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"Empowering Domestic Commercial Arbitration in ASEAN: An Analysis of the Benefits of Domestic Commercial Arbitration and Obstacles to its Promotion in Southeast Asia"

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EMPOWERING DOMESTIC COMMERCIAL ARBITRATION IN ASEAN:AN ANALYSIS OF THE BENEFITS OF DOMESTIC COMMERCIAL ARBITRATION AND OBSTACLES TO ITS PROMOTION IN SOUTHEAST ASIA

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Abstract

ASEAN member states, like many other nations, strive to promote international commercial arbitration to increase their standing and prestige, while simultaneously attracting investments. One area of focus is promoting international arbitration. Domestic commercial arbitration also has several advantages, such as easing the case overload in state courts and providing parties with more opportunities to choose a dispute resolution procedure, in line with their cultural preferences. However, with the ambitious aim of promoting international commercial arbitration, developing Southeast Asian nations may unknowingly harm their domestic arbitration practices.

This study sheds light on the overlooked significance of domestic commercial arbitration in Southeast Asia, and points out how verbatim adoptions of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, which ASEAN member states have adopted to promote international commercial arbitration in the region, adversely affects further developments to domestic arbitration, and creates a monopoly of a few English-speaking lawyers and arbitrators in the domestic commercial arbitration market.

This paper suggests for ASEAN member states to adopt separate domestic arbitration legislation to apply to solely domestic commercial arbitration. Careful drafting would accommodate their citizens' specific needs and certain domestic dispute resolution traditions along with established business practices. The paper also calls for Southeast Asian scholars and arbitration practitioners to do more research on domestic commercial arbitration legislation and related practical issues.

Keywords

Arbitration

Arbitral Institutions

ASEAN

Commercial arbitration

Labor arbitration

Southeast Asia

United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration

I. Introduction to the Domestic Commercial Arbitration in ASEAN Member States

Following the promotion of international arbitration in the West, ASEAN member states (AMS) and other non-Western countries wanted to develop international commercial arbitration within their jurisdictions, and attract foreign parties and businesses. Thus, many states established arbitral institutions in their jurisdictions, and adopted legislation closely based on the UNCITRAL Model Law on International Commercial Arbitration (the Model Law), hoping to bring prestige and money through foreign disputants utilizing arbitration services within their country. As of 2022, eight of the ten AMS have adopted the Model Law officially, just like many other states, and nine of them have established permanent arbitral institutions in their jurisdictions.[1]

This study sheds light on the importance and advantages of domestic commercial arbitration in Southeast Asia, while arguing that with the ambitious aim of promoting international arbitration, AMS may unwittingly harm their own domestic arbitration practices. The paper will first explain the present situation of domestic commercial arbitration in AMS, before detailing its positive significance to the region. It will then analyze how wholesale adoption of the Model Law in Southeast Asian nations negatively impacts domestic commercial arbitration. and creates a monopoly of a few domestic lawyers and arbitrators in the domestic arbitration market. The paper will conclude with some recommendations.

The discussion here focuses on specific ASEAN nations that have remarkable experience in using arbitration although further comprehensive research is recommended to investigate the issue deeply within all member states. The most significant limitation of this study is perhaps the scarcity of data and statistics on the struggles of developing Southeast Asian countries in applying the Model Law to domestic arbitration cases.

[1] As of 2022, except for Laos, all AMS have established arbitral institutions in their jurisdictions; about the adoption of the Model Law, see UNCITRAL, "Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006" (March 18, 2022) https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status

II. The Significance of Domestic Commercial Arbitration in Southeast Asian Legal Systems

Permanent arbitral organizations are fundamental to develop domestic commercial arbitration, since without specific institutions, it is difficult for arbitration to take place. Every arbitral organization among AMS has its own path of development. Some institutions were only established very recently, while some have been in service for more than 40 years. Thus, it is unreasonable to compare them in terms of qualifications. Indeed, very little is known about domestic commercial arbitration practice and tradition in Southeast Asia, but data collected from the various resources throughout Southeast Asia for this study indicates that commercial arbitration in most of the ASEAN states is blooming.

Table 1. Permanent Arbitral Institutions in Southeast Asia and Its Caseloads[2]

Country	Internationally Recognized Permanent Arbitral Institution in the Jurisdiction	Year Established	Published Caseloads Including Both International and Domestic Cases
Brunei Darussalam	Brunei Darussalam Arbitration Centre, BDAC	2014 (started to operate since 2016)	Unpublished
Cambodia	National Commercial Arbitration Centre of Cambodia, NCAC	2006	Total of 25 cases (Between 2015-2020)
Indonesia	*Badan Arbitrase Nasional Indonesia* Arbitration Center, BANI	1977	Total of 215 cases (Between 1997-2007)
Laos	None (No internationally known arbitral institutions)	-	-
Malaysia	Asian International Arbitration Center, AIAC (the former Kuala Lumpur Regional Centre for Arbitration, KLRCA)	around 1982 (started to operate)	764 cases (In 2019)
Myanmar	Myanmar Arbitration Centre, affiliated to the Union of Myanmar Federal Chambers of Commerce and Industry	2019	Unpublished

[2] See NCAC, "Establishment", NCAC official website, (December 27, 2021) https://ncac.org.kh/establishment/; Conventus Law, "UMFCCI Establishes the Myanmar Arbitration Centre.", (January 16, 2022) https://www.conventuslaw.com/report/malaysia-umfcci-establishes-the-myanmar/; PICCR, "About Us", Our Vision, (January 15, 2022) https://piccr.com.ph/about.php; THAC, "About us", (December 27, 2021) https://thac.or.th/about-us-2/; BANI Arbitration Center, "About Us", (January 13, 2022) https://baniarbitration.org/about-bani; BANI, Arbitration Development in Indonesia', (2007) 1 Oct-Dec Indonesia Arbitration Quarterly Newsletter 4; Setyawati, "Critical Review on Indonesia's Drawbacks as a Preferable Seat of Arbitration," Indonesia Law Review 3, no. 1 (January-April 2013): 11-22; SIAC, "Annual Report", 2020, SIAC official website, (December 27, 2021) https://www.siac.org.sg/images/stories/articles/annual_report/SIAC_Annual_Report_2020.pdf; AIAC, Corporate Profile: "Who We Are", AIAC official website, (January 11, 2022) https://www.aiac.world/About-AIAC-; AIAC, "CIPAA Statistical Report", 2018, AIAC official website, (January 11, 2022) https://admin.aiac.world/uploads/ckupload/ckupload_20191121071408_84.pdf; VIAC, "Statistics", 2020, VIAC official website, (December 27, 2021) https://www.viac.vn/en/statistics/2020-statistics-s37.html; BDAC, "About Us", (January 16, 2022) http://www.bdac.com.bn/Style/Home.aspx; Brian J. M. Quinn, "Legal Reform and its Context in Vietnam," Columbia Journal of Asian Law 15, no. 2 (Spring 2002): 219-292.

Philippines	Philippine Dispute Resolution Center, Incorporated, the PDRCI	1996	Unpublished
	Philippine International Center for Conflict Resolution, the PICCR	2019	Unpublished
Singapore	Singapore International Arbitration Centre, SIAC	1991	1080 cases (In 2020)
Thailand	Thailand Arbitration Center, THAC	2015 (started to operate)	Unpublished
Vietnam	Vietnam International Arbitration Centre, VIAC	1993 (started to operate)	221 cases (In 2020)

The table above indicates that out of ten AMS, nine have established permanent arbitral institutions in their jurisdictions since 1977. Singapore's International Arbitration Centre, SIAC, receives a total of 1,080 cases per year,[3] as it is a major arbitration hub not just for Southeast Asia but for all of Asia and beyond.[4] Further, as seen above, Malaysia's leading arbitral institution, the Asian International Arbitration Center, AIAC (the organization was formerly known as Kuala Lumpur Regional Centre for Arbitration, KLRCA), receives a total of 764 cases per year.[5]

In addition to the SIAC and AIAC, the leading Vietnamese arbitral institution, Vietnam International Arbitration Centre, VIAC, which has been in service for nearly 20 years, received a total of 221 cases in 2020.[6] These three institutions' caseloads are bigger than other ASEAN arbitral organizations', as indicated in the table above. Nonetheless, receiving a high number of disputes does not translate into having a lot of domestic commercial arbitration cases, as the statistics also include the number of international commercial arbitration cases. Furthermore, some arbitration centers do not publish their statistics on domestic commercial arbitration. Thus, it is difficult to investigate fully the domestic commercial arbitration practice in each of the AMS.

[3] SIAC, "Annual Report", 2020, SIAC official website, (December 27, 2021) https://www.siac.org.sg/images/stories/articles/annual_report/SIAC_Annual_Report_2020.pdf. This statistic is specifically for the number of cases received in 2020.

[4] Queen Mary University of London and White & Case International Arbitration Survey: Adapting Arbitration to a Changing World, 2021, as cited in the SIAC, "Arbitration in Singapore", (January 15, 2022) https://www.siac.org.sg/about-us/why-siac/arbitration-in-singapore

[5] AIAC, "CIPAA Statistical Report", 2018, AIAC official website, (January 11, 2022) https://admin.aiac.world/uploads/ckupload/ckupload_20191121071408_84.pdf. This statistic is specifically for the number of cases in the fiscal year between 16th April 2018 and 15th April 2019.

[6] VIAC, "Statistics", 2020, VIAC official website, (December 27, 2021) https://www.viac.vn/en/statistics/2020-statistics-s37.html

Nevertheless, the table above provides a glimpse into current developments in both domestic and international commercial arbitration scene in Southeast Asia. The data indicates that except for Singapore, Malaysia, Vietnam, and Indonesia, AMS have only recently established permanent arbitral institutions in their jurisdictions. Domestic commercial arbitration, for most of Southeast Asia, is still in the developing stages and just starting to make progress.

a) Easy Access to Commercial Justice

According to the World Justice Project Rule of Law Index 2021, the Justice Index of Civil Litigation, which ranks 139 countries' level of access to civil justice, ranks Cambodia at 139, Myanmar at 136, and Indonesia at 105, while Thailand and Vietnam are ranked at 88 and 98 respectively.[7] There could be many reasons for the poor civil justice scores in AMS courts, which are often related to corruption or excessive caseloads at civil courts.[8] However, instead of waiting for the national court systems to be improved, AMS can raise the level of civil justice and make the justice system more accessible for disputants by promoting domestic commercial arbitration.

If more disputants start to choose domestic commercial arbitration as their method of dispute resolution, it could balance the case overload in national courts. Furthermore, disputants who cannot gain access to justice satisfactorily at domestic courts due to corruption or other related issues can seek justice through arbitration. Nonetheless, AMS governments often do not pay enough attention and effort to improving domestic arbitration legislation and practice.

Moreover, it is not just governments but also Southeast Asian scholars who do not pay much attention to domestic commercial arbitration. Even though many scholars in Southeast Asia have started to specialize fully in arbitration law and are devoted to improving arbitration in their nations, most of the research and articles about arbitration in AMS are still solely focused on investment arbitration, while the remaining few studies on commercial arbitration in the region are often only about how to improve

[7] World Justice Project, "Rule of Law Index", 2021, (January 13, 2022) https://worldjusticeproject.org/sites/default/files/documents/WJP-INDEX-21.pdf

[8] See Edward Laws, "Addressing Case Delays Caused by Multiple Adjournments", GSDRC Helpdesk Research Report, June 2016, (April 13, 2022) https://assets.publishing.service.gov.uk/media/57a9c983e5274a0f6c000006/HDQ1374.pdf; See also UNODC, "Corruption, Human Rights, and Judicial Independence", by Special Rapporteur Diego García-Sayán, 2018, (April 13, 2022) https://www.unodc.org/dohadeclaration/en/news/2018/04/corruption--human-rights--and-judicial-independence.html

international arbitration and attract foreign investors.[9] Thus, domestic commercial arbitration in ASEAN is one of the overlooked areas in legal studies in ASEAN.

b) Prior Experience of Using Arbitration when Litigation Fails to be Effective in Southeast Asia

Even though it is not directly about commercial arbitration, Cambodia has notable experience in using arbitration as dispute resolution when national courts fail to resolve labor disputes effectively. After the collapse of the Khmer Rouge, there was a lack of judges and a proper dispute resolution system in Cambodia, which was also one of the poorest nations at the time. Thus, many multinational corporations grasped this opportunity to make Cambodia their garment factory. Following this, many severe human rights breaches and accidents occurred in Cambodia.[10] However, due to ineffective labor dispute resolution and lack of professional judges in Cambodian courts, claimants could not access justice effectively. Thus, in 2003, the Labor Arbitration Council of Cambodia was established. This dawn of labor arbitration opened access to justice in labor disputes and became one of the few successful experiences using labor arbitration while labor litigation could not work effectively.

Ponak and Taras (2016) compare Cambodia to "a traumatized nation [that] could not develop workplace justice processes through its courts or traditional government institutions, [and] turned to an experiment in arbitration."[11] At present, the Labor Arbitration Council resolves more than a hundred disputes each year.[12] It was one of the remarkable success stories of turning to alternative dispute resolution (ADR) when the state courts fail to serve effectively. At present, even multinational corporations do greenwashing in Cambodia because of its effective dispute resolution at the Labor Arbitration Council of Cambodia.[13]

This is a good illustration of how disputants can access justice when they cannot do so in their state courts through arbitration. Thus, one may infer that domestic commercial arbitration could be a favorable venue for commercial disputants whose state courts' litigations are not convenient or effective.

[9] Almost all of the studies related to commercial arbitration in Southeast Asian countries are about promoting international arbitration, not domestic arbitration.
[10] Allen Ponak; Daphne Taras, "Rule of Law and the Arbitration Council of Cambodia," Employee Rights and Employment Policy Journal 20, no. 1 (2016): 37-70
[11] Ibid, 38
[12] Labor Arbitration Council of Cambodia, Annual Report, 2020, (January 17, 2022) https://www.arbitrationcouncil.org/resources/annual-reports/
[13] Allen Ponak; Daphne Taras, "Rule of Law and the Arbitration Council of Cambodia," Employee Rights and Employment Policy Journal 20, no. 1 (2016): 37-70

c) Culture-Friendly Dispute Resolution

ADR often has a freer atmosphere than litigation. Particularly in arbitration, parties are largely free to conduct the proceedings by their own rules. Thus, it is easier for disputants to remain in a friendly relationship after resolving the dispute by arbitration than through litigation, as litigation is much stricter on procedures which are legislated and controlled by state powers. Particularly for Southeast Asian communities, maintaining a friendly relationship is important since most of the Southeast Asian nations value the significance of harmony in the group, and these cultural characteristics are often reflected in the parties' perspectives and attitudes towards dispute resolution.

Significantly, despite skepticism from some, it finds support among Southeast Asian scholars as well.[14] As an illustration, Bruneians oftentimes prefer to settle disputes out of court due to the Malay cultural tradition in which a concept called *silaturrahim*, meaning ties of kinship and relationship, is very strong.[15] Awang Besar and Zuliskandar (2017) point out, "ADR methods would fit in nicely with the way of life in Brunei and the people's easy-going temperament and further implementation of the mechanism [ADR] would encourage Bruneians to not simply "*biarkan tia*" (Bruneian Malay for "let it go") in the face of injustice and wrongful treatment."[16]

Hence, domestic commercial arbitration is not just a mere alternative to commercial litigation; it is a disputant-friendly and culture-friendly form of dispute resolution, where parties tend to feel less threatened than they may feel in court litigation. Citizens will have more chances to inject their culture into the dispute resolution process, not only in terms of kinship and harmony but in broader respects. For example, a Christian disputant in a community where the majority of the people are Muslims can choose a particular arbitrator with a Christian background to resolve her domestic commercial dispute. Indeed, in commercial arbitration, there is an approved precedent of *Jivraj v. Hashwani*[17] in which parties required specific religious backgrounds from their arbitrators. Likewise, though it may not be

[14] See Fan, Kun. 2016. '"Glocalization" of International Arbitration- Rethinking Tradition: Modernity and East-West Binaries Through Examples of China and Japan'. University of Pennsylvania Asian Law Review 11: 243–92.
[15] Arif Azhan bin Awang Besar; Adi Iskandar Safwan bin Zuliskandar, "Making Progress: Brunei Darussalam as a Hub for Arbitration of Islamic Financial Disputes in Asia," ALSA Academic Journal 2017, no. Law Review (2017-2018): 104-122 (at 106).
[16] Ibid, 106-107
[17] *Jivraj v Hashwani* [2011] UKSC 40

explicitly provided for, in many similar ways, parties in domestic arbitration proceedings have more chances to reflect their culture preferences in their dispute resolution than parties would in litigation.

III. How a Desire to Promote International Commercial Arbitration Can Negatively Impact Domestic Arbitration

The above two sections analysed current domestic commercial arbitration practices in Southeast Asia and its benefits. This section will explore the issues related to commercial arbitration legislation, triggered by the direct adoption of the Model Law designed for international commercial arbitration for domestic commercial arbitration in developing AMS.

a) The Model Law is Not Suitable for Domestic Commercial Arbitration in Southeast Asia

AMS strive to promote international arbitration just like many other developing states as discussed in Part One. The best tool to promote international commercial arbitration is to adopt modern international commercial arbitration legislation. Thus, seven ASEAN nations (excluding Indonesia, Laos, and Vietnam) have officially adopted the Model Law.[18] Moreover, all seven jurisdictions undertook wholesale adoptions without significant changes. Most remarkably, except for Singapore, almost all AMS adopted the Model Law not just for international commercial arbitration but also for domestic commercial arbitration.

However, adopting a legislation designed for international commercial arbitration verbatim for domestic commercial arbitration is a problematic move. Even though the Model Law is a globally accepted standard for international commercial arbitration, its verbatim adoption is perhaps not highly advisable for countries without much prior experience in arbitration. Indeed, even the United States once concluded that adopting the Model Law, sic et simpliciter, is not appropriate. After UNCITRAL introduced the Model Law in 1985, the United States' Washington Foreign Law Society established a committee to study the Model Law. It is significant that the committee recommended that the United States Congress should not adopt the Model Law wholesale.19 Literal adoption of the Model Law has caused application problems, particularly in countries without a pre-existing, developed arbitration tradition.

[18] United Nations Commission on International Trade Law, "Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006" (March 18, 2022) https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status

[19] Patrick John Potter, International Commercial Arbitration in the United States: Considering Whether to Adopt UNCITRAL's Model Law, 10 Mich. J. Int'l L. (1989): 912-934 at 912, 927

Table 2. ASEAN Member States' Adoptions of the Model Law[20]

Singapore	1994	Only for ICA
Thailand	2002	Both for ICA and DVA
Philippines	2004	Both for ICA and DCA
Malaysia	2005	Both for ICA and DCA but amendments made for improving DCA regulations (came into force in 2018)
Cambodia	2006	Both for ICA and DCA
Brunei Darussalam	2009	Both for ICA and DCA
Myanmar	2016	Both for ICA and DCA

(ICA refers to International Commercial Arbitration, DCA refers to Domestic Commercial Arbitration)

The table above indicates that seven AMS have adopted the Model Law between 1994 and 2016. The table shows that six of seven member states adopted the Model Law adopted it into their domestic commercial arbitration. One may conclude that AMS with an existing arbitration tradition and experience adopted the Model Law only to their international commercial arbitration (i.e. Singapore), or adopted it for both international commercial arbitration (ICA) and domestic commercial arbitration (DCA), and later amended the law to improve the DCA regulations (i.e. Malaysia). Meanwhile, developing Southeast Asian nations without well-established arbitration traditions or practice adopted the Model Law both for their ICA and DCA (i.e. Brunei Darussalam, Cambodia, Myanmar, Philippines, Thailand).

Nevertheless, and significantly so for the developing nations without much prior experience in commercial arbitration—like Brunei Darussalam, Cambodia, Myanmar, Philippines, and Thailand—adopting the Model Law for both ICA and DCA may create barriers in its DCA practice. Indeed, the Model Law is designed for international arbitration and it is mostly based on developed nations' perspectives on commercial arbitration. Scholars such as Ndulo (1998) have stressed the inadequate participation of

[20] United Nations Commission on International Trade Law, "Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006"; see UNCITRAL official website, (March 18, 2022) https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status.

developing countries in the lawmaking process of UNCITRAL.[21] In the drafting process of the Model Law, the participation of developing countries was minimal compared to that of developing countries.

Moreover, as for its content, the Model Law mainly observes common law perspectives and is largely based on the Federal Arbitration Act of the United States.[22] Significantly, most of the delegates in the Drafting Committee of the Model Law were experts from "Americanized" arbitration cultures or states where arbitration was well established,[23] and the Model Law has well-developed provisions borrowed from these developed and Americanized arbitration cultures. However, none of the developing AMS that adopted the Model Law for their domestic commercial arbitration (the above mentioned five states, Brunei Darussalam, Cambodia, Myanmar, Philippines, and Thailand) have roots in the common law system or Americanized arbitration culture.

Thus, the Model Law is perhaps not suitable for domestic commercial arbitration in developing AMS. Though at present there is not enough data and research on struggles of developing Southeast Asian countries on applying the Model Law to domestic arbitration cases, in the next decade, it is that there will be more case studies and it may become easier to research the issue comprehensively. However, at present, this study stresses that the Model Law is not suitable for domestic commercial arbitration in developing AMS. In the future, it may generate application difficulties and other transplantation issues. The purpose of the Model Law was not for domestic arbitration as its name suggests; the law was designed for international commercial arbitration.

b) Verbatim Adoption of the Model Law for Domestic Commercial Arbitration in AMS Conceivably Creates a Monopoly of a Few Domestic Lawyers and Arbitrators in the Field

Direct adoption of the Model Law for domestic commercial arbitration discourages domestic lawyers from specializing in arbitration or entering into the field as national arbitrators. The adoption of the Model Law in Southeast Asia is often pure word-for-word translations of the original text. Thus, the resulting arbitration laws based on the Model Law are usually difficult to read and interpret if the lawyer is not already familiar with the original text of the Model Law. Hence, very few lawyers—those who know the Model Law,

[21] Muna Ndulo, 'UNCITRAL: The Unification of International Trade Law and Developing Countries' (1998) 1998 Zam LJ 68
[22] Gerold Herrmann, 'Introductory Note on the UNCITRAL Model Law on International Commercial Arbitration' (1985) 1985 Unif L Rev os 285
[23] Gerold Herrmann, 'Introductory Note on the UNCITRAL Model Law on International Commercial Arbitration' (1985) 1985 Unif L Rev os 285, at 287-288

because they are familiar with international commercial arbitration and are particularly English or French-speaking—often have more chances to practice in domestic commercial arbitration than other lawyers.

Indeed, it is no wonder that often lawyers from developing AMS are unfamiliar with or driven away from practicing arbitration.[24] Only a small number of Southeast Asian lawyers who know the Model Law practice in domestic commercial arbitration or take part in promoting domestic commercial arbitration in their countries. For example, Mr. Bun Youdy, the president of the National Commercial Arbitration Centre of Cambodia, is a Fellow of the Singapore Institute of Arbitrators (SIArb) and speaks fluent English and French.[25] The president of Thailand Arbitration Center, THAC, Professor Wisit Wisitsora-at received his LL.B. at University of Wales, in the United Kingdom.[26] Almost all of the few domestic arbitrators among numerous international arbitrators at the Vietnamese International Arbitration Centre, the VIAC, speak English along with German and Russian.[27]

Thus, one may conclude that in AMS, English speaking national professionals or lawyers who are educated in the West are more likely to practice in domestic arbitration cases, either as counsels or as arbitrators. As mentioned above, the reason for this is because English-speaking practitioners have greater capacity to understand the difficult arbitration law texts in their languages which were translated from the Model Law without any traditional reflections or amendments.

Hence, verbatim adoption of the Model Law for domestic commercial arbitration in AMS also limits the competition between lawyers in the field and may create a monopoly of a few English (or French) speaking lawyers or practitioners who studied in the West. One may agree that domestic lawyers or arbitrators should not be required to be extremely competent in English or any other foreign languages to practice in the domestic commercial arbitration cases, where the facts and basis of the dispute is domestic.

[24] The author has met many Southeast Asian lawyers and judges in her career and most of them said that they did not understand the arbitration laws based on the Model Law in their countries. Some even argue that it even takes lot of effort just to understand the text's meaning due to word-for-word translation from English.
[25] 'Bun and Associates' Law Firm, "About Mr. Bun Youdy", (March 22, 2022) https://www.bun-associates.com/lawyer/bun-youdy/
[26] THAC, "About Us", Board of Directors, (March 23, 2022) https://thac.or.th/about-us/board-of-directors/
[27] VIAC, "Arbitrators", (April 13, 2022) https://www.viac.vn/en/list-of-arbitrator

IV. Conclusions and Recommendations

This study investigated the situation of domestic commercial arbitration legislation and tradition in AMS. Promoting domestic arbitration has two main advantages: first, commercial disputants who cannot access justice effectively through their national courts can use domestic arbitration as an alternative, or domestic commercial arbitration can be used to ease the case overload in state courts; secondly, in domestic commercial arbitration procedures, parties have more opportunities to reflect their cultural preferences on their dispute resolution procedures than they do in litigation.

This paper is of the position that each state has its own unique characteristics regarding law and development, but most of ASEAN nations are only starting to promote their domestic arbitration. Nonetheless, the research also found out that domestic commercial arbitration in the developing AMS—particularly in Brunei Darussalam, Cambodia, Myanmar, Philippines, and Thailand, where the Model Law was adopted verbatim for domestic commercial arbitrations—may confront application difficulties or transplantation issues for its domestic commercial arbitration in the future. The Model Law is designed for international arbitration and largely based on developed nations' perspectives on commercial arbitration. Such laws are not likely to be perfectly transferable.

At the same time, the adoptions of the Model Law in these AMS are word-for-word translation of the original text in English. Thus, it creates application and interpretation difficulties if the lawyer or arbitrator is not already familiar with the original text of the Model Law. Hence, only very few lawyers who know the Model Law or who are familiar with international commercial arbitration or know English or French well are equipped to become experts in domestic arbitration practice. This tendency conceivably limits the number of lawyers and arbitrators specializing in arbitration and creates monopoly of few lawyers or arbitrators in the field.

Consequently, this paper suggests for AMS to adopt separate domestic arbitration legislation for application to solely domestic commercial arbitration. Careful drafting should be undertaken to accommodate specific needs related to certain domestic dispute resolution traditions and established business practices, and to make the arbitration system sustainable. Finally, as there has been little research related to the important issues surrounding domestic commercial arbitration and Model Law transplantation issues in domestic arbitration in AMS, this paper thus urges Southeast Asian scholars to pursue more research on the

effects of verbatim adoption of the Model Law for domestic arbitration in AMS and suggested transplantation issues.

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