it autonomously. Additionally, the limitations of the EU's authority in public health under Article 168 TFEU must be examined. Finally, the progressive implementation of hard law demonstrates the EU institutions' confidence in their ability to begin addressing the Pandemic's regional consequences in a coordinated manner.

6. Southeast Asian Free movement rights in times of COVID-19 Pandemic: follow 'the ASEAN ways'

ASEAN maintained free movement rights differently from the EU during the COVID-19 epidemic. As previously noted, the EU employs a combination of hard and soft law, whereas ASEAN relies entirely on soft law in the form of declarations and statements. Throughout 2020, ASEAN published 56 declarations and statements connected to COVID-19; however, only two joint statements were indirectly tied to travel restrictions, and one declaration was directly related to travel restrictions that impacted the free movement of ASEAN member states' citizens. Additionally, ASEAN published 48 declarations and statements in 2021 regarding COVID-19, but just one statement regarding travel restrictions. Thus, between March 2020 and December 2021, ASEAN filed just one declaration and three declarations on restrictions on free movement between member nations.[96]

The first joint statement in 2020 was The ASEAN Tourism Ministers' *Joint Statement on Strengthening Cooperation to Revitalise ASEAN Tourism* on 29

[94] Nicole Bolleyer and Valeria Smirnova, "Parliamentary Ethics Regulation and Trust in European Democracies," *West European Politics* 40, no. 6 (2017): 1218–40.
[95] European Union, "Charter of Fundamental Rights of The European Union" (2000).
[96] Generated and analysed from https://asean.org/category/statements-meetings/ last accessed on 31 March 2022.

April 2020, and the second was *The ASEAN Tourism Ministers' Joint Statement on Responding to the Impact of COVID-19 on Labor and Employmen*t on 29 May 2020.[97] Additionally, on 12 November 2020, the specific declaration was adopted under the formal title ASEAN Declaration on an ASEAN TRAVEL Corridor Arrangement Framework.[98] Then, in 2021, the joint statement was presented on the eve of the ASEAN Tourism Ministers' 24th Meeting on 4 February 2021.[99] Hence, this paper found some facts that ASEAN did not adopt hard laws in regulated travel limits at the regional level. Instead, the soft law was chosen by ASEAN during Southeast Asia's COVID-19 epidemic in 2020 and 2021. This condition may refer to various issues concerning regional citizens' rights and the most recent advancements in ASEAN integration efforts.

ASEAN has a considerable amount of experience related to public health crises. For example, previous MERS and SARS outbreaks had hit the region in 2003 and 2009.[100] As an area geographically close to China, ASEAN member states can mitigate the potential spread of this virus earlier than other countries.[101] However, in reality, ASEAN can be slow in responding to the emergence of COVID-19. In the early phases of the COVID-19 Pandemic spread in the Southeast Asian region, each member country carried out travel restrictions without ASEAN's coordination.[102] However, soft law related to free movement rights was adopted in November 2020 to guide essential business travel.[103] This fact in a state of crisis reinforces the doctrine of 'the ASEAN ways', which prioritises the sovereignty of each country in regional cooperation.[104]

In addition, in responding to the COVID-19 Pandemic, ASEAN conducts multilateral cooperation well with certain countries or with regional

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[97] ASEAN, "Joint Statement of The ASEAN Tourism Ministers on Strengthening Cooperation to Revitalise ASEAN Tourism" 2019, no. February (2020): 2019–21, https://asean.org/joint-statement-asean-tourism-ministers-strengthening-cooperation-revitalise-asean-tourism/; ASEAN, "Joint Statement on Response to the Impact of COVID-19 on Labour and Employment," 2020.

[98] ASEAN, "ASEAN Declaration on an ASEAN Travel Corridor Arrangement," 2020.

[99] ASEAN, "Joint Media Statement The 24th Meeting of ASEAN Tourism Ministers," no. February (2021): 1–5.

[100] Mely Caballero-Anthony, "ASEAN's Multilateral Path Through the Pandemic," *Current History* 119, no. 818 (2020): 222.

[101] Rüland, "Covid-19 and ASEAN: Strengthening State-Centrism, Eroding Inclusiveness, Testing Cohesion"; Gianna Gayle Amul et al., "Responses to COVID-19 in Southeast Asia: Diverse Paths and Ongoing Challenges", *Asian Economic Policy Review* 17 (2022): 90–110.

[102] ASEAN, "Declaration of the Special ASEAN Summit on Coronavirus Disease 2019 (COVID-19)," 2020.

[103] ASEAN, "ASEAN Declaration on an ASEAN Travel Corridor Arrangement".

[104] Rüland, "Covid-19 and ASEAN: Strengthening State-Centrism, Eroding Inclusiveness, Testing Cohesion," 14.

organisations[105] However, travel restrictions remain the domain of each member country without any commitment at the beginning of the Pandemic. Therefore, the Declaration on travel corridor arrangements was established more than six months after the Pandemic. On the one hand, ASEAN member states are trying to limit the spread of the virus. However, on the other hand, travel restrictions will weaken the tourism industry. The tourism industry is one of the leading sectors of ASEAN, which was severely affected when travel restrictions were imposed to prevent the spread of the virus.[106]

Furthermore, the selection of instruments in the form of declarations or statements is a significant issue. Because the two instruments are not legal acts, they are not legally enforceable and have no legal implications. The two institutions are classified as 'ASEAN Instruments' rather than 'ASEAN Legal Instruments,' but the ASEAN Charter makes no distinction between the two titles.[107] Nonetheless, based on their nomenclature, the author refers to the two instruments as 'ASEAN Instruments.' ASEAN's legal acts, referred to as 'ASEAN Legal Instruments,' generally use treaty terminology, Agreement, arrangement, and protocol.[108] As a result, instruments in the form of declarations and statements are non-binding on ASEAN member nations.

On the one hand, this scenario demonstrates the fragility of regional institutions such as the ASEAN's legal system. On the other hand, this fact demonstrates the legal system's complexity, owing to the ambiguity of the nomenclature and the binding nature of each legal instrument. However, by utilising soft law as a legal instrument for regional organisations, conflicts with national law and pressure from the industrial world can be avoided.[109]

Regional integration factors greatly influence the choice of legal instruments adopted by ASEAN in tackling the Pandemic. ASEAN implements coordination and activates multilateral cooperation with China, Russia, the United States, Korea, Japan, and regional organisations such as the EU without producing a legally binding agreement. Therefore, ASEAN consistently implements 'the ASEAN ways' that prioritise informality, non-legal consensus building, and weak regionalism.[110] From this perspective, it can be said that the crisis caused by the Pandemic has not had a significant impact on the ASEAN

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[105] Djalante et al., "COVID-19 and ASEAN Responses: Comparative Policy Analysis"; Amul et al., "Responses to COVID-19 in Southeast Asia: Diverse Paths and Ongoing Challenges".

[106] Loo See Beh and Woon Leong Lin, "Impact of COVID-19 on ASEAN Tourism Industry," *Journal of Asian Public Policy* 00, no. 00 (2021): 1–21.

[107] Limsiritong, "The Problems of Law Interpretation under ASEAN Instruments and ASEAN Legal Instruments," 139.

[108] Yoshifumi Fukunaga, "Use of Legal Instruments in the ASEAN Economic Community Building," *Journal of Contemporary East Asia Studies* 10, no. 1 (2021): 66.

[109] Di Robilant, "Genealogies of Soft Law," 502.

[110] Amitav Acharya, "Arguing about ASEAN: What Do We Disagree About?," *Cambridge Review of International Affairs* 22, no. 3 (2009): 493–99.; Usanee Aimsiranun, "Comparative Study on the Legal Framework on General Differentiated Integration Mechanisms in the European Union, APEC, and ASEAN," 2020, 1–17.

integration process. Furthermore, this condition also affects 'ASEAN citizens' human rights, pseudo or non-existent. The choices taken by ASEAN leaders in dealing with the Pandemic are also included as a development strategy.[111] Restrictions on free movement rights carried out by each member country are expected to build resilience in response to the ongoing Pandemic or even further Pandemic.

ASEAN's response to free movement rights since the Pandemic broke out also shows that ASEAN integration processes in the legal sector are slow. The implications also affect the implementation of the Rule of Law at the regional level. Strengthening the Rule of Law is very important for the rule-based organisation as aspired by ASEAN.[112] Furthermore, ASEAN's lack of response regarding restrictions on free movement rights continued in 2021. During the Pandemic, most ASEAN Citizens experienced a lack of legal protection, especially in terms of free movement rights, relying solely on the legal protection of national countries without contributions from regional organisations. This condition occurs not almost evenly distributed throughout ASEAN countries; the Pandemic is a momentum to further limit human rights for citizens.[113] In addition, democratic backsliding also occurs with a coup by the military or a change of government without elections.[114] Weak legal integration makes ASEAN's powerlessness even more complete. The principle of non-interference adopted by ASEAN also makes interference of member states to other countries impossible.[115] This condition increasingly limits the guarantee of citizens' rights of ASEAN member states listed in the ASEAN Declaration of Human Rights.

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[111] Ishikawa, "The ASEAN Economic Community and ASEAN Economic Integration".

[112] Kevin Y. L. Tan, "ASEAN Law: Content, Applicability, and Challenges," in *ASEAN Law and Regional Integration: Governance and The Rule of Law in Southeast Asia's Single Market*, eds. Diane A Desierto and David Cohen (New York: Routledge, 2021), 39–56.; ASEAN Secretariat, *Roadmap for an ASEAN Community 2009-2015, Jakarta: ASEAN Secretariat*, 2009, http://www.asean.org/images/2012/publications/RoadmapASEANCommunity.pdf; ASEAN, "Asean Community Vision 2025," 2015, 8, http://www.asean.org/wp-content/uploads/images/2015/November/aec-page/ASEAN-Community-Vision-2025.pdf.

[113] Champa Patel, "How COVID-19 Infected Human Rights Protection," *East Asia Forum Quarterly*, 2020.

[114] Rüland, "Covid-19 and ASEAN: Strengthening State-Centrism, Eroding Inclusiveness, Testing Cohesion"; Saleena Saleem, "Malaysia 2020: Democratic Backsliding Amid the COVID-19 Pandemic," *Asia Maior* XXXI, no. 1 (2020): 241–58.

[115] Sanae Suzuki, "Why Is ASEAN Not Intrusive? Non-Interference Meets State Strength," *Journal of Contemporary East Asia Studies* 8, no. 2 (2019): 158.

7. Conclusion

The EU and ASEAN chose different paths in providing guarantees for implementing free movement rights during the Pandemic.[116] Strong regional integration in the EU has implications for guaranteeing human rights and implementation. Furthermore, this condition is strongly related to adopting legal instruments to ensure the implementation of human rights during times of crisis, especially pandemics. The EU adopts hard and soft laws to handle the Pandemic quite tactically and strategically. However, it is not easy to distinguish strictly between hard law and soft law adopted by the EU.[117] In instruments in the form of soft law, there is a dimension of substance that is hard and vice versa.[118] Nonetheless, in the context of restrictions on free movement rights, the EU adopts both of these instruments regardless of the dimensions of the substance it regulates. On the other hand, ASEAN consistently adopt soft law with dimensions of substance that do not have legally binding power.

The two forms of regional integration of the EU and ASEAN consistently carry out their respective organisational visions. The EU, with the pattern of using soft law at the beginning of the Pandemic, which then turned into hard law in the following year, showed the strong integration and influence of the Union on handling the Pandemic. ASEAN, which is consistent with the principle of non-interference, prefers the form of soft law instruments with soft substances. As a result, the role of each ASEAN member state in dealing with the Pandemic is more prominent without showing any significant contributions from regional organisations. In this context, it can be said that the public health crisis cannot strengthen ASEAN regional integration once again. State-centrism remains a common choice with symptoms of democratic backsliding that ignore citizen rights.

The study conducted by this author has limitations in reaching and identifying instruments other than soft law and hard law. In addition, the documents on which the research is based are legal acts officially declared by regional organisations. However, the author has realised that there are documents that do not include legal acts but have an influence on handling the Pandemic, especially related to restrictions on free movement rights. Therefore, future research can cover these documents to photograph more comprehensive results. Furthermore, the dichotomy of the form of hard and soft law instruments can be less precise to measure the cohesion of integration and implementation of human rights. However, the classification of these two forms of legal instruments remains relevant for reviewing and discussing integration at the legal and regulatory levels. For example, regional organisations with solid

[116] Maas, "The Origins, Evolution, and Political Objectives of EU Citizenship"; Van Den Brink, "EU Citizenship and (Fundamental) Rights: Empirical, Normative, and Conceptual Problems".
[117] Terpan, "Soft Law in the European Union– The Changing Nature of EU Law," 84.
[118] Choudhury, "Balancing Soft and Hard Law for Business and Human Rights".

integration cohesion, such as the EU, the soft and hard law is formal and has become a part of supranational legal order. Otherwise, ASEAN with weak integration cohesion tends to adopt soft law in informality lawmaking process.

Further research should examine strategically legal responses either through legal or non-legal instruments that have implications for the public. The EU and ASEAN can overview two different polar models of regional organisations with different goals and outcomes. The escalation of the Pandemic, which is changing, also makes the study of the legal responsibility of regional organisations relevant, especially regarding the restriction of free movement rights, which is a source of regional economic stagnation.