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Legal Issues of Mekong Water Allocation: The Case Study of Thailand

Charuwan Saming¹, Chonruitai Kaewrungrueng², Pawita Kakhai³

^{1,2,3} Faculty of Law, Suan Sunandha Rajabhat University, Bangkok, Thailand
E-Mail: ¹s65123440117@ssru.ac.th, ²chonruitai.ka@ssru.ac.th, ³pawita.ka@ssru.ac.th

Abstract

This study examines the legal issues surrounding the water allocation of the Mekong River, which significantly impacts Thailand, especially regarding agriculture, fisheries, and overall water security. Data were collected and subjected to qualitative analysis via content analysis. The findings revealed significant concerns: The Mekong Agreement underscores the principle of Equitable and Reasonable Utilization (ERU), though its implementation has been a subject of contention. Upstream nations, notably China, have been criticized for prioritizing their own interests, impacting downstream nations such as Thailand. Environmental Impact Assessments (EIA) raise concerns regarding their sufficiency for large infrastructure projects, such as dams, which may result in considerable environmental and social consequences. The Mekong River Commission (MRC) faces criticism regarding its insufficient legal framework for the enforcement of comprehensive Environmental Impact Assessments (EIAs). The governance of transboundary water resources in the Mekong River involves a complex legal framework characterized by multiple regulatory layers and overlapping jurisdictions. This may result in conflicts and difficulties in coordinating efforts among the six MLC member countries. There have been requests for increased public involvement in decision-making processes concerning water allocation and infrastructure projects. The MRC has been called upon to guarantee that impacted communities are represented in these processes. The Mekong Agreement aligns with international water law; however, recommendations exist to enhance its compatibility by aligning it with global water conventions, including the UN Watercourses Convention. The legal issues underscore the necessity for enhanced frameworks and improved collaboration among MLC member countries to guarantee sustainable and equitable utilization of the Mekong River's resources.

Keywords: Water Allocation, Law, Mekong River, Thailand

1. Introduction

The Mekong River Basin is a transboundary river basin, meaning that multiple countries share its water resources. This shared nature necessitates cooperation and coordination among the riparian states to ensure equitable and sustainable water allocation. However, the lack of a comprehensive and legally binding international agreement on water allocation poses significant challenges. (DHI, 2023) Furthermore, the construction of large-scale dams in upstream countries, particularly China, has significantly altered the river's flow regime, impacting downstream countries like Thailand (Eyler & Weatherby, 2020). These upstream developments raise concerns about the equitable distribution of water resources and the potential for conflicts (Sithirith, 2021). While addressing various water-related issues, Thailand's domestic legal framework may not be fully equipped to deal with the complexities

of transboundary water management. The interplay between international law, regional cooperation, and domestic law presents a challenging legal landscape for Thailand. This paper will explore these legal issues in detail, analyzing the international legal framework, the role of regional organizations like the Mekong River Commission (MRC), and Thailand's domestic water laws. It will also examine the impact of climate change on water availability and the potential for transboundary water disputes. Understanding the legal complexities and challenges, we can identify potential solutions and recommendations to ensure sustainable water management in the Mekong River Basin. This research aims to contribute to the ongoing dialogue on transboundary water cooperation and to promote equitable and sustainable water allocation in the region.

Research Objective

To analyze the legal and institutional framework governing water allocation in the Mekong River Basin, with a specific focus on Thailand, and to identify the key legal challenges and opportunities for sustainable water management.

2. Literature Review

The Mekong River, an essential resource for millions in Southeast Asia, is increasingly subjected to the strains of rapid industrialization and climate change. As a nation inside the lower Mekong Basin, Thailand is especially susceptible to the repercussions of these difficulties, notably regarding water distribution. This literature study examines the intricate link between Thailand and the Mekong River, as well as the legal concerns pertaining to water allocation in Thailand, focusing on the interaction of international law, regional cooperation, and domestic legal frameworks.

2.1 Thailand and the Mekong River: A Relationship the Mekong River is a vital lifeline for Thailand, shaping its economy, ecology, and culture. This relationship is multifaceted and influenced by various factors, including economic significance and ecological importance. (*Mekong Integrated Water Resources Management Project – Mekong River Commission*, 2021)

As for economic significance, the Mekong River provides water for irrigation and supports agriculture, particularly rice cultivation, in the northeastern region of Thailand. Also, the river and its tributaries are a significant source of fish, contributing to food security and livelihoods (*Mekong River*, 2021). In the tourism aspect, the river's scenic beauty and cultural significance additionally attract tourists, boosting the tourism industry. Last, the river has historically been used for transportation, facilitating trade and commerce (*Navigation – Mekong River Commission*, 2021).

Additionally, the Mekong River is attributed to ecological importance for the country in terms of biodiversity and ecosystem service. For biodiversity, the Mekong River basin is one of the world's most biologically diverse regions and Thailand benefits from this rich biodiversity. The country encompasses diverse ecosystems, including mixed wet and dry evergreen, deciduous, and montane forests, shrublands, woodlands on karst limestone outcrops, and mangroves. Non-timber forest products are a significant revenue source for rural

populations and supply markets, encompassing a diverse range of plant and animal goods, including food, medicinal items, and dyes (*Natural Resources – Mekong River Commission*, 2021).

Other than biodiversity, the river also provides various ecosystem services, such as water purification, flood control, and climate regulation. It includes freshwater for human use, sustenance and resources for flora and fauna, irrigation for prolific agriculture, and a foundation for vibrant cultural practices and tourism prospects. Valuing these and other ecological advantages is crucial for decision-making regarding water resources in the Mekong Basin (*Ecosystem Services - Mekong Fish Network*, 2017).

2.2 International and Regional Legal Framework Two related texts are the UN Watercourses Convention and the Mekong River Commission (MRC).

The Convention on the Law of the Non-Navigational Uses of International Watercourses is a critical international accord that establishes a framework for the equitable use and environmental safeguarding of international watercourses. Although not ratified by all Mekong nations, this pact establishes fundamental principles for equitable utilization and preventing significant harm. The MRC was created in 1995 as a regional cooperation to foster collaboration and sustainable development in the Lower Mekong Basin. It is essential for overseeing water levels, flow, and quality, although it lacks robust enforcement measures (*Mekong Integrated Water Resources Management Project – Mekong River Commission*, 2021).

2.3 Domestic Legal Framework in Thailand Two regulations pertain to water management in the country. The first is the Water Resource Act, and the second is the Environmental Impact Assessment.

Domestic legislation (Water Resource) establishes a framework for water resource management in Thailand; nevertheless, its relevance to transboundary water concerns is constrained. The Act primarily addresses domestic water management but indirectly influences the nation's strategy toward transboundary water matters, especially with water allocation in the Mekong River Basin. The Act establishes a framework for the allocation of water resources in Thailand, encompassing agricultural, industrial, and home applications. Although it does not directly pertain to transboundary water distribution, it might affect domestic water demand and, as a result, the nation's stance in international negotiations (FAO.org, n.d.).

The other is a substantial legislative measure aimed at safeguarding the environment and promoting sustainable development. Developers must evaluate the potential environmental implications of planned projects prior to implementation. It served as a vital instrument for evaluating the potential environmental, social, and economic effects of development projects. Within the Mekong River Basin, Environmental Impact Assessment (EIA) is crucial for alleviating the adverse effects of extensive infrastructure initiatives, including dams (*Guidelines for Transboundary Environmental Impact Assessment in the Lower Mekong River Basin (TbEIA) – Mekong River Commission*, 2023).

3. Methodology

This study is the Qualitative Research by Documentary Research relating to transboundary water allocation from Secondary Data, prepared and collected, such as books, articles (Meebua *et.al*, 2023), electronic data and the applicable law of Thailand, international water resources management and laws of other countries to analyze the legal issues of Mekong water allocation for Thailand plus the interplay of international law, regional cooperation, and domestic legal frameworks.

4. Results

The challenges of Mekong water allocation is a complex issue with significant implications for the region's economy, environment, and social stability. The primary challenges including upstream development, lack of a binding agreement, limited transparency and data sharing.

As for upstream development, Large-scale dam construction in the Upper Mekong Basin, primarily by China, has significantly altered the river's flow regime. The dams can reduce water flow downstream, impacting agriculture, fisheries, and ecosystems (Dang & Pokhrel, 2024). Other than that, the cooperation agreement has no legal binding. There no legally binding agreement among all Mekong River Basin countries that specifically addresses water allocation and management. This lack of a formal framework makes it difficult to enforce equitable water sharing and resolve disputes *transboundary Cooperation on the Mekong and International Water Law*, 2024). Moreover, upstream and downstream countries are lack of data sharing. Upstream countries, particularly upstream country, have been criticized for a lack of transparency regarding water release data and dam operations (CSDS Communications, 2023).

5. Conclusion and Recommendation

Several causes, such as development upstream, climate change, and pollution, are putting more and more strain on the Mekong River Basin, which is an important ecosystem and a source of income for millions of people. Because of its location in the lower Mekong Basin, Thailand is at heightened risk of experiencing water allocation-related consequences as a result of these issues. International law, regional cooperation, and domestic legal frameworks have all been examined in this study to provide light on the complicated legal issues regarding the allocation of Mekong water in Thailand.

When it comes to water allocation, Thailand is unable to assert its rights due to the lack of a comprehensive and legally enforceable international agreement. Development and Impact Upstream: Downstream nations like Thailand are impacted by the massive changes to the river's flow pattern caused by dam building in upstream nations, especially China. Upstream nations' secrecy about water release statistics and dam operations makes it difficult for Thailand to prepare for and respond to variations in water flow.

To tackle these difficulties and guarantee sustainable water management in the Mekong River Basin, the following proposals are suggested:

1. **Fortify the MRC:** Augment the MRC's power and equip it with more robust enforcement measures to guarantee adherence to established principles and norms.
2. **Foster Diplomatic Engagement:** Advocate for ongoing diplomatic conversation and collaboration among Mekong River Basin nations to tackle water-related challenges and enhance confidence.
3. **Fortify Domestic Legal Frameworks:** Augment Thailand's internal water legislation and regulations to proficiently tackle transboundary water challenges and advocate for sustainable water utilization.
4. **Enhance Public Engagement:** Augment public involvement in decision-making processes pertaining to water management to guarantee that the needs and concerns of impacted communities are acknowledged.
5. **Invest in Water Conservation and Efficiency:** Advocate for water-saving technology and practices to diminish water demand and enhance water usage efficiency.

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