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ENERGY JUSTICE IN ELECTROMOBILITY DEVELOPMENT: EU AND ASEAN LAW IN A COMPARATIVE CONTEXT

Abstract: *To counteract climate change, various states have adopted innovative laws and solutions. Electromobility as a climate policy is one of the solutions that can contribute to reducing carbon emissions. Furthermore, international organisations such as the European Union (EU) have encouraged member states to develop an electric mobility ecosystem. Moreover, as one of the EU partner organisations, the Association of Southeast Asian Nations (ASEAN) has encouraged member states to adopt similar laws and policies in electromobility innovations. This study examined the EU and ASEAN legal innovations that developed electromobility ecosystems in the context of energy justice comparisons. This paper argues that adopting the principle of energy justice in EU and ASEAN law is highly dependent on the function and role of international organisations in lawmaking. As a climate policy innovation, electromobility is closely related to energy justice for the public. Therefore, analysing the functions and roles of international organisations such as the EU and ASEAN is crucial. The study examined the legal framework adopted by the EU and ASEAN to create an electromobility ecosystem. The purpose of the study was to obtain a comprehensive understanding of the role and function of lawmaking in international organisations supporting climate policy and contributing to the achievement of energy justice.*

Keywords: *ASEAN, Comparative, Energy Justice, Electromobility, EU.*

1. INTRODUCTION

Carbon dioxide emissions from the transportation sector worldwide increased by 8% in 2021 compared to the previous year.¹ This fact shows that efforts to reduce emissions from the transportation sector are crucial. Electric vehicles (EVs) are one of the alternative solutions to reduce emissions from the transportation sector that has been enthusiastically adopted by various countries.² In building the EV or electromobility ecosystem, there is also a significant role for regional organisations such as the European Union (EU) and the Association of Southeast Asian Nations (ASEAN). The EU and ASEAN share the same approach and ambition concerning energy transition targets, particularly electromobility development.³ Nonetheless, the EU and ASEAN take different approaches from a legal perspective. This condition is closely related to the differences in the design of the organisations. Therefore, due to differences in the legal framework design on electromobility, the EU and ASEAN also have different definitions of justice in their regional energy policies.

Energy justice is vital in energy laws and policies adopted by international organisations.⁴ As such, the discussion of energy justice in climate policy is very relevant. In response to climate change, policies and laws on electromobility are also very important to ensure energy justice. The EU and ASEAN have a long history of renewable energy cooperation.⁵ From 2023 to 2027, the energy sector will be one of the mainstays in increasing cooperation between the two regional organisations.⁶ The EU and ASEAN have similarities and differences as organisations that influence the energy policies of their member states. Therefore, there is an urgent need to analyse the comparative laws governing electromobility development in the two organisations. The results of the analysis and examination will contribute to the outlook for EV development at least until 2027.

Recent studies on the comparison of EU and ASEAN energy laws and policies have been conducted by several scholars. First, Indeo compared the climate policies adopted by the EU and ASEAN with a focus on regional renewable en-

¹ International Energy Agency, Transport: CO2 emissions from transport rebounded in 2021, returning to their historical growth trend, <https://www.iea.org/reports/transport>, 11 October 2022.

² P. Jochem, *et. al.*, “The Contribution of Electric Vehicles to Environmental Challenges in Transport” 64 *Transportation Research Part D: Transport and Environment* 1, 64/2018, 1.

³ Fabio Indeo, „ASEAN-EU Energy Cooperation: Sharing Best Practices to Implement Renewable Energy Sources in Regional Energy Grids“ *Global Energy Interconnection*, 2/2019, 395.

⁴ Raphael Heffron, „Applying Energy Justice into the Energy Transition“, *Renewable and Sustainable Energy Reviews*, 156/2022, 2.

⁵ W. Huck, *et. al.*, „Framework and Content of Energy Transition in Southeast Asia with ASEAN and the EU“, *The Journal of World Energy Law & Business*, 15/2002, 402–403.

⁶ ASEAN Secretariat, “Plan of Action to Implement the ASEAN-EU Strategic Partnership (2023-2027)”, 2020, 10.

ergy grids.⁷ The next study, which was published by Diaz-Rainey et al., makes a comparative analysis of ASEAN's energy policy and the EU's perspective on energy integration, security, and decarbonisation.⁸ Furthermore, a very interesting and valuable study conducted by Huck et al. discussed the energy transition in ASEAN, which involved the EU as a significant influencing party.⁹ However, the previous studies did not specifically compare EU and ASEAN energy policies from a legal perspective. Therefore, this article will fill in the gaps in knowledge regarding the comparison of EU and ASEAN energy laws and policies, especially the aspect of energy justice. This paper focuses on laws and policies related to electromobility due to the large carbon dioxide emissions produced by conventional vehicles that use fossil fuels.

Furthermore, this paper argues that energy justice as a vital aspect of energy transition law and policy is interpreted differently in the legal systems adopted by the EU and ASEAN. In addition, this paper also argues that adopting the principle of energy justice in EU and ASEAN law is highly dependent on the function and role of international organisations in lawmaking. In the context of electromobility development, the development, expansion, and penetration of EVs to the public in member countries is an inseparable variable from the role of regional organisations. The analysis and discussion in this article consist of two main parts. The first section discusses the urgency of energy justice in electromobility development and its adoption in EU and ASEAN legal instruments. The second part of the analysis compares the electromobility laws and policies of the EU and ASEAN from the perspective of energy justice and the regulation of the operational level of its implementation. The last section concludes this article.

2. ENERGY JUSTICE IN ELECTROMOBILITY DEVELOPMENT

Energy justice is a concept that is closely related to environmental justice and climate justice.¹⁰ Energy justice conceptually consists of core principles and implementation principles.¹¹ The core principles of energy justice are distributive justice, procedural justice, and recognition justice.¹² Distributive justice consists of three interrelated aspects of distribution: the object of distribution, the

⁷ F. Indeo, 399.

⁸ I. Diaz-Rainey, *et al.*, "An Energy Policy for ASEAN? Lessons from the EU Experience on Energy Integration, Security, and Decarbonization", *ADB Working Paper Series*, 1271/2021, 1-22.

⁹ W. Huck, *et al.*, 396.

¹⁰ Kirsten Jenkins, "Setting Energy Justice Apart from the Crowd: Lessons from Environmental and Climate Justice", *Energy Research and Social Science*, 39/2018, 120.

¹¹ R. Heffron, 3.

¹² *Ibid.*

subject of distribution, and the mode used in the distribution process.¹³ In a broader dimension, energy as a public commodity needs guarantees so that distribution from one place to another can take place safely and continuously.¹⁴ Therefore, the principle of distributional justice in energy justice is vital because it is related to the guarantee of supply of energy needs. Electromobility development is also inseparable from the dimension of distributive justice.

Furthermore, electromobility technology must be distributed fairly and sustainably to the public to reduce emissions within the climate change framework.¹⁵ The next core principle is procedural justice, which focuses on the legal process in policymaking.¹⁶ The procedural aspect of justice also includes fairness in the legislative process by involving public participation without discrimination.¹⁷ Thus, procedural justice highly depends on the available participation space and includes the participation of the public.¹⁸ In addition, the principle of procedural justice enables everyone to participate in the lawmaking process without discrimination.¹⁹ The last core principle in energy policy is recognition justice, which generally guarantees public recognition of representation, rights, and the vision of the future, especially among local communities.²⁰ Neglecting recognition of justice will lead to the rejection of energy policies by the public because they will be considered inconsistent with cultural and political values.²¹ The absence of recognition justice will also create a gap in understanding energy needs between the public, regulators, and energy companies.²²

In addition to the core principles, implementation principles also form an integral part of energy justice. Implementation principles can also be interpreted as decision-making tools in energy policy.²³ Sovacool, in his study, revealed eight

¹³ Benjamin Sovacool, *et. al.*, *Energy Security, Equality, and Justice*, New York 2014, 23.

¹⁴ *Ibid.*

¹⁵ Andri Gunawan Wibisana, “Keadilan Dalam Satu (Intra) Generasi: Sebuah Pengantar Berdasarkan Taksonomi Keadilan Lingkungan”, *Mimbar Hukum*, 29/2017, 294.

¹⁶ R. Heffron, 2.

¹⁷ Gordon Walker, “Beyond Distribution and Proximity: Exploring the Multiple Spatialities of Environmental Justice”, *Antipode*, 41/2009, 627.

¹⁸ Darren McCauley, *Energy Justice: Re-Balancing the Trilemma of Security, Poverty and Climate Change*, Cham 2018, 66-67.

¹⁹ Robert Kuehn, “A Taxonomy of Environmental Justice”, *Environmental Law Reporter*, 30/2000, 10688.

²⁰ Alaize Dall-Orsoletta, Paula Ferreira and Géremi Gilson Dranka, „Low-Carbon Technologies and Just Energy Transition: Prospects for Electric Vehicles“, *Energy Conversion and Management: X*, 16/2022, 3.

²¹ Kirsten Jenkins and others, „Energy Justice: A Conceptual Review“, *Energy Research and Social Science*, 11/2016, 177.

²² G. Bombaerts, *et. al.* (eds), *Energy Justice Across Borders*, Cham 2019, 99.

²³ Benjamin Sovacool and Michael Dworkin, “Energy Justice: Conceptual Insights and Practical Applications”, *Applied Energy*, 142/2015, 435.

aspects of the principle of implementing energy justice: availability, affordability, due process, good governance, sustainability, intragenerational equity, intergenerational equity, and responsibility.²⁴ In contrast, McCauley argued that the main problems in implementing energy justice were related to availability, accessibility, and sustainability.²⁵ However, this paper takes the view of Sovacool because it is more comprehensive and covers upstream and downstream aspects. In addition, this paper also argues that energy justice is inseparable from human rights; the approach taken by Sovacool is more closely aligned with human rights than McCauley's approach.

Availability is the most fundamental element in the implementation of energy justice because it is related to efforts to provide the energy needed for daily life.²⁶ In addition, availability is closely related to a country's energy security.²⁷ The dimensions of energy availability include quantity, form, quality, and time.²⁸ From an electromobility perspective, one aspect of energy availability—electricity—is crucial. The supply of electricity, including energy sources, is a challenge for power plants, and their distribution should create ease of access.²⁹ Therefore, in the implementation of energy justice, the availability of the charging infrastructure is vital, especially as it relates to the availability aspect of the electromobility framework.³⁰ Affordability is the second element that plays an important role in energy justice. This element concerns access to decent energy by different levels of society.³¹ From an electromobility perspective, the sales price of EVs and battery charging must be affordable for customers. Price is one of the main factors that make the public switch from conventional vehicles to EVs.³² The next element of energy justice implementation is due process by prioritising public participation in formulating energy policies.³³ This participation is not only aimed at stakeholders

²⁴ Benjamin K Sovacool, *Energy and Ethics: Justice and the Global Energy Challenge*, New York 2013, 239.

²⁵ D. McCauley, *Energy Justice: Re-Balancing the Trilemma of Security, Poverty and Climate Change*, Cham 2018, 9, fn. 18.

²⁶ B. Sovacool, 220, fn 24.

²⁷ D. McCauley, 6, fn. 18.

²⁸ Indeo, 394, fn 3.

²⁹ Karol Tucki and others, „The Development of Electromobility in Poland and EU States as a Tool for Management of CO2 Emissions“, *Energies* 1, 12/2019, 2.

³⁰ Mehmet Efe Biresselioglu, Melike Demirbag Kaplan and Barbara Katharina Yilmaz, „Electric Mobility in Europe: A Comprehensive Review of Motivators and Barriers in Decision Making Processes“, *Transportation Research Part A: Policy and Practice* 1, 109/2018, 3.

³¹ Sovacool, 220, fn. 24.

³² Kristin Ystmark Bjerkan, Tom E Nørbech and Marianne Elysaas Nordtømme, „Incentives for Promoting Battery Electric Vehicle (BEV) Adoption in Norway“, *Transportation Research Part D: Transport and Environment*, 43/2016, 170.

³³ Sovacool, 221, fn. 24.

but also at parties who are likely to be affected by the energy policy.³⁴ Therefore, policymakers need to predict all parties likely to be affected in the future through various mechanisms such as repeated public consultations.³⁵ At the level of regional organisations such as the EU and ASEAN, parties affected by electromobility policies are member states and local communities.

Furthermore, an important element in implementing energy justice is good governance, which is closely related to accountability and information disclosure to the public.³⁶ The practice of good governance will encourage the public to contribute actively to energy policy. On the contrary, a lack of information will make the public ignore and not care about the targets set by energy policies.³⁷ The implementation of good governance will minimise the occurrence of elitism and social rejection in electromobility policies, as experience in the Nordic area has shown.³⁸ The next fundamental element is sustainability, which requires lawmakers to ensure the sustainable use of energy sources. In the context of electromobility law, the sustainability element plays a role in the sustainable adoption of EVs by the public.³⁹ Therefore, electromobility development must also impact the environment, with the guarantee that the electricity that drives EVs also comes from clean energy-based power plants.⁴⁰

The next implementation principle is intragenerational equity, which aims to provide justice for present generations. This principle is rooted in distributive justice and is closely related to the fair distribution of resources and risks at the national and international levels.⁴¹ From the perspective of electromobility development and climate change, present generations have equal access and opportunity to use EVs and electricity derived from renewable energy sources.⁴² The principle of intragenerational equity is also related to the next principle, intergenerational equity, which concerns the future.⁴³ In addition, the principles of intragenerational and intergenerational equity are also intertwined with the dimensions of human

³⁴ Sovacool and Dworkin, 439, fn. 23.

³⁵ Luis Mundaca, Henner Busch and Sophie Schwer, „Successful” Low-Carbon Energy Transitions at the Community Level? An Energy Justice Perspective”, *Applied Energy*, 218/2018, 300.

³⁶ Sovacool and Dworkin, 439, fn. 23.

³⁷ Xing Li and others, “The Impact of Environmental Accountability on Air Pollution: A Public Attention Perspective”, *Energy Policy*, 161/2022, 10.

³⁸ Siddharth Sareen (ed), *Enabling Sustainable Energy Transitions: Practices of Legitimation and Accountable Governance*, New York 2019, 80.

³⁹ Sovacool, 221, fn. 24.

⁴⁰ Angel Arcos-Vargas (ed), *The Role of the Electric Vehicle in the Energy Transition: A Multidimensional Approach*, Cham 2021, 94.

⁴¹ Sovacool and Dworkin, fn. 23; Wibisana, fn. 15.

⁴² Benjamin K Sovacool, Matthew M Lipson and Rose Chard, “Temporality, Vulnerability, and Energy Justice in Household Low Carbon Innovations”, *Energy Policy*, 128/2019, 499.

⁴³ Sovacool, 221–222, fn. 24.

rights for both present and future generations.⁴⁴ Therefore, electromobility law must consider the connection between intragenerational and intergenerational equity principles. The factors of price, the availability of charging facilities, batteries, and education and promotion to the public do not only concern the present generation but also have an impact on future generations.⁴⁵ Next is the principle of responsibility, which complements energy justice principles. This principle means that lawmakers are responsible for protecting the environment and minimising environmental damage due to energy production activities.⁴⁶

Energy justice plays a crucial role in electromobility development, which is part of the energy transition effort. Conceptually, energy justice plays a role in providing certain guidelines and values for solving energy problems.⁴⁷ Hence, the role of regional organisations such as the EU and ASEAN in adopting laws on electromobility is vital and urgent since these international institutions have specific organisational mechanisms to ensure that every decision will be effective and sustainable.⁴⁸ The legal output of an international organisation is also expected to be effectively implemented by member states. Furthermore, climate policies such as electromobility are also expected to be effective and have a sustainable impact. Therefore, the form of law or legal character of the law adopted will largely determine the effectiveness and sustainability of a climate policy.

3. ENERGY JUSTICE IN EU AND ASEAN LAW ON ELECTROMOBILITY DEVELOPMENT: A COMPARATIVE ANALYSIS

In this section, this paper will review energy justice in the EU law and ASEAN law on electromobility. This section provides an overview of the legal instruments adopted by the EU and ASEAN to regulate electromobility within the climate change framework. This section will also compare the legal instruments adopted to accelerate electromobility. Two aspects will be a comparative indicator, namely the form of law or legal character (hard law and soft law), and the substance related to the law on climate change, renewable energy, energy efficiency, and vehicle emissions. This article argues that both the forms of law and the substance related to the law on electromobility affect its implementation and sustainability.

⁴⁴ Richard P Hiskes, *The Human Right to a Green Future: Environmental Rights and Intergenerational Justice*, Cambridge 2009, 7.

⁴⁵ Johannes Kester and others, „Policy Mechanisms to Accelerate Electric Vehicle Adoption: A Qualitative Review from the Nordic Region“, *Renewable and Sustainable Energy Reviews*, 94/2018, 720.

⁴⁶ Sovacool, 222–223, fn. 24.

⁴⁷ Benjamin Sovacool and Michael Dworkin, “Energy Justice: Conceptual Insights and Practical Applications”, *Applied Energy*, 142/2015, 435.

⁴⁸ J. Cogan, *et al.* (eds), *The Oxford Handbook of International Organizations*, Oxford 2016, 564.

Therefore, the discussion from the perspective that has been presented above is current and relevant.

3.1. A Dynamic of EU Law and the Informality of ASEAN Law in Electromobility Development

The EU has been recognised as a global leader in the transition to clean energy within the climate change framework.⁴⁹ The Treaty on the Functioning of the European Union (TFEU) has provided a clear constitutional basis for the EU to promote renewable energy and provide a legal framework for its implementation.⁵⁰ The EU has implemented climate and energy policies integrally to promote renewable energy and energy efficiency.⁵¹ The EU took this step because, previously, the energy policy was highly dependent on each member state in the absence of significant intervention from the EU.⁵² In its development, the EU formulated a mature and ambitious climate and energy policy in the 1990s; until now, it has been the global leader in environmental issues.⁵³

The EU has set ambitious targets for climate change to be achieved by 2030 and 2050.⁵⁴ To achieve the targets in climate policy, the EU has set annual emission reduction targets that each member state must achieve by 2030.⁵⁵ Furthermore, the EU has also set ambitious targets for climate neutrality by 2050 that all member states must achieve.⁵⁶ In addition, the EU has also established guidelines for the development of energy infrastructure across Europe.⁵⁷ The legal instrument adopted by the EU also expressly states that low-carbon vehicles are one of the

⁴⁹ Sebastian Oberthür and Claire Dupont, “The European Union’s International Climate Leadership: Towards a Grand Climate Strategy?”, *Journal of European Public Policy*, 28/2021, 1095.

⁵⁰ Art. 194 of the consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C 326/47 (hereinafter the ‘TFEU’).

⁵¹ Jon Birger Skjærseth, „Towards a European Green Deal: The Evolution of EU Climate and Energy Policy Mixes“ *International Environmental Agreements: Politics, Law and Economics*, 21/2021, 33–34.

⁵² Georgios Maris and Floros Flourous, “The Green Deal, National Energy and Climate Plans in Europe: Member States’ Compliance and Strategies”, *Administrative Sciences*, 11/2021, 3–4.

⁵³ T. Delreux and F. Ohler, *Climate Policy in European Union Politics*, Oxford 2019, 2.

⁵⁴ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions (European Green Deal) COM (2019) 640 of 11 December 2019.

⁵⁵ Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and .

⁵⁶ Regulation (EU) 2021/1119 of The European Parliament and of The Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (‘European Climate Law’).

⁵⁷ Regulation (EU) 2022/869 OF The European Parliament and of The Council of 30 May 2022 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943 and Directives 2009/73/EC and (EU) 2019/94.

solutions to reduce emissions.⁵⁸ Generally, most EU climate change policies use legal instruments with a hard law character, namely regulation. This legal instrument is legally binding and applies directly to all member states.⁵⁹ Therefore, it can be said that the EU's climate change policy is very much institutionally concerned and is expected to be effective and sustainable.

Unlike the EU, ASEAN's climate change policy is carried out by adopting hard law and soft laws in a balanced manner. However, legal instruments in the form of hard law have no direct relevance to climate or energy targets. The substance of the hard law agreed upon in 1985 consists of the conservation of nature and natural resources,⁶⁰ the establishment of the ASEAN Centre for Biodiversity,⁶¹ and the reduction of transboundary haze pollution.⁶² The substance of climate change law is regulated by soft law in the form of resolutions, joint statements, and blueprints that are not legally binding. The resolution on sustainable development was agreed upon by ASEAN member states in 1987.⁶³ ASEAN leaders carry out joint statements on climate change at the ASEAN Summit and Conference of the Parties to the United Nations Framework Conventions on Climate Change (UNFCCC COP).⁶⁴ In addition, ASEAN has adopted the ASEAN Socio-Cultural Community Blueprint 2025, which provides strategic measures for member states to achieve a sustainable climate by 2025.⁶⁵ ASEAN climate policy prioritises cooperation in various fields involving other parties such as the EU, EU member states, China, Japan, and Korea.⁶⁶ The character of legal formation in ASEAN is to prioritise consultation and consensus between member states.⁶⁷ Therefore, informality and mutual trust are the hallmarks of ASEAN's legal mechanisms that distinguish it from the EU. However, because of this soft character, ASEAN cannot monitor the law's implementation. Therefore, the effectiveness and sustainability of the ASEAN law on climate change are highly doubtful due to the absence of strict control mechanisms.

⁵⁸ See European Green Deal, 9-10; Point (8) Consideration of Regulation (EU) 2018/842; Point (34) and (35) Consideration of Regulation (EU) 2021/1119; Point (14) Consideration of Regulation (EU) 2022/869.

⁵⁹ Art. 288 TFEU.

⁶⁰ ASEAN Agreement on the Conservation of Nature and Natural Resources 1985.

⁶¹ Agreement on the Establishment on the ASEAN Centre of Biodiversity 2005.

⁶² ASEAN Agreement on Transboundary Haze Pollution 2002.

⁶³ Jakarta Resolution on Sustainable Development 1987.

⁶⁴ The First Joint Statement on UNFCCC COP by ASEAN Leaders was in 2009 ASEAN Joint Statement on Climate Change to the 15th Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change and the 5th Session of the Conference of Parties serving as the Meeting of Parties to the Kyoto Protocol.

⁶⁵ ASEAN Secretariat, 'ASEAN Socio-Cultural Community Blueprint 2025' (2016) 12.

⁶⁶ Raman Letchumanan, "Climate Change: Is Southeast Asia up to the Challenge?: Is There an ASEAN Policy on Climate Change?", *IDEAS reports – special reports*, 62/2010.

⁶⁷ Art. 20 para. 1. The ASEAN Charter 2008.

This difference is also found in the EU and ASEAN laws regulating renewable energy, energy efficiency, and building performance. The EU consistently uses hard law instruments such as regulations and directives. Furthermore, EU energy policy integrally links climate change, decarbonisation, and renewable energy.⁶⁸ These three aspects are the main factors that accelerate electromobility development. For example, Regulation (EU) 2018/1999, which sets targets for using renewable energy and reducing emissions in general, also requires contributions from the transport sector. In other words, the mass use of EVs by the public is one of the mechanisms mandated by the regulation.

Furthermore, the 2018/2001 Directive (EU) also makes EVs an integral part of promoting renewable energy use and reducing carbon emissions.⁶⁹ Another directive related to energy efficiency as one of its policies determines that the transportation sector also plays a role in the energy transition.⁷⁰ Another policy that strengthens electromobility development in the EU is Directive 2010/31/EU. The directive requires buildings to have facilities to support the development of an ecosystem of EVs.⁷¹

The EU periodically requires its member states to provide reports on the achievement of targets set out in the regulations and directives mentioned above.⁷² Provisions regarding reporting and monitoring are always mentioned in regulations and directives governing climate targets, renewable energy, and carbonisation.⁷³ Thus, the EU has data and can monitor the targets achieved by member states. For instance, reducing emissions from the transportation sector includes achieving the targets set in regulations and directives. Therefore, it is very important to ensure that the adoption of EVs by the public in EU member states also increases. Increased adoption of EVs will reduce dependence on fossil energy such as petroleum.⁷⁴ Thus, the EU legal instruments governing decarbonisation and renewable energy are closely related to the development of electromobility in the region.

The study argues that the main legal instruments adopted by the EU in electromobility development are Regulation (EU) 2019/631 and A European Strategy

⁶⁸ Art. 1 para 2. Regulation (EU) 2018/1999 of the European Parliament and of The Council of 11 December 2018 on the Governance of the Energy Union and Climate Action.

⁶⁹ Art. 25 and 27 Directive (EU) 2018/2001 of The European Parliament and of The Council of 11 December 2018 on the promotion of the use of energy from renewable sources.

⁷⁰ Art. 7, Art 7a, and Art 7b Consolidated Version of Directive 2012/27/EU of The European Parliament and of The Council of 25 October 2012 on energy efficiency.

⁷¹ Art. 8 Consolidated Version of Directive 2010/31/EU of The European and of The Council of 19 May 2010 on the energy performance of buildings.

⁷² Jonas J Schoenefeld, „The European Green Deal: What Prospects for Governing Climate Change with Policy Monitoring?“, *Politics and Governance*, 9/2021, 371.

⁷³ *Ibid.* 72.

⁷⁴ Biresselioglu, Demirbag Kaplan and Yilmaz, 1, fn. 30.

for Low-Emission Mobility.⁷⁵ Regulation (EU) 2019/631 sets emission reduction targets that EU member states must achieve, especially using low-emission vehicles in the transport sector.⁷⁶ The European Commission recognises that the transport sector has the potential to contribute significantly to lowering emissions.⁷⁷ In addition, the linkage between energy systems and low-emission transport is an important part of the EU's electromobility development policy.⁷⁸ Therefore, the regulations and directives on climate, renewable energy, energy efficiency, and building performance policies adopted by the EU are integrated and supportive of electromobility policies.⁷⁹ Thus, the 2030 emission reduction target set by the EU is very likely to be achieved, especially with the support of the private sector.⁸⁰

So what about ASEAN? This study outlines the legal instruments adopted by ASEAN as they relate to renewable energy, energy efficiency, and the reduction of vehicle emissions. Since 1986, ASEAN member states have adopted the Agreement on ASEAN Energy Cooperation.⁸¹ This cooperation was followed up with the adoption of the agreement on establishing the ASEAN Centre for Energy in 1998. However, the two hard laws do not specifically target renewable energy, energy efficiency, and reducing vehicle emissions. As a follow-up to the agreement in 1998, the Hanoi Plan of Action (HPA) was adopted, including strengthening cooperation in the energy sector.

Furthermore, the HPA was followed by the ASEAN Plan of Action for Energy Cooperation (APAEC) in 1999, which serves as a blueprint for regional energy cooperation. To date, there have been five APAEC documents: APAEC 1999–2004, APAEC 2004–2009, APAEC 2010–2015, and APAEC 2016–2025. Furthermore, APAEC 2016–2025 consists of Phase I for 2016–2020 and Phase II for 2021–2025.⁸²

⁷⁵ Regulation (EU) 2019/631 of the European Parliament and of the Council of 17 April 2019 setting CO₂ emission performance standards for new passenger cars and for new light commercial vehicles; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A European Strategy For Low-Emission Mobility. 2016.

⁷⁶ Art. 4 Regulation (EU) 2019/631 of the European Parliament and of the Council of 17 April 2019 setting CO₂ emission performance standards for new passenger cars and for new light commercial vehicles.

⁷⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A European Strategy For Low-Emission Mobility. 2.

⁷⁸ *Ibid.*, 9.

⁷⁹ Maria Niestadt and Amalie Bjørnåvold, "Electric Road Vehicles in the European Union Trends , Impacts and Policies", *European Parliamentary Research Service*, PE 637.895/2019, 10.

⁸⁰ M. Fritz, *et al.*, "The Impact of Ambitious Fuel Economy Standards on the Market Uptake of Electric Vehicles and Specific CO₂ Emissions", *Energy Policy*, 135/2019, 6.

⁸¹ Agreement on ASEAN Energy Cooperation 1986, agreed in Manila, the Philippines, on 24 Juni 1986.

⁸² ASEAN Centre for Energy (ACE), 'ASEAN Plan of Action for Energy Cooperation (APAEC) 2016-2025. Phase II: 2021-2025' (2021) 3.

In addition, renewable energy, energy efficiency, and emission reduction targets from the transportation sector are also listed in APAEC Phase II. Nonetheless, this legal instrument does not specifically list targets of electromobility or EVs.

The same condition is also contained in the Kuala Lumpur Transport Strategic Plan (ASEAN Transport Strategic Plan) 2016–2025. As an instrument that provides specific guidance for the transportation sector, it does not set targets for developing an electric vehicle ecosystem. The target of achieving electromobility development can be found in The 7th ASEAN Energy Outlook 2020–2050 document. However, the document lists each member state's targets, not ASEAN's as a regional organisation.⁸³ Therefore, institutionally, ASEAN does not have independent electromobility development guidance. Renewable energy and energy efficiency are integral to ASEAN's electromobility development policy. This fact further confirms that the principle of informality in legal development in ASEAN is used consistently in all areas.⁸⁴ Adopting soft law and the principle of informality is a challenge in the sustainability of ASEAN policies related to energy and especially electromobility. Thus, regional stability and good relations between member states are very important to ensure that policies can be implemented sustainably.

3.2. Hard Law and Soft Law Adoption in Electromobility Development: Impact on Energy Justice

This paper has clarified in the previous section that the EU is more likely to adopt hard laws to regulate renewable energy, energy efficiency, and vehicle emission reduction. In contrast, ASEAN tends to adopt soft laws to regulate the same factors. The difference between hard and soft law is that hard law is legally binding and it involves a detailed and specific lawmaking process and the delegation of authority to interpret and implement certain laws.⁸⁵ This paper distinguishes hard and soft law based on the legally binding factor, which is the most important factor that distinguishes the character of the law.⁸⁶ The focus of this section is to elaborate on the correlation between the choice of legal instrument forms in elec-

⁸³ Rika Safrina, *et al.*, "ASEAN Decarbonisation Pathway: A Policy Review on Variable Renewable Energy, Electric Vehicle, and Smart Microgrid", *ACE Policy Brief*, 07 May/2022, 2.

⁸⁴ Winfried Huck, "Informal International Law-Making in the ASEAN: Consensus, Informality and Accountability", *ZaöRV*, 80/2020, 115.

⁸⁵ K. Abbott and D. Snidal, "Hard and Soft Law in International Governance", *International Organization*, 54/2000, 421; Barnali Choudhury, "Balancing Soft and Hard Law for Business and Human Rights", *International and Comparative Law Quarterly*, 67/2018, 961; F. Terpan and S. Saurugger, "Soft and Hard Law in Times of Crisis: Budget Monitoring, Migration and Cybersecurity", *West European Politics*, 44/2021, 21.

⁸⁶ Ramses Wessel, "Normative Transformations in EU External Relations: The Phenomenon of "Soft" International Agreements", *West European Politics*, 44/2021, 74.

tromobility development and efforts to realise energy justice. The author is aware that there are differences in consistency in the nomenclature of the legal instruments adopted by the EU and ASEAN.⁸⁷

The overarching question in this section is whether the choice of legal instrument form will affect energy justice. As previously stated, the principles of implementing energy justice include availability, affordability, due process, good governance, sustainability, intragenerational equity, intergenerational equity, and responsibility. The EU's choice to adopt more hard law is influenced by solidity and the level of regional integration. In addition, the EU's ambition to become a global leader in climate policy also influences the setting of climate targets.⁸⁸ The development of electromobility is one of the EU's ambitions. Therefore, aspects of the principles of energy justice implementation, especially availability, affordability, sustainability, and responsibility, must be met first. The use of hard law legal instruments can also guarantee the effectiveness of implementation and compliance, although a consensus and good negotiations between member states are needed in their formation.⁸⁹

Another advantage of using hard law instruments is the existence of a clear monitoring and reporting mechanism. For example, in Article 15 Regulation (EU) 2019/631, the European Commission will supervise and review the effectiveness of the legal instrument. Another example is Article 33 of the Directive (EU) 2018/2001, which specifies the European Commission's monitoring of the achievements of member states' renewable energy. In hard law instruments, the subject performing the monitoring, the object being monitored, and the reason for the monitoring are specified in the legal instrument.⁹⁰ Monitoring the implementation of legal instruments will also allow the organisation to determine the policies that need to be changed.⁹¹ Thus, the adoption of hard law can positively impact the realisation of energy justice in the development of electromobility. According to the author, with a clear monitoring and reporting mechanism, hard law instruments guarantee due process, good governance, intragenerational equity, and intergenerational equity. However, to realise this condition, a hard law instrument must have connectivity between hard obligation and hard enforcement.⁹²

⁸⁷ Nattapat Limsiritong, "The Problems of Law Interpretation under ASEAN Instruments and ASEAN Legal Instruments", *MFU Connexion*, 5/2016, 136.

⁸⁸ J. Schoenefeld and M. Knodt, "Softening the Surface but Hardening the Core? Governing Renewable Energy in the EU", *West European Politics*, 44/2021, 49.

⁸⁹ J. Skjærseth, *et al.* "Soft Law, Hard Law, and Effective Implementation of International Environmental Norms", *Global Environmental Politics*, 6/2006, 119.

⁹⁰ Schoenefeld, 372, fn. 72.

⁹¹ J. Schoenefeld, *et al.* "The Challenging Paths to Net-Zero Emissions: Insights from the Monitoring of National Policy Mixes", *International Spectator*, 56/2021, 24.

⁹² Fabien Terpan, "Soft Law in the European Union-The Changing Nature of EU Law", *European Law Journal*, 21/2015, 76.

ASEAN is adopting more soft laws to regulate renewable energy, energy efficiency, and emission reduction. Nonetheless, the parent legal instrument is in the form of hard law. An example is the Agreement on ASEAN Energy Cooperation as the main hard law instrument in energy cooperation. Furthermore, for the implementation of the agreement, a soft law was agreed upon, namely the Hanoi Action Plan, and an APAEC has also been agreed upon since 1999. This fact shows that the hard laws adopted by ASEAN, especially in the energy sector, have not been implemented directly by member states. Therefore, there is a need for a soft-law instrument that is more operational to implement the energy cooperation agreement.

Nevertheless, this delegation pattern of authority is not mentioned by the master agreement, so the adoption of soft law instruments requires a different consensus. Therefore, ASEAN's hard and soft laws in the energy sector are more characteristic of political instruments than laws. Although it is labelled as an agreement, it does not have binding legal force.⁹³ The soft obligation and mild enforcement conditions in the ASEAN legal framework on energy will affect energy justice in electromobility development. In addition, weak monitoring mechanisms will make it more difficult to realise the development of electromobility at the regional level. For example, in APAEC 2016–2025 Phase II, monitoring is only carried out with a scoring mechanism against the implementation of the target.⁹⁴ If this condition continues, cooperation in the development of electromobility in the region will not occur.

On the one hand, each ASEAN member state will compete to create an EV ecosystem in each jurisdiction. On the other hand, achieving energy justice at the regional level will be difficult. Implementation principles in energy justice will not be realised without strong legal instruments at the regional level. In addition, ASEAN integration that can be achieved through energy policy and climate change will also be difficult to implement. Nevertheless, the recognition of the significance of EVs as climate policy in The 7th ASEAN Energy Outlook 2020–2050 gives hope for ASEAN's agreement on hard law in the future.

4. CONCLUSION

The EU and ASEAN play an active role in realising energy justice in electromobility law with different mechanisms. The EU has mainly adopted hard laws, while ASEAN mainly uses soft laws to regulate electromobility, which is also

⁹³ Kevin YL Tan, 'ASEAN Law: Content, Applicability, and Challenges' in Diane A Desierto and David Cohen (eds), *ASEAN Law and Regional Integration: Governance and The Rule of Law in Southeast Asia's Single Market*, New York 2021, 42.

⁹⁴ ASEAN Centre for Energy (ACE), 48, fn. 82.

related to renewable energy, energy efficiency, and emission reduction. In addition, this article also argues that the different legal instruments' characteristics will affect energy justice implementation in member states. The EU and ASEAN have also adopted different strategies to achieve energy justice in electromobility. Nonetheless, the two organisations consistently strive to implement core principles and implementation principles using the available legal framework mechanisms. Finally, the author acknowledges the limitations of this paper, mainly from the number of legal instruments analysed. Therefore, future research can examine the range of legal instruments, including delegation regulations adopted by the EU or declarations made by ministerial-level officials in ASEAN countries.

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Енергетска правда у развоју електромобилности: право ЕУ и право АСЕАН у компаративном контексту

Сажетак: У сврху сујорисавања климатским променама, различите државе су усвојиле иновативне законе и реџења. Електромобилност као климатска политика је једна од реџења која може допринећи смањењу емисије угљеника. Даље, међународне организације као што је Европска унија (ЕУ) охрабрују државе чланице да развију екосистем електричне мобилности. Штавише, Асоцијација држава Југоисточне Азије (АСЕАН), као једна од партнерских организација ЕУ, охрабрује државе чланице да усвоје сличне законе и политике у области иновација у електромобилности. Ова студија је испитивала правне иновације ЕУ и АСЕАН које су развиле екосистеме електромобилности у контексту ујоредивања енергетске правде. У раду се иврди да усвајање принципа енергетске правде у праву ЕУ и АСЕАН у великој мери зависи од функције и улоге међународних организација у области креирања закона. Као иновација климатске политике, електромобилност је блиско повезана са енергетском правдом за јавност. Стога, анализирање функција и улога међународних организација као што је ЕУ и АСЕАН је кључно. Студија је испитивала правни оквир усвојен од стране ЕУ и АСЕАН за стварање екосистема електромобилности. Циљ студије је био стицање свеобухватној разумевања улоге и функције креирања закона у међународним организацијама које подржавају климатску политику и доприносе остваривању енергетске правде.

Кључне речи: АСЕАН, ујоредни, енергетска правда, електромобилност, ЕУ.

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