

CONFERENCE PROCEEDINGS

RETHINKING LAW, INSTITUTION, AND POLITICS IN ADVANCING PARTNERSHIP FOR SUSTAINABLE ASEAN COMMUNITY

International Conference on ASEAN Studies (ICONAS) 2019 -
Yogyakarta, March 13th-14th 2019



Conference Proceeding

**INTERNATIONAL CONFERENCE ON ASEAN STUDIES (ICONAS)
RETHINKING LAW, INSTITUTION AND POLITICS IN ADVANCING
PARTNERSHIP FOR SUSTAINABLE ASEAN COMMUNITY**

Yogyakarta, March 13th – 14th 2019

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INTERNATIONAL CONFERENCE ON ASEAN STUDIES (ICONAS)

RETHINKING LAW, INSTITUTION AND POLITICS IN ADVANCING PARTNERSHIP FOR SUSTAINABLE ASEAN COMMUNITY

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FOREWORD

It is a great honor for us to present this proceeding of the International Conference on ASEAN Studies (ICONAS) 2019. This year's conference is the 4th edition of ICONAS. The conference was held on 13-14 March 2019 in Yogyakarta hosted by the Faculty of Social and Political Sciences, Universitas Gadjah Mada. ICONAS 2019 is collaboratively organized by ASEAN Studies Centre, Faculty of Social and Political Science, Universitas Gadjah Mada; Centre for Asian Legal Exchange, University of Nagoya; and Faculty of Law, Universitas Gadjah Mada. This event is supported by the Ministry of Foreign Affairs of the Republic of Indonesia and Grants-in-Aid for Scientific Research (KAKENHI) Japan Society for the Promotion of Science (JSPS). Yogyakarta, the city of culture and education is one again hosting an excellent event to promote knowledge and science in understanding the dynamics of Southeast Asia.

Our gratitude and appreciations for esteemed speakers, H.E. Kazuo Sunaga, the ambassador of Japan for ASEAN, H.E. Vedi Kurnia Buana, Secretary General of the Directorate of ASEAN Cooperation at the Ministry of Foreign Affairs, Prof. Shimada Yuzuru of the Graduate School of International Development, Nagoya University; Prof. Kaoru Obata of the Center for Asian Legal Exchange, Nagoya University; Dr. Poppy S. Winanti, Vice Dean at Faculty of Social and Political Science UGM; Dr. Dafri Agussalim, the Director of ASEAN Studies Center UGM; Dr. Heribertus Jaka Triyana of Faculty of Law UGM; and Prof. Thomas Schmitz, visiting professor from the German Academic Exchange Service (DAAD).

We are committed to continue the tradition to bring together scholars from Southeast Asia and the world to interact and share their most recent scientific works. Presented in this proceeding are 28 excellent contributed papers discussing issues of law and regionalism, economic cooperation, politics, security, and socio-cultural aspects of ASEAN development. We thank all the authors for these insightful works. This proceeding will enrich the discussion and discourse on respective fields. We hope that this proceeding could inspire further studies on multi-disciplinary and socio-legal approach in ASEAN Studies.

Special note of acknowledgment and gratitude for unwavering efforts to organize this event to Prof. Shimada Yuzuru, Dr. Dafri Agussalim, Dr. Randy Wirasta Nandyatama, Laurensia Andriani, Nabiyla Risfa Izzati, Ezka Amalia, Andika Putra, Karina Larasati Bhumiriyanto, Akmal Muhammad Fakhri, Intan Fajar Rahmawati, Ayu Kartikasari, Rifki Maulana Iqbal Taufik, Tunggul Wicaksono, Aisha Jasmine, Jonathan Evert Rayon, Aisyah Danti, Btari Kinayungan, Farhan Fauzy, Prasetya Richard, and all of the committee members.

Conference Chair,



Dr. Muhammad Rum

ICONAS AT A GLANCE

ICONAS is an annual academic conference which is opened for practitioners, business and academic communities including researchers, lecturers, or undergraduate, graduate and doctoral students from various scientific backgrounds (economics, politics, law, communications, culture, arts, sociology, anthropology, international relations, etc). ICONAS was first initiated in 2014 by ASEAN Studies Center, Faculty of Social and Political Sciences, Universitas Gadjah Mada (UGM) and later on collaborate with other academic and research institutions in ASEAN member countries and its dialogue partners.

Having successfully held conferences in 2014, 2015 and 2016, ASEAN Studies Center UGM is very happy to be able to conduct ICONAS in 2019. Focusing the topic on “Rethinking Law, Institutions, and Politics in Advancing Partnership for Sustainable ASEAN Community”, the conference is held in collaboration with the Center for Asian Legal Exchange (CALE), Nagoya University and Faculty of Law, Universitas Gadjah Mada. In addition, this conference is co-funded by the Ministry of Foreign Affairs of the Republic of Indonesia and JSPS Grant-in-Aid for Scientific Research – KAKENHI-(A) “ASEAN Economic Community Building and Its Impacts on the Laws of State Members”.

The opening remarks was delivered by the Vice Rector for Education, Learning and Student Affairs, Prof. Dr. Ir. Djagal Wiseso Marseno, M.Agr, who expressed his appreciation for the support and cooperation of various parties, including the Ministry of Foreign Affairs so that ICONAS activities could be held again in 2019.

On the same occasion, a keynote speech regarding the event was also presented by the Ambassador of Japan for ASEAN, H.E. Kazuo Sunaga. He conveyed the various achievements of cooperation in the ASEAN-Japan framework that has existed for 45 years. H.E. Amb. Kazuo Sunaga also emphasized the important role of ASEAN as Japan's strategic partner, especially in realizing the Indo-Pacific Strategy Free and Open policy. Furthermore, Secretary of the Directorate General of ASEAN Cooperation, Vedi Kurnia Buana in his keynote speech addressed that ASEAN politics, institutions and law must be able to overcome various endless challenges. He also stated that the development of law and politics in ASEAN needs to be accompanied by the development of the integration of values and identities. These two things are key to maintaining the unity, centrality and sustainability of ASEAN as a regional organization, of which the centrality of ASEAN has become important amid the changes in the geopolitical and geo-economic constellation of Indo-Pacific region.

ICONAS 2019 presented speakers from academics such as: Prof. Obata Kaoru from the Graduate School of Law, Nagoya University; Dr. Dafri Agussalim, Director of the UGM ASEAN Study Center; Dr. Heribertus Jaka Triyana, S.H., M.A., LL.M from the UGM Faculty of Law; Prof. Shimada Yuzuru from the Graduate School of International Development, Nagoya University; Dr. Poppy S. Winanti, Deputy Dean of FISIPOL UGM; and Prof. Dr. Thomas Schmitz, lecturer from the German Academic Exchange Service (DAAD) at the Faculty of Law, UGM.

ICONAS 2019 was attended by around 263 participants from various scientific fields. On this occasion, there were 35 studies of issues that were presented in parallel in three discussion clusters, namely, the issue cluster of the Political Society - ASEAN Security, the ASEAN Economic Community, and the ASEAN Socio-Cultural Society. The results of the study in ICONAS 2019 will be submitted as policy recommendations published and distributed to relevant institutions in ASEAN.

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INTEGRATION THROUGH LAW - THE EUROPEAN APPROACH OF SUPRANATIONAL GEO-REGIONAL INTEGRATION

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Keywords: world order of states; geo-regional integration; supranational integration; integration through law; European Union - legal nature; "*Staatenverbund*"/supranational union; member states of the European Union; sovereignty; primacy of European Union law; implementation of European Union law; rule of law; general principles of Union law; Europeanisation of administrative law.

INTRODUCTION

As any geo-regional integration, ASEAN integration will be a challenge - for law, institutions and politics. In history, until today the European integration is the only example for a (to some extent) successful voluntary integration of different sovereign states. The European way of a supranational integration based on supranational institutions and supranational law, with a strict commitment to the rule of law and a strong influence of the jurisprudence of a supranational (European) Court of Justice is not the only conceivable way of geo-regional integration - but other approaches still need to prove that they will work. In Europe, for example, the alternative softer approach of intergovernmental cooperation, which is still practiced in the field of Foreign and Security Policy, has proved not very effective. Even if the situation in ASEAN is different, the study of the European experience will be helpful to achieve a better assessment of the chances, challenges and dangers of geo-regional integration.

When discussing the characteristics of European integration, we need to be aware of some facts and developments:

A changing political world order of states but an unchallenged legal world order of states

For several decades, the world has been undergoing a process of transformation. The old political world order, emanating from the 19th century, where the independent individual nation-state is the basis of all power, law and politics, is dramatically changing. The world has seen the

development from the solitary loner state to free trade, joint markets, economic interpenetration and interdependence, inter- and supranational cooperation and integration. This has led to a considerable rise of geo-regional and global law and institutions. This process is not irreversible but today it becomes more and more evident that a return to the old ways would not be possible without the high price of a major economic and social (and probably also environmental and security) decline.

While the political world order of states is changing, the legal world order of states is still unaffected. So far, there is *no challenge of the legal foundations of all law and legal power on this planet: the principle of the territorial state, the self-determination of peoples and the sovereignty of the state*.¹ Humanity is not united but divided into approximately 200 distinct communities (peoples), forming legally recognized independent (sovereign) governing entities (states) with exclusive power to rule over a certain territory. The fundamental concept of the sovereignty of the state (originary and independent, unlimited legal capacity to act at the domestic and international level) has been vividly criticised by some scholars, but their ideas of "shared sovereignty"² or "sovereignty in limbo" are not more than wishful thinking and there are no serious political attempts to replace the world order of sovereign states by an integrated legal order for the planet. This has a number of consequences for our topic.

International cooperation, supranational cooperation and integration

In the context of geo-regionalisation and globalisation, different phenomena are to be distinguished:³ There are various forms of international cooperation (bilateral, multilateral, direct or in international organisations etc.). Supranational cooperation is a special form where a special kind of international organisation, a supranational organisation, directly exercises public power in its member states. The citizens and authorities are directly bound to the decisions of the organisation without any intermediate act of their own state. Supranational cooperation is much more efficient than conventional international cooperation but requires the openness of the state for exterior powers operating on its territory.

¹ Cf. *Thomas Schmitz*, Integration in der Supranationalen Union [Integration in the Supranational Union], 2001, English summary at www.iuspublicum-thomas-schmitz.uni-goettingen.de/SupranUnion/Summary.htm, p. 31 ff., 189 ff. with further references.

² See the references on the discussion if sovereignty can be "shared" at *Thomas Schmitz* (note 1), p. 91 f. with further references. The idea of "shared sovereignty" is incompatible with the existing legal world order since the concept of the sovereignty of the state is an absolute concept but shared sovereignty would not be absolute anymore and therefore sovereignty cannot be shared without giving it up.

³ See my course material "Forms of international cooperation, supranational cooperation and integration", Semester II, 2015/16, www.iuspublicum-thomas-schmitz.uni-goettingen.de/Downloads/Schmitz_EU-Law_diagram1.pdf.

Integration, however, is more than cooperation. It implies uniting the states as a whole to a new, exclusive general political community - with the vision of a common future. While a state may practice international cooperation in numerous specialised international organisations it can only be the member of one organisation of integration. Insofar, an organisation of integration can be indeed compared with a family, and leaving it, as in the case of Brexit, with divorce.

Geo-regionalisation and globalisation

Actually, two processes are changing the world: the developing cooperation at the global level (globalisation) and the advancing cooperation and integration in delimited regions of the planet (geo-regionalisation). These are not competing but complementary processes. Globalisation does not make geo-regionalisation redundant and integrating regions of the planet are not less open to global cooperation than others.

Why do we need geo-regional integration?

The reasons for these developments are simple but inconvenient for the supporters of the model of the free and independent individual state: In the 21st century, there are few states left on the planet that are big enough to fulfil their missions alone. The challenges of advancing technical progress, keeping a sustainable economy, fighting international organized crime and terrorism, mastering migration, protecting the environment, resisting the pressure of hegemonial super powers etc. are too high. Globalisation alone cannot be the answer to these challenges, since the idea of a comprehensive fair and non-hegemonial cooperation only and directly at the global level is illusive. The state needs the embedding in and the support of a powerful regional community of states sharing, defending and promoting rather similar cultures, values and interests. Without the "home" of a geo-regional organisation of integration the individual state, in particular small states with just a few millions of citizens, will become more and more helpless.

THE INTEGRATION OF EUROPE IN A SUPRANATIONAL UNION, BASED ON LAW

After the Second World War the (West-) European states did not follow the American model to merge to a geo-regional federal state but chose the alternative approach of processual supranational integration. It preserves the sovereignty of the participating states and focuses on exercising more and more public functions and fulfilling more and more public missions collectively in supranational institutions. Starting with three supranational "European

Communities", this development gave rise to a complicated, difficult to understand and often underestimated novel governing entity with an unconventional design, the "European Union".⁴

Understanding the European Union

- a) *A non-state but state-like geo-regional organisation of integration, performing on a large scale public missions by the exercise of supranational public power in its member states*

The European Union is not a state but a state-like geo-regional organisation of integration, located *in the triangle between supranational organisation, confederation and federal state*. It is more than an international or supranational organisation, a confederation or a combination of both but not yet a federal state. It is based on public international law but exercises public power on a large scale like a state and thus is *as dangerous as a state*. For this reason, it also needs and nowadays has its own fundamental rights catalogue. It accomplishes its integrative function primarily by legislation and regulation, but it also serves as an institutional framework for (formal and informal) intergovernmental cooperation and as a habitat for the substantive integration law, in particular the European internal market law.

- b) *The first representative of a new form of organisation, emerged in the process of European integration and designed for a long transition from the nation-state to the civilisation state*

The European Union is unlike any other organisation under public international law in the past and present and therefore does not fall into the established categories. It is the first representative of a new form of organisation that was not intentionally invented as such by its creators but emerged as the result of many developments, reforms and compromises. It is a *specific form of organisation for supranational integration*, designed for the long transition process from a Europe of nation-states to a European civilisation-state, which will be a European federal state. However, it will not necessarily lead to this result.

One of the striking characteristics of this new form of organisation is its *dynamic*: Unlike a classical inter- or supranational organisation or a federal state, the European Union is not stable but always developing. The fields of its missions and its competences have been steadily enlarged and there have been numerous structural and institutional reforms but always after a couple of years the reform debate will start again. Stagnation is not possible under this form

⁴ See on the history of European integration the overview of the *European Commission (editor)*, The history of the European Union, at the European Union's main server, https://europa.eu/european-union/about-eu/history_en#1990-1999; *European Parliament (editor)*, The historical development of European integration, 2018, [www.europarl.europa.eu/RegData/etudes/PERI/2018/618969/IPOL_PERI\(2018\)618969_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/PERI/2018/618969/IPOL_PERI(2018)618969_EN.pdf); *Thomas Schmitz* (note 1), p. 113 ff.

of organisation because it is not prepared for it: The European organisation of integration will either progress (as in the past decades) or regress (as in the last years) or even fail. If the Europeans one day want to change over to stable structures and a stable distribution of responsibilities and competences (in order to prevent centralisation), they must convert their Union to a European federal state.

c) *The debate on the legal nature: "compound of states" ["Staatenverbund"], "compound of states and constitutions" or supranational union?*

The unconventional design of the European organisation of integration has sparked a long, intensive scholarly debate about its legal nature. While there is consensus that a new form of organisation has emerged, its basic understanding is heterogeneous, and this is even reflected in the chosen terminology. Three approaches should be highlighted: According to the state-centred *"Staatenverbund" doctrine of the German Federal Constitutional Court* [Bundesverfassungsgericht] as developed in its Maastricht judgement of 1993⁵ and further developed in its Lisbon judgement of 2009⁶, the European Union is a "Staatenverbund" ["compound of states"], i.e. more than a "Staatenverbindung" [association of states] or a "Staatenbund" [confederation] but far from being a "Bundesstaat" [federation, federal state]. This doctrine has caused confusion because it defines the legal nature of the European organisation of integration with a newly created German term that cannot be translated correctly into other languages. It has also met strong resistance because it focuses lopsidedly on the role of the member states and neglects the function of the Union. Some scholars who consider the Union's Founding Treaties a constitution, prefer to talk instead about a "Verfassungsverbund" ["constitutional compound"]⁷ of the Treaties and the national constitutions or consider the European Union a "Staaten- und Verfassungsverbund" ["compound of states and constitutions"]⁸. This, however, meets objections because according to constitutional theory, every constitution is restricted to one specific organisation [Verbandsspezifität der Verfassung]⁹ and therefore cannot form a "compound" - neither with other constitutions,

⁵ *Federal Constitutional Court*, BVerfGE 89, 155 (decisions of the Bundesverfassungsgericht, vol. 89, p. 155 ff.).

⁶ *Federal Constitutional Court*, BVerfGE 123, 267.

⁷ See in particular *Ingolf Pernice*, *Theorie und Praxis des Europäischen Verfassungsverbundes* [Theory and Practice of the European Constitutional Compound], WHI Paper 8/2008, www.rewi.hu-berlin.de/de/lf/oe/whi/publikationen/whi-papers/2008/whi-paper0808.pdf; *Ingolf Pernice*, *The EU - a Citizens' Joint Venture. Multilevel Constitutionalism and Open Democracy in Europe*, WHI Paper 09/2013, p. 3 f., www.rewi.hu-berlin.de/de/lf/oe/whi/publikationen/whi-papers/2013/whi-paper-09-2013.pdf.

⁸ See in particular *Christian Calliess (editor.)*, *Verfassungswandel im europäischen Staaten- und Verfassungsverbund. Göttinger Gespräche zum deutschen und europäischen Verfassungsrecht* [Constitutional Change in the European Compound of States and Constitutions. The Göttingen Talks on German and European Constitutional Law], 2007.

⁹ *Thomas Schmitz* (note 1), p. 405 f.

neither with governing entities such as the Union and the states. For these reasons, and since the new form of organisation can only be understood in depth by focusing on the Union and its function in the process of supranational integration, it is instead appropriate to classify the European Union a *supranational union*¹⁰ and to develop a *union-centred approach of a general theory of the supranational union*, parallelly to the general theory of the state.

The member state in the European Union

The status of the member state in the European Union has several interesting aspects. The following are the most important for our topic:

a) *The unaffected sovereignty of the state*

Since the European Union is not a state and since sovereignty cannot be shared or be "in limbo", during the whole integration process, until the Union is (possibly) converted into a federal state, the sovereignty of the individual member state stays unaffected. Its right to exercise its sovereignty is restricted but not the sovereignty itself. This means that the member state enjoys an *unlimited public power*, including the legal power (but of course *not* the right) to break Union law. In case of a serious conflict, a domestic law intentionally violating Union law will not be void. Furthermore, the state keeps the *unlimited legal capacity at the international level* - including the capacity to conclude treaties with third countries that are incompatible with its obligations under Union law, or to leave the Union. Finally, the state still has the *ultimate control over all public power exercised on its territory*. The supranational public power of the Union cannot come into effect on its territory if the state does not recognize it and order the domestic authorities and citizens to follow it - a decision that it can revoke at any time. On the other hand, the state retains the *ultimate responsibility* for the well-being of the citizen: The state must ensure that all public missions are performed satisfactorily on its territory, by whomsoever. This implies that if it turns out that the state is too weak and the powers delegated to the Union are insufficient the state will need to justify why it has not tried to strengthen the Union and to delegate more powers to it.

¹⁰Cf. *Arnim von Bogdandy*, Supranationale Union als neuer Herrschaftsträger: Entstaatlichung und Vergemeinschaftung in staats-theoretischer Perspektive [The Supranational Union as a New Ruler. Denationalisation and Communitarisation from the Perspective of General Theory of State], in: *Integration* 1993, p. 210 ff.; *Arnim von Bogdandy*, in: von Bogdandy (editor), *Die Europäische Option. Eine interdisziplinäre Analyse über Herkunft, Stand und Perspektive der europäischen Integration* [The European Option. An Interdisciplinary Analysis of Origin, Status and Perspective of the European Integration], 1993, p. 97 (119 f.); *Thomas Schmitz* (note 1), p. 74 with further references.

b) The member states as the "masters of the treaties"

When acting together as so-called "masters of the treaties", that means by amending the Founding Treaties, on which the Union is based, the member states can modify or repeal any Union law and even dissolve the Union and destroy all Union law at all. However, this requires an amending treaty that needs to be signed and ratified by all member states. The individual state and even the entirety of the states, when represented in the Union's institutions, do not have this power.

c) The basic duty to respect, implement, execute and enforce Union law (cf. art. 4(3) EU Treaty)

The central obligation of the member state is the duty to respect but also to implement, to execute and wherever necessary to enforce Union law. This is even laid down expressly in art. 4(3) of the Treaty on the European Union (= EU Treaty). There is an abundant jurisprudence on these requirements in detail (see *infra*, IV.).

The basic concept of integration through law

a) Integration based on law and the respect for law

With regard to the unaffected sovereignty of the member state and its central obligation to respect, implement, execute and enforce the law of the Union, it is evident that the integration in this type of organisation builds on reliability and discipline. Important elements of the substantive law of the integration, in particular the economic fundamental freedoms of the citizens, are directly regulated in the Treaties. Besides, the work of the Union's institutions mainly consists of preparing and adopting legal acts that the member states must transform into national law (in the case of directives) or (in most cases) directly execute. With few exceptions, the Union does not execute its law itself. Since most provisions concern the economy or have an economic effect, *compliance is essential*: Even small irregularities may cause serious distortions of competition in the internal market that would disadvantage those who follow the law and, thus, soon jeopardize the acceptance of the whole integration process. The European integration process is based on the respect for law on the Union level and in all member states and on the trust in it.

b) No coercive powers of the Union to enforce its law in the member states

This is underlined by the fact that the Union does not have any coercive powers to enforce its law. Under the Treaties, the strongest sanction against a member state is the imposition of a lump sum or a penalty payment by the European Court of Justice in case of non-compliance with its judgements (art. 260(2, 3) of the Treaty on the Functioning of the European Union [= FEU

Treaty]]. Furthermore, art. 7 EU Treaty allows special sanctions in the case of continuous serious violations of the European fundamental values (art. 2 EU Treaty). However, unlike in a federal state, there is no way to force a renitent member state to comply. The ultimate step would be the expulsion of the member state from the Union (under art. 60(2) lit. a of the Vienna Convention on the Law of Treaties).¹¹

c) Strong emphasis on the rule of law

Against this background, it becomes clear that the common fundamental value of the *rule of law*, as anchored in art. 2 EU Treaty, is the most important foundation of the European Union. Consequently, as in every system based on the rule of law, there will be a strong influence of the judiciary. The *European Court of Justice* (= ECJ)¹² even plays a particularly prominent role because there was consensus from the beginning that the integration process should follow the rule of law but the Founding Treaties did not include the necessary provisions and it was the task of the Court to identify and develop the many elements of the rule of law in the European legal order by *extensive further development of law*. In this process the Court applied the criterium of "*effet utile*" (practical effectiveness) as the dominant criterium in dealing with the norms of the European law.¹³ It always interpreted, applied and further developed them in a way that they could not be marginalised but did have a practical effect with regard to the objectives of the norm.

d) Uneasiness in parts of public law doctrine

While this approach has been in generally accepted, there has been some uneasiness in some member states in parts of public law doctrine. Some national constitutional courts expressed reservations regarding special issues, which, however, were not shared by the constitutional courts of other member states, and also the community of constitutionalist scholars was divided.

¹¹Cf. *Thomas Schmitz* (note 1), p. 274 ff.

¹²Note that the *European Court of Justice* in *Luxembourg* (the Court of the European Union, <https://curia.europa.eu>) must be distinguished from the *European Court of Human Rights* in *Strasbourg* (the treaty body under the European Convention of Human Rights, www.echr.coe.int). The latter is not an institution of the European Union.

¹³See on the significance of the "*effet utile*" in European Union law *Łukasz Stępkowski*, The notion of effectiveness in the law of the European Union, *Studia nad Autorytaryzmem i Totalitaryzmem* 38 (2016) no. 2, p. 81 ff., <http://sfzh.wuwr.pl/download.php?id=479e62064724e01e54cc9db8f1d89788292eef8b>; *Alenka Berger Škrk*, *Effet utile* and national practice: Is there a room for improvement?, *InterEULawEast* 1 (2014), no. 1, p. 113 ff., <https://hrcak.srce.hr/123278>; *Sibylle Seyr*, Der *effet utile* in der Rechtsprechung des Europäischen Gerichtshofs [The *Effet Utile* in the Jurisprudence of the European Court of Justice], 2008; *Francis Snyder*, The Effectiveness of European Community Law: Institutions, Processes, Tools and Techniques, *The Modern Law Review* 56 (1993), p. 19 ff., www.francis-snyder.com/tl_files/contents/articles/%20The_Effectiveness_of_European_Community_Law.pdf.

For decades, triggered by decisions of the Italian and German constitutional courts,¹⁴ there was a vivid debate about the ultimate responsibility for the protection of fundamental rights in the European Union¹⁵ - until this debate came to an end with the Treaty of Lisbon that formally introduced the Charter of Fundamental Rights of the European Union as a binding fundamental rights catalogue at the level of primary law (see now art. 6(1) EU Treaty). Another debate, namely about who is the final arbiter of interpreting the norms about the Union's competences, is still going on (see *infra*, V.). Furthermore, for some years in the nineties, there was a reluctance of some scholars to give up or to adapt established solutions in the domestic administrative law to the requirements of Union law (see *infra*, IV.2.).

THE CHARACTERISTIC FEATURES OF EUROPEAN UNION LAW

What are the characteristic features of European Union law that set it apart from the law of other organisations based on public international law?

The *autonomy* of Union law

First of all, the Founding Treaties have created a *distinct legal order* of its own that is not an annex to national law but also apart from public international law.¹⁶ The European Court of Justice has stressed this already in 1963 in its first leading case *van Gend & Loos*.¹⁷ This legal order is autonomous from the law of the member states but not from their unanimous will when acting as "masters of the treaties" (cf. *supra*, II.2.b). The Union is in particular not bound to the

¹⁴ *Italian Constitutional Court [Corte costituzionale]*, judgement 183/73, Frontini Franco, www.giurcost.org/decisioni/1973/0183s-73.html; *German Federal Constitutional Court*, BVerfGE 37, 271 (see p. 277 ff.), "Solange I", English translation at <https://law.utexas.edu/transnational/foreign-law-translations/german/case.php?id=588>; BVerfGE 73, 339 (see p. 366 ff.), "Solange II", English translation at <https://law.utexas.edu/transnational/foreign-law-translations/german/case.php?id=572>; BVerfGE 89, 155 (headnote 7, p. 70), Maastricht judgement, www.servat.unibe.ch/dfr/bv089155.html; BVerfGE 102, 147, Banana market organisation, English translation at www.bundesverfassungsgericht.de/entscheidungen/ls20000607_2bvl000197en.html; see for a different perspective *French Constitutional Council [Conseil constitutionnel]*, decision 92-308DC, no., 18, www.conseil-constitutionnel.fr/decision/1992/92308DC.htm.

¹⁵ See the references at Thomas Schmitz, Bibliography on Jurisprudence on European integration, last updated 2011, part D, www.iuspublicum-thomas-schmitz.uni-goettingen.de/Lehre/Jurisprudence-on-integration-bibliography.htm.

¹⁶ Strictly speaking, in the legal world order of sovereign states there can only be domestic and international law and European Union law is a part of international law. However, this part is so different from (other) public international law and so developed that most rules of international law do not apply and that it is generally recognised as a distinct and autonomous legal order.

¹⁷ ECJ, case 26/62, *van Gend & Loos*, p. 23 ff. All decisions of the European Court of Justice are available in all official languages of the Union at its website (<https://curia.europa.eu>). Just insert the case number!

fundamental rights in the constitutions of the member states.¹⁸ The national courts have no jurisdiction to declare legal acts of the Union invalid.¹⁹

The *direct effect* of Union law within the member states

The second characteristic feature is the direct effect of Union law within the member states. All public authorities and also the citizens are directly bound without intermediate national legislation or other national acts (except to directives, which must be transposed to national law). This also applies to the primary law (the Treaties), which is directly applicable.²⁰

The *unity* of Union law

The unity of Union law is essential for the functioning of the Union. In order to avoid disparities and distortions endangering the integration process, Union law is and must be exactly the same everywhere, with uniform validity and application in all member states without regard to the specific features of national law.

The *primacy* of Union law over national law

The fourth characteristic feature is the most outstanding: Union law enjoys primacy over national law. In case of conflict, the authorities and courts in the member states must not apply their national law. The European Court of Justice has emphasized this already in its important leading case *Costa/ENEL*²¹ in 1964. In the case *Internationale Handelsgesellschaft*²² it confirmed primacy *even over national constitutional law*. This has been expressly recognised by many constitutional courts of the member states - usually as far as the constitutional identity (fundamental values and ideas constituting the core of the constitution) is not affected.²³ Conflicts may be avoided by interpreting national law in conformity with Union law.²⁴ When questions arise, the national courts may ask the ECJ for preliminary rulings on the validity and interpretation of Union law (art. 267 FEU Treaty).

¹⁸ECJ, case 11/70, *Internationale Handelsgesellschaft*, no. 3 f.

¹⁹ECJ, case 314/85, *Foto-Frost*, no. 15 ff.

²⁰ECJ, case 26/62, *van Gend & Loos*, headnote 5.

²¹ECJ, case 6/64, *Costa/ENEL*.

²²ECJ, case 11/70, *Internationale Handelsgesellschaft*, no. 3 f.

²³See, for example, the decisions of the Italian and German constitutional courts (note 14); *Austrian Constitutional Court [Verfassungsgerichtshof]*, decision of 26.06.1997, B877/96, www.ris.bka.gv.at; *French Constitutional Council*, decision of 27.07. 2006, 2006-540 DC, no. 19, www.conseil-constitutionnel.fr/decision/2006/2006540DC.htm.

²⁴ECJ, case 79/83, *Ratti*, no. 19 ff.

Unlike the primacy of constitutional law over ordinary law, this is only a *primacy in application*, not in validity. National law incompatible with Union law will not be void and even become applicable again if one day the member states leaves the Union. Furthermore, based on its unaffected sovereignty, in case of a serious conflict the member state has the legal power (not the right!) to break the primacy of Union law by adopting laws that intentionally and expressly ignore it. However, in this case it risks expulsion. The primacy of Union law over national law is only a rule of the game but the *fundamental rule of the game* of supranational integration. Whoever wants to participate in this game must play by its rules.

THE REQUIREMENTS FOR THE IMPLEMENTATION OF EUROPEAN UNION LAW IN THE MEMBER STATES

Demanding requirements ensuring the uniform and effective implementation in all member states

The Founding Treaties of the European Union demand the implementation and execution of Union law but do not regulate it. Art. 288 FEU Treaty presents the different types of legal acts of the Union. Art. 4(3) sub-sect. 2 EU Treaty stipulates that "the Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union" but does not elucidate what that means. The requirements have instead been substantiated in detail in an abundant jurisprudence of the European Court of Justice. The Court has elaborated demanding requirements that ensure efficiently the uniform and effective implementation in all member states. For this purpose it has often applied a special technique of further development of law that originates in the French legal tradition: the "discovery" (and later further development) of unwritten *general principles of law* that are inherent in a legal order based on the rule of law. When introducing and concretising these general principles the Court followed a comparative approach, inspired by the standards in the law of the member states (usually the higher standards in those states with a more advanced administrative law) and with special regard to any aspect of the rule of law and to the criterium of "effet utile". The Court did not only take into account the need to ensure the implementation of Union law but *also* generally recognized *principles under the rule of law* (e.g. of protection of legitimate expectation) that may in the individual case be *opposed to it in order to protect the citizen*. Thus, a whole collection of principles and sub-principles under the rule of law emerged that has sometimes been called "European

administrative law"²⁵ and nowadays is the most comprehensive and up-to-date collection of rule of law principles in the world. For any country preparing an administrative procedure act this collection may serve as a valuable source of inspiration.²⁶

Some important requirements of the implementation of Union law should be highlighted:

- a) The implementation is the responsibility of the member states under the Treaties (see today art. 4(3) EU Treaty). They apply the European law in accordance with their national administrative law. This must not, however, affect its scope and effectiveness. For example, unduly paid European aids must be recovered by the authorities in the member states. Provisions excluding the recovery with regard to such rule of law considerations as protection of legitimate expectations, loss of unjustified enrichment, passing of time-limits or awareness of the administration etc. may be applied, but the interests of the Union must be taken fully into account.²⁷ In the case of illegitimate national state aids, which may distort competition, the protection of legitimate expectations is restricted. There will be no protection of the beneficiary in case of a violation of the duty to notify the European Commission about the state aids. Furthermore, the national authorities must give effect without discretion if the Commission orders the recovery of the aids.²⁸
- b) The authorities of the member states must not only take the necessary administrative decisions to execute Union law but *also take coercive measures against the citizen* to enforce it.²⁹ Otherwise the European law would be practically ineffective. This is a matter of course in any system based on the rule of law - but yes, the European Court of Justice needed to remind the member states of it.
- c) The courts in the member states are obliged to grant *interim relief to enforce Union law* - regardless of adverse provisions of national law.³⁰ They may *also grant interim relief against the enforcement of Union law* but under restrictive conditions: There must be serious doubts as to the validity of the EU regulation, the question must be referred to the European Court of Justice for a preliminary ruling, the applicant must be threatened with serious and

²⁵ Jürgen Schwarze, *Europäisches Verwaltungsrecht* [European Administrative Law], vol. 1 and 1, 1988; Jürgen Schwarze, *European Administrative Law*, 1996 (revised edition 2006); Thomas von Danwitz, *Europäisches Verwaltungsrecht* [European Administrative Law], 2008.

²⁶ See Thomas Schmitz, *The general principles of European Union law - a source of inspiration for the development of a modern administrative law in the Republic of Moldova*, *Administrarea Publică* 2017, no. 1 (93), p. 26 ff., http://aap.gov.md/files/publicatii/revista/17/AP_1_17.pdf.

²⁷ ECJ, joint cases 205-215/82, *Deutscher Milchkontor*, no. 17 ff.

²⁸ ECJ, case C-24/95, *Alcan*, no 43, 54.

²⁹ Cf. ECJ, case C-217/88, *vin de table*, no. 14 ff., 33.

³⁰ Cf. ECJ, case C-213/89, *Factortame*, no. 20 ff.

irreparable damage and the interest of the Union that its legal acts have full effect must be duly taken into account.³¹

d) The legal instrument of *directives* causes particular problems because these particular legal acts are not directly applicable in the member states but must first be transposed into national law. According to art. 288 sub-sect. 3 FEU Treaty, directives are binding, as to the result to be achieved, but shall leave to the national authorities the choice of form and methods. This softer approach allows a harmonious integration of the norms into the system of the national law in the responsibility of the member state, but - of course - there are often some states that do not transpose the directive in time, do not transpose it correctly or do not transpose it at all. To fight the threats emanating from these failures, the European Court of Justice has elaborated various *precautions in Union law to assure effective compliance* with directives:

- the obligation to *implement* directives *by law*, not by administrative practice or administrative provisions;³²
- the obligation to refrain during the implementation period from taking measures liable to compromise the result prescribed;³³
- the obligation of all national courts and authorities to *interpret the national law in conformity with the directives*;³⁴ this helps to avoid conflicts;
- the *exceptional direct applicability* of directives *in favour of the citizen* (never against³⁵) in case of late or inadequate implementation, if the directive is unconditional and sufficiently precise;³⁶ in this case, the authorities and courts decide themselves how to implement the directive, thus replacing the legislator until it fulfils its duty.

e) The most spectacular example of further development of law in order to ensure the effective implementation of Union law in the member states was the introduction of *state liability for non-implementation of directives* with the leading case *Francovich*³⁷ in 1991. It introduced a whole new field of European Union law that has an important theoretical and practical impact, and developed first elements of a European state liability doctrine. With the leading cases *Brasserie du Pêcheur/ Factortame*³⁸ the Court extended in 1996 the state liability to cases of violation of directly applicable Union law, concretised important aspects and

³¹Cf. ECJ, joint cases C-143/88 and others, Zuckerfabrik Süderdithmarschen, no. 16 f., 22 ff.

³²ECJ, case C-361/88, TA-Luft, no. 20 f., 24.

³³ECJ, case C-129/96, Inter-Environnement Wallonie, no. 44 ff.

³⁴ECJ, case 79/83, Harz, see summary.

³⁵Cf. ECJ, case 152/84, Marshall I, no. 48 ff.; case C-91/92, Faccini Dori.

³⁶ECJ, case 148/78, Ratti, no. 19 ff.; ECJ, case 41/74, van Duyn.

³⁷ECJ, joint cases C-6/90 and 9/90, Francovich, no. 31 ff.

³⁸ECJ, joint cases C-46/93 and 48/93, Brasserie du Pêcheur/Factortame, no 16 ff.

presented a whole dogmatic system of state liability. In other decisions state liability has also been confirmed for violations of Union law by incorrect transposition of directives,³⁹ by wrongful administrative practice⁴⁰ or by decisions of national supreme courts⁴¹. Today there is a *general principle of state liability for any violation of Union law* (the liability of the Union for its own illegal acts is regulated expressly in art. 340 FEU Treaty).

The liability of public institutions for any violations of the law is a matter of course in any system based on the rule of law. Thus, as for all further development of law, the Court could justify its advance with the *essential task* conferred to it under the Treaties (today: art. 19(1) EU Treaty) *of ensuring "that ... the law is observed"*. Its jurisprudential innovation was nothing else than taking the rule of law seriously. However, it was uncomfortable for many member states whose national state liability law was deficient. For example, some states needed to become accustomed to the fact that in case of violation of Union law they must also pay compensation for illegal acts of the legislator, since the legislator makes the law but does not stand above the law. Soon it became evident that a late or "sloppy" transposition of a directive into national law may become expensive in fields where many citizens are concerned and that it may be the better way to do it correctly and in time.

Inevitable side-effect: *Europeanisation of administrative law*

The European Court of Justice has not only focused on the uniform and effective implementation of European Union law but also "discovered" many other general principles of law that reflect classical elements of the rule of law, such as the principle of legal certainty⁴² and the protection of legitimate expectations⁴³, including the respect for acquired rights⁴⁴, the right to effective legal protection⁴⁵, the principle of proportionality⁴⁶ and principles of a fair administrative procedure⁴⁷ or "good [proper] administration"⁴⁸. Some of these principles must

³⁹ ECJ, case C-392/93, *British Telecommunications*, no. 40 ff.

⁴⁰ Cf. ECJ, case C-5/94, *Hedley Lomas*, no. 28.

⁴¹ Cf. ECJ, case C-224/01, *Köbler*, no. 32.

⁴² ECJ, See on legal certainty as a general principle of Union law the overview and analysis of *Juha Raitio*, in: Ulf Bernitz; Joakim Nergelius; Cecilia Cardner; Xavier Groussot (editors), *General Principles of EC Law in a Process of Development*, 2008, p. 47 ff.; see for the limitation of retroactive effects ECJ, case C-293/04, *Beemsterboer*, no. 24 f.

⁴³ ECJ, case 21/81, *Bout*, no. 13; case C-293/04, *Beemsterboer*, no. 24.

⁴⁴ Cf. ECJ, case C-496/08 P, *Serrano*, no. 84 with further references.

⁴⁵ ECJ, case 222/84, *Johnston*, no. 18 f.; case 222/86, *Heylens*, no. 14.

⁴⁶ This principle has not only a prominent role in fundamental rights doctrine but also represents a core element of the rule of law and thus applies as a general principle of law in the whole legal order of the European Union, cf. *Cordula Stumpf*, in: Jürgen Schwarze (editor), *EU-Kommentar [EU Commentary]*, 2nd edition 2009, art. 6 EUV [= EU Treaty], no. 11 with further references.

⁴⁷ See *Thomas Schmitz* (note 26), p. 26 (31 f.).

⁴⁸ Cf. ECJ, case C-255/90, *Burban*, no. 7, 12; joint cases 33 and 75/79, *Kuhner*, no. 23 ff.

be balanced with the need for uniform and effective implementation of the law or with each other. Naturally, this balancing will vary in different legal orders. Given the primacy of Union law the member states needed to adapt their individual solutions to those of the Union, at least in those areas where Union law was involved. This has created a considerable pressure to align the national administrative law to the Union law, which is called the Europeanisation of administrative law.⁴⁹ This is an inevitable side-effect of supranational integration. Prominent problem areas were administrative finality, the right of action, interim relief and state liability. In the nineties, this process triggered the resistance of some German scholars,⁵⁰ which was followed by critical reflections on the domestic law. In other fields of law, the phenomenon of Europeanisation was more moderate and has not met such resistance.

THE CONTROVERSY ABOUT THE ULTIMATE DECISION ON THE LIMITS OF THE EUROPEAN UNION'S COMPETENCES

While the extensive further development of law by the European Court of Justice has been in general accepted in the member states, a certain tendency in the Court's jurisprudence to interpret and apply the competence clauses in the Treaties in a "generous", "Union-friendly" way has met fierce resistance. In the early nineties the criticism by the scholars piled up and in 1993 the German Federal Constitutional Court declared in its Maastricht judgement⁵¹ that it would control if the Union's legal acts complied with the limits of the Union's competences. It based its position on the fact that the founding treaties drew a clear distinction between treaty interpretation and treaty extension. In 1998 and 2005 the Danish Supreme Court⁵² and the Polish Constitutional Court⁵³ adopted a similar position, while in 2004 the French Constitutional Council⁵⁴ declared that without an explicit constitutional reserve any control with regard to the limits of competences was reserved to the ECJ. In 2009 the German Federal Constitutional Court

⁴⁹ See now for a recent analysis Attila Vincze, *Europäisierung des nationalen Verwaltungsrechts - eine rechtsvergleichende Annäherung* [Europeanisation of national administrative law - a comparative approach], in: *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 77 (2017), p. 235 ff., www.zaoerv.de/77_2017/77_2017_1_a_235_268.pdf; J.H. Jans; S. Prechal; R.J.G.M. Widdershoven (editors), *Europeanisation of Public Law*, 2nd edition 2015.

⁵⁰ E.g. *Friedrich Schoch*, *Die Europäisierung des Allgemeinen Verwaltungsrechts* [The Europeanisation of General Administrative Law], in: *Juristenzeitung* 1995, p. 109 ff.; *Friedrich Schoch*, *Die Europäisierung des verwaltungsgerichtlichen vorläufigen Rechtsschutzes* [The Europeanisation of interim relief by the administrative courts], in: *Deutsches Verwaltungsblatt* 1997, p. 289 ff.

⁵¹ BVerfGE 89, 155 (headnote 6, p. 157).

⁵² *Danish Supreme Court [Højesteret]*, judgement of 06.04.1998, I 361/1997, no. 9.6, in: *Europäische Grundrechte-Zeitschrift* 1999, p. 49 (52).

⁵³ Cf. Polish Constitutional Court [Trybunał Konstytucyjny], judgement of 04.05.2005, K18/04.

⁵⁴ French Constitutional Council, decision 2004-496 DC, no. 7, www.conseil-constitutionnel.fr/decision/2004/2004496DC.htm

elaborated in its Lisbon judgement⁵⁵ the *theory of an ultra vires review of the Union's legal acts by the Federal Constitutional Court*, which was further elaborated and slightly mitigated in a decision of 2010⁵⁶. The community of scholars is still seriously divided - after a decades-long intensive controversial debate⁵⁷ that culminated in 2009 in the call of the former German Federal President and President of the Federal Constitutional Court *Roman Herzog* to "stop the European Court of Justice"⁵⁸

Any ultra vires review of the Union's legal acts by national courts violates art. 19(1) EU Treaty and art. 251 et seq. FEU Treaty, which unambiguously reserve this power exclusively to the courts of the Union. All institutions of the member states must follow, even if the decision is wrong. As any court, within its jurisdiction the European Court of Justice enjoys the *privilege of authoritative misconception*. The duty to follow its decisions only ends if the national constitutional identity is affected or if the decision is so arbitrary that it does not constitute any act of judicature anymore.⁵⁹ This also applies to the constitutional courts, which are specialised courts but not the supreme guardians of the rule of law. If they intervene against an ECJ judgement, this usurpation of power represents such a severe attack on the rule of law in the Union that the other institutions of the concerned member states must take all necessary and appropriate measures to neutralize it, including legislation or even constitutional amendments restoring the reliability and trustworthiness of the member state as a partner in integration. This does, however, not mean that the member states must accept a lopsided European jurisprudence on the questions of competences: As "masters of the treaties", by the way of Treaty amendment, they can correct any decision or tendency of the Court they consider unbearable or introduce procedural or institutional solutions (e.g. an extraordinary right of appeal for member states in questions of competence, before an extended bench of the Court with judges from national supreme or constitutional courts)⁶⁰.

⁵⁵BVerfGE 123, 267 (headnote 4, p. 240 f.), Lisbon judgement, English translation at www.bundesverfassungsgericht.de/entscheidungen/es20090630_2bve000208en.html; see on this judgement *Thomas Schmitz*, Das Bundesverfassungsgericht und das Recht der europäischen Integration [The Federal Constitutional Court and European integration law], in: Piotr Czarny/Piotr Tuleja/Krzysztof Wojtyczek (editors), *Verfassung im Zeitalter von Globalisierung und Europäisierung* [Constitution in the Era of Globalisation and Europeanisation], 2011, p. 21 (33 ff.), updated download version at http://home.lu.lv/~tschmit1/Downloads/BDHK-Symposium_11-12-2009_Schmitz3.pdf.

⁵⁶BVerfGE 126, 286 (headnote 1), Honeywell, English translation at www.bundesverfassungsgericht.de/entscheidungen/rs20100706_2bvr266106en.html.

⁵⁷See the references at *Thomas Schmitz* (note 15) part D.

⁵⁸*Roman Herzog; Lüder Gerken*, Stop the European Court of Justice, in: *EU Observer*, 10.09.2008 [= Stoppt den Europäischen Gerichtshof. Die Kompetenzen der Mitgliedstaaten werden ausgehöhlt, in: *Frankfurter Allgemeine Zeitung*, 08.09.2008, p. 8.].

⁵⁹Cf. *Thomas Schmitz* (note 55), p. 33 ff. (II.6.e).

⁶⁰Cf. *Thomas Schmitz* (note 1), p. 504. Such solutions have been proposed again and again for decades but never been implemented.

The discussion is still going on and in several cases national courts actually proceeded to an ultra vires review of legal acts of the Union. However, so far there has been no serious conflict.⁶¹ In the present crisis situation, carrying out the threat of intervention could mean the end of European integration and no constitutional judge would want to go down in history as the one who has ended a decades-long integration process that has brought Europe peace, stability and prosperity.

THE EUROPEAN APPROACH - A MODEL FOR ASEAN INTEGRATION?

Can the European approach be a model for ASEAN integration? On the one hand that is not easily conceivable because ASEAN is known for its preference for intergovernmentalism and non-interference, the rule of law is still in the process of development in its member states, the courts do not have such a strong position as in Europe and there may also be a lack of the necessary qualification and professionalism of the judges and public servants. On the other hand, rule of law problems also existed in Europe when in 2004 ten East European former communist countries entered the European Union. As it turned out, integration based on law is *demanding but possible* even for countries with a less developed legal system and legal culture *if there is a firm will of development under the rule of law*. Apart from that, is there a realistic alternative to the European model? Can a "softer", e.g. intergovernmental approach advance Southeast Asian integration as effectively and sustainably as it is necessary to address the challenges of the 21st century? Given the slow progress in the last decades, even at present in the realisation of the project of an ASEAN Economic Community, there are doubts. In particular: Can there be a successful economic integration in a Southeast Asian common or internal market without an adequate legal and institutional system?

The main obstacles for choosing the way of supranational integration in Southeast Asia are that ASEAN would need stronger institutions, in particular a ASEAN Court of Justice, that the idea of non-interference would need to be widely given up and that corruption - at least in the areas of the supranational law - would become more difficult. As the current attacks on the independence of the judiciary and the rule of law in the EU member states Poland, Hungary and Romania illustrate, not all politicians like that - not only in Southeast Asia. Especially populist

⁶¹In the case ECJ, C-441/14, Dansk Industri, the *Danish Supreme Court* openly refused to follow a preliminary ruling of the European Court of Justice, cf. *Urška Šadl; Sabine Mair*, Mutual Disempowerment: Case C-441/14 Dansk Industri, acting on behalf of Ajos A/S v Estate of Karsten Eigil Rasmussen and Case no. 15/2014 Dansk Industri (DI) acting for Ajos A/S v The estate left by A, in: *European Constitutional Law Review* 13 (2017), no. 2, p. 347 ff., <https://doi.org/10.1017/S1574019617000116> However, this case attracted little attention and did not trigger a new crisis. The situation would be different if a constitutional court of a large member state intervened.

politicians hate the close corset of the rule of law. Furthermore, ASEAN mainly consists of medium or big member states, which would profit from but do not absolutely need geo-regional integration, while the European Union unites many small and very small states (12 member states with a population of less than 6 millions), which alone would not have any chance to master the challenges of our time or even to maintain the current living standard. For these small European countries in the medium or long term the realistic alternative to supranational integration would not be to return to the old national independence but to merge to larger states. Since this problem does not exist in Southeast Asia, there is less pressure to integrate and supranational integration may develop later and more slowly.

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PART ONE: **ASEAN POLITICAL-SECURITY COMMUNITY**



URGENCY OF ASEAN CONVENTION AGAINST TRAFFICKING IN PERSON, ESPECIALLY WOMEN AND CHILDREN (ACTIP) AGAINST CRIME OF HUMAN TRAFFICKING IN INDONESIA

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ABSTRACT

The current development of criminal acts of trafficking in persons in Indonesia is very worrying. This crime is a violation of human rights which needs special attention. The World International has divided the three rankings in protecting victims of trafficking in persons, according to the 2017 US government report. Indonesia falls into the category that the government has not fully met the minimum standards in protecting victims of trafficking in persons. ASEAN cooperation in the prevention of human trafficking crimes gained important momentum by signing ACTIP on 21 November 2015. The main problem in this paper is the extent of the urgency of ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) against trafficking crimes in Indonesia and how the problems faced in implementing ACTIP. There is a need for cooperation between Indonesia and ASEAN countries in combating criminal acts of trafficking in persons in Indonesia. These crimes include organized crime and are trans-national crimes which include syndicates that have been systematically arranged. Indonesia is one of the ASEAN countries which has signed the ASEAN Convention and opposes trafficking in persons, especially against women and children. Although there are already national instruments that regulate these crimes, there is still a need for other efforts to maximize law enforcement by establishing cooperation with ASEAN countries to jointly combat trafficking.

Keywords: ASEAN, Human Trafficking.

INTRODUCTION

Crime of trafficking in persons is a crime that needs special attention, this is because this crime is a violation of human rights and violates the life order and values that live in society. Criminal acts of human trafficking have occurred before the Indonesian nation became independent until now after Indonesia's independence. As an independent state, it should be able to protect its people to the fullest and better

than before. But in practice Indonesia is currently one of the countries in ASEAN that is a supplier, transit, and destination for human trafficking. *Dunia Internasional* has divided the three rankings in protecting victims of trafficking in persons, this is based on a report by the US government in 2017. Indonesia is in the category that the government has not fully met the minimum standards in protecting victims of trafficking

but has made significant efforts to adjust to these standards.

Criminal action Trafficking in persons is an international problem, where almost every country in the world has a record of cases of trafficking in persons in their country. Billions of dollars have been generated at the expense of millions of victims of trafficking. Boys and girls who should go to school are forced to become soldiers, do forced labor, or sell for sex. Likewise, women and girls are trafficked for the purpose of various forms of exploitation, such as being forced to become domestic workers, prostitution or forced marriage. Every December 2, all countries in the world commemorate it as the Day of Abolition of Slavery. Modernization does not automatically make slavery a part of human history which is only a memory. In fact, until now slavery still occurs in various forms and modes. Slavery which encourages the occurrence of criminal acts of trafficking in persons which is one form of crime against humanity.(Nur Hidayati 2012)

In the 2011 US State Department's annual report on Trafficking in Persons, Indonesia was in the second tier of the Trafficking in Persons Victims (TPPO) protection standard. Indonesia is considered to be the main source of trafficking in women, children and men, both as sex slaves and victims of forced labor. Indonesian Government data cited in the report, around six million Indonesians are migrant workers abroad, including 2.6 million in Malaysia and

1.8 million in the Middle East. Of the total migrant workers, 4.3 million are officially documented and 1.7 million are classified as undocumented workers. About 69 percent of Indonesian migrant workers are women. The Ministry of Women's Empowerment estimates that 20 percent of Indonesian workers (TKI) who work abroad are victims of human trafficking. At present there are 6.5 million-9 million migrant workers working abroad. Based on data from the Organization of International Migration (IOM), 70 percent of the mode of human trafficking in Indonesia originated from sending illegal migrant workers abroad. (Santoso and Mayjen TNI (Purn), Tenaga Profesional Bidang Sosial, Budaya n.d.) The National Commission on Violence Against Women documented 259,150 cases of violence against women in 2016, with details of 245,548 cases obtained from 358 Religious Courts and 13,602 cases handled by 233 service procurement partner institutions. The data is spread to 34 provinces in Indonesia. (Irma and Hasanah n.d.)

The National Police Criminal Investigation Agency notes that around 1,154 Indonesian citizens are victims of human trafficking. They were mostly sent to a number of countries in the Middle East region. Bareskrim Polri Director of General Crimes, Brigadier General Herry Rudolf Nahak, said that 1,154 Indonesian citizens were victims of Trafficking in Person to Saudi Arabia, Syria, and Sudan from 2014 to March 2018. "A total of 910 Indonesian

citizens were victims of Trafficking in Person to Saudi Arabia, 244 Human Trafficking victims to Syria. (Martahan Sohuturon 2018).

Based on empirical facts, the recent annexation of treatment and/or crime against women and children, including babies, both from deception and or abducted victims, is increasingly alarming. The phenomenon of crime and violence against women can be identified from various aspects, cases, and regions which cover almost all social strata of society, including:

1. Victims of sexual exploitation/rape in conflict areas such as Aceh, Maluku, Papua, Nusa Tenggara, and others that were not revealed.
2. Physical and psychological violence in the family environment both towards wife or child (Polygamy-incest-persecution, etc.);
3. Violence and sexual abuse of female workers or workers in domestic and foreign private companies;
4. Violence and coercion as objects of sexual exploitation with physical or psychological threats to women and children;
5. Forcing with or without threats, in an organized or individual manner, for children to be exploited as beggars/sprawl, especially in big cities such as DKI Jakarta, Medan, Surabaya, Bandung, and others.
6. Specifically for trading (buying and selling) babies, usually against the

background of and for a certain amount of money by directly involving parents of the baby concerned, midwives or persons who assist the birth process as well as agents or intermediaries and interested persons or baby buyers.

7. Specifically for trafficking in human organs, outside of sexual exploitation, whether intentional or agreed upon by victims, usually from an economic background. But from various cases that have been revealed the process of buying and selling organs takes place due to fraud or coercion or because of being caught in the debt. (Minin 2011).

Women and children victims of trafficking in persons who have been sexually abused often face a lifelong struggle to overcome the profound effects of the traumatic experience Childhood sexual abuse (CSA) has been found to be a major risk factor for many mental health disorders; most commonly noted are posttraumatic stress disorder (PTSD), depression, suicide, alcohol problems, and eating disorders (Reid and Jones 2011)

The formulation of the problem in this paper is:

1. How the urgency of ASEAN convention Against Trafficking in Persons, Especially Women and Children (ACTIP) against trafficking crimes in Indonesia?

2. How is national law enforcement concerning criminal acts of trafficking in persons in Indonesia?

DISCUSSION

1. Urgency of ASEAN convention Against Trafficking in Persons, Especially Women and Children (ACTIP) against trafficking crimes in Indonesia

The complexity of the problems of trafficking in persons causes the process of prevention and mitigation to require the right thoughts and strategies. Errors in thinking about trafficking in people will cause this crime to develop. Indonesia is one part of ASEAN countries which is quite high for trafficking in persons. Not only as a country of origin, but Indonesia is also a transit country for trafficking in persons at the ASEAN level. human trafficking crimes in practice use various types of deception to make victims become deceived and trapped in the traps of trafficking. Starting from the lure of large salaries because of working abroad to be caught in the problem of sexual crime and become victims of violence.

Indicators of women's trafficking in Indonesia according to the Global Alliance Against Traffic on Women report (GAATW), it appears there are three aspects as follows:

1. The rise is published from one place to another, whether it occurs domestically or abroad which is not in accordance with the desire or the free choice of women who are liked, because of the interests or results of

poverty and purchasing, so that from a strong desire to improve their destiny;

2. The increasing number of labor distribution companies, mostly illegal, because the profits obtained by recruiters, sellers, corporate syndicates are alleged to be very large,
3. High rates of fraud cases, including false promises, debt bonds, slavery, coercion, pressure and blackmail. (Muflichah; Wintoro; Rahadi Wesi 2009). The crime of trafficking in persons is a serious crime against humanity especially for women and children. Indonesia is one country that has an important record of the dynamics of trafficking in persons. Indonesia is an ASEAN member who cooperates with other ASEAN countries to eradicate this crime. The ASEAN Member States seek to effectively address these challenges so as to progressively prevent, suppress and punish all forms of trafficking in persons including the protection and assistance to victims of trafficking in the region and work towards an enhanced comprehensive and the coordinated regional approach to achieve this objective.

The importance of ACTIP is because there are several additional regulations that are regulated in the ACTIP convention, such as cross-country or regional coordination,

jurisdiction from countries, cross-state control, and also a number of other things. These are policies that have not been regulated in Law No.21 of 2007 concerning the Eradication of TPPO, some specific things from ACTIP according to ICJR, namely: (System 2017)

First, ACTIP regulates the weighting of criminal threats if trafficked victims are exposed to situations that are vulnerable to life-threatening diseases, including HIV and AIDS or TPPO cases that involve victims of more than one person. Law No.21 of 2007 also regulates criminal penalties for victims of TPPO but there are no rules regarding cases of TPPO involving victims of threatened deadly diseases and also no weighting in the case of TPPO involving victims of more than 1 person.

Second, ACTIP regulates criminal acts related to TPPO cases, namely the process of criminalizing money laundering. In national legislation, Money Laundering (TPPU) is regulated in the Money Laundering Law No. 08 of 2010. Whereas Law No. 21 of 2007 concerning TPPO does not specifically regulate the definition of money laundering, the only provision that regulates the criminalization of criminal offenses is only in the form of additional criminal acts stipulated in article 15 of Law No.21 of 2007, and that only applies to corporate bodies only

Third, ACTIP requires member countries to criminalize TPPOs that involve state administrators as corruption. The crime is

also given a definitional definition: the acquisition of benefits, directly or indirectly, for himself or other people within the scope of state duties. Act No. 21 of 2007 article 8 actually regulates this provision in the element of abuse of the power of state agents. But with this broad and unclear element, the provisions of this article cannot be applied to state administrators involved in corruption related to TPPO cases.

Domestic and international victims of human trafficking are typically not eligible for services until they have been officially classified as victims of trafficking. This has often been a hardship for governmental and non-governmental agencies, who do receive funding for services until this classification status is achieved. Once sexually exploited youth have been identified, there are few secure shelters and treatment programs that can aid in rehabilitation and reintegration. Moreover, many shelters and treatment programs do not provide services specific to sexually exploited youth. (Fong and Berger Cardoso 2010)

According to Lawrence Friedman, he has described the functions of the legal system:

- a) Social control function. According to Donald Black, all laws are functioning as social control of the government.
- b) Function as a way of resolving disputes (dispute settlement) and conflict (conflict). This dispute resolution is usually for settlement whose nature is in the form of small-scale local conflicts. Conversely, macro conflicts are called conflicts.

- c) The function of retribution or function of social engineering (redistributive function or social engineering function). This function leads to the use of the law to make planned social changes determined by the government.
- d) Social maintenance function, this function is useful for enforcing the legal structure so that it continues to run in accordance with the rules of the game (rule of the game).

Based on the above, it can be said that the function of law enforcement is to actualize the legal rules so that they are in accordance with the aspirations of the law itself, namely to realize human attitudes or behavior in accordance with the frame (framework) that has been determined by Law or law. So it is expected that law enforcement is maximized and measured in accordance with existing standards. (Susanti 2018)

In terms of providing a legal framework for ASEAN cooperation to immediately be able to overcome trafficking crimes, especially against women and children, ASEAN agreed to establish the ASEAN Convention Against the criminal acts of Trafficking in Persons, especially Women and Children. The Convention has been signed by all members of ASEAN countries on November 21, 2015 and will be effective after 6 (six) ASEAN countries have ratified. The background for the formation of the ASEAN convention is because it is based on the assumption that trafficking crimes constitute extraordinary crimes against human rights (HAM). Forms of forms of a

crime arising from trafficking in persons such as sexual exploitation, forced labor, slavery are violations of individual freedom, and at the same time hurt human dignity. Although the national legal basis already exists, in practice, the crime of trafficking in persons, both national and international dimensions, is still ongoing. Data from the Indonesian National Police in 2011-2013 shows that there were 509 (five hundred and nine) cases of TPPPO. The majority, 213 (two hundred and thirteen) cases, are labor exploitation; 205 (out of five) is sexual exploitation; 31 (thirty one) cases worked not in accordance with the agreement; and 5 (five) cases of babies being traded. Data said that the largest number of victims were 418 (four hundred and eighteen) adult women, followed by 218 (two hundred and eighteen) girls. The male victims numbered 115 (one hundred and fifteen) adults and three sons. (Association of Southeast Asian Nations (ASEAN) 2016)

Legal politics is the policy of the state through the authorized bodies to determine the desired regulations that are expected to be used to express what is contained in society to achieve what is aspired to, and efforts to realize good regulations according to the situation and situation at a time. The reality in practice is that so far there have been trafficking activities not yet optimally suppressed, it is not due to errors in the formulation rules which stipulate that trafficking in persons is a criminal act, but rather the failure of the application of the

law in the application and execution stages. Failure or more subtle not optimal law enforcement by law enforcement officials is caused by many factors that do not stand alone for further research. Factors that are not yet prosperous, education and location also determine the increasing activity of trafficking in persons. (Effendi Erdianto 2013)

Some issues of trafficking in persons in the ASEAN region can be categorized as follows:

1. Problems regarding the conception of trafficking in persons. The crime of trafficking in persons is any action or series of actions that fulfill the elements of a criminal offense specified in the law. So that the legal substance is formal because based on proof of the purpose of trafficking crimes, the judge can punish someone. The similarity of definitions or understandings and forms of criminal acts of trafficking are important especially in an effort to prevent and overcome trafficking practices in the ASEAN region. Similarity of understanding will be very helpful in the framework of implementing coordination both for prevention and overcoming criminal acts of trafficking in persons within the ASEAN region. The birth of the Declaration Against Trafficking in Persons, Particularly Women and Children is a form of initial commitment from ASEAN to

focus on eradicating trafficking in women, but with the increasing conditions of trafficking in women, it is needed.

2. Problems related to the coordination of the handling of criminal acts of trafficking. In the prevention of criminal acts of trafficking there has been a formal mechanism that can be used, namely the international agreement of the United Nations Convention against Transnational Organized Crime (UNTOC) but this has not been effective. This is because the content of the UNTOC agreement is a discussion of transnational crime not specifically for the prevention of trafficking in persons (TPPO), so that it does not explain in detail the processes / procedures for the crime of trafficking in persons for each country and this is returned to the laws of each country. This in practice requires a tiered process and a long time.
3. Problems of trafficking in persons from the ASEAN member countries as origin, transit or destination countries. So far, the protection of victims of TIP is still being problems in the countries of origin and countries that are the destination. In several ASEAN countries, the victims of TIP were even sentenced for being related to violations including violations of

immigration documents. In addition, there are differences in perceptions between ASEAN countries in handling victims of trafficking. For the home country, the focus is on efforts to prevent and protect victims of trafficking, while for destination countries such as Singapore, Malaysia and Brunei Darussalam emphasize the responsibility of home countries to criminalize trafficking in persons. (Association of Southeast Asian Nations (ASEAN) 2016)

Indicators of women's trafficking in Indonesia according to the Global Alliance Against Traffic on Women report (GAATW), there are three aspects, as follows:

1. The rise of movement from one place to another, whether it occurs domestically or abroad, is not due to the wishes or free choice of the woman concerned, but because of the force or pressure of the situation in the form of poverty and unemployment, resulting in a strong desire to improve fate;
2. Increasing the number of labor distribution companies, especially those that are illegal, because the profits obtained by recruiters, salespeople, corporate syndicates are allegedly very large.
3. The high number of fraud cases, including false promises, debt ties, slavery, coercion, pressure, and

extortion. (Muflichah; Wintoro; Rahadi Wesi 2009)

There are several forms of trafficking that occur in women and children:

1. Forced Sex and Sexual Exploitation. In many cases, women and children are promised workers as migrant workers, domestic workers, restaurant workers, shopkeepers, or unskilled jobs, but are then forced to work in the sex industry but they are deceived by working conditions and they are restrained under coercion and are not allowed to refuse work.
2. Domestic helpers, both overseas and those in Indonesia, are in arbitrary working conditions including long mandatory working hours, legal confinement, unpaid or reduced wages, debt bondage work, torture physical or psychological, sexual assault, not being fed or lacking in food, and may not practice his religion or be ordered to violate his religion. Some employers and agents confiscated passports and other documents to ensure the helpers did not try to escape.
3. Another Form of Migrant Work. Although many Indonesians migrate as domestic workers, others are promised to find jobs that do not require expertise, such as factories, restaurants, cottage industries, or small shops.

4. Dancers, entertainers and cultural exchanges - especially abroad. Women and girls are promised to work as cultural ambassadors, singers or entertainers in foreign countries. On arrival, many of these women (Bintari 2009)

Protection of human rights relating specifically to women in particular regarding the elimination of all forms of discrimination against women is based on The International Bill of Rights for Women who pioneered a United Nations (UN) committee, which functions as a monitor and supervisor the Elimination of Discrimination Against Women or Women's conventions or CEDAW. (Minin 2011)

2. National law enforcement concerning criminal acts of trafficking in persons in Indonesia

Indonesia is a country that has local culture and wisdom that is very distinctive and different from other ASEAN countries. Indonesia is famous for its eastern culture which is still thick with patriarchal culture. Where Indonesian women live under the influence of male and family power. The position of women is still number two in the community, not a few women who are treated like merchandise that is not able to fully control their rights. This is what makes women and children vulnerable to trafficking crimes.

Many people do not fully understand about trafficking crimes. Actually, human

trafficking crimes are a global problem with local implications. Victims of domestic and national trafficking in persons can be children or adults, men or women. In some cases, victims and women are vulnerable. Victims were forced to work in domestic slavery, clothing factories, agricultural industries, and commercial sex trafficking. Victims are usually forced and have no choice because of economic limitations and low education making them more easily caught up in this crime.

Poverty is one of the inhibiting factors in efforts to resolve traffic in persons in Indonesia. The number of victims who were tempted by all the tricks of the perpetrators was caused by the economic crash of their families. Inadequate socio-economic life makes them vulnerable to trafficking crimes

According to data obtained from the Indonesian health profile of the Ministry of Health in 2015 can be seen in 2009, the poverty rate was 14.15% of the population or 32.53 million people, in 2010 it was 13.33% or 31.02 million people, in in 2011 amounted to 12.49% or 30.12. million people, in 2012 it was 11.96% or 29.25 million people. In 2013 it was 11.36% or 28.17 million people and in 2014 the poverty rate was 11.25% or 28.28 million people (detik.com, 2014). Children and women's channel groups are looking for targets coming from families with low and unstable economic conditions. Then, the high level of poverty in Indonesia has made channeling

groups easily search for victims from various poor regions in Indonesia. (Novi 2016)

In one case, Indonesia was not only at the level of the country of origin, but also became a destination country for trafficking in ASEAN countries. One example of modern slavery that occurred in Indonesia was in the case of civil servitude in Benjina, what happened was that victims of trafficking were forced to work on fishing vessels in Indonesian waters. They generally depart by fishing boat from ports in Thailand. Others came from Myanmar and Cambodia, who eventually seek employment in Thailand. Not only that, there were victims who did find work and wanted to become ABK members, but later found that conditions were not what they expected. But they were forced to work and some had sailed for years. They came to Indonesia because of the abundant wealth and sources of fish, which are no longer in the Gulf of Thailand. After arriving in Indonesia, finally, these victims are more easily monitored and held captive on remote islands. The victims were helpless and could not refuse because their supervision was very strict and far from access to information.

The migration of workers is one of the important factors in the economy in the territory of Indonesia and other ASEAN countries. this is what makes migrant workers very vulnerable to being trapped in this condition. Especially because they are usually reluctant or difficult to report their situation to the authorities. Almost all

patterns of illegal trade and slavery require bilateral and multilateral responses, that is, they must involve several countries with different jurisdictions. Therefore, joint cooperation and regulations are needed, for example regarding the return of victims and every criminal justice process.

In the effort to enforce national law, there is actually Act Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons with 9 (nine) Chapters. Chapter I regulates general provisions stipulated in Article 1, which consists of 15 points of explanation concerning criminal trafficking in persons, Chapter II concerning sanctions for criminal trafficking in persons containing 17 articles, from Article 2 to Article 18, Chapter III rules regarding sanctions for acts of action other crimes relating to criminal trafficking in persons, which are regulated in Article 19 to Article 27, Chapter IV rules concerning investigations, prosecutions and examinations in court hearings, are regulated in Article 28 to Article 42, Chapter V rules concerning witness protection and victims, regulated in Article 43 up to Article 55, Chapter VI of the rules for prevention and handling, are regulated in Articles 56 through Article 58, Chapter VII rules regarding international cooperation and community participation, in Articles 59 to 63, Chapter VIII regarding transitional provisions, regulated in Articles 65 to Article 67. Regarding criminal sanctions that can ensnare criminal acts of trade in Law No. 21

of 2007 concerning Eradication of Criminal Acts on Trafficking in Persons, regulated in Chapter II which contains 17 articles starting from Article 2 to Article 18, including the following:

- 1) Article paragraph (1) "Any person who recruits, transports, accommodates, transfers, or accepts someone under threat of violence, use of violence, fraud, fraud, abuse of power or vulnerable positions, debt trapping given the fees or benefits even though the person in control of another person, for the purpose of a minimum of 3 (three) years and a maximum of 15 (fifteen) years a little IDR 120,000,000.00 (one hundred twenty million rupiahs) and at most IDR 600,000,000.00 (six hundred million rupiahs) ".
- 2) The provisions in Article 2 paragraph (1) include:
 - (1) Every person who commits a crime by recruiting, sending, protecting, sending, transferring or receiving someone with the threat of violence, use of violence, abduction, confinement, fraud, fraud, abuse of power or vulnerable position, bond debt or paying or benefits even if You get approval from someone who controls another person;
 - (2) For the purpose of exploitation;
 - (3) Performed in the territory of the Republic of Indonesia;
 - (4) Sentenced to a minimum of 3 and a maximum of 6 years in prison;
 - (5) Sentenced to a minimum fine of IDR 120,000,000.00 and a maximum of IDR 600,000,000.00. 2) Article 2 paragraph 2 "If the action referred to in paragraph (1) produces an exploited person, the offender will be subject to the same criminal offense as referred to in paragraph (1)".

The provisions in Article 2 paragraph 2 include: (1) Crime of trafficking in persons as referred to in Article 2 paragraph (1) results in people being exploited; (2) Sentenced to a criminal equivalent to that referred to in Article 2 paragraph (1), namely, a minimum sentence of up to three years and a maximum fine of Rp. 120,000,000,- and a maximum of Rp.600.000.000,-

Article 3 "Anyone who enters a person into the territory of the Republic of Indonesia with the intention of being exploited in the territory of the Republic of Indonesia or exploited in another country shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and criminal penalties at least Rp. 120,000,000.00 (one hundred twenty million rupiahs) and at most Rp. 600,000,000.00 (six hundred million rupiahs) ". Based on the provisions of Article 3 that, this provision is intended that the territory of the Republic of Indonesia is a destination or transit country.

ACTIP is a regional legal instrument that applies to ASEAN countries and regulating

the eradication of Trafficking in Persons (TPPO). This legal instrument is more effective for victims of trafficking through stronger law enforcement processes. Because of the nature of cross-border TPPO, ACTIP regulates the mechanism of cooperation and cooperation between ASEAN member countries. Indonesia as a member of ASEAN, which has signed the ASEAN Convention Against Trafficking in Persons, especially Women and Children, has a moral obligation to immediately ratify the Convention. It was hoped that by ACTIP ratification by Indonesia, Indonesia could become an active participant in the ASEAN Action Plan on Trafficking in Persons (ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children).

The ASEAN Convention has established prevention of trafficking in persons, here are some things that will become the priority of ASEAN countries in efforts to the prevention trafficking in persons:

1. Increase awareness campaigns to educate all levels community about trafficking in persons and their relation to violations of human rights, targeting those most at risk effectively involvement of mass media, related non-government organizations, the private sector, and community leaders;
2. Continue capacity building of law enforcement, immigration, education, social welfare, labour and other relevant officials in the prevention of

trafficking in persons, taking into account the need to respect human rights, child and gender-sensitive issues, and encourage cooperation, where appropriate, with civil society, non-governmental organizations and other relevant organizations

3. Put in place effective mechanisms and ensure their proper implementation to effectively prevent the movement of traffickers and victims of trafficking in persons through appropriate border control systems, issuance of identity papers and travel documents, and through measures that prevent counterfeiting, forgery or fraudulent use of identity papers and travel documents
4. Enhance cross-border cooperation and sharing of intelligence and exchange of information to disrupt the operations of traffickers;
5. Adopt and implement appropriate labor laws or other mechanisms that promote and protect the interests and rights of workers to reduce their risk of being trafficked; Adopt and ensure implementation of national action plans, where applicable, to identify and prioritize key policies and programmes aimed at preventing trafficking in persons, and strengthen the implementation and coordination and monitoring mechanisms of such plans;
6. Conductor support research studies on relevant topics to be used by the ASEAN

Member States in combatting trafficking in persons and collect suitable data to enable analysis and a better understanding of the nature and extent of trafficking in persons both nationally and regionally;

7. Develop national data collection systems in relation to trafficking in persons and methods of exchange of such data between and among ASEAN Member States with a view to developing a regional database for trafficking in persons
8. Utilize existing regional guidelines as well as develop or strengthen national guidelines for the identification of victims of trafficking in persons, including applying appropriate and;
9. non-discriminatory measures that help to identify victims of trafficking in persons among groups who are more susceptible to trafficking. The early detection of possible cases of trafficking in persons will allow swift responses to deter and prevent trafficking in persons and minimize the exploitation of victims;
10. Increase and support prevention efforts in each ASEAN Member State by focusing on discouraging both the demand and supply that fosters the exploitation of persons, especially women and children that leads to trafficking;
11. In the case of cross-border trafficking, to explore how the country of origin can

implement intensive preventive measures in cooperation with the receiving country who can provide useful information gathered from the victim of trafficking; and

12. Strengthen prevention measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, including to protect victims of trafficking in persons, especially women and children, from revictimization. (Association of Southeast Asian Nations (ASEAN) 2016)

CONCLUSION

Human trafficking crime is a very cruel and inhuman form of human slavery. In an effort to eradicate trafficking crimes, the need for rules that regulate international scale, namely in certain countries at the ASEAN level. The joint agreement contained in the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) Against Crime of Human Trafficking is a good first step for ASEAN member countries in combating trafficking crimes that occur across ASEAN countries. Indonesia has ratified the convention because trade crime is an organized crime and is rampant in Indonesia. In practice, to maximize these rules, mutual agreements and commitments are needed between ASEAN countries. So that the common goal

with ASEAN countries to eradicate human trafficking crimes can be achieved.

Nationally there has been Law No.21 of 2007 concerning Crime of Trafficking in Persons as a legal basis in law enforcement efforts in Indonesia. But in a broader scope, the process of law enforcement of criminal trafficking in persons in Indonesia cannot be said to be as a whole as a whole, this is because these crimes are related to other countries both as countries of origin and destination of trafficking in persons. To maximize it, cooperation and agreements are needed with other countries, especially ASEAN member countries in the uniformity and understanding of trafficking in persons.

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THE CHALLENGES OF AICHR IN OVERCOMING THE TIP (TRAFFICKING IN PERSON) IN SOUTHEAST ASIA: WOMEN AND CHILDREN IN FOCUS

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ABSTRACT

In the perspective of international relations, the phenomenon of human trafficking is included in the issue of transnational crime because it occurs globally and crosses national borders, which requires cooperation between countries to handle it. Therefore, it becomes necessary to formulate a real step to overcome this form of human rights violation in each region. In the Southeast Asia region, ASEAN has a regional mechanism to guarantee the protection of human rights in the Southeast Asia region called the AICHR (the ASEAN Intergovernmental Commission on Human Rights (AICHR), which has been established since 2009.

The protection of women and children, especially in the TIP (Trafficking in Person) case, is also a concern of the AICHR. AICHR is a comprehensive body with a cross-sectoral mandate that deals with matters relating to human rights cooperation with ASEAN bodies, external partners and other stakeholders. The result of this research found out that AICHR had done its function as a promoter of human rights by doing the dissemination in Southeast Asia, but it also had met a lot of obstacles and challenges that need support, not only from each government in ASEAN but also from the rest of the stakeholders.

Keywords: *trafficking, humanitarian, a regional organization.*

INTRODUCTION

Human trafficking is one of the issues of human rights violations that has received attention in the science of International Relations. By introducing a perspective that began to see the humanitarian side in International Relations, as well as the emergence of the concept of Human Security, human trafficking became one of the critical issues. The movement of human trafficking across borders and the effect of

human rights protection has led countries to start various ways to deal with it. Cooperation between countries both bilaterally and multilaterally was carried out.

The mechanism through international organizations and regional bodies is also one of the steps carried out by the state. One of the human rights regional authorities dealing with the

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problem of human trafficking in the Southeast Asia Region is AICHR. This body is the first local human rights body in Southeast Asia. In the Article 14 of the ASEAN Charter, ASEAN, in this case, the Minister of Foreign Affairs of ASEAN, establishes an ASEAN human rights body. Before it becomes inaugurated, the Terms of Reference (TOR) of AICHR was being adopted at the 14th ASEAN Summit in Phuket, Thailand on July 20, 2009. Finally, in October, the AICHR was inaugurated at the 15th ASEAN Summit on October 23, 2009, in Hua Hin, Thailand (Sekretariat Nasional ASEAN).

By its mandate and function, in TOR of AICHR, article 1, the objectives of the AICHR are as follows (Sekretariat Nasional ASEAN):

1. Promoting and protecting human rights and fundamental freedoms of the people of ASEAN;
2. Upholding the power of the people of ASEAN to live in peace, dignity, and prosperity;
3. Contributing to the realization of ASEAN goals;
4. Promoting human rights in the regional context by considering national and regional specificities;
5. Increasing regional cooperation to assist national and international efforts;
6. Upholding international human rights standards as outlined in the Universal Declaration of Human Rights, the Vienna Program of Action and Declaration and international human rights instruments where ASEAN member countries are parties (AICHR).

In this study, the researchers focus on women and children, because they are a group that is the most vulnerable to human trafficking and forced labor according to the ILO, in addition to migrant workers, and groups discriminated against in certain areas (ILO, 2014, p. 10). Women and children are weaker in terms of the physical side, so they are vulnerable to being abducted and trafficked. Davy's research proves that there are many groups of children who are also susceptible to being victims of this transnational crime (Davy, 2017, p.15).

Therefore, this study will explore further the efforts made by the AICHR, especially in tackling the problem of trafficking in persons in Southeast Asia, especially for women and children. The research question in this research is: What is the challenge of AICHR in overcoming Trafficking in Person (TIP) in Southeast Asia, especially Women and Children? The research method that the researchers used in this study were a qualitative method while data collection techniques used secondary data obtained from books, journals, official documents, internet sites, news, and so on.

THE TIP IN SOUTHEAST ASIA: THE OVERVIEW

In the Protocol to Prevent, Suppress and Punish Human trafficking, especially Women and Children, human trafficking in

terms of the Protocol of Palermo describes it as,

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (ILO, 2014, p. 5)

From the definition above, one can understand that the term trafficking may include the following details:

- a) The definition of trafficking can include labor delivery activities, namely the activity of removing or removing someone from his / her family's environment. The workforce in question can be in the form of domestic or overseas labor.
- b) Even though trafficking is carried out with the relevant labor permit, the permit does not become relevant at all (cannot be used as an excuse to justify the trafficking) in the event of abuse or

the victim is in a helpless position. For example, because of being trapped in debt, pushed by economic needs, made believe that he did not have another job choice, cheated, or deceived.

- c) The purpose of trafficking is exploitation, especially labor (by draining the power of the labor employed) and sexual exploitation (Daniel et al., 2017, p. 9).

Almost all cases of trafficking lead to forced labor (for organ harvesting), but not all forced labor is a result of human trafficking. From the ILO's point of view, it is essential to distinguish between forced labor and sub-standard working conditions. In forced labor, there is coercion and fraud to keep someone from working. On the other hand, exploitative labor concerning the lack of alternatives in choosing employment does not always mean forced labor under the Palermo Protocol. One of the worst forms of employment according to ILO Convention No. 182 is child trafficking (ILO, 2014, p. 5).

Forced labor and trafficking include gross human rights violations. It is quite difficult to eradicate forced labor and trafficking because this business produces huge profits and is related to other illegal activities such as tax avoidance (ILO, 2014, p. 1). Economic sectors related to forced labor and trafficking are very diverse, such as construction, agriculture, mining, food processing industry, domestic work,

cleaning, factory work, especially textiles, restaurants including catering, the sex industry and entertainment, and including economic activities informal such as begging and street vendors (ILO, 2014, p. 9). The economic sectors above are difficult to monitor by law enforcement agencies and NGOs because of the seasonal nature of their work and easily changing workplaces (ILO, 2014, p. 10).

Southeast Asia is a region with a high economic disparity between countries. Some countries have strong economies like Singapore, but other countries like Cambodia, have not experienced the same economic acceleration. People also experience different economic disparities, where the gap between rich and poor can be very far. Communities experiencing economic stress are very vulnerable to involving children to increase income (Davy, 2017, p. 23-24).

In the context of pursuing accelerated economic growth, many countries, especially in Southeast Asia, are maximizing the tourism sector. The increase in this sector means the proliferation of entertainment businesses from casinos, bars, restaurants, hotels and the like, which desperately needs workers. This type of business is also very vulnerable to being used to commit illegal acts (Davy, 2017, p. 15).

Many victims in Southeast Asia migrated to find a better livelihood, but eventually, they had to involve themselves in forced

labor in the fields of fisheries, agriculture, construction, and domestic work. For men who are trapped in forced labor, often because they have debts to be paid to suppliers, so they are forced to stay in the job. Such practices are prevalent in agriculture, such as Indonesia, Cambodia, and Thailand. Many cases where they get minimal wages (Anthony, 2018).

In this case, girls are again the most vulnerable group, especially if children enter the workforce, especially the tourism and entertainment industries. Girls are more vulnerable to discrimination, violence, and exploitation. Many girls enter the world of prostitution because they feel responsible for increasing family income. Deep-rooted culture, especially the view of virginity, adds to the negative impact on girls (Davy, 2017, p. 27).

During 2012-2014, out of a total of 7800 victims identified; there was more than 60 percent sold for sexual exploitation purposes. Women are also victims of household assistants and various other forms of forced labor. In many cases, women and children who are victims are mostly from the periphery. Besides, forced marriages of young women also occur in various countries in Southeast Asia. Thailand has often been the destination of human trafficking from Cambodia, Laos, and Myanmar, based on the Walk Free Foundation's Global Slavery Index 2016 study. On the other hand, Malaysia becomes

the destination of victims from Indonesia, the Philippines and Vietnam (Anthony, 2018).

ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS (AICHR): THE OVERVIEW

AICHR has roles and duties, which in one of its functions is to carry out promotional functions in Southeast Asia. Correctly, in the protection of TIP especially for women and children, AICHR has carried out various policies. One can see the role of the AICHR concerning the TIP from the 2016-2020 AICHR's second Five-Year Work Plan which provides emphasis and function to make realistic approaches and implement them in the field, by continuing to work with various authorities. One of the main focuses in the AICHR also relates to the issue of TIP which is often a universal human rights issue in Southeast Asia (Davy, 2017, p. 84).

The AICHR's role is also to support the work of other ASEAN Sectoral Bodies. The AICHR and the Senior Officials Meeting on Transnational Crime (SOMTC) co-organized a Workshop on the "Human Rights-based Approach to Combat Trafficking in Persons, Especially Women and Children" in November 2015. The AICHR, together with the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), the ASEAN Committee on Women (ACW), and the ASEAN Committee on the Implementation of the ASEAN

Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) met with the European Union for the first ASEAN-EU Policy Dialogue on Human Rights. Another notable area of progress in the work of the AICHR includes the operationalization of the Guidelines on AICHR's Relations with Civil Society Organizations (CSOs), and the granting of 'Consultative Relationship' status to eleven organizations (Davy, 2017, p. 84).

Although it has played a role in carrying out the promotion and protection functions, the AICHR is the only regional mechanism that handles human rights issues in Southeast Asian countries, so that their duties cannot be considered as easy. Although it is an independent body, the effectiveness of this institution is still in influence by its central organization, ASEAN. The principles and workings of ASEAN are indeed still a culture of the way countries in the region work together or solve problems.

Looking at its history, ASEAN has not entirely made the issue of human rights as the priority. One can see from the realization of the ASEAN Charter which emerged precisely after several decades of this regional institution existed. The ASEAN Charter came into force since December 15, 2008 (Purnama, 2012, p. 472). After a long journey, years of discussion and discussion, both arising from civil society and their respective governments. ASEAN finally decided to make the ASEAN Charter. This

decision was undoubtedly appreciated very well by regional and international human rights activists.

The ASEAN Charter was hoped to be the beginning to bridge all current interests in terms of human rights in the region (Purwandoko and Sasmini, 2012, p. 123).

With this agreement, there is a gradual push for the development of this regional organization to continuously change the different impressions and perceptions of the ASEAN organization in the eyes of civil society throughout the Southeast Asian region.

Table 1. Timeline of ASEAN and AICHR

Year	Event
1967	Association of Southeast Asia Nations (ASEAN) was formed.
1995	the Human Rights Committee of LAWASIA formed a Working Group for an ASEAN Human Rights Mechanism. The purpose of Working Group the establishment of a human rights mechanism in ASEAN. It produces a draft of Agreement for the Establishment of the ASEAN Human Right Commission.
2004	ASEAN adopted the Vientiane Action Program (VAP). VAP is a seven-year master plan to build an ASEAN Community based on three pillars, namely political-security, economic and socio-culture.
2006	Task Force on ASEAN and Human Rights (SAPA Task Force), was formed by Solidarity for Asian Peoples' Advocacy (SAPA), February 3-4, 2006, in Bangkok.
2007 – 2008	On November 20, 2007, the ASEAN Summit in Singapore, ASEAN adopted the ASEAN Charter which then took effect on December 15, 2008.
2009	In October 2009, TOR of ASEAN Human Rights Body was adopted in 15 th ASEAN Summit in Thailand, and ASEAN Intergovernmental Commission on Human Rights (AICHR) was established.

The development and process of ASEAN cooperation were always through an informal approach to regional cooperation, by using consultation and dialogue as the

media (consensus agreement). Although it has long been formed as a regional organization, the respect for national interests and the principle of non-

interference affect the way state actors behave. One can see from the declarations that are often not binding, so it is difficult to force the state to apply the agreement that emerges from ASEAN as a forum that can carry out supervision (Davy, 2017, p. 78).

CHALLENGES AND OBSTACLES OF THE IMPLEMENTATION OF AICHR'S POLICIES

The primary function of human rights organizations in the region, especially those represented by AICHR, is to promote and protect human rights. This promotion can be seen from ASEAN's participation to then provide the broadest possible information to the public regarding matters relating to human rights, conduct training, and do much dissemination from time to time so that this human rights issue can become something familiar and known together in the public sphere (Purwandoko and Sasmini, 2012, p. 124).

Besides, the AICHR is mandated to carry out the protection function, following all the clauses and rules that have been previously set. The AICHR can also be an effort so that ASEAN members can solve their problems, without having to involve other international organizations. The settlement carried out by regional organizations is felt to be better, because ASEAN is expected to be the one who understands the conditions of all the differences and characteristics of

each member in Southeast Asia countries (Purwandoko and Sasmini, 2012, p. 125).

Of all the things that have been previously mentioned, the problems and challenges that need to consider are regarding the effectiveness and power of the AICHR which is not authoritative and binding for the members of ASEAN. It is evident in the final decision to resolve the problem by consensus, and it will be a disadvantage because state and national interests will often become prioritized. Meanwhile, humanity and issues related to it also need to become the primary concern. The phenomenon and also the label of the "ASEAN Way" have to be constructively criticized because if all the members keep using the same consensus-decision process, it cannot always be the best option and a right resolve approach for the problems that exist in Southeast Asia (Purwandoko and Sasmini, 2012, p. 125-126; Purnama, 2012, p. 473; Putri, 2013, p. 483).

From all the existing literature and discussions, often the criticisms that have emerged on the surface, many are related to the alignment between international law and national law in each member country (Triyana, 2011, p. 617-618). Not all countries in Southeast Asia have ratified key international instruments relating to the SEC. For example:

Country	The Protocol	Status of Ratification
Brunei Darussalam and Singapore	The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children	Has not signed and ratified
Singapore	The Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography	Has not signed and ratified
Thailand	The Optional Protocol to the CRC on a Communications Procedure.	Has signed and ratified

Source: (Davy, 2017, p. 96).

The process of handling complaints, both from individuals and groups, is not entirely optimal due to the lack of proper socialization of the coordination of how the process of resolving human rights issues should be carried out (Purnama, 2012, p. 487-488). The ASEAN Charter cannot always be effectively used as a reference for the constitution and decision-making of the Human Rights body as represented by AICHR if the process of problem-solving is still dependent on the political regime per each country. The individual rights of the community can be easily ignored, given the general nature of the formula of ASEAN Charter does not sufficiently provide a binding mechanism (Putri, 2013, p. 493).

On the other hand, the criticism towards human rights and ASEAN is regarding its regional context, which indirectly makes the standard for handling international human

rights issues something to be avoided for use in the Southeast Asia region. The policy of non-interference which becomes the principles in most Southeast Asian countries, it hampers and makes this process becomes stagnant in its implementation process (Putri, 2013, p. 497). The other studies have also mentioned four obstacles that cause the role of the AICHR to be less than optimal. These include the following, such as ASEAN Way principles; decision-making based on consensus; the weak mandate of a protection function in the TOR of AICHR; and the differences in the views of each ASEAN country on human rights and the lack of commitments of each ASEAN country against Human Rights (Irawan, 2017, p. 65).

ASEAN and member countries have indeed begun to implement democracy as part of their respective governments.

However, the actual implementation of democracy can still be said to be far from expectations. This challenge needs to take into consideration, and each member country is also obliged to think of a solution so that democracy is not just a mere concept waiting to realize (Putri, 2013, p. 501-502). It is evident from the fact that ASEAN and its member countries have also not fully opened to the involvement of civil society to provide input and contribution to existing policies. Fair policy indeed requires significant participation from the object of law and the current agreement (Putri, 2013, p. 498-499).

The absence of national law, coupled with limited resources, both in terms of finance, infrastructure, and technical expertise, adds to the long list of difficult commitments to maintain human rights. Each country has its own rules - standards and systems that vary regarding how protection for women and children must be carried out. These limitations certainly will have an impact on the difficulty and complexity of coordination and assistance for the protection of victims. With that said, the focus of the state must also be able to overcome human trafficking crimes that have crossed national borders and prevent those from happening again in the future (Davy, 2017, p. 78).

CONCLUSION

Non-interference or the ASEAN Way which has become the initial guideline for many of the ASEAN member countries

diplomatic relations have contributed to peace and reduced the potential for conflict in the region. However, with the development of ASEAN organizations and with the increasingly complex global problems, ASEAN is also required to be more flexible in its policies.

Legal awareness must remain socialized and enforced. So, despite the principle of non-interference, the enforcement of human rights remains the main factor. Because respect, protection, and implementation of human rights-based laws are obligations that must be given by the state. The state cannot ignore this obligation and must not allow any form of crime to flourish without supervision.

Comprehensive and integrated actions must be taken to address the problem of forced labor and human trafficking. With the limited functions and duties of the AICHR, the optimization of the promotion and protection functions of AICHR is a must. Actions that disseminate information by the government to increase public awareness, for example, research, campaigns, mass media, and so on must be encouraged. The improvement of cooperation between countries must become a priority, given that human trafficking is a cross-border crime.

Each government also must make policies that embrace the issues of human rights in its universal sense and the government also needs to be able to cooperate with other elements of civil society, such as NGOs and INGOs. Vigorous law enforcement, along

with relevant policies, should be able to touch more on the aspects of people's lives such as the economy, social, and so on, to prevent the demand that leads to exploitative conditions that encourage trafficking in persons, especially women and children. The commitment of ASEAN countries to advance the AICHR institution is also vital in order to realize the aim of the AICHR which seeks to advance human rights in Southeast Asia.

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THE ROLE OF ASEAN IN ENCOURAGING THE IMPLEMENTATION OF THE STATE RESPONSIBILITY PRINCIPLE BY THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AGAINST COMPREHENSIVE PROHIBITION OF POST-ARMED CONFLICT ANTI-PERSONNEL MINES IN ACEH³

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ABSTRACT

The Convention on the Comprehensive Prohibition of Anti-Personnel Mines, was formed to realize a "Mine-Free World". Indonesia ratified the Ottawa 1997 Convention into to the Undang-Undang Nomor 20 Tahun 2006. As a State Party, Indonesia is bound to fulfill all provisions of the convention. Most important is the commitment to protect each of its citizens so that they do not become victims of anti-personnel mines. During the armed conflict in Aceh, mines were used by both parties namely the Indonesian Security Forces and the Free Aceh Movement. The indication is the fall of victims dominated by civilians after the conflict ended. For this reason, the parties are considered not to comply with and carry out their responsibilities as intended by the conventions and principles of International Humanitarian Law.

Both parties seemed to be not optimal to resolve the problems caused by the presence of anti-personnel mines. Therefore, the experience of ASEAN countries that have succeeded in burying their past as a result of armed conflict is very much needed in mediating the problems experienced in Aceh, Indonesia. Experience such as Vietnam and Cambodia is absolutely necessary in initiating the agenda of cleaning anti-personnel mines whose findings still occur today. The involvement of ASEAN was intended to encourage and help both parties to continue the peace agenda in Aceh in accordance with the MoU Helsinki on August 15, 2005 and Undang-Undang Nomor 11 Tahun 2006 about Local Government of Aceh.

Keywords: ASEAN, Anti-Personel Mines and State Responsibility Principle.

INTRODUCTION

All type of weapon is an enemy for mankind as a reason for war weapons. Therefore, there is a desire to prohibit the use of all types of weapons such as the use of

anti-personnel mines which were previously governed by the Convention on Conventional Weapons (CCW Convention) 1980 and Additional Protocol II of this

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Convention, declared in Geneva and entered into force on 3 December 1998.

Anti-personnel mine is one type of conventional weapons that are not expected to existence in a conflict or war. This object does not like bombs or other types artillery exploded as the target. Mines will stay in place where it is located without exploding the years after the war. Landmines still wait until in a moment there is somebody, vehicle, animal, treading on its anti-handling devices explosion. Unfortunately planting anti-personnel mines around the country who have a conflict or dispute is not mapped, it abandoned.⁵

Planting of mines continues and does not include prohibition on stockpiling, production, transfer and destruction. The CCW Convention 1980 will be less than significant because not prohibit the production of smart anti-personnel mines by developed countries, as well as the use of Improvised Explosive Devices (IED), commonly used in the non-international armed conflict in developing countries.

After the Declaration of Ottawa on 5 October 1996 and Declaration of Brussels on 27 June 1997. International community is called upon to negotiate international legal

norms include the prohibition of the use, stockpiling, production and transfer of anti-personnel mines. Therefore, formed the Convention on the Total Prohibition of Anti-Personnel Mines separate from Additional Protocol II of the CCW Convention to be a separate convention. Indonesia is a State Party, for having ratified the convention, commonly known as the Ottawa Convention 1997 to the Undang-Undang Nomor 20 Tahun 2006.⁶

Consequently, Indonesia is bound to comply with the obligations specified in the convention. The shape of the state's responsibility in general to be implemented, such as bearing integration and socio-economic rehabilitation program, recovery from psychological trauma, and the construction of health facilities for mine victims. The above measures are, it is important to be paid attention, especially in Aceh in the period of more than 7 years, since the Government of the Republic of Indonesia (GoI) and the Free Aceh Movement (GAM) signed a Memorandum of Understanding (MoU) in Helsinki, Finland, on August 15, 2005. Noted by 5 IED victims continue to increase and followed the invention of tens similar explosives.⁷ Estimated that almost every week there is

⁵ Team Representatives Working Group Secretariat of the Research and Development Board, Department of Defence of the Republic of Indonesia, *Perkembangan Ranjau Anti-Personel dan Implementasinya di Indonesia*, Article 2007, pp.1.

⁶ AM Fachir, *Perkembangan Konvensi Ranjau Darat Anti Personel*, Research and Development Journal, Department of Defence of the Republic of Indonesia, June Edition 2007, pp. 1.

⁷ Serambi Indonesia, *Tabung Pelontar Meledak 1 Tewas*, Newspaper, Sunday Edition on 29 January 2012.

one person who suffered permanently landmines effect in the world. The victims were mostly non-combatants or military active in the field, but the civilian like children, women and the elderly.

“Anti-personnel mine” means a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed of a person, that are equipped, with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.⁸

Civilian casualties victims like in Aceh, generally caused by IED mine types and mine is not made in factory. In Article 2, point (1) Ottawa Convention 1997, not found explosives in addition to the type of anti-personnel mines. While in fact, the prohibition of anti-personnel mines thorough set out in customary international law, particularly International Humanitarian Law and the various convention and additional protocols are available.

In the following section, the principle of state responsibility for the overall prohibition of anti-personnel mines that

Indonesia has adopted in the practice of national law will be explained. Then outlines the problems faced by Indonesia in an effort to carry out the responsibility of the state for the complete prohibition of anti-personnel mines in armed conflict in Aceh. And the role and opportunities of ASEAN in promoting sustainability of peace in Aceh.

THEORY OF STATE RESPONSIBILITY AND PROTECTION IN RELATION WITH THE ARMED CONFLICT

Background the incidence of state responsibility in law there no single country can enjoy their rights, without respect for the rights of the living and developing in other countries. The law about state responsibility is the law concerning obligation that arise when countries have or abstain from doing any conduct. In other words, if the charge state had violated the terms of the agreed.⁹

The law about state responsibility is still in evolution and the level is likely to rise at a stage where countries and individuals who are responsible for violations of international law constitute an international crime, differing from than ordinary responsibilities for violations to obligation which as a result generate the restitution or indemnity compensation payments.¹⁰

⁸ Ottawa Convention
http://www.google.com/ottawaconventiontext/2005_in access on 4 January 2012.

⁹ Rosalyn Higgins, *Problems and Proses: International Law and How We Use It*, Oxford, Clarendon Press, Vol. 1, 1994., *Dalam Tanggung Jawab Negara Terhadap Penduduk Sipil Korban*

Ranjau Darat Pasca Konflik Bersenjata Ditinjau dari Konvensi Ottawa 1997, Muhd. Heikal Daudy, Thesis, Faculty of Law, University of Syiah Kuala, Banda Aceh, 2008, pp. 20.

¹⁰ J.G. Starke, *Introduction to International Law*, Sinar Grafika, Jakarta, 2003, pp. 393.

Mistakes or losses that cause various types of state responsibility. A country is said to be responsible, because committing breach of an obligation in the form of a) an action, and b) negligence. The situation is very depended on state actions which does not execute the contractual obligations and is governed by international standards.

- a. Abuse of obligation or not implementation by some rules of action that is considered a country raises responsibilities;
- b. The authority or competence of the state agency made a mistake.¹¹

Abuse or negligence in point (a) is an action that fulfilling some of the rules of international law. In point (b) in general is not an opportunity for a country to defend itself from claims by stating that certain state agencies at the expected strong action errors have exceeded the scope of its authority under national law. Therefore, in the legal sense of responsibility is a responsibility that is really related to the rights and obligations. Therefore, a country can not avoid an international obligation on the extent of the country involved or may be involved in the activities of total prohibition anti-personnel mine. Because of problems such mines, efforts should be made to impose strict obligations for consultation, notification, registration and provision of

information and make a special national regulation arrange mentioned.

Apart from that, issues related to the use of indiscriminate weapons that cause death or injury to civilians, according to the international humanitarian law principles on the protection of civilians in armed conflict since the first set and practiced. As well as the protection of civilians in armed conflict in the territory of a country, set out in Article 3 of the Geneva Conventions 1949 and Additional Protocol II 1977. Article is also called as Convention in Miniature.

Article 3 (1) sets some restrictions, that is:

- a. Violence on the soul and sense;
- b. hostage;
- c. Rape of personal honor;
- d. Punish and execute, without any prior decision rendered by a court set up on a regular basis. Verse 2 states that the wounded and sick shall be collected and taken care of. A humanitarian agency of impartiality, such as the International Committee of the Red Cross (ICRC) to offer his services to the parties to the dispute.¹²

The Protocol II 1977 set include:

- a. Protection of military operations;
- b. Prohibition make the civilians as targets of armed conflict;
- c. Prohibition makes starvation of civilians as a means of dispute;

¹¹ International Law Commission, *Report of the 27th Session, 1975*, pp. 6.

¹² Mochtar Kusumaatmadja, *Konvensi-konvensi Palang Merah Tahun 1949*, Binacipta, Bandung, 1986, no page.

- d. Prohibition to attack buildings and institutions containing dangerous forces;
- e. Protection of civilian victims of armed conflict helper.

Protection of victims of anti-personnel mines is a rule that is order coverage, and detailed technical and system load declaration and verification system operated by an international regime under the auspices of the Secretary of the United Nations. Even from similar experiences, in non-international armed conflict civilians should also be protected as well as the hors de combats. The use of anti-personnel mines, have inspired many people in the world, particularly by the government to be a phenomenon is not rarely found.

Protection of the civilian population can be distinguished according to the form and contents. According to shape, that arrangement international humanitarian law was contained in international customary law and the Law of Treaties. According to the regulation in order to protect the contents of man in an armed conflict governed by the distinction principle between civilians and combatants.¹³

Therefore, the international community is required to formulate a comprehensive convention on the prohibition of anti-personnel mines, which aims to end the suffering and casualties caused by anti-personnel mine use, especially of innocent

civilians. It is recognized that the use of mines has pursued the economic development efforts, reconstruction and bad consequences for many years, even long after the end of armed conflict. Even the existence of anti-personnel mines, has affected people's activities and hinder the wide farm for agriculture and ranch.

STATE RESPONSIBILITY PRINCIPLE TOWARDS A TOTAL PROHIBITION ANTI-PERSONNEL MINES IN NATIONAL PRACTICE

Indonesia as consistent state in his efforts creating world peace, consistency is shown with an active role in a number of international cooperation. Indonesia has become a State Party to several international instruments and adopting standards or norms set out in the convention.

These measures are considered to be strategic, because GoI will continue to improve the role and participation in many international forums related to the total prohibition of anti-personnel mines, with a commitment to always give priority to the national interest. At a global security order, GoI seek and promote the elimination of anti-personnel mines with active cooperation to achieve the goal of "zero victim", and take the effective approaches prohibition anti-personnel mines, including the provision of technical assistance and medical. As well as ongoing support for the

¹³ Fadillah Agus, *Hukum Humaniter Suatu Perspektif*, cooperation between the Center and

the Faculty of Law Humanitarian Law Unsyiah with the ICRC, Jakarta, 1997, pp. 42-43.

registration of conventional weapons owned.

Objectives to be achieved by the GoI with the ratification of the Ottawa Convention 1997 on 29 December 2006 to the Undang-Undang Nomor 20 Tahun 2006, is a representing responsibility form towards Indonesia's commitment to total prohibition on the use of anti-personnel mines. As a state party, Indonesia has an obligation to submit reports based on Article 7 of the first Ottawa Convention 1997 within 180 days after the Convention entered into force for Indonesia.¹⁴

Indonesia has submitted the first initial report the implementation of the Ottawa Convention 1997 in January 2008..¹⁵ Apart from that, Indonesia has executed its obligations destroy anti-personnel mines deposits in 3 stages as much as 11.603.¹⁶ The anti-personnel mines reserves remaining and kept the Indonesian National Army (TNI) 2.454 as mine.¹⁷ The number is still allowed as debt in the Ottawa Convention 1997, Indonesia planned to be used as training material related to the ability of military forces to identify, detect and destroy anti-personnel mines, especially the training required by Indonesian forces who will participate in UN peacekeeping operations.

A few implementation efforts from obligation Ottawa Convention 1997 continue to be made as well as actively participate in the follow various forms of bilateral and multilateral cooperation, as can be shown below:¹⁸

1. Always supported the concept, program and desires presented by the developing countries in general, which Indonesia had become Chief of the Non-Aligned Movement (NAM);
2. Cooperation with other countries in the field of handling disarmament, whether institutional, management and the involvement of the Ministry of Defence and Ministry of Industry and International Trade;
3. Technical cooperation with other countries in the field of disposal explosive weapons and demining anti-personnel mines, cooperation can take the form of training in the field of protection and early warning of the use of weapons, as prevalent in the former areas of armed conflict;
4. Placement officers or diplomatic staff as an inspector in the working bodies are formed from the convention, on the chance of existence of political support from countries in the region, with the placement of candidates for superintendent and staff at the agency.

Existence of the National Authority that oversees conventions or treaties that have

¹⁴Explanation of *Undang-Undang Nomor 20 Tahun 2006* about Ratification Convention on Prohibition of the Use, Stockpiling, Productions and Transfer Anti-personnel Mine and Their Destructions (additional to Lembaran Negara No. 4671).

¹⁵ Article 7 Ottawa Convention 1997.

¹⁶<http://www.kemlu.go.id/Pages/IssueDisplay.aspx?IDP=20&l=id/> in access on 7 Juli 2010

¹⁷ Febrian Ruddyard, *Pelarangan Ranjau Darat*, Papers, Faculty of Social Scince and Political Science University of Gadjah Mada cooperation and Directorate of International Security and Disarmament Ministry of Foreign Affairs of Indonesia, April 2012, no. page.

¹⁸<http://www.kemlu.go.id/Pages/IssueDisplay.aspx?IDP=20&l=id/> in access on 7 July 2010.

been ratified in the field of disarmament, it is significant considering that the agency will manage the implementation of each convention or treaty, among other things, dissemination, declaration, verification, inspection and legal.

In conjunction with a total prohibition on anti-personnel mines, so far Indonesia not yet owned a National Authority, in accordance with the provisions of international conventions and treaties as the contact point between the organizers of the national and international level organizers and fellow States Parties. Accordingly, the situation and the condition of post-conflict elections can be used as starting the measuring, the GoI efforts to realize various obligations contained in the Ottawa Convention 1997. As we know, until now there are still civilians were killed or injured in Aceh, an explosion of anti-personnel landmine heritage of the conflict were planted in the region.

THE PROBLEMS FACED BY INDONESIA EFFORTS TOWARDS A TOTAL PROHIBITION ANTI-PERSONNEL MINES IN ARMED CONFLICT OF ACEH

According to the International Humanitarian Law, the conflict in Indonesia, especially in Aceh, it can be categorized as a violation of international humanitarian law, as required in so many conventions. Both

sides GoI and GAM is responsible for the protection of civilians and civilian objects from the use of anti-personnel mines. Considering the various rules and customs international humanitarian law of anti-personnel mines, specially the Ottawa Convention 1997.

The victims of anti-personnel mines in Aceh, GoI and GAM should not wash its hands of responsibility. Both sides must work together to overcome the problem of anti-personnel mines that have claimed civilian casualties. Forms of cooperation such as providing information on the position where mines and cleaning the area, destruction of mines stockpile, providing assistance to mine victims and other forms of cooperation.

An excellent success, if the both sides can work together as shown at the time of implementation of the MoU Helsinki under the supervision of the Aceh Monitoring Mission (AMM), the results were considered successful and encouraging. At that moment, in accordance with the MoU Helsinki point 4.3 states: "GAM undertakes the decommissioning of all arms, ammunition and explosives held by participants in GAM activities with the assistance of the AMM. GAM commits to hand over 840 arms".¹⁹

Both parties should put an end to the suffering of the victims due to the use of anti-personnel mines. Each required not to use,

¹⁹Point 4.3. Memorandum of Understanding Between The Government of the Republic of

Indonesia and The Free Aceh Movement, Team Socialization for Peace of Aceh, 2005, no page.

create, produce, acquire, stockpile, retain or transfer anti-personnel mines to anyone, directly or indirectly. In particular, the state is required not to assist, encourage everyone to participate in activities that are contrary to this Convention. Others, the State Party is also required to decommission or ensure the destruction of all types of anti-personnel mines. Towards the end of the 2012, Indonesia has fulfilled its obligations as a State Party to destruction its mine stockpiles.

Indonesian National Army have destroy 16.581 anti-personnel mines stocks stored in his armory.²⁰ The move was made, given the maturity of the States Parties to destroy all stockpiles mines later than 10 Years for mines located in areas of deployment of mines and no later than 4 years after the country is a party.

Apart from that, GoI can cooperate with regional organizations such as the Association of South East Asian Nations (ASEAN) or can also ask the help of the International Committee of Red Cross (ICRC) to evaluate the presence of mines in Indonesia, especially in Aceh, following the media acts as a facilitator of rehabilitation of mine victims assistance by way construction of mental health facilities and psychological recovery of victims of traumatic mine-affected with or without the

recommendation of the UN Secretary General.²¹

The events of the invention anti-personnel mines in Aceh occurred regularly from 2007 to 2012 in this time. Search from a number of existing media documentation, indicating that these mines still remains found. Almost average of death indiscriminate object-fur, found the residents at the time of executing routine activities in the garden or fields.

Aceh as the former armed conflict is highly vulnerable to a variety of events that commonly arise in the wake of a period transition. The events of the anti-personnel mine explosion in the number of areas in Aceh to cause casualties, confirmed that post-conflict Aceh is not fully secure. The situation is safe, pretend to a very comfortable situation for civil society to execute their routines. Mine explosion incident to cause civilian casualties specially, could be a boost for the GoI to quickly create policies are popular, which are capable of providing security for its citizens who have very limited capabilities. Such regulation products that are not discriminatory, so there is sufficient access to public facilities for disabilities people (casualties during the conflict), or people with physical ability are perfect, but are discriminated against for various reasons that are very detrimental to the welfare of those, for the opportunity to resume a normal life. As the victims of anti-

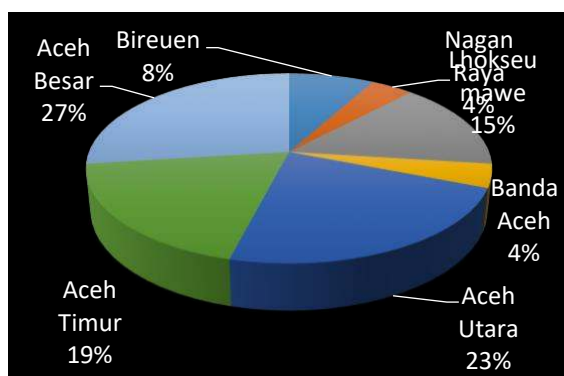
²⁰ Op-Cit., Febrian Ruddyard.

²¹ ICRC, *Kenalilah ICRC*, ICRC, Jakarta, 2001, pp.28

personnel mine blast residue of the conflict in Aceh, which is not sufficient to gain access to their rights, and therefore not included in the category of casualties during the conflict.

Efforts are made GoI to ratify the Ottawa Convention 1997 was a very appropriate action. The policy was rated as sincerity GoI, fully supports the consideration that the use of anti-personnel mines has hindered economic development efforts, reconstruction and cause ill effects for years, even long after the end of armed conflict.²² GoI needs to pioneer the demining course with the mutual exchange of information about the existence of anti-personnel mines that have used the GAM and the TNI, as well as the rehabilitation of mine victims in mine infested countries to establish some general purpose activities.

Chart.4.4. Regional Distribution Anti-Personnel Mines Post-Conflict of Aceh



Another good alternative that has been or is being done, the GoI to consider initiating a national legal framework in order to provide

protection for victims of mines. Undang-Undang Nomor 20 Tahun 2006 was a legal fundament, which can be used as a rationale for the GoI and GAM in order to provide protection for the civilian population of anti-personnel mine victims in Aceh. In fact, the sincerity is not visible, because the civilian casualties continue to fall, effect to the deadly mine explosion. This fact is seen during the period of \pm 12 years of age MoU Helsinki peaceful consultation.²³

Reports from the Local Indonesian Police (Polda) Aceh that during the Year 2016 alone, it managed to collect 215 anti-personnel mines or IED types Explosive Remnants of War (ERW). Mines are the rest of the armed conflict, as well as colonial wartime relics in Aceh. Overall, the mines were collected from a number of areas covering Bireuen district, Lhokseumawe, North Aceh and Langsa. Based on recent information was successfully obtained. the mines had been disposal, place in the Jeulikat company headquarters complex, Lhokseumawe.²⁴

The Communication and Coordination Forum (FKK) Desk Aceh formed as a place with GoI and the GAM in order to carry out the monitoring, development, and use of the results that have been reached by both parties as well as to continue and improve the implementation of the tasks and role of the AMM match the content of the MoU Helsinki. Forum is responsible to the

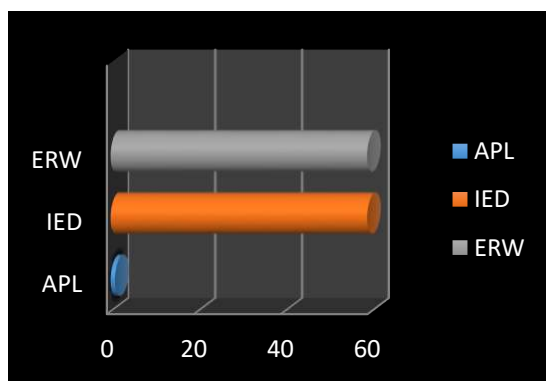
²² Daniel Smith, *The Landmine Web*, Foreign Policy in Focus, 17 The Geneva Centre for Security Policy, 2009, page 27. <http://www.fpiif.org/fpiftxt/512>, in access on 23 October 2009.

²³<http://aceh.tribunnews.com/2016/03/04/brimob-lhokseumawe-masih-gudangkan-90-bom-temuan>. Friday Edition on 4 March 2016.

²⁴ *Ibid.*, no page.

Coordinating Minister for Political, Legal and Security Affairs Republic of Indonesia (Menkopolhukam RI). FKK more focused on monitoring the circulation of illegal firearms are believed to be still circulating in Aceh. Next is the existence of the agency fund the reintegration of combatants and victims of the conflict known as the Aceh Reintegration Agency (BRA)..²⁵ According to records obtained, the agency does not accommodate the existence of civilian victims of anti-personnel mine blast victims as a category of socio-economic beneficiaries. Although the events in the natural landmine victims, an excess of the end of the armed conflict in Aceh.

Chart. 4.5. Type of Anti-Personnel Mines Post-Conflict of Aceh



GoI at the national level through the Ministry of Defense, also participated in coordination and cooperation with other relevant ministries and agencies as well as the discussion of issues relating to the

implementation of anti-personnel mines conventions such as the implementation of anti-personnel mine awareness in the security forces including Gegana, Brimob, TNI or another name assigned directly in the field.

In accordance with Article 3 of the Geneva Conventions of fourth 1949, the non-international armed conflict the rebels also have an obligation to abide by the rules of international humanitarian law. So as one side of the conflict, GAM is responsible for the anti-personnel mine victims in Aceh.

Aceh Transitional Committee (KPA) as an based organization of ex-combatants after the MoU Helsinki, is not responsible and authorized to provide a range of assistance for rehabilitation, reintegration, and mental-psychological recovery-traumatic for victims in the conflict including the mine-affected victims of post armed conflict ended as intended in the Ottawa Convention. Because of a shared commitment of both parties GoI and GAM according to MoU Helsinki should be executed by a specialized agency dealing with the various problems faced by the people who are suffering and loss due to the conflict, the agency set up and take full responsibility to the GoI.²⁶

At period of armed conflict, TNI and GAM participate using mine as a series of strategies to conquer the enemy. It's just

²⁵The agency was formed to follow up the agreements reached by the GoI and GAM in MoU Helsinki, with the task force to help the process of integration of the combatants and non-combatants into society to start a normal life as

before, and also help the civilian victims experiencing suffering and loss during armed conflict.

²⁶ Alm. Tgk. Ibrahim Bin Sulaiman, Vocal Point KPA Center, *Interview*, 7 November 2007.

mine problem as happened during the time in Aceh, not yet earned seen as a serious case as has happened in some countries such as Vietnam, Sri Lanka, Cambodia, Northern Ireland, and others. Accordingly, some of the efforts that are emergency response was performed by the KPA as bear the full cost of the funeral and pray and help the TNI/POLRI in many cases to track down and other detonator existence sterilization the presence of explosives in other parts of Aceh. KPA will continue to coordinate with the TNI/POLRI related to the presence of mines that have been used in the conflict for destruction.

Apart from that, protection and handling suffering given to civilian victims of anti-personnel mines in post-conflict Aceh, confessed the both sides have not maximum and a lot of experiencing of resistance. The resistance can be categorized in two forms, among others: a) implementation of the relevant regulations have not been effective and b) lower commitment of both sides to the victims. ²⁷Therefore, the leadership element representing each party to discuss and find solutions wisely in order to mediate the resistance.

THE ROLE AND ASEAN OPPORTUNITIES IN DRIVING PEACE SUSTAINABILITY IN ACEH

The active role of ASEAN in its involvement in realizing efforts to reconcile the warring parties during the armed conflict in Aceh, has been seen since the pilot project of the first peace effort initiated by the Hendry Dunant Center (HDC) in the era of the early reforms in Indonesia (the 2000s). Even though in reality the peaceful pilot process initiated by HDC had not had a significant impact on the realization of peace at that time. The main inhibiting factors at the time were (1) each of the warring parties (TNI and GAM) were unable to resist themselves, in seeking permanent ceasefire, and (2) the limited authority held by HDC as a mediator .

Based on this experience, then in 2005 after the biggest disaster in the 21st century there was an earthquake and tsunami that reached 9 RS on December 26, 2004, and has destroyed the coast and mainland of Aceh. Since then, the *Crisis Management Initiative (CMI)*, based in Finland and led directly by the country's former charismatic President Marti Ahtisari, has moved and taken the initiative to offer good services to reconcile the Government of Indonesia and GAM to sit at one table opening dialogues constructive for both parties as a form of win-win solution. This business was quite successful

²⁷Andrew Latham, *The Politics of Stigmatization: Global Cultural Change and the Transnational Campaign to Ban Antipersonnel Landmines* The

International Studies Association 40th Annual Convention), 2009, pp. 25. In access <http://www.ciaonet.org/isa/laa01/>.

which led to the signing of the Helsinki *Memorandum of Understanding (MoU)* on August 15, 2005. All the Acehnese were happy and grateful for the achievement of this monumental history.

In its development, the follow-up of the signed *Memorandum of Understanding* was established by a monitoring institution with extensive authority and equipped with relatively neat qualifications and institutional structures.

Marti Ahtisari included the Aceh Monitoring Mission (AMM) in a peace agreement that must be realized and made the European Union a monitoring institution that also included ASEAN. Because of that then, in the *Peace Memorandum of Understanding* a European-ASEAN collaboration was formed as the party that would monitor the peace agreement in Aceh.²⁸

The European Union community has historically made a real contribution to efforts to mediate and facilitate the resolution of armed conflicts throughout the world. As he did with the settlement of internal armed conflict in Aceh. Through its collaboration with ASEAN, it has proven to be effective in encouraging warring parties to make peace. Although the involvement of ASEAN is seen as a regional institution among countries in Southeast Asia, Indonesia is the founder and member.

Through the concept of ASEAN Community Security cooperation with a number of countries, including with the European Union. An Aceh Monitoring Mission (AMM) was formed after the Helsinki MoU was signed. In the memorandum of understanding, Article 5 point 5.1 states that: "*An Aceh Monitoring Mission (AMM) will be established by The European Union and ASEAN contributing countries with the mandate to monitor the implementation of the commitments taken by the parties in this Memorandum of Understanding*".

The ASEAN countries that sent their representatives (representatives) in the monitoring mission (AMM) included: Brunei Darussalam, Malaysia, Philippines, Singapore and Thailand. And the members of this mission carry out their duties impartially and impartially or represent any party. This monitoring mission was officially carried out from 15 September 2005 to 15 December 2006, after previously experiencing several delays in certifying the end of the mission, given the conduciveness of the Aceh region at that time.

The role of ASEAN countries through AMM on its mission on this occasion was very successful, and became a determining factor behind the success of its cooperation with the European Union. This achievement also led to the Indonesian Government

²⁸ Citra Dea Gemala, *The role of Aceh Monitoring Mission in Peace Building Efforts in Aceh in 2005-*

2006, Skripsi, FISIP-UIN Syarif Hidayatullah, Jakarta, 2014, page. 43.

awarding a number of awards such as Bintang Jasa Utama, and Bintang Jasa Pratama by the President of the Republic of Indonesia as a form of gratitude for the real contribution to support peace in Aceh.

At present the existence of ASEAN countries is still very much needed in order to monitor the peace agenda that has not been maximally implemented. The case of the discovery of homemade bombs which have caused death and injury, when the bombs were planted for years (mines) and cleaning was never done at all. Vulnerable is a serious threat, especially if there is no institution that monitors it. Therefore, the involvement of ASEAN countries is absolutely necessary for the sustainability of peace in Aceh.

CONCLUSIONS

Non-international armed conflict in Aceh, GoI and GAM hold responsibility together to realize the protection and reduce the suffering of victims of anti-personnel mines. The reasons are contrary-productive to that commitment as early as possible to avoid, given the national policy is quite important, in order to avoid claim of the international community.

As the former armed conflict, Aceh should be used as one measure of the success of Indonesia as a State Party to the Ottawa Convention 1997. In accordance MoU Helsinki, the both parties should work

together to maintain peace and to support the sustainable development agenda post-conflict in Aceh. Even the role of ASEAN countries is very strategic to be maximized in order to convince fellow states that Indonesia remains committed to realizing a "Mine-Free World".

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ASEAN AND HUMAN RIGHTS NORM: RESPONSIBILITY OR CONVICTION?

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ABSTRACT

Albeit an ample of analysis has been given to the establishment of ASEAN Declaration on Human Right (ADHR), the fact that none of them have assessed the development of ADHR from an ethical point of view is somewhat peculiar. Therefore, this paper aims to fill the gap; that is to use an ethical framework of analysis to critically examine the process through which States in the region finally comes to that agreement. It asserts that the ASEAN's affirmation toward international human rights norms is a reflection of the working of "ethics of responsibility". The writing also covers an assessment addressing the likely of ADHR in helping to improve the quality of human rights situation in Southeast Asia. A suggestion can be made here is that it is possible for the ASEAN's human rights mechanism to be developed further as to be effective in the future as long as there is one condition; domestic, regional and transnational activism should be working in concert not only to perform monitoring and evaluating the implementation of ADHR, but also to continue completing the "internalization" process of human rights norm in the region.

Keywords: ASEAN, human rights institution, implementation of ADHR, internationalization of human rights norm.

INTRODUCTION

Members of the Association of Southeast Asia Nations (ASEAN) through their Heads of State on November 18, 2012, finally agreed to establish a human rights institution by adopting the ASEAN Declaration on Human Rights (ADHR) (AICHR, 2012). On one hand, after more than forty years of its existence without significant improvement in the

region's engagement with human rights, some scholars argue that the adoption marks a progressive sign. At the regional level of analysis, Renshaw (2013) for instance, argues that the declaration is believed to be "a precursor to a formal treaty for the region." She assumes that ADHR will follow in the same way that the American Declaration of the Rights and Duties of Man

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preceded the Universal Declaration of Human Rights.

However, other scholars refute this position. Davies (2013a), for example, says that instead of ASEAN members understanding the moral virtue of human rights norms, ADHR is aimed merely at answering critics while at the same time enhancing ASEAN's legitimacy in the eyes of both its citizens and external internal actors. His arguments considerably rest upon the fact that member countries of ASEAN still have serious problems in implementing human rights norms within their domestic life, ranging from the limitation of freedom of expression such as in Malaysia and Singapore; minority expulsion in Myanmar; deterioration of the rights of religious minority in Thailand and Indonesia, as well as violations of the right to life in the Philippines which include extra judicial killing and torture.

The main purpose of this paper is to use an ethical framework of analysis to critically examine the process through which countries in Southeast Asia finally agree to refer to international human rights as embodied within the ADHR. Indeed, it is the gap within literature that discusses the *raison d'être* of countries in Southeast Asia that supports the institutionalization of human rights within ASEAN. None of the analyses by far has linked the development of human rights in ASEAN with ethical discourse. Second, this paper will assess

whether the declaration is likely to be effective in strengthening the implementation of human rights within the region in the future.

As suggested by Nardin (1992), ethics has always been part of international relations decision making. Ethics here is defined as "a wide range of considerations affecting choice and action" (p. 3). Williams (2005) notes that a states' deliberate policy-making is always governed by two political ethics; ethics of convictions and ethics of responsibility. Bell (2010) suggests that the former refers to the approach that regards the main character of a moral action determined by how the intention of that action abides by unconditional ethical prescription, independent of the consequences it may produce. Alternatively, ethics of responsibility assumes that instead of a political decision being in accordance merely with a set of ethical parameters, it should be a combination of principle of conviction and "good strategic judgments" or cause-effect analysis.

The first argument that is going to be made here is that the deliberate process of establishing a human rights regime by ASEAN represents the work of those two ethical perspectives. By using the framework of a "norm life cycle" offered by Finnemore and Sikkink (1998), this paper finds that "norm entrepreneurs" both at the international and the regional level are in

fact important in convincing leaders in the region to accept and to embrace the universality of human rights in Southeast Asia. However, the regional norms of international relations, known as ASEAN Way, are comprised of the principle of non-interference and diplomatic behavior of non-confrontation or consensus building (Caballero-Anthony, 2005). In fact, this norm still continues to influence the process of making regional human rights mechanism and to some extent, is reflected implicitly within ADHR. The main reason this happened is due to the steady assertions of ASEAN leaders and key eminent persons in the decision-making process during the institutionalization of human rights that the operation of regional human rights mechanism should be in accordance with the ASEAN Way. They argue that ASEAN regional stability and security for decades cannot be separated from its members' consistency to implement the ASEAN Way. It means, on one hand, the promulgation of ADHR in particular and regional human rights mechanism in general represent the recognition of what generally people at the grassroots level in Southeast Asia have long fought for such as justice, emancipation and political participation. In short, the ADHR can be perceived as the expression of the commitment of both the State and the society to respect and to strengthen human rights in Southeast Asia. On the other hand, ADHR is also a reflection of a deliberate

decision in order to keep national unity, regional stability and ASEAN legitimacy.

The findings above suggest that the ADHR will likely be effective in strengthening the implementation of human rights in Southeast Asia. By taking ADHR as the basis for their activism, a continuing pressure from both internal and external "norm entrepreneurs" is needed to push forward the internalization process of human rights. At the domestic level, it is possible for them to encourage each government to implement human rights norms in every aspect of the relationship between State and society, as well as to educate the people to respect the norms. Their domestic activism can be combined by strengthening regional mechanisms of reporting and evaluations of human rights situations within the region; i.e., by providing assistance with an independence assessment conducted by the ASEAN Intergovernmental Commission on Human Rights (AICHR).

This paper proceeds in four parts. Firstly, it will discuss the debate between universalism and relativism regarding human rights as well as will explain the theoretical underpinning for this paper, that is the framework of "norm cycle". Second, it will discuss the process of the institutionalizing of human rights norms in the ASEAN. This section is important to describe the dilemma that ASEAN had during the institutionalization of human

rights. The fourth section will answer whether the affirmation of international human rights norms exemplified within the ADHR is the result of “ethics of conviction” or “ethics of responsibility.” The last part will assess whether the adoption of the ADHR will be likely to bring improvement regarding implementation of human rights in the region.

INSTITUTIONALIZING HUMAN RIGHTS IN ASEAN

Human Rights: Universalism versus Relativism

There is a vast literature discussing human rights, thus it is impossible to explore all the disputes here. This section will focus on the debate between universalism and relativism in contemporary human rights discourse. According to Donnelly (2003), the proponents of universalism believe that cultural and local values are “irrelevant to the (universal) validity of moral authority and rules” (p.90). Meanwhile, relativism suggests that cultural and local norms matters and are the sole source of moral authority when determining what should be human rights. But it should be noted that he mentions the tension between those spectrums can be categorized in some perspectives, such as strong cultural relativism and weak cultural relativism or strong universalism. The former, which might also be called weak radical universalism, contends that culture is the principle legitimacy for rights but accepts to

some extent the universality of few basic rights. Conversely, the latter approach suggests that culture is a “secondary source of the validity of a right” (p.90). The tension itself touches at least three topics, ranging from the substance or concept, interpretation and implementation of human rights.

But how does such tension emerge? After the end of World War II, the international community agreed to establish some international legal norms in order to provide legitimacy for what should be included as human rights. As it is noted by Dunne and Hanson (2013), the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) are three international legal norms that nowadays serve that objective. They are often called the “International Bill of Rights” because of their importance in providing a foundation to other treaties on human rights (Donnelly, 2013).

However, the use of words ‘universal,’ and to some extent ‘international,’ has sparked debates whether there is a universality of human rights. For the proponents of universalist, mostly legal theorists and philosophers, human rights are presumed to be universal in nature. Cranston (1973), for instance, writes that human rights are basically universal because they are “something which all men...at all

times ought to have” and this set of rights is owned by “every human being simply because he is human.” As the result, it is possible to identify a set of rights that is considered as important for the life of every human being, and once it has been achieved, to create international regimes to assure the fulfillment of those rights by all states or societies.

Other experts and decision makers who fall within the cultural relativism line rebut this assumption. UDHR, as an example, accuses it of having Western bias - ignoring the diversity of values and realities in those parts of the world (Renteln, 1990)- and of being part of a neocolonialist strategy (Tharoor, 1999). Their arguments rest upon the fact that the Commission on Human Rights, a committee in charge of drafting of the UDHR and other covenants, was predominantly Western. Consequently, many points within the UDHR reflect Western values, i.e too much focus on individual rather than societal rights (Tolley, 1987). Although some scholars argue that the UDHR is in fact a product of international consensus which implies states’ recognition of the existence of “a common standard” of human rights for all people (see for example Chowdhury, 2008), Renteln (1990)notes that the international agreement is not sufficient in its claim that human rights are universal. Instead, she proposes that the question should be answered through examinations across different cultures around the world beforehand. If empirical

investigation discovers there are shared cross-cultural values related to rights, then it is possible to build a standard for human rights.

Moreover, experts have also disputed the nature of rights within the international agreement on human rights. On one hand, there are some arguments that link rights with a claim, suggesting that “to have rights is to have claim to something” based on legal rules or morality (Feinberg, 1980). On the other hand, experts such as McClosky (1979) argue differently by asserting that rights here act as an entitlement rather than a claim. Thus, as an entitlement, there is no obligation or duty to fulfill all of the points within the international human rights legal norms.

The dispute over the conceptualization of rights led to the second debate over interpretation. Although states may accept and recognize the UDHR and other international covenants, they still have differences regarding the interpretations of points written in those legal norms. For instance, the Universal Declaration in Article 5 mentions that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” However, states have different understanding as to what constitutes torture and to what extent particular actions are inhumane and cruel (Donnelly, 2003). The United States utilized this ambiguity to legitimize its policy of torturing terrorist suspects during the War

on Terror (Nincic & Ramos, 2011).

The last problem deals with the aspects of implementation. Countries may acknowledge the importance of human rights and have similar interpretations of what they constitute, but they can disagree over how to realize those rights, and to some extent, which right should be prioritized. For example, article 2 of the Declaration grants all “peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development” (AICHR, 2012). However, states, particularly from the third world, have problems in implementing such rights domestically because of the fear that it will encourage separatism (Teson, 1984). Even though the debates between universalists and relativists are still continuing in this decade, what can be summed up are two things according to Donnelly (2003). First, human rights at a minimum consist of a ‘set of goods, services, opportunities, and protections’ which have to be fulfilled because they are important and necessary for a ‘life of dignity’ of every person, and the way or “set of practice” to fulfill those needs (Donnelly, 2003) (p.17). Second, it seems that the disputes over concepts is close to being settled with almost every country in the world have ratified the Declaration and other covenants. What still remains disputable centers within the aspects of interpretation and implementation.

The Norms of Human Rights in ASEAN: A Theoretical Framework

Within the study of international relations and international law, scholars often link the terms of human rights with norms. Galtung and Wirak (1977) for example, write that human rights are “norms that regulate actions by the norm-receiver relative to other human beings in general and their need-satisfaction in particular” (p.252). Donnelly also mentions the UDHR as one of the most important of international legal norms in his famous book *Universal Human Rights in Theory and Practice* (Donnelly, 2003). Following the work of Chayes and Chayes (1994), norms in this paper are defined as “a broad of class of prescriptive statements-rules, standards, principles and so forth-both procedural and substantive” that prescribe “for action in a situation of choice, carrying a sense of obligation, a sense that they ought to be followed.”

In the current literature, explanations of why states are in compliance with human rights norms can be divided into three categories. Commonly known as the realist perspective, this first approach emphasizes the role of power, asserting that compliance will occur at the greatest when a hegemonic state supports and encourages an international pressure to make states, which are usually internationally weak, to adopt particular norms (Krasner, 1999). The pressure may be in the forms of economic sanctions and coercive military threats

(Crawford & Klotz, 1999). The second perspective, called the neoliberal-institutionalist, focuses on the effectiveness of international legal institutions in shaping states' behavior. It assumes states' compliance with human rights norms depends on the strength of international legal institutions and their concomitant mechanism such transparency, monitoring and reputational payoff (Shelton, 2003). International human rights institutions are functioning to induce, rather than to persuade or to coerce, leaders to comply human rights norms (Chayes & Chayes, 1995).

Within the context of the ASEAN, nevertheless, those two approaches are rarely used in analyzing the process of implementing human rights in the region. Indeed, there is no evidence showing the presence of strong international pressure in terms of military or economic forces when ASEAN began formally to discuss the issue at the 1993 ASEAN Ministerial Meeting in Singapore (Thio, 1999). Even though the United States (US) cut military ties with Indonesia because of human rights violations such as in the case of Dili Massacre in 1992, it never mentions that the decision was aimed to press the ASEAN to comply with international norms of human rights. Also, the effectiveness of international human rights institutions to induce leaders in the region to adopt human rights norms is questioned. In fact, ASEAN governments had

criticized the UDHR by raising the issue of Asian Values (Tang, 1995).

Constructivism is the third approach that is often used to explain the process that leads to states' compliance to international human rights norms. Believing in the power of ideas instead of material power, this approach suggests states will comply with a particular international norm when domestic actors support that norm and actively join transnational activism (Sikkink, 1993). In the case of human rights norms, transnational networks of activists will use persuasive strategies and moral entrepreneurship to put human rights norms within national agendas, including lobbying leaders of powerful states (Schmitz & Sikkink, 2012).

The Sikkink and Finnemore's framework of the norm cycle life is substantially powerful in giving detail the process of how a particular norm is emerging, affirmed by states and internalized within their domestic life (Finnemore & Sikkink, 1998). They divide the process into three steps; norm emergence, norm cascade or acceptance and internalization. The first step begins when norm entrepreneurs emerge, start to create a new standard of appropriateness and convince states' leaders to affirm that standard. As suggested above, norms entrepreneurs can be both domestic actors as well as international actors who are involved in transnational activism. When some leaders agree and adopt that norm, it means the norm reaches a tipping point and

the stage of a norm cascade begins. A norm cascade is characterized by a mechanism known as socialization. In the context of international politics, socialization may include the diplomatic meetings both bilateral and multilateral in order to promote the norm and to establish a norms regime of cooperation. The last stage is internalization; that is when that norm has been ratified by each of the states and societies accept the norm without question.

This paper uses constructivist perspective to critically examine the process by which members of the ASEAN adopt international human rights norms, which is arguably embodied within the ADHR, in order to answer whether the affirmation by the ASEAN is more the result of “ethics of conviction” or “ethics of responsibility. Given the absence of political and economic sanctions from other states outside the region as well as international legal organizations’ lack of effectiveness to induce leaders of the ASEAN to affirm human rights norms, it argues that the key factor within institutionalization of human rights in the ASEAN is both internal and external pressure from domestic and international activism. For this reason, constructivism offers a theoretical framework to explain how human rights transnational activists have played a role in encouraging states in the region to comply with human rights norms as well as states’ acts of socialization to establish a human rights regime in Southeast Asia.

THE EVOLUTION OF HUMAN RIGHTS IN THE ASEAN: AN OVERVIEW

ASEAN before the 1980s: Human Rights Was Not an Issue

When the ASEAN was established in 1967 by five countries, states in Southeast Asia were facing imminent security threats that endangered their national unity with the presence of internal communist insurgencies, as well as bilateral conflicts between them and the Cold War’s great powers’ competition. The ASEAN’s members had designed this regional cooperation to answer these problems in three reinforcing ways. First, the ASEAN provided a room in which its members could socialize and interact as to improve their relationships to reduce competition and settle conflicts among them (Ganesan & Amer, 2010). Second, the ASEAN was important towards off communist expansion by promoting economic development and cooperation. Third, as the ASEAN sought to reduce external military presence in the region, it could prevent and avoid regional instability caused by military competition between great powers (Narine, 2002).

Because of its focus on regional security and stability, the notion of human rights during the height of Cold War in the 1970s and the mid-1980s unfortunately never surfaced in the ASEAN discourse. Along the way, the association developed their specific mode of interaction among its members. A principle of diplomacy was adopted informally to manage intergovernmental

relations and to keep its sustainability by discouraging the ASEAN members from intervening in each other's domestic affairs (Haacke, 2003). Ba (2009) writes that the principle of non-intervention has significantly shaped the development of regional diplomatic culture among ASEAN members characterized by consensus-building and networking rather than formal and legal arrangements. These two modes of interaction have been known as the "ASEAN Way" and Acharya (2001) writes it constitutes the ASEAN identity. However, as it is written in the ASEAN People's Summit Declaration (1999), a strict implementation of the ASEAN Way together with the ASEAN's primary concern of a security agenda had been accused of causing the ASEAN's reluctance to put human rights issues on the regional agenda. Afraid that putting human rights norms on the regional agenda while each other was still battling with human rights issues would jeopardize the cooperation, they treated the issue as domestic affairs concern (Ciorciari, 2012).

***ASEAN's Human Rights Norm
Entrepreneurs: The Roles of Civil Society***

Kishore Mahbubani, in his speech at the first ASEAN Congress held in Kuala Lumpur and organized by Malaysia's Institute of Strategic and International Studies, said, "ASEAN did not choose to focus on these new areas of Environment, Human Rights and Democracy. These three new areas were thrust upon ASEAN. ASEAN had to react"

(Mahbubani, 1992). The congress itself was attended mainly by intellectuals as well as civil society and this statement indeed represent the efforts of civil society as norm entrepreneurs to press the ASEAN to start taking all of those issues above seriously and to put them in the regional agenda.

However, it was not until 1992 when human rights norms began to be a regional issue in Southeast Asia due to the advocacy of a think tank group. A network of influential scholars, the ASEAN-Institute of Strategic and International Studies (ASEAN-ISIS), submitted a note on human rights in July 1992 to ASEAN leaders during the ASEAN Ministerial Meeting in Manila. This note suggested the "ASEAN should examine the feasibility of establishing an ASEAN Commission on Human Rights" (Wanandi, 1992). At the following year during a conference on human rights in Bangkok, more than 170 NGOs from internal and external ASEAN attended as observers. They criticized the Bangkok Declaration issued by their governments for putting emphasis on "regional specificities" which potentially watered down the character of universality of human rights and responded instead by issuing their own declaration (Ching, 1994). In June of 1993, Asian NGOs engaged in sharp debates with Asian governments during the World Conference on Human Rights in Vienna, but they succeeded in having their declaration reflected in the Vienna Declaration (Aviel, 2000). Civil society again attempted to influence the

proceedings during the ASEAN Ministerial Meeting (AMM) in July of 1993 which was held to respond to the Vienna Declaration (Serrano, 1994). At the end of the meeting the ASEAN minister stated the ASEAN “commitment to and respect for human rights and fundamental freedom” and also considered “the establishment of an appropriate regional mechanism on human rights” (ASEAN Sec., 1993).

The importance of a civil society and think tanks became significantly crucial in creating bottom-up pressure on the ASEAN governments after the Vienna Declaration. The ASEAN-ISIS’s first Colloquium on Human Rights was held in Manila in 1994 to boost the discussion about human rights among scholars in the region (Hashimoto, 2015). The Friedrich Nauman Foundation and a human rights group comprised of lawyers, judges and legal politico scholars from the Law Association for Asia and the Pacific (LAWASIA) organized a series of meetings attended between 1994 and 1995. The end result was the subsequent setting set up of the Working Group for a Regional Human Rights Mechanism in July 1995, which was aimed at pressing for a regional human rights body. The Working Group generated many supports in terms of financial resources and experts from people outside the ASEAN. This includes from international human rights organizations such as Norwegian Human Rights Fund, Amnesty International, and the Asia Foundation as well as other governments;

for instance, the US State Department and the Canadian International Development (Close & Askew, 2004).

A Tipping Point

It can be argued that the institutionalization of human rights norms reached a tipping point at the end of the 1990s. At the regional level, leaders from strategic countries such as Thailand and Malaysia started to agree that human rights were a strategic issue that needed to be put within the regional agenda. Since 1996, the Working Group had met with several prominent figures including the Indonesian Foreign Minister Ali Alatas, a chairman of the ASEAN Ministerial Meeting (AMM) in 1996, and the Foreign Minister of Malaysia who was the chairman of the AMM in 1997. Active communications and constructive engagements between government officials and leaders of the Working Group evidently brought positive results with the ASEAN’s recognition that the Working Group is an important partner in setting up a human rights mechanism in the region and regularly mentioned in annual foreign minister communiqué (Langlois, 2012). Moreover, some leaders even began to suggest that the ASEAN should be more flexible in its demands for a stronger role in defending human rights norms. In response to NGOs’ protests in Kuala Lumpur demanding the ASEAN to react toward human rights problems emanating from the case of Myanmar and East Timor, The Prime

Minister of Thailand, Surin Pitsuwan, said, "Perhaps it is time for the ASEAN's cherished non-intervention principle to be modified. When a matter of domestic concern poses a threat to regional stability, peer pressure of friendly advice can help" (Aviel, 2000).

But progressive signs were clearly happening at the domestic level with the acceptance of some countries, including Asian Values' supporters of Malaysia, to establish a national human rights commission. Understanding that regional affirmation by the ASEAN would be difficult to achieve without human rights instruments "actualized in the national context," civil society also pressed each national government to establish a national human rights commission in order to promote as well as to ensure the enforcement of the norm (Rachagan & Tikamdas, 1999). It was only the Philippines and Indonesia that had a national human rights institution before 1996. Thailand finally held its national commission in 1997 followed by Malaysia in 1999. According to Mohamad (2002), the outbreak of economic crisis that hit Southeast Asia between 1997-1998 was an important factor behind this significant progress. He explained that the crisis provided an impetus for stronger critics toward the idea of Asian values, a concept that emphasized the denunciation of human rights universalism, and instead, an acceptance toward interpretation that Asia had their own human rights norms based on their culture. As the crisis reduced political

support to leaders in the region whose political legitimacy was built upon an impressive economic performance, their idea also began to lose its grip among their people. Therefore, establishing a national human rights institution served general two purposes; to accommodate people's demand on more recognition of human rights as well as to preserve the leaders' legitimacy in the eyes of critics.

Norm Cascade

Finnemore and Sikkink (1998) identify that after a particular norm had reached a tipping point, the second stage called the "norm cascade" begins. This stage is characterized by norms leaders' attempts to socialize others as to encourage them to be norm followers. They say that legitimation, conformity and self-esteem are key factors that affect leaders to be norm followers (p. 903). However, it should be noted that the transition from a norm emergence to a norm cascade is not clear-cut. Berman (2001) doubts the possibility to determine when the shifting actually occurs. Moreover, he also problematizes how to determine norm leaders and norm followers as the line between them is sometimes uncertain. Harrison (2004) provides a better solution by saying that the shifting from the tipping point to the norm cascade should not be understood as rigid and linear. He says, "There are many potential historical paths that could produce the same outcome precisely (p. 352).

The ASEAN in the late 1990s certainly reflects the problem above. Countries in the region can be said to have been socialized with regard to the importance of human rights norms due the fact that key countries within the ASEAN had begun to create national human rights commissions and almost all of them had to sign an international agreement on human rights (Clarke, 2012). However, a regional human rights mechanism had not been established yet. Civil society perceived signing treaties as not enough without a regional mechanism by which states and civil society were allowed to monitor each other's compliance with the treaties (Mohamad, 2002). As a result, they were still pressing leaders to establish human rights mechanisms within the ASEAN. For example, in July of 2000, the Working Group officially presented the final version of a Draft Agreement for the Establishment of the ASEAN Human Rights Commission to ASEAN officials after a series of consultation meetings with national foreign ministers in 1998-1999 to receive feedback (Saravanamuttu, 2005).

However, the ASEAN's response was relatively mixed and caused the human rights activism to become more robust. ASEAN foreign ministers in their 2000 Joint Communiqué "noted with the appreciation the consultation between ASEAN Senior officials and the Working Group about an ASEAN Human Rights Mechanism (ASEAN Sec., 2000). However, the ASEAN did not put

forward the initiative and proposal into reality. Being disappointed with the response, the Working Group organized several meetings to seek other alternatives of action in the following years. Other network of human rights activists, the ASEAN-ISIS, launched the ASEAN People's Assembly (APA), a diplomatic "Track Two" aimed to bridge policy makers and civil society. Human rights activists doubted APA to be effective in fostering the ASEAN's acceptance of the draft because the ASEAN constantly attempted to control and regulate the APA agenda settings and who could attend the meetings (Gerard, 2014). Yet, they still consider that APA to some extent was useful for providing a room for civil society to meet the ASEAN as their counterpart in discussing and addressing critical political, economic and security dimensions of the ASEAN's policies.

It was in 2003 that could be said was the turning point of the ASEAN in the story of its engagement with the institutionalization of human rights norms. The ASEAN's representatives who were attending the third regional workshop held by the Working Groups stated that the Draft Agreement submitted to ASEAN in 2000 seemed to be "premature" (Phan, 2008). But they accepted a concept paper prepared by the Co-chair of the Groups, Viti Muntarbhorn, titled the Roadmap for ASEAN Human Rights Mechanism (Muntarbhorn, 2003). This concept paper included a time frame to implement step-by-step and multi-

track approaches in order to establish the mechanism. Some of the important points within the paper were creating of a Joint Working Group between ASEAN and the Group and establishing an Eminent Person Group and forming an ASEAN Commission for the Promotion and Protection of the Rights of Women and Children. ASEAN senior officials agreed during their meeting in June of 2003 to submit the concept paper to the ASEAN Ministerial Meeting (AMM) in 2004. While there were some revisions, largely the important points within the paper were accepted by the AMM and the ASEAN included those points when it declared the Vientiane Action Program (VAP) in November 2004. According to Davies(2013b), there are two factors that affected the success of the Working Groups to influence ASEAN leaders; first, elites of the Group's decision to work with ASEAN officials "within the procedural context of the ASEAN Way"(p.392); second, the implementation of issue linkage by connecting the issue of human rights and existing agreements within ASEAN, i.e the Group stated that a regional human rights institution suited to all goals of ASEAN Vision 2020 to create a Security Community and was a focal point to put ASEAN collective action in harmony for the future(Working Group, 2002).

Human rights were an issue that was so contentious in the subsequent years of the VAP, particularly after the ASEAN leaders in 2005 decided to establish the ASEAN Charter

as part of its effort to build the ASEAN community. During the process of drafting the ASEAN Charter, Tommy Koh, a representative from the Singapore ASEAN Charter in High Level Task Force, says that "there was no issue that took up more of our time, no issues as controversial and which divided the [ASEAN] family so deeply as human rights" (Beng, 2008). The first step to create the Charter was to set up an Eminent Persons Group, a collection of senior officials and statesmen who produced guidance and recommendations on the drafting of the Charter. Manea (2015) records that the EPG had held meetings with various stakeholders to get input regarding the Charter. Particularly on the issue of human rights, the EPG met for several times with human rights advocates who joined with regional human rights networks such as the Working Groups, the APA, and a coalition of human civil societies established in 2006 named SAPA (Solidarity for Asian People's Advocacy). Phan (2008) notes that the meetings provided an opportunity for the activists to lobby and to work together with the EPG to insert a provision related to the establishment of the ASEAN human rights mechanism in the Charter. The result was positive when the statesmen at the end of 2006 affirmed in their report that an ASEAN Human Rights Mechanism was a "worthy idea [and] should be pursued further, especially in clarifying how such a regional mechanism can contribute to ensuring the respect for and protection of[the] human

rights of every individual in every Member State” (Durbach, Renshaw, & Byrnes, 2009)

The recommendation made by the EPG was followed by the creation of the High-Level Task Force (HLTF) to work on drafting the ASEAN Charter. However, responding to the EPG’s recommendation on human rights was not easy and it needed the ASEAN summit held in January 2007 in Cebu to make the decision which finally endorsed the presence of the ASEAN Human Rights Mechanism (Munro, 2009). The endorsement sparked numerous debates among countries in the region within HLTF sessions regarding the kind of form this body should take and how it should be written in the ASEAN Charter (Langlois, 2012). They made a study visit to Brussels and Berlin to look for “inspiration” for a regional integration, including the making of a Charter and the creation of a human rights body (Wong, 2012). Yet, Cambodia, Laos, Myanmar and Vietnam (CLMV), which were basically reluctant to establish a regional human rights body, still opposed a commission for human rights in the HLTF meetings, while Indonesia and Thailand supported the body. Koh (2009) describes the situation at the HLTF meetings in July of 2007 where “strong words were exchanged and emotions ran high” (p.59). In the end, Indonesia, Singapore, Thailand and the Philippines were successful in persuading the CLMV to accept the provision of a human rights body in the ASEAN Charter which was formally signed in November of 2007(Phan,

2008).

As it was during the drafting of the Charter, the creation of the ASEAN human rights body was not going smoothly. Following the ASEAN Charter declaration, ASEAN foreign ministers appointed a High-Level Panel composed of one representative from each ASEAN member in July of 2008 to “determine the form, functions and scope of the ASEAN Human Rights Body (AHRB) (Munro, 2009). Strong debates occurred between progressive and conservative groups regarding the level of independency and the scope of the body. CLMV states in particular, worried about a strong human rights body. For example, Myanmar insisted that the ASEAN human rights institution must not obstruct the ASEAN principle of non-interference (Tan, 2011). After some serious debates and consensus building during their meetings, the HLP finally presented their Term of Reference (TOR) draft to the AMM in July of 2009. The draft was agreed to three months later at the 15thASEAN Summit in October 2009 and the heads of states officially launched a new body called the ASEAN Inter-governmental Commission on Human Rights (AICHR)(ASEAN Sec., 2009).

Among some points of AICHR mandates, it had to create the ASEAN Human Rights Declaration to provide “a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights” (AICHR, 2009).

The development of the Declaration was agreed upon to go through two-layers. A Drafting Group would do draft preparation and the AICHR would revise the draft. Unfortunately, the making of the ADHR was done in secrecy with only two consultative meetings with civil society, and the draft had not been made public until it was officially declared (Renshaw, 2013). According to Clarke (2012), the process was difficult; for the preamble, it needed four meetings in which the CLMV refused to participate but only observed. He explained that the AICHR was divided into two groups of liberal wings consisting of Indonesia and Thailand, with the Philippines in some cases, and the conservative wing included Malaysia, Singapore, Brunei and CLMV countries. Unable to agree on the final draft, particularly on the sections of The Limitation of Rights, Civil and Political Rights and Duties and Responsibilities, the ASEAN foreign ministers passed the draft to senior foreign ministry officials. After seven weeks of intensive diplomatic talks, some minor but crucial changes had been made and at 18 November 2012, the ASEAN heads of states agreed to adopt the declaration.

ASEAN and Human Rights: More Ethics of Responsibility?

The proponents of ethics of responsibility argue that states' behavior should be a combination of the affirmation of unconditional ethical prescription or ethics

of conviction on one hand and strategic calculations related to the impact of that behavior on the other hand. These two spectrums of consideration certainly are reflected within the process of establishing a human rights mechanism in the ASEAN. By examining the evolution of human rights norms in the ASEAN through the tool of analysis of norm cycle, it can be recognized that instituting human rights in the ASEAN is a highly complex issue. Debates and conflicts have occurred not only between civil society and states, but also among states within the ASEAN. As the result, the progress of institutionalizing human rights within ASEAN was slow, which took almost two decades just to arrive at the stage of "norm cascades." But what is most important from the description of that long process is the presence of a human rights mechanism signifies the affirmation of normative aspects within external and internal demands for justice, emancipation, broader political participation as well as affirmation of international human rights norms by ASEAN. While at the same time it is denoting the result of strategic consensus between states in order to maintain regional stability in Southeast Asia.

One may find the element of ethics of conviction within the presence of ASEAN human rights mechanisms by considering the fact that the mechanism is the answer toward internal and external human rights activists' demand, which was much stronger after the end of the Cold War, to act in terms

of giving more recognition toward human rights. The director of Suaram, Malaysia human rights NGO, Dr. Kua Kia Soong, explains that by supporting the establishment of a regional human rights mechanism, he hopes it would be able address the problem of protecting human rights within each countries, including Malaysia, which he claims “has not lived up to our expectation” (Manea, 2015). Similarly, learning from Indonesian experiences where people “are very frustrated with all the unresolved violations of the past”, Azhar, a leader of Indonesian human rights NGO KontraS, says that human rights NGOs in Indonesia always encourage the government to press the ASEAN to setting up a human rights mechanism in order to prevent human rights violations within the region in the future (Chew, 2007). Eldridge (2013) explains that pressure from the international society and regional human rights activists became a motivating factor that encouraged leaders in the region to start making human rights their priority and to change their policies toward the issue.

However, in deciding to establish such a mechanism, the ASEAN also had some strategic consideration related to the impact of adopting the international norms. For example, the ASEAN was also reluctant to change and only did the transformation under concerted Western pressure (Katsumata, 2009). As a result, some leaders of the ASEAN such as Mahathir Muhammad and Lew Kuan Yew then raised the concept

of Asian Values in 1993 (Thio, 1999). When the ASEAN finally agreed to have a regional human rights institution, Jones (2015) notes that it can be seen also as a way to prevent external intervention which would use the issue of human rights as an excuse. Moreover, while regional activists have insisted that the ASEAN affirm international human rights norms by establishing a strong mechanism, ASEAN had difficulties in fulfilling this request given that members have their own internal problems related to human rights. Consequently, adopting international human rights without considering situations at a domestic level would be devastating to the continuity of the ASEAN. Therefore, ASEAN has designed the mechanism the best it can in order to accommodate the demand and to acknowledge the reality. Chalermpananupap (2010), a senior official of ASEAN, explains that “the dilemma facing ASEAN members’ states and the HLP (High Level Panel) is how to reconcile the national political reality with new regional obligation to promote and protect human rights.”

As the result, a human rights institution within the ASEAN can be understood as a sign that ASEAN overall understands the virtue of human rights. Yet, it cannot further push the implementation of the norm regionally given each member has varieties in terms of level readiness to implement that norm. The best way ASEAN can do this is to the recognize the norm at the regional level as well as to encourage the protection of it

and to provide each member flexibility to make policy to implement human rights based on their internal circumstance. Following the categorization that is made by Donnelly (2003) regarding the focus of the debates between the proponents of universalist and relativist thought in human rights discourse, it seems that the ASEAN has a different interpretation regarding how to implement international human rights norm.

Ways Forward

Many problems still occur despite the ASEAN human rights mechanism being already present, ranging from Rohingya's expulsion in Myanmar, limitation of freedom of expression in Malaysia and human rights abuse in the Philippines. It will be attractive to criticize and to claim that the ASEAN has failed to create an ideal regional instrument to guarantee the promotion and protection of human rights of each members by, for example, only mentioning the absence of a regional court to hear complaints (see Hien, 2016). However, establishing a mechanism with a strong institution to give punishment for the violations of human rights ignores the reality that "ASEAN is operating in the real world," says Chalermphanupap (2008). It means pushing the ASEAN to adopt international human rights norms too hard would put the efforts to maintain and strengthen human rights institutions in the region in jeopardy. Such suggestions would

bring difficulties for the ASEAN itself which is built and maintained upon the principle of non-interference and non-confrontation. As a result, it is problematic to rely on regional top-down decision-making processes to push the ASEAN for further changes in the near future.

The ASEAN's human rights mechanism today is in the best format that can be achieved, but it does not mean that there is no hope for it to be developed in a better way. Donnelly (2003) notes that "human rights are ultimately a profoundly *national*, not *international*, issue" (p. 179). Therefore, two measures can be done to improve upon mechanism. First, as it is more about the problem of internalization, NGOs once again need to pursue what had been done a few years ago; that is to press each individual government to implement their commitments to protect and to promote human rights. At the same time, they can strengthen their transnational network to encourage the international community to pressure ASEAN members to put their commitment into reality and to help the current institution to do reporting and monitoring. It can be expected that the process will take some years to complete, but history shows that it is the only way to achieve such objectives.

CONCLUSION

This paper aims primarily to examine the evolution of human rights norms within the ASEAN through ethical analysis. It finds that the ASEAN's affirmation toward international human rights norms is a reflection of the working of both "ethics of conviction" and strategic calculation within the ASEAN. In other words, it is governed by the logic of ethics of responsibility. On one hand, pressure from human activist groups from both internal and external actors demanding ASEAN to affirm international human rights norms has impacted ASEAN to start the process of establishing a regional human rights regime which at the end resulted in the ADHR. The ASEAN recognizes that it cannot escape from the responsibility to protect and promote human rights nowadays. On the other hand, the ASEAN is also aware that given each ASEAN members still have internal problems related to human rights, abandoning the principle of non-interference and consensus building will potentially endanger regional stability. Thus, ASEAN's human rights mechanism today is the best format that can be achieved when examining those two ethical considerations.

Nevertheless, this paper also suggests that it is possible for the ASEAN's human rights mechanism to be developed further as to be effective in the future promotion and protection of human rights norms in the region. Instead of relying on top-down

decision-making processes, this paper recommends to follow a bottom-up process. Civil society must work to strengthen their regional and transnational network to help them to do "framing" about the need for the ASEAN to move forward to enter the stage of "internalization" to complete the norm cycle. It means domestic, regional and transnational activism should be working in concert rather than in substitution. Yet, that effort should not abandon supporting the current mechanism by helping to perform monitoring and evaluating.

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STUDY ON THE RELEVANCE OF ASEAN NON-INTERFERENCE PRINCIPLE IN HANDLING HUMANITARIAN ISSUES IN SOUTHEAST ASIA

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ABSTRACT

The principle of non-interference is a framework that allows each country of ASEAN to respect the sovereignty of other countries. As a regional organization, ASEAN has shown its consistency in the implementation of the principle of non-interference in humanitarian issues. It can be seen from the absence of ASEAN interference in the internal affairs of each country. This non-interference principle is motivated by culture, state sovereignty and national law of a country. The adoption of this principle presents a dilemma between ASEAN's consistency in this principle or in terms of responsibility to protect. It has been such a long debate that this non-interference principle is considered as an obstacle in handling humanitarian issues in the Southeast Asia region because it is not relevant to the humanitarian issues of the region, as happened in Myanmar, particularly Rohingya issue, conflict in Moro, The Philippines, and even older case, like Hmong ethnical issue in Laos, and so forth. The principle of non-interference influences the effectiveness of humanitarian assistance given to a country through humanitarian intervention. This humanitarian intervention is considered as a response to humanitarian goals, not as a threat to the sovereignty of the states. This research aims to evaluate the essence of ASEAN as a regional organization on handling humanitarian issues. In addition, this research proposes a solution in the form of providing specifications, in implementation of limiting non-interference principle in the realm of humanitarian issues by setting standards of humanitarian intervention with references from other region and cases.

Keywords: ASEAN, humanitarian intervention, humanitarian assistance, non-interference principle.

INTRODUCTION

The existence of the principle of non-interference in the corridors of regional organizations begins simultaneously with the establishment of the Association of Southeast Asian Nations (ASEAN). The principle of non-interference has taken a big

part of the process of regionalism in the Southeast Asian region ever since the 1995 Bandung Asian- African Conference where the principle of non-interference became one of its core principles.³⁰ ASEAN was born during the cold war, initially adopted the principle of non-interference in the name of

³⁰ Acharya, Amitav 2008: 18

the spirit of decolonization and as an antidote to particularistic interest of other countries. In the development of non-interference principle in ASEAN, it has covered the humanitarian issues where in its realization, it creates dilemma between ASEAN's Responsibility to Protect (R2P) and the consistency of the principle of non-interference. It can be seen from any cases of humanitarian crisis that occurred in the Southeast Asian region where ASEAN turns blind eyes to the humanitarian crisis due to the principle of non-interference. Humanitarian crisis defined by International Federation of Red Cross Red Crescent Societies (IFRC) as some disasters including natural and man-made disaster in a country, region or society where there is total or considerable breakdown of authority resulting from internal or external conflict and which requires an international response that goes beyond the mandate or capacity of any single agency and/or the ongoing UN country program.³¹ This paper will point out humanitarian crisis caused by man-made disaster in Southeast Asian regional that leads to the extensive of violence, loss of life, displacements of populations also the need for large-scale humanitarian assistance.

In the case of the Hmong Case in Laos, in which Laos is accused of committing genocide against Hmong ethnic minority,

ASEAN tends to not be able to do much because there are normative restrictions on the principle of non-interference. Even in the Rohingya crisis in Myanmar which leads to displacement of people, ASEAN could only manifests a policy called 'constructive engagement' in the provision of Myanmar's sovereignty which ended in blocking of humanitarian assistance and relief by Myanmar.³² The handling of the Moro Humanitarian crisis also reflects ASEAN's limited role. It can be seen clearly from the process of resolving conflicts embodied by the Muhammadiyah organization which should be carried out by ASEAN.³³ ASEAN as a regional organization should see the humanitarian crisis that occurs in its member as a threat to regional security and is the responsibility of all ASEAN members by implementing humanitarian intervention, in consonance with Steven P. Lee's Theory of Humanitarian Intervention. As Lee stated that the proper scope of humanitarian intervention by considering limitations in the regard to the domestic case should be generalized as international case.³⁴

As happened in European Union (EU) where one of its members, Germany has been struggling to cope with a high inflow Syrian refugee in its country.³⁵ EU as a regional organization has a big role in handling the refugee crisis along with

³¹ IFRC 2011

³² Oliver, Holmes 2017

³³ Druce, Stephen 2016:54

³⁴ Lee, Steven P 2010:17

³⁵ McCarthy, Niall 2018:2

Germany. Reflecting on these cases, ASEAN needs to limit the scope of non-interference in the case of humanitarian crisis. This paper will reveal the principle of non-interference which is no longer relevant to the ASEAN regional situation by proposing standardization of humanitarian intervention as assistance to the humanitarian crisis, that are limiting the principle of non-interference only in the Scope of Sovereignty, maximizing the ASEAN human right declaration and the ASEAN Intergovernmental Commission of Human Right (AICHR) Terms Of Reference (TOR) by promoting R2P, the use of military forces as a response to humanitarian crisis accompanied by observer.

Brief History

The Association of South East Asian Nations (ASEAN) is arguably the most prominent and instituted regional organization in Asia. ASEAN was indeed an icon of the rise of Asia in the regionalization and integration process. Formed on August 8, 1967, the ASEAN Formation was motivated by the concept of security and politics in a third world country in South East Asia, which was dominated by newly independent countries from hundreds of years of western colonization. The formation of ASEAN in its regionalization process aggressively applied ASEAN norms which

were referred to "ASEAN Way" that is considered to the building of peace and stability in Southeast Asia which includes the tradition of consensus (*musyawarah mufakat*) and in particular, the norm of non-interference in the internal affairs of each member.³⁶ ASEAN norms can be seen from the process of resolving conflicts carried out with negotiations and prioritizing the principle of non-interference among its member countries. This can be seen from ASEAN's position in resolving the Coup Conflict in Cambodia in 1970 by establishing the Jakarta Informal Meeting (JIM) followed by peace negotiations in Paris.³⁷

The principle of non-interference adopted in the Southeast Asian region as Southeast Asia became a place where two major world powers competed to expand their hegemony, namely Uni of Soviet Socialist Republics (USSR) and the United States of America. This began as Civil War in Vietnam which took place in 1950 ended with the fall of North Vietnam into communist in 1954.³⁸ It is later triggered the emergence of domino theory.³⁹ In the context of communist damming in Southeast Asia, on September 8 1954, Southeast Asia Treaty Organization (SEATO) was formed in Manila as a collective defense pact to stem communism. The members are the United States, Britain, France, Australia, New Zealand, Pakistan, the Philippines and

³⁶Tobing, Dio Herdiawan 2018:155

³⁷Alagappa, Muthiah 1993:445

³⁸Jones, Lee 2009: 16

³⁹ Silverman, Jerry.M 1975: 56,82

Thailand. However, SEATO is seen as weak in credibility because it only involves two countries in the South East Asia region.

The establishment of SEATO became a gateway to Southeast Asian regional cooperation. After the failure of SEATO, the Association of Southeast Asia (ASA) as a precursor to ASEAN was formed in 1961 where its enthusiasm was explicitly an anti-communist organization and was directed against no block.⁴⁰ The concept of the Non-interference principle actually emerged during the 1955 Bandung Asian-African Conference (KAA). The spirit of non-interference is motivated by decolonization. The spirit of decolonization that emerged between Asian and African countries at that time arose because of the desire of self-determination and maintain the country's sovereignty from the intervention of other country. This is explained by Robert Jackson as "negative sovereignty" where in addition to the state maintains positive sovereignty/empirical sovereignty.⁴¹ The Bandung Conference, which is part of the KAA, is also an "injection" of the ASEAN formation which finally lead to the 1967 Bangkok Declaration as the reference for the 1967 ASEAN Declaration.⁴²

THEORETICAL FRAMEWORK

Theory of Humanitarian Intervention

Steven P. Lee's theory of humanitarian intervention (HI) addresses a main argument that HI can be justified on the same basis as domestic coercion, that is, on the grounds of protecting individual cases where that interference would also lead to violations of individual rights of association.⁴³ HI is the use of military force by one state or a group of states against another state to promote respect for human rights among the citizens of that other state.⁴⁴ Steven configures the exception of HI from the focus of treating state sovereignty as its own moral category. Instead of using a standard approach, Steven adopted a cosmopolitan alternative approach that looked at the fundamental categories of moral justification of war, included HI, as individual human rights. The standard approach, which is identical to just war theory and sovereignty, assumes a basic discontinuity – represented by the idea of sovereignty – between the use of coercion in domestic and international level. Foreign interference can be morally assessed directly if it is intended to protect human rights as morally continuous with domestic coercion in terms of the rights its seeks to protect and the rights it would violate.⁴⁵ It can be justified directly from a moral perspective if it is intended to protect human

⁴⁰ Acharya, Amitav 2008 : 22

⁴¹ Jackson, Robert 1990:27

⁴² Acharya, Amitav 2008 : 22

⁴³ Lee 2010: 42

⁴⁴ Ibid: 22

⁴⁵ Ibid: 37

rights in a morally sustainable human right with domestic coercion, in the sense that each can morally assessed directly in terms of the rights to be protected and rights to be violated.

Reinforcing the former theories, Steven addresses the proper scope of HI by considering limitations in regard to the domestic case and then seek to generalize them to the international case.⁴⁶ He suggests to determine HI by weighing our reasonable expectation of the rights that the interference would protect against our reasonable expectation of the rights of association that the interference would violate.⁴⁷ Underlining the point from Henry Shue formula, state power should be used in order to protect human rights, that is, to keep individuals from violating the rights of others.⁴⁸ Then, Steven added that the scope of the usage is limited and should not be used to tackle all domestic human rights violations because it would lead to counterproductive. These limitations are based on two general categories: (1) efficiency limitations, whether it is efficient enough to use state power with the consideration of the probability to achieve the goal and cost of that action, and (2) rights-balancing limitations, regarding to the costs in violating rights that might come along with the efforts to protect rights.⁴⁹

Specification in Implementation of Limiting Non-Interference Principle

It has been such a long debate that this non-interference principle is considered as an obstacle in handling humanitarian issues in the Southeast Asia region because it is not relevant to the humanitarian issues of the region, as happened in Myanmar, particularly Rohingya issue, conflict in Moro, The Philippines, and even older case, like Hmong ethnical issue in Laos, and so forth. Compared to the German significant role to overcome refugee crisis in 2015, ASEAN's response looked unenthusiastic because of the restriction from non-interference principle that does not accommodate humanitarian intervention. Humanitarian intervention is a form of *rescue*, its purpose is to rescue individuals in another state caught up in a humanitarian crisis, generally brought about by rights violations imposed by their fellows.⁵⁰ Therefore, as George Lucas addressed, that humanitarian are not, nor are they intended to be, acts of war on the part of the intervening forces, thus HI should be justified in order to maintain the ongoing humanitarian crisis.⁵¹ Therefore, we suggest that ASEAN needs to do limitation of non-interference principle's scope, allowing intervention in the case of humanitarian crisis. The principle of non-interference should only be applied in each member's government affairs.

⁴⁶ Ibid: 38

⁴⁷ Ibid: 42

⁴⁸ Shue 1996

⁴⁹ Lee 2010: 39

⁵⁰ Ibid: 24

⁵¹ Lucas 2004

The Condition and Evaluation of Hmong Ethnic Issue in Laos

The problem that adhered with the existence of Hmong ethnic in Laos is one of the longest unsolved crises in the Southeast Asia region. Hmong people has been persecuted by the Lao government since 1975, when they were marked as traitors because of their support to the US troops during the Vietnam War.⁵² This conflict became complicated due to the involvement of several external actor, such as US and Vietnam who took advantage of Laos's condition. Despite the magnitude of the bloodshed, Hmong people are still struggling against governmental ethnic cleansing.⁵³ The government of Laos has been accused for committing genocide against Hmong, with more than 100.000 killed from a total of 400.000 population.⁵⁴ With the help from the Vietnamese army, Laos has been criticized for humanitarian violation which include massacres, terror bombing, and mass rape. This incident forced Hmong to leave Laos in order to escape from governmental persecution. Thailand is the main destination for refugees, but since Thailand is not a party of the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol, they decided to return Hmong refugees to Laos.⁵⁵

While ethnic cleansing and refugees exodus became a threat to the peace and security in the Southeast Asia region, ASEAN as a regional organization did not put an adequate effort to solved this prolonged conflict. The main reason behind this unfortunate condition is due to the normative limitation of the principle of non-interference that traditionally adhered to the members. The Lao Government did not approve humanitarian access aimed to distributing aid and monitoring violations against human rights. This secured attitude of Laos urged Amnesty International to speak up, invoked R2P in relation to the Hmong that the Lao authorities have responsibility to protect them, not least because of the children involved, and must end all attacks against the Hmong people.⁵⁶ While the number of victims and refugees keep increased, the Laos authorities denied Amnesty's claim regarding the attack to Hmong villages and civilians. On this opportunity, they reaffirmed the importance of sovereignty and non-interference principle, noting that the threat of use of force and other violations of sovereignty hindered the cause of international cooperation on peace and security.⁵⁷ Unfortunately, the Hmong ethnic cleansing seems to have been forgotten by the

⁵² Martin 2018

⁵³ Congressional Research Service 2018: 2

⁵⁴ Senate of United States 2018

⁵⁵ Médecins Sans Frontières 2007

⁵⁶ The Asia-Pacific Centre for the Responsibility to Protect 2009: 30-31

⁵⁷ Ibid: 31

international community, including ASEAN which tends to ignore this issue.

The Condition and Evaluation of Rohingya Ethnical Issue in Myanmar

Myanmar is one of the countries that has become the world's attention with humanitarian issues, namely the issue of the Rohingya which is a Muslim group in Rakhine where they have their own culture. This problem made the exodus of Rohingya refugees to neighboring countries thus, they were disturbed. It caused by Myanmar government who rejects the Rohingya as one of the nationally recognized ethnic groups. Most of them do not have citizenship. The basis for denial of citizenship had existed since 1947 where to be declared indigenous had to exist within the territory of Myanmar before 1826 and when Britain controlled parts of Burma (Myanmar) also stated that neither British nor Burmese documents mentioned the Rohingya ipso facto 'disqualified' them from citizenship.⁵⁸ In addition, in 1982 General Ne Win imposed Citizenship Law in Burma and in the law rejected the existence of ethnic Rohingya.⁵⁹ Therefore, as "foreigners" the Rohingya people do not get services from the government and not allowed to work. Besides that, their movements were also

restricted. They became victims of rape, torture, forced labor.⁶⁰

Rohingya tribulations caused them to flee to other regions such as Thailand, Indonesia and so on. Therefore, this issue has been raised as an international issue because it disrupts the sovereignty and security of the country which is visited by refugees. The rejection occurred in Thailand alongside with the statement of the Thailand's Prime Minister, Prayuth Chan Ocha, who stated that *"if Thailand accommodated them, then who else would come freely to Thailand"*.⁶¹ Malaysia is also on the same statement as Thailand where they only give a little debriefing and releasing back into the ocean. Whereas Indonesia, which initially carried out the same actions with Thailand and Malaysia finally, accepted and accommodated voluntarily. However, their status is illegal immigrants because they do not fulfill Law Number 6 Year 2011, article 8 paragraph 1 concerning Immigration.⁶²

The humanitarian problem made instability and also to be an international responsibility in particular, ASEAN as a regional organization in Southeast Asia. On the other hand, ASEAN applies the principle of non-interference which supports the absence of interference with the internal

⁵⁸Singh, Bilveer 2014: 41

⁵⁹Nuswanto, Heru S. 2012

⁶⁰Mohajan, Haradhan 2018

⁶¹Tuwo, Andreas G. 2015

⁶² Law of the Republic of Indonesia Number 6 of 2011 about Immigration

affairs of the members. However, ASEAN in its charter also stated

*"To strengthen democracy, enhance good governance and the rule of law and promote human rights and fundamental freedoms."*⁶³

However, it cannot be denied that ASEAN still has to respect Myanmar's sovereignty thus, Myanmar can reject or accept the 'assistance', which is seen in Myanmar's actions which still isolate some regions. In addition, it blocked all United Nations assistance for humanitarian assistance in the form of civilian needs such as food, water and medicine supplies.⁶⁴ Therefore, there is no openness of a country in the case of a humanitarian crisis due to the prevailing non-interference principle in ASEAN which makes it difficult for an authority to help resolve the problem thus, it does not disturb other countries.

The Condition and Evaluation of Moro Ethnical Issue in Philippines

The combating between government forces and rebels in the Philippines gave a big attention for humanitarian issue. This case started when the Spanish-United States (US) war in 1898 and was won by US. It was because US formed a new country by combining 3 regions with different

backgrounds, especially the Moro Nation who refused to join the Philippines. The different culture was ignored by the US and continued to liberate the Philippines on July 4, 1946. After it, The US Administration conducted a migration for northern Christians to the south in order to improve the economy thus, Moro became an increasingly marginalized or minority group. The conflict has been followed by several peace agreements, namely, Tripoli Agreement 1976, Jeddah Accord 1989, and the 1996 Final Peace Agreement, however, the agreement failed.⁶⁵

The incident led to the MNLF⁶⁶ movement fought for the welfare of Muslims in the southern region. Then, the MNLF was formed due to discriminatory treatment by the Philippine government over the Moro community. The Moro people did not get worship facilities and the government did not amend to make the place of worship. Not only places of worship but also, schools.⁶⁷ The government is furious that this will eventually happen to the 'Jabidah Massacre' and in 1974 there was a massive massacre.⁶⁸ After this harsh reality, the MNLF reconciled with the government in 1996 with an agreement that the MNLF obtain the Mindanao Muslim Autonomous Region .⁶⁹

⁶³ ASEAN 2008:at art 1(7)

⁶⁴ Holmes, Oliver 2017

⁶⁵Harber, John. D. June 1998:108

⁶⁶ According to Santos et al. (2010:474) Moro National Liberation Front is an Islamic separatist organization based in the southern Philippines. It seeks an independent Islamic state or autonomous

region for the Filipino Muslim minority, known as the Moro people, who live primarily in the Philippines' Mindanao region.

⁶⁷ Peng Hui 2012:5

⁶⁸Budiarti, Nissa. 2009:97

⁶⁹ BBC 2013

However, in 2013 the MNLF took hostage civilians.⁷⁰ This is because the MNLF still wants the establishment of an independent Islamic state thus, the MNLF controls a portion of southern Zamboanga in order to confirm the claim of the establishment of an independent Islamic state. However, the Philippine military itself immediately took action by carrying out a military operation to oust the rebels and release the hostages.

Thus, the Philippines as a member of ASEAN should uphold humanitarian values as stated in the ASEAN Charter however, they caused this riot. Therefore, ASEAN must play a role in this humanitarian issue. Nonetheless, the enforcement of human rights issues in ASEAN is still at odds with the international community which the human rights discourse has shifted the principle of absolute state sovereignty.⁷¹ In addition, ASEAN's difficulties in helping it, because the Philippines does not fully allow ASEAN to act. The Philippines is trying to maintain its sovereignty by completing itself. On the other hand, this case was resolved by another actor who was able to mediate well, namely Muhammadiyah.⁷² Therefore, this problem cannot be directly dealt with by ASEAN as a regional region that must be able to protect the public interest without differences in the minority or majority.

The Condition and Evaluation of Refugee Crisis in Germany

The conflict in Syria involving the Government of Bashar al-Assad and various other forces leads to displacement within the country and across the region.⁷³ As an effect, Europe has been struggling to cope with a high inflow of refugee and reached a peak on 2015.⁷⁴ The number of first time applicants in the European Union (EU) from Syria reached 363.000 with 85% of them applied for Germany.⁷⁵ According to the UNHCR's annual asylum trends report between 2009 and 2013, Germany is ranked among the top five countries receiving asylum claims⁷⁶ and has demonstrated a significant commitment to alleviating the Syrian refugee crisis.

Described as an open society, Germany has a structured and organized mechanism regarding refugees. As Thomas de Maiziere stated in April 2015 that dealing with refugees should be considered as a responsibility for the entire EU, thus Germany along with all EU's member states worked together in collaboration and cooperation to overcome this problem.⁷⁷ Regarding to this matter, EU as regional organization took a significant role by having a well-established coordinations with state members to tackle this problem together. EU adopted asylum policies aimed

⁷⁰ Stanford University 2018

⁷¹ Suganda, Fatimah 2016:10

⁷² Asia Peacebuilding Initiatives 2013

⁷³ Ostrand 2015: 255

⁷⁴ Akin 2017: 83

⁷⁵ Mihaela 2018: 5

⁷⁶ Ostrand 2015: 257

⁷⁷ Peixoto 2015: 43

to offer appropriate status to any third country national requiring international protection in one of the member states and ensure compliance with the principle of non-refoulement.⁷⁸ The regulation imposed by EU is not only consider each member condition, but also accommodate the humanitarian responsibility and morality aspects.

Beside following EU's mechanism, Germany adopted a number of related policies such as the Asylum Act that outlines process under which asylum is applied for and granted in Germany, asylum grantees receive temporary residence permit, insurance benefits, and integration assistance.⁷⁹ Germany's policies related to refugee is an important model due to its efforts to fulfill its moral duties to refugees. Based on German Basic Law, equivalent to the Asylum Law and the Integration Law, the policy includes state provision of primary conditions such as housing, medical care, minimum living expenses, also includes job training and language courses in order to provide social and labor market integration.⁸⁰ Besides crucial primary needs, refugees need to be welcome and addressed positively in order to maintain the stability in the hosted country. Hence, German engaged the role of civil society and NGOs through the grass-root movement. In acts of humanity, vast numbers of people

volunteered to maximizing the role of Government by supporting refugees in order to reduce their pain, confusion, and isolation.⁸¹

The Dilemma of Non-Interference Principle with Humanitarian Intervention as Responsibility To Protect

The existence of a non-interference principle as a basis for survival in Southeast Asia regional organizations provides peace for each member, because sovereignty is maintained when no other country can disrupt the internal affairs. In addition, it is followed by four obligations that must be obeyed by ASEAN member countries,⁸² namely restrictions to criticize any action from a member country where each country has the right to resolve its problems in accordance with applicable internal rules, refusing recognition or asylum applications against insurgent groups that can disrupt stability of neighboring countries, and support for actions that oppose subversive activities that disrupt ASEAN stability.

On the other hand, there are some dilemma regarding the consistency of the implementation of the principle of non-interference with humanitarian intervention that leads to R2P. This principle has a good effect on inter-state relations where there is no suspicion or misperception of one another due to intervention. Therefore, most

⁷⁸ European Parliament 2018: 3

⁷⁹ Harvard Law School Library 2016: 1

⁸⁰ Funk 2016: 290-291

⁸¹ Ibid: 292

⁸² Archaya, Amitav 2009

ASEAN member countries continue to choose to use traditional views,⁸³ namely, applying these principles thus, there is no interference from other countries even for humanitarian problems that occur in a country. This is due to fears over the vulnerability of humanitarian interventions where each country is still trying to build its own sovereignty. This principle is also supported by the widespread influence of political reality and international consensus on the boundaries of sovereignty. Therefore, the principle of non-interference is still consistently used in the Southeast Asia region.

Meanwhile, humanitarian intervention is intensified with the spirit of Responsibility to Protect where this intervention is a response from a country that can no longer overcome and protect its people. The ICISS report also states if, indeed it is appropriate to use military action against another state with the purposes of protecting people at risk.⁸⁴ However, humanitarian intervention carried out is still difficult to penetrate state sovereignty. This is because the adjustments made by ASEAN to its member countries are if, a country gets a problem then, the country has the right to resolve in its own way but, if the country is already incapacitated, the international community or regional organization can help the country. So far,

humanitarian intervention has only been limited to humanitarian assistance in the form of food, clothing and shelter, although sometimes the state has refused the assistance.

Standardization

1. Limiting the Principle of Non-Interference only in the Scope of Sovereignty

The absence of this interference as a form of mutual respect for sovereignty. But, in other side the limitation of non-interference principle based on the cases is important to do. Robert Jackson said "Sovereignty as a legal institution that is political order based on independent states both principally and internationally".⁸⁵ State sovereignty implies responsibility to protect the people but, when a population is suffering serious harm and the state is unable to settle, the principle of non-intervention yields to the international responsibility to protect.⁸⁶ Therefore, the principle can only be used in the sovereignty scope and give a space to the humanitarian crisis. There is nothing to fear, as long as the use is right in its position where the principle is not over intervention.⁸⁷ Thus, in discussing the humanitarian

⁸³ Bellamy, Alex J. & Drummond, Catherine 2011:196

⁸⁴ ICISS 2001:9

⁸⁵ Jackson, Robert 1999:9-34

⁸⁶ ICISS 200:13

⁸⁷ Ts'aj, Y., & Lee, S. 2013:54

issue, do not cross the boundaries of sovereignty. The interveners can only enter the realm of problem solving and assistance, not up to the legal institution as stated by Jackson.

The principle of non-interference needs more flexible to face up the problem especially, humanitarian issues. One step can be done by allowing freedom for others to help in the humanitarian crisis. This is a form of humanitarian intervention, not as a threat to the principle of non-interference. This action as advocated by R2P, which is one of the foundations for doing so, is aimed at human security. A human security that was introduced by the United Nations through the 1994 Human Development Report, "Human security is about providing priority services thus, people can exercise choices safely and freely".⁸⁸ Not only about that, but also the UN Charter affirmation principle of non-interference in the domestic affairs of a sovereign state; it also offers international cooperation in promoting human rights.⁸⁹ Therefore, there is no reason for state to block the humanitarian assistance even, it will be humanitarian intervention.

2. Maximizing the ASEAN Human Right Declaration and the AICHR TOR by promoting R2P Changes in the norms of international relations, has entangled humanitarian crisis an important issue in it. This encourages the formation of human rights mechanisms at the regional level which are expected to be more effective because of the integration of factors between countries in the formation of a regional organization. The ASEAN Intergovernmental Commission on Human Rights (AICHR) present as a body that has a big role to promote and protect the human rights in regional context as stated in the AICHR TOR.⁹⁰ In handling of the Rohingya Crisis, according to the report from The Jakarta Post where the AICHR has made regional approach but the situation on the ground has not been easily improved.⁹¹ It is reflected AICHR's lack of response of humanitarian crisis in the region. AICHR's failed response to the Rohingya crisis is influenced by the limited mandate of the AICHR to the principle of non-interference, as. However, ASEAN as a regional organization should generalize any form of humanitarian crisis that occur in a country as security threat to its

⁸⁸ United Nations Development Programme 1994:23

⁸⁹Europarl 2005

⁹⁰ASEAN Intergovernmental Commission on Human Rights 2009:5

⁹¹Setrianti, Dian 2018

region, so that the use of force is needed in the form of humanitarian intervention.

In other hand, it should be remembered that one of AICHR's goals is:⁹²

1.6 International human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Program of Action, and international human rights instruments to which ASEAN Member States are parties.

Also, the AICHR's mandate and functions including:⁹³

4.1. To develop strategies for promotion and protection of human beings' rights and fundamentals of freedoms to complement the building of the ASEAN Community;

4.2. To develop an ASEAN Human Rights Declaration with a view to framework for human rights cooperation through various ASEAN conventions and dealing with other instruments human rights;

4.3. To enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information

With this mandate, the AICHR as a humanitarian authority in ASEAN has a room to look in the Charter VII UN where the basis of humanitarian intervention was found, as it is referred to the international human right standards. Having to say this, AICHR can maximize its function to formulate a humanitarian intervention strategy through the promotion of R2P where the development of this concept is still become a task in ASEAN due to non-interference principle. However, it should be remembered that globalization has blurred the public private divide among nations, including if a country fails to protect human rights against its own people. AICHR can take a part to promoting R2P by forming institutions at local, national and regional levels. It is because humanitarian crisis does not develop overnight, therefore at each level should have the capability to monitor the crisis as they grow. Consistency in building this R2P can be done through academic institutions, or institutions that focus on policy research.

3. The Use of Military Forces as a Response to Humanitarian Crisis Accompanied by Observer. The ongoing humanitarian crisis in

⁹²ASEAN Intergovernmental Commission on Human Rights 2009: 5

⁹³ Ibid: 8

Southeast Asia region remain unsolved while ASEAN as a regional organization is seen as increasingly valuable in seeking solutions to emerging conflict in its respective areas. In this regard, it is important to deepen strategic approaches to emerging crisis and improve ASEAN's collective response to peace and security threats. Combatant as a crucial part of national security posture should show their useful support in terms of conflict prevention, management, and resolution. However, the use of military forces should be accompanied and balanced with other instruments of power.⁹⁴ Hence we proposed that ASEAN should make an act by using military forces in the face of humanitarian crisis followed by its observer in order to keep them in track. This deployment is an implementation of ASEAN Declaration, stating that "the aims and purposes of the Association are to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter".⁹⁵

Military forces will be working under the authority of ASEAN in order to promote peace and security, along

with state members and local communities. The rapid deployment of military forces seeks to protect humanity and maintain stability in conflict areas. Regarding to this matter, the joint military forces will allow national armed forces across each member states to coordinate and work together under the command of ASEAN. This deployment will be reinforced by observers to keep track of and oversee forces working in accordance with international law. The placement of military forces along with observers will be approved in response to the failure to respect international humanitarian law or to combat human rights violations.

CONCLUSION

ASEAN as a regional organization is now facing dilemma in carrying out "ASEAN Way". The principle of non-interference which is part of the ASEAN WAY, limits ASEAN to resolve the humanitarian crisis that occurs in Southeast Asia. Besides that, this principle has positive and negative sides. As the positive sides, there is no misperception between countries and maintaining the state sovereignty. Meanwhile, the negative sides are the problem will never be completed and cause many victims. Therefore, a dilemma arises to

⁹⁴ Oliveira, Antonio 2016: 34

⁹⁵ ASEAN 2016

keep the principle as an ASEAN identity or implement R2P by allowing humanitarian intervention. This paper reckons Steven P. Lee's theory of humanitarian intervention, considering humanitarian intervention as an instrument to protect and promote respect for human rights by using moral considerations as the main foundation.

In practice, the principle of non-interference is discordant with the high number of humanitarian violations occurred in Southeast Asia region. The zero access to the humanitarian intervention as an effect of non-interference principle compels the conflicting countries to remain satisfied with humanitarian assistance. Whereas in the long-standing and protracted case such as Hmong ethnical issue in Laos, Rohingya, and Moro Conflict in Philippines. Humanitarian intervention is needed to solve the root cause of the problems. The principle of non-interference encourages reluctance behavior between state members, thus the poor integration in ASEAN cannot develop, especially in the case of humanitarian. Humanitarian crisis that occurred in particular country is fully delegated to domestic, while it is bothering neighboring countries and ASEAN as a regional organization can be optimized to tackle such cases. This research finally proposed standardization to set the limitation of non-interference principle by:

1. Providing space for humanitarian issues to be resolved with assistance from any party. This principle only

applies this principle to the corridors of state sovereignty. It aims to create human security.

2. Maximizing the ASEAN Human Right Declaration and the ASEAN Intergovernmental Commission on Human Rights (AICHR) TOR by promoting R2P at local, national and regional levels through academic institutions, or institutions that focus on policy research. By forming these institutions there will be a consistency of monitoring humanitarian crisis at each level.
3. Under the command of ASEAN, humanitarian intervention can be done by using military forces accompanied by observer as a response to humanitarian crisis. This deployment facilitates armed forces across each member state to work together in order to protect humanity and maintain stability in the region.

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INDONESIA DEFENSE DIPLOMACY STRATEGY IN ASEAN DEFENSE MINISTERS' MEETING-PLUS (ADMM-PLUS) TO BUILD ASEAN SECURITY ARCHITECTURE IN COUNTER-TERRORISM COOPERATION

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ABSTRACT

The increasing of terrorism activities in Southeast Asia is faced with differences in defense capabilities between ASEAN countries, differences in perspectives about terrorism, and lack of international multilateral cooperation to combat terrorism. The establishment of ADMM in 2006 and ADMM-Plus in 2010 as multilateral cooperation to form a security architecture intended to overcome these problems. This study aims to analyze the role of ADMM-Plus and Indonesian defense diplomacy strategy to achieve national interests in the field of counter-terrorism. This study uses a qualitative descriptive method with processual approach to analyze the processes of Indonesia defense diplomacy in ADMM-Plus Expert Working Group on Counter-Terrorism (EWG-CT). The theories used in this study were the theory of regionalism, regional security complex, and defense diplomacy. The theories can be used to analyze the dynamics of regionalism in ASEAN that has regional security complexes in it. The application of defense diplomacy theory can be used to analyze the role of Indonesia in ADMM-Plus as a multilateral cooperation in the field of defense to combat terrorism in order to achieve national interests. The results of the study show that ASEAN countries use this forum to create a defense cooperation architecture under ADMM and ADMM-Plus. Defense diplomacy was used as a medium in forming those cooperation. Indonesia applied direct model defense diplomacy to contribute in combating terrorism as well as achieve its national interests such as stability and security in the region, create confidence building measure (CBM) among ASEAN countries, and develop its defense capability in counter-terrorism.

Keywords: *Regionalism, regional security complex, defense diplomacy, ADMM-Plus, counter-terrorism cooperation*

INTRODUCTION

Indonesia Defense Diplomacy Strategy in ASEAN Defense Ministers' Meeting-Plus (ADMM-Plus) to Build ASEAN Security Architecture in Counter-Terrorism Cooperation

Does ASEAN Matter? This fundamental question is important related to various challenges that have been and are being faced by ASEAN for more than fifty years. Marty Natalegawa (2018), former

Indonesian Minister of Foreign Affairs, has an optimistic view towards ASEAN's success in making condition from "trust deficit" into "strategic trust" among its country members. The facts show that ASEAN has managed to survive for more than fifty years since its establishment in 1967. This is can be a strong foundation to deal with various types of defense and security challenges in

Southeast Asia region. The end of the Cold War marked the beginning of multipolar era with the emergence of new powers other than the United States and Russia. This was driven by decisive power of globalization and technology that changed the future of global politics. Rosenau (2006a) states that there are four phenomena caused by technological developments and globalization. These phenomena include organizational explosion, skill revolution, upheaval mobility, and bifurcation of global structures. Organizational explosion is a phenomenon of the emergence of new organizations in the global community that driven by mobility upheaval across national borders from global society. Then, skill revolution has increased the ability of the world community in various fields so that they create the phenomenon of bifurcation of global structure, which means the emergence of new actors in international relations that were previously only filled by states (Rosenau, 2006b).

The situation described by Rosenau in line with situation we experience today by looking at the emergence of various organizations in the world. One of the organizations is a terrorist group that currently become a prominent actor in the international world. This phenomenon is also driven by the development of technology that makes the ability of terrorist groups evolve dangerously. The phenomenon of mobility upheaval strengthens the formation of a terrorist

group's network around the world. The peak of the terrorist attacks took place in 2001 in the United States. The event known as 9/11 was masterminded by a terrorist group namely Al-Qaeda. After the incident, the United States declared war on terrorist groups around the world with the "Global War on Terror" campaign. A few weeks after 9/11 the United States announced that Southeast Asia was a "second front" in the context of the fight against terrorism around the world. The terms of "second front" is based on the existence of Abu Sayyaf group in the Philippines and the Jemaah Islamiyah (JI) group in Indonesia. The Abu Sayyaf group has long carried out guerrilla warfare, insurgencies, and acts of terror against the government. On the other hand, the Jemaah Islamiyah (JI) group has carried out bombings in Indonesia in 2002 (Bali Bombing 1) which caused many lives from civilians. This phenomenon marks the strength and militancy development of terrorist groups in the Southeast Asian region (Smith, 2015).

Terrorism in Southeast Asia region become a serious problem for ASEAN countries. ASEAN needs to build a comprehensive cooperation to overcome this problem. However, there are still some obstacles faced by ASEAN in creating multilateral cooperation in combating the threats of terrorism. First, ASEAN countries have different views and ways in dealing with terrorism. Second, there are differences in defense capabilities among ASEAN

countries in terms of defense infrastructure and experience in combating terrorism. These problems can lead to spillover terrorism caused by the failure of a country to crush terrorism in their land so that it can spread to other countries. To overcome these obstacles, a multilateral cooperation is needed in ASEAN to facilitate dialogues, discussions, and enhancement of defense capabilities in combating terrorism. With the increasing activity of terrorist groups in Southeast Asia, the discussion on defense and security is one of the main topics in ASEAN.

Encouraged by the awareness of the need for multilateral cooperation at the ASEAN level in facing defense and security threats, one of them is terrorism, the ASEAN Defense Minister's Meeting (ADMM) was formed on May 9, 2006 in Kuala Lumpur. This is done by adopting The ASEAN Security Community (ASC) Plan of action held at the 10th ASEAN Summit. ADMM is the highest forum at the ASEAN level in terms of defense and security cooperation that managed by the defense ministers of ASEAN countries. This forum was created to build mutual trust through the same understanding in facing defense and security threats. Also, it is to increase transparency and openness so it can eliminate security dilemmas (ADMM, 2018, para 1-2). In 2010, ADMM was developed into ADMM-Plus with the adoption of eight new memberships from countries outside ASEAN. The involvement of the new eight countries can strengthen the multilateral

cooperation in defense sector. Those new countries are Australia, United States, China, India, Japan, New Zealand, South Korea, and Russia. The involvement of the eight developed countries is intended to strengthen cooperation and enhancing defense capabilities among the ADMM-Plus members.

The defense ministers of the ADMM-Plus country members agreed on five areas of cooperation to focus in handling defense and security problems that arise in the region. The five areas of cooperation are counter-terrorism (CT), maritime security, military medicine, peacekeeping operations (PKO), and humanitarian assistance and disaster relief (HADR). To facilitate these areas of cooperation, Experts' Working Groups (EWGs) were formed (ADMM-Plus, 2018, para 2), including the Experts' Working Groups on Counter-Terrorism (EWG-CT) which were the focus of this research. In 2013 and 2016, new EWG were established namely Humanitarian Mine Action (HMA) and Cyber Security. The formation of ADMM and ADMM-Plus is driven by the phenomena of regionalism and regional security complex. The factors come up in today's multipolar global situation and give understanding that threats to defense and security tend to arise from the surrounding environment. To overcome this threat, cooperation with neighboring countries is needed to create regional stability. The media used in defense and security cooperation in ADMM and ADMM-Plus is

defense diplomacy. In fact, ADMM and ADMM-Plus are the result of defense diplomacy.

Indonesia plays an important role in the establishment of ADMM and ADMM-Plus. In terrorism issue, Indonesia has massive resources in the form of defense forces and long experiences in combating terrorism. This makes Indonesia has a central role in collaborating counter-terrorism cooperation in ADMM-Plus, which in this case is carried out inside Experts' Working Groups on Counter-Terrorism (EWG-CT). The defense diplomacy strategy undertaken by Indonesia in EWG-CT is aimed to achieve national interests in the field of defense and security. Indonesia certainly needs comprehensive and constructive multilateral cooperation to create regional stability by erasing terrorism threats in the region. ADMM-Plus is the right forum to achieve Indonesia national interests and project its leadership.

METHOD

This research used descriptive qualitative method with Dawson's Processual Approach (2014). This approach serves to analyze the processes in an organization by using several contexts that include political processes, power relations, and decision-making processes within an organization. Processual approach can be used as an analytical tool related to aspects

of "why" and "how" in a process within the organization so that mechanisms and results can be identified. In short, processual approach aims to examine the process of change that occurs in a certain period of time by looking at existing patterns to gain understanding. There are three elements in this approach, namely internal context, political activity within organizations, and substance of change.

Elements of Processual Approach

Internal context. Consist of people, technology, core business, history, and culture. Internal context can also infected by external activities like business market shift, legislative change, social events, and political events. In this case, internal context is the increasing of terrorism activities in Southeast Asia region.

Political activity within organizations. Consist of collaboration and conflict inside individual, group, or external process like strategic alliance and political lobbying. This aspect is a response from internal context. In this study the cooperation among ASEAN countries and other countries outside ASEAN in ADMM-Plus is political activity within organizations.

Substance of change. Consist of content, scale, and scope of change. This aspect is about the result of the internal context and political activity within organizations that

can be seen through the process, change, and development in the ADMM-Plus forum.

RESULT

Defense cooperation in the ADMM-Plus Expert Working Group on Counter Terrorism (EWG-CT) forum was formed on the basis of the development of threats in the Southeast Asian region. Regional organizations such as ASEAN have used these institutions as discussion forums in order to create defense architecture schemes in facing the development of diverse threats to defense and security. In terms of counter-terrorism, the establishment of an Expert Working Group on Counter-Terrorism (EWG-CT) is used to directly address the problem. The forum serves as a place of discussion, builds confidence building, and collaborates to improve the defense capabilities of country members. This is important to prevent the occurrence of terrorism spillover phenomenon which is rooted in the inability of a country to crush terrorism in its territory.

Indonesia has national interests in safeguarding the Southeast Asian region from the threats and instability caused by terrorist groups. To achieve this goal, Indonesia has always been active in various forums held in ASEAN. Even Indonesia has a central and significant role as the driving force for multilateral cooperation at the

ASEAN level. Some of Indonesia's initiatives approved and implemented in ASEAN are the establishment of the cooperation of the Our Eyes Initiative as a forum for strategic information exchanges among ASEAN countries and the establishment of the Trilateral Maritime Patrol in the Sulu Sea between Indonesia, Malaysia and the Philippines. Indonesia has general and specific objectives. General objectives include multilateral cooperation in order to erase terrorism threats in the region, improve defense capability in counter-terrorism, and build mutual trust. On the other hand, the specific objectives of Indonesia are to achieve the national interest (*strata mutlak*) which includes national sovereignty, national security, and national unity. These objectives have been consistent with the objectives contained in the 2007 and 2015 National Defense Strategies that written in Indonesia Defense White Paper.

DISCUSSION

The Emerge of Terrorism Threats in Southeast Asia and Regional Security Complex as Internal Context

The end of World War II was followed by process of decolonization in almost every corner of the world, including Southeast Asia region. The decolonization process created many new countries which were separated from colonialism and gain its freedom. These new countries then tried to participate in the arena of international politics and show

their existence. The formation of the Association of Southeast Asia Nations (ASEAN) in 1967 marked the phenomenon of regionalism. Archarya (2007a) states that regionalism is a consistent feature after the end of World War II. He added that at this time the development of regionalism had entered a new phase called "new regionalism". "New regionalism" views if the phenomenon of regionalism has grown to become more comprehensive and gave birth to new actors other than states. The aspects of discussion in new regionalism are also increasingly diverse which include economics, politics, social, demography, and environment (Archarya, 2007b).

Similar to Archarya's "new regionalism", Wunderlich (2007) states that currently regionalism has reached the second wave which driven by globalization and economic politics. The new regionalism or the second wave of regionalism has triggered the emergence of new actors in international relations, namely terrorist groups that pose threats to defense and security across the world. The 9/11 event which carried out by the Al-Qaeda became the most obvious example of the destruction of terrorist attack in the name of jihad. Roshandel and Chadha (2006) state that the rise of modern jihad began in 1979 that he called "Year Zero". From these jihad groups, Al-Qaeda became the most powerful. The forms of activities of these groups are implemented in inter-state war, struggle for independence, separatism, rebellion, and terrorism. The jihadist group

made the United States and Israel as the main targets that they considered to be disseminators of secularism and imperialism.

The existence of Al-Qaeda with the global jihadi movement managed to spread the ideology of jihad to other radical groups. Bierstaker and Eckert (2008) in their book *"Countering the Financing of Terrorism"* state that the global jihadist movement must be widely understood and not only focus on Al-Qaeda. They said that Al-Qaeda is affiliated with 30-40 terrorist groups that spread across Asia, Africa and Middle East known as the Al-Qaeda Network. Al-Qaeda has been proven to have helped fund, train, and carry out ideological doctrines to terrorist groups in Pakistan, Sudan, Afghanistan, Bosnia, Chechnya, and Mindanao. The groups indirectly formed the *World Islamic Front for Jihad against the Jews and the Crusaders* in February 1998. The group consisted of the Salafi Group for Call and Combat (GSPC), Moroccan Islamic Combatant Group (GICM), Takfir wal Hijra (TWH), Tawhid wal Jihad (al Qaeda of the Two Rivers), Lashkar-e-Taiba (LeT), Jemaah Islamiyah (JI), and Abu Sayyaf Group (ASG) (Thomas & Sue, 2008). The threats of terrorism are serious in the Southeast Asian region with the presence of terrorist groups such as the Abu Sayyaf, Jemaah Islamiyah, and several other terrorist groups in the Philippines and Indonesia. In other words, terrorism has become a serious problem related to defense and security in the Southeast Asian region.

The threats of defense and security triggered by terrorist group activities in Southeast Asia has made ASEAN countries have awareness to cooperate multilaterally. The cooperation is important to build the same perception regarding the threat of terrorism and formulate a strategy to overcome it. Buzan and Waever (2003a) states that post-colonization phenomena in many countries in the world make security at the regional level become important. They formulated a theory called the Regional Security Complex (RSCT) to dissect the dynamics of security at regional level. The main assumption of the Regional Security Complex Theory (RSCT) is that the threat to security in a region is impacted by the surrounding strategic environmental conditions rather than the long ones (Buzan & Waever, 2003b). RSCT uses a regionalist perspective approach that focuses on the locus of conflicts, threats and inter-state cooperation in overcoming those problems (Buzan & Waever, 2003c).

The use of RSCT is important as a tool to analyze the dynamics of defense and security cooperation in the regional level. An area inhabited by several countries is basically forming a unity of common concern in defense and security (Buzan & Waever, 2003d). This awareness made ASEAN begin to think about cooperation to facilitate security dialogues. The establishment of ASEAN Regional Forum (ARF), which was formed in 1994, become a response to security threats such as political instability

in Cambodia, high tension in the South China Sea region and the Korean Peninsula, and security dilemmas (Rosyidin, 2017). ARF has held various kinds of dialogue activities that have been routinely carried out. The agenda including ASEAN Military Intelligence Meeting, ASEAN Armies Rifles Meet, ASEAN Chiefs of Defense Formal Informal Meeting, the ASEAN Air Force Chiefs Conference, ASEAN Chiefs of Army Multilateral Meeting, and ASEAN Navy Interaction (Seng Tan, 2016).

ASEAN also created the ASEAN Political Security-Community (APSC) to accelerate cooperation in the political and security fields of the ASEAN region and global. APSC is an open and inclusive collaboration based on a comprehensive security approach. There are several forums conducted under APSC which include the ASEAN Intergovernmental Commission on Human Rights (AICHR), ASEAN Ministerial Meeting on Drug Matters (AMMD), ASEAN Foreign Ministers 'Meeting (AMM), ASEAN Regional Forum (ARF), ASEAN Defense Ministers' Meeting (ADMM), ASEAN Law Ministers Meeting (ALAWMM), ASEAN Ministerial Meeting on Transnational Crime (AMMTC) (Association of Southeast Asia Nations, n.d). These forums are the forerunners of the establishment of the ASEAN Defense Ministers' Meeting (ADMM) in 2006 and ADMM-Plus in 2010 as a regional cooperation forum that focused on defense and security issues including terrorism. The increasing threat of defense and security

caused by terrorist activities in Southeast Asia region has encouraged the creation of a regional security complex phenomenon. This, if according to Dawson's processual approach, can be seen as an aspect of internal context that can encourage the creation of political activities such as the formation of cooperation related to defense and security in ASEAN like ARF, APSC, ADMM, and ADMM-Plus.

The Role of Indonesia Defense Diplomacy in Counter-Terrorism Cooperation in ADMM-Plus as Political Activity within Organizations

Defense Diplomacy as an approach

Cooperation in an international relationship is a necessity. Driven by the power of globalization, the cooperative relationship is increasingly developed in order to maximize national interests. In a simple term, international relations is an activity involving two or more countries in bilateral and multilateral forums carried out to achieve certain goals. This relationship increased along with the swift flow of globalization that emerged after the cold war. In discussions about defense and security cooperation, a theory emerged that namely defense diplomacy. Cottey and Forster (2004a) state that defense diplomacy is a tool to create confidence building measure (CBM) in order to improve defense capabilities, to prevent and resolve global defense matters, and security problems. Defense diplomacy can be used as

a strategy for conflict prevention, cooperative relations, providing transparency in the military sector, and building a common understanding in military use in the field of defense and security.

History records that the use of the military in a collaboration is more intended to carry out balance of power, get the power of international politics, and have limited political goals. Progress in the past two decades shows that defense diplomacy has expanded its objectives. Defense diplomacy is currently aimed at achieving interests of defense and foreign policy more broadly. They called the change as new model of Defense Diplomacy. New model defense diplomacy has several characteristics. First, it uses military to build cooperation with potential enemies. This step can also be called strategic engagement. Second, western countries that adhere to a democratic system use cooperation and military assistance to promote civilian supremacy that provides a mandate to civilian institution to control military as well as helping to develop liberal democracy and a good system of government. Third, military cooperation and assistance have been increased to assist other countries in building capacity of peacekeeping operations and peace-enforcement operations. Old Defense diplomacy is intended to fight the enemy while the new defense diplomacy emphasizes cooperation, supports democracy, human rights, and

enhances defense capabilities (Cottey and Forster, 2004b).

	Defense diplomacy activities
1.	Multilateral and bilateral meeting with military and defense officers
2.	Appointing defense attaché in foreign country
3.	Bilateral agreement in defense cooperation
4.	Training of foreign military personnel and defense staff
5.	Exchange of information and insight regarding role of democracy in controlling and managing military institution.
6.	Exchange of military personnel, unit, and ship/vessel visits
7.	The deployment of foreign military personnel or defense officers in defense institution or military institution
8.	Joint training
9.	Providing military equipment and other aids
10.	Join military training in both bilateral and multilateral

Source: Cottey and Forster, 2004c

In the development of the theory of defense diplomacy, there are several overlapping opinions and ambiguities. In carrying out the partition of the concept of defense diplomacy, Gregory Winger (2014a) first started with a level in theory about how the state achieved its importance in a global

forum. After that, he explained the connection with defense diplomacy. According to Winger, defense diplomacy is the peaceful use of defense institutions from a country to co-opt other state government institutions to achieve their goals. The concept of defense diplomacy that is still problematic, according to Winger, is due to a gap between non-violent use of military force and international relation theory. In the theorizing of defense diplomacy, he combines defense diplomacy and soft power theory from Joseph Nye.

He then made a model in the form of direct and indirect models in the use of soft power to influence government policies. Indirect models are carried out by a country (the practitioner) to obtain public support from other countries (the target). When support from the target country has been obtained, it will form a political atmosphere that benefits the country (the practitioner). The public of the target country can put pressure on the government through demonstrations on streets. This model can be done by strengthening public diplomacy in the target country. The indirect model is described as follows:

Indirect model: Resource -> Public ->
Shape Political Atmosphere -> Elite
Decisions

While the direct model aims to influence the government of the target country directly (government to government). Activities that can support the success of direct model are bilateral and multilateral

state and international conferences. The direct model is described as follows:

*Direct model: Resource → Governing
Elites → Elite Decisions* (Winger,
2014b)

Winger (2014c) emphasizes the use of soft power in defense activities from one country to another. The use of non-violent aspects in the definition of existing defense diplomacy often limits experts to clearly defining defense diplomacy. According to him, defense diplomacy is an effort of a country to enter strategic thinking or interests of a country to another country in a harmonious collaboration. The use of military institutions in a peaceful manner in the frame of defense diplomacy is called by Winger as a soft power. This research uses direct model defense diplomacy to dissect defense cooperation carried out by Indonesia in the ADMM-Plus EWG-CT that conducted in the form of government to government collaboration.

Indonesia Direct Model Defense Diplomacy Strategy in ADMM-Plus EWG-CT

Resources

The terms *resources* in this discussion emphasize to activity or agenda made in the ADMM-Plus EWG-CT forum which was then used by Indonesia to achieve its national interests. From the various agendas and activities, Indonesia gets positive effects in achieving its interests. Winger stated that defense diplomacy carried out with direct

models requires mediums such as military-to-military contact, joint training programs, military member exchanges, ship visits, etc. (Winger, 2014). There are many agendas in ADMM-Plus which include ASEAN Defense Senior Officer Meeting (ADSOM), Expert Working Group (EWG), Ministerial Meeting, and others. (Lieutenant General (Ret) Yoedhi Swastanto, former Director General of Defense Strategy, Indonesia Ministry of Defense, personal communication, September 6, 2018).

From the various kinds of agendas carried out at ADMM-Plus EWG-CT, Indonesia is very active. This has caused Indonesia to become a central player in the issue of counter-terrorism. Indonesia participated in various activities such as dialogue forums, seminars, as speaker in seminars, and as the first coordinator of the ADMM-Plus Expert Working Group on Counter-Terrorism (EWG-CT) which ended with created a joint exercise on counter-terrorism in 2013 (Lieutenant Colonel Ikwan Achmadi, Section Head of Peace Mission in Indonesia Ministry of Defense, personal communication, August 30, 2018). Indonesia has strong modalities in implementing direct model defense diplomacy. This is because Indonesia very active and plays an important role in following and managing activities carried out in the ADMM-Plus forum. A concrete example of Indonesia's contribution is be the first coordinator in expert working group on counter-terrorism (EWG-CT) for 2011-2013.

During this period Indonesia became the coordinator with the United States.

In that period, Indonesia and the United States succeeded in carrying out a large-scale counter-terrorism exercise in Sentul, Indonesia. The training was attended by hundreds of delegates from ADMM-Plus country members. These exercises are carried out indoors (table top exercise) and outdoors (field exercise). Tabletop exercise (TTX) is very important to discuss and share information on the development of terrorism and how to deal with it. In a report released by the Naval Post-Graduate School (2013) related to the implementation of the 2013 ADMM-Plus EWG-CTX in Sentul, it was stated that TTX is a place for delegates to discuss in the face of the complexity of strategic decision making. The hope of a strategic decision can be implemented into a tactical strategy (Naval Post Graduate School, 2013).

The consistency of Indonesia directly or indirectly contributes to strengthen the positive image in the international world since Indonesia is very active in creating an area that safe from the threat of terrorism. In the current era of globalization, ownership of a positive image is very important to achieve national interests. The positive image is classified as a soft power. Viewed from the perspective of theory and facts in the field, Indonesia has strong resources in carrying out direct model defense diplomacy in the EWG-CT ADMM-Plus.

Governing elites

The second aspect in direct model defense diplomacy is governing elites. This aspect shows a form of recognition from other state officials on the ability of a country so that the country easily directs or inputs from that country tend to be accepted and applied. In simpler languages, a country is said has fulfill the governing elite's aspect when the country is recognized for its leadership on certain issue. In the ADMM-Plus forum Indonesia gives views that terrorism is a common enemy that requires cooperation to mitigate it. These views were finally accepted in the ADMM-Plus forum so that the expert working group on counter-terrorism (EWG-CT) was realized. Indonesia, since the beginning of the establishment of ADMM and ADMM-Plus, has given the view that terrorism is a common enemy so that there is a need for inter-state cooperation in the ASEAN region (Lieutenant General (Ret) Yoedhi Swastanto, former Director General of Defense Strategy, Indonesia Ministry of Defense, personal communication, September 6, 2018).

Indonesia was very prominent in cooperation on the prevention of terrorism, especially in the ADMM-Plus EWG-CT forum. It is because Indonesia became coordinator with the United States for the first period of 2011-2013. At the end of that period, Indonesia succeeded in creating a large-scale counter-terrorism exercise on the ADMM-Plus Expert Working Group on

Counter-Terrorism Exercise (EWG-CTX). This event held by comprehensive cooperation with Indonesia and other member countries (Major General (Ret) Syaiful Anwar, Former Head of International Cooperation of Indonesia Ministry of Defense, personal communication, September 7, 2018).

The implementation of governing elites aspect carried out by Indonesia in the activities in ADMM-Plus EWG-CTX 2013 was Indonesia's defense diplomacy strategy. This strategy succeeded in encouraging the United States, Australia and Singapore to actively participate in the event from the planning stage to the implementation stage. Then, Indonesia's major contribution to other sector such as Peace Keeping Operations (PKO) has strengthens Indonesia's centrality in contributing in world peace. The strength of the governing elite's aspect owned by Indonesia is inseparable from the active role of the Indonesian Minister of Defense since the era of Purnomo Yusgiantoro and Ryamizard Ryacudu. The two ministers were very active in conducting dialogues and political lobbies through bilateral and multilateral meetings with defense officials of other countries. Moreover, the cooperation area discussed at the meeting was not limited to terrorism cases but also to other cases.

Initiatives conveyed by Indonesia at major forums in ASEAN were mostly always accepted. The initiatives were carried out at

meetings such as the Senior Official Meeting (SOM), ASEAN Ministerial Meeting (AMM / PMC / IAMM), 26th and 27th ASEAN Summit, Plus One Summit, East Asian Summit, ASEAN Regional Forum (ARF), AIPR, and AICHR. The recommendations received show Indonesia's strategic values and Indonesia's leadership at the ASEAN level.

Elite decisions

The third aspect of the direct model of defense diplomacy put forward by Gregory Winger is Elite Decisions. This aspect is the ultimate goal of every diplomacy carried out in international relations. Winger (2014c) said that the diplomacy carried out between government to government aims to get the desired results proven by policies that are applied by the governments of other countries. In the context of defense, the diplomacy that is carried out is defense diplomacy involving military and non-military cooperation. This is reflected in the formation of the ADMM-Plus forum in which ministers of defense and defense officials from each country members were brought together.

ADMM-Plus EWG-CT forum brings together defense officials and experts in discussing development of the issue of terrorism and how to deal with it. The forum is a media for discussions, exchange of views, and sharing information regarding security issues. ADMM-Plus are preceded by

meetings, table-top, and end with field exercises. It has been mentioned before if Indonesia plays a central role in the ADMM-Plus EWG-CT forum. Indonesia has hard power element in the form of special detachments (Kopassus, Den. Bravo, Denjaka, Densus AT 88) to combat terrorism and defense infrastructure. In addition, Indonesia also has soft elements (soft power) in the form of experience, organizational maturity, and diplomacy capabilities.

With the modalities possessed by Indonesia, Indonesia has a high bargaining position in every diplomatic activity carried out in the ADMM-Plus EWG-CT forum. It has been mentioned previously that Indonesian initiatives have always been accepted show Indonesia's strategic values and leadership in the forum. There have been many Indonesian initiatives and inputs applied in the ADMM-Plus forum and this has marked the achievement of aspects of the elite decisions in the direct model of defense diplomacy implemented by Indonesia in the ADMM-Plus forum. One of the implementations of elite's decisions is the Our Eyes Initiative program which is an inter-ASEAN cooperation in strategic information exchange (Colonel Oktaheroe Ramsi, Head of Sub directorate of Multilateral Cooperation in Indonesia Ministry of Defense, personal communication, September 20, 2018). In the

field of counter-terrorism cooperation, Indonesia succeeded in carrying out cooperative initiatives in the form of the Trilateral Cooperation Agreement (Maritime Patrol in Sulu Sea). In addition, Indonesia succeeded in cooperating with the Joint Patrol with Singapore and Malaysia to address the movement of terrorist groups in the Southeast Asia region (Ingan Malem, Head of Sub directorate of ASEAN Political and Security Cooperation in Indonesia Ministry of Foreign Affairs, personal communication, September 21, 2018).

Activities in the ADMM-Plus EWG-CT cooperation forum can be seen as the fulfillment in the aspects of political activity within organizations. This is because the forum involved various kinds of activities which included cooperation between ADMM-Plus member countries in forming a regional security architecture in order to combat terrorism. The defense diplomacy activity also involved the process of inter-state political lobbying in response to the threat of terrorism that came both from within and outside the Southeast Asian region. All decisions made by ADMM-Plus EWG-CT in the meetings describe international political activities involving member countries. These decisions were made in order to build confidence building measures (CBM) and increase defense capabilities in the context of counter-terrorism.

Scope of Change in ADMM-Plus Cooperation Driven by Indonesia

Indonesia initiated and provided inputs in several policies or decisions that were implemented in the forum. Indonesian initiatives in the ADMM-Plus EWG-CT are often accepted and implemented. The activeness of Indonesia in the ADMM-Plus EWG-CT forum is intended as an application direct model defense diplomacy strategy in order to achieve national interests in defense sector. This strategy has been consistent with the Indonesian National Defense Strategy written in Indonesia Defense White Paper 2007 & 2015. This strategy includes universal defense strategies (*strategi pertahanan semesta*), layered defense strategies (*strategi pertahanan berlapis*), and active-defensive defense strategy. This can be seen in Indonesia's decisions in involving other related ministries, experts, and academics as an effort to implement universal defense and layered defense strategy.

However, there were differences in the 2007 National Defense Strategy with the 2015 National Defense Strategy. The 2015 National Defense Strategy was made with reference to government policies in realizing the Global Maritime Fulcrum (*Poros Maritim Dunia*) (Indonesia Defense White Paper, 2015). Whereas in the 2007 National Defense Strategy only stated that the national defense strategy was applied with layered defense strategies with the synergy of military and non-military defense

(Indonesia Defense White Paper, 2007). Development of a defense strategy that has been implemented by Indonesia since 2015 with the establishment of the sub-cooperation in the form of a Trilateral Maritime Patrol in the Sulu Sea.

This collaboration is important for Indonesia to improve maritime security in the Sulu Sea by preventing the movement of terrorism, pirates, and kidnappings in the sea (Andolong, 2017). The Sulu Sea is a porous border area for Indonesia so that the terrorist movement gets less attention. This makes marine crimes such as terrorism, piracy, and kidnapping movements rampant. In 2016, the terrorist group Abu Sayyaf launched a kidnapping in the sea. Three Indonesian ships and one Malaysian vessel were recorded as having been hijacked and holding 18 passengers (Abuza, 2016).

The Trilateral Maritime Patrol is aimed to overcome problems in the sea such as piracy, kidnapping, and terrorism activities. This is also in line with Global Maritime Fulcrum policy promoted by Indonesia. The success of the Trilateral Maritime Patrol was later developed into the Trilateral Air Patrol which was formed on October 1, 2017. This collaboration is consistent with government policies related to the Global Maritime Fulcrum in increasing sea defense. This collaboration has proven successful in reducing crime rates in the Sulu Sea. This is evidenced by the research conducted by Ian Storey (2018) regarding the Trilateral

Security Cooperation in the Sulu-Celebes Sea. In his research, he said that Trilateral Maritime Patrol cooperation in the Sulu-Celebes Sea had sharply reduced (2016 recorded ten cases) the level of crime at sea during 2017 (three cases) and 2018 (up to now only one case was recorded).

Indonesia's strategic move in establishing cooperation in Trilateral Maritime Patrol is a concrete step in achieving the strategic objectives of national defense strategy in maintaining the security of the sea, land and air. The collaboration was driven by limited cooperation mechanism under ADMM-Plus level which emphasized discussion, information sharing, and capacity building. This mechanism does not make it possible to form tactical cooperation as well as the deployment of troops. Regarding these facts, the defense sub-cooperation is needed outside the ADMM-Plus. The Trilateral Maritime Patrol has greatly contributed to the achievement of Indonesia's strategic goals, namely improving maritime security in accordance with Global Maritime Fulcrum policies. While the strategic objectives of the national defense strategy such as contributing to creating world peace are still being carried out at the ADMM-Plus level through various activities. Other strategic objectives such as strengthening in the defense industry and state defense (*Bela Negara*) programs have also been promoted in the country but there is no collaboration yet in these fields in the ADMM-Plus.

Indonesia's experience in dealing with terrorism for a long time has become a “*plus point*” for Indonesia to contribute in creating security architecture in the region from the threat of terrorism. Indonesia encourages the creation of defense cooperation in the ASEAN region and makes terrorism a common enemy. With the same view on terrorism at the ASEAN level, it becomes an important capital to form a defense architecture scheme in order to combat terrorism. The collaboration built in ADMM-Plus was carried out under the ASEAN mechanism which prioritized discussion and consensus. This is in line with the characteristics of regionalism in the Asian region as stated by Amitav Archarya. He said if regional cooperation in the Asian region has advantages in the field of decision-making processes carried out through an inclusive process (Archarya & Alastair, 2007).

CONCLUSION

The emerging of terrorism activities in Southeast Asia region give awareness for ASEAN countries to cooperate multilaterally. ADMM-Plus is a forum to directly address the problem by enhancing common perception about terrorism, building defense capability among country members, and creating cooperation to combat terrorism in the region. Indonesia is a central player in the forum since Indonesia needs to maintain stability by erasing

terrorism threats both inside and outside its territory. Indonesia uses direct model defense diplomacy in ADMM-Plus EGW-CT forum to achieve its national interest. Processual approach can analyze the role of ADMM-Plus in address terrorism and examine Indonesia defense diplomacy to achieve its national interest. Since Indonesia is a prominent figure in the issue of terrorism and supported by good defense capabilities and long experiences in combating terrorism, the country has achieved its national interest in counter-terrorism cooperation.

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DYNAMIC EQUILIBRIUM AS INDONESIA'S DEFENSE DIPLOMACY GEO-STRATEGY TO ADDRESS CHINA-US SPHERE OF INFLUENCE DUALISM IN ASEAN

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ABSTRACT

Global strategic environment dynamics is inevitably correlated to foreign policy addressed by superpower states. Based on economic and political view, CHINA-USA dualism sphere of influence in ASEAN has different dimensions. Re-balancing Asia in Obama's administration and Indo-Pacific quad-lateral strategy of Trump's administration are strategies of United States for containing China's political influence in Indo-Pacific. United States foreign policy cannot be separated to China's rising political influence through Belt and Road Initiatives Mega Project in ASEAN. ASEAN Centrality weakness is a threat. As a result of different national interests in ASEAN such as defense alliances and development acceleration interests in several ASEAN states, readdressing ASEAN Centrality is imperative that Indonesia assert ASEAN identity to be a part of external influences (Major Powers). This challenge could be seen from Dynamic Equilibrium view as a doctrine that has geo-strategy character in its implementation. Marty Natalegawa asserts that Dynamic Equilibrium is geo-strategic balancer to Major Power State's geopolitics influence in ASEAN. Through qualitative approach, this paper aims to describe a new free-active foreign policy model by Marty Natalegawa through Dynamic Equilibrium doctrine. A geo-strategy model rendered of Dynamic Equilibrium doctrine for writer is required a more advance study and development through a deep research, therefore Dynamic Equilibrium can be a unique Indonesian School of Thought in Indonesia's Defense Diplomacy Geo-strategy, finally this paper will be its introduction.

Keywords: *Dynamic Equilibrium, geo-strategy, ASEAN, ASEAN Centrality, Marty Natalegawa, Doctrine*

INTRODUCTION

Indonesia's geographical constellation which lies in the position between the Continents of Asia and Australia and between the Pacific Ocean and Indian Ocean, puts Indonesia into a region of strategic value for countries in various regions. This

position causes political, economic and security conditions at the regional and global levels to be a factor that influences national conditions. The current political and security relations are still influenced by the dynamics of competition in the world's major powers (major powers) in securing their respective interests. Given the

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increasingly open and complex governance of international relations, each country requires an alliance that is sometimes temporary and ideological across its strategic rivals. The Asia Pacific region is a region that is very dynamic, rapidly changing, and full of uncertainty. The situation has an impact not only on economic problems, but also on security issues. Some developments in the Asia Pacific region that need to be monitored and influence the stability of regional security are China's economic and military developments, the United States' strategic policies in the region and disputes in the South China Sea that involve several countries in the region⁹⁷.

The rise of China and US with its Asia Rebalancing program and Quadrilateral Policy has made tensions in the South China Sea increase. There are several ASEAN member countries that are claims and have close ties to one of the major powers, both China and US, both in the economic, military and political fields. Under these conditions, claim states that are not capable of competing militarily and economically in China in an effort to visually struggle with China for claims over territorial disputes. On the other hand, an international tribunal won by the Philippines was ignored by China

who preferred to settle existing disputes through bilateral relations with claimant states⁹⁸. Thus, these countries will be in the influence of one of the major powers that pursues its influence in the Asia Pacific region, in particular Southeast Asia. Indonesia sees the relationship in the frame of influence something that needs to be neutralized so that Southeast Asia, ASEAN in particular, does not become an area that becomes a proxy for "cold war" between two major powers in the region.

Indonesia as an emerging market sees the Southeast Asia region in particular and Asia Pacific widely as an area that needs stability in order to support security and is able to maintain the stabilization of economic growth due to stable political and regional security. In Meriam Webster's dictionary that sees geostrategy as a strategy used by a country in achieving its objectives based on its geopolitical conditions, Indonesia's interests in ASEAN require a geostrategy because the geopolitical constellation in ASEAN has implications for Indonesia itself. Geostrategy is also interpreted as a branch of geopolitics. Furthermore, geostrategy is also defined as an identification of an area based on a combination of geopolitics and the strategies used⁹⁹.

⁹⁷Indonesia Defense Ministry, 2015, *National Defense Strategy*, Jakarta: Indonesia Defense Ministry

⁹⁸ ASEAN has five claimant states. They are Brunnei, Filiphina, Malaysia, dan Vietnam.

⁹⁹Meriam Webster Dictionary, *Geostrategy*, <https://www.merriam-webster.com/dictionary/geostrategy>

This paper will explain qualitatively the concept of Dynamic Equilibrium used by Indonesia as its doctrine in establishing international relations in the region to achieve Indonesia's national goals which have the character of free and active foreign policy. The things that are of concern in this paper are how Indonesia sees the threat from the perspective of Dynamic Equilibrium, so that geostrategically, Dynamic Equilibrium can also function as a defense diplomacy strategy? Thus this paper aims to see dynamic equilibrium more than just a concept of foreign policy but also indirectly charged with security, especially regional stability which in the end this concept is more feasible to be considered as a doctrine of diplomacy that is useful both in general diplomacy and in defense diplomacy (carried out by defense establishments).

THEORITICAL REVIEW

There are several security concepts in viewing the reality of regional security carried out by a group of countries in a region. In the regional security complex described by Barry Buzan about the Regional Security Complex. This theory stems from regional security as the main security for each country to be considered more deeply.

This is because the basis of this theory is social security¹⁰⁰ and securitization. This security perspective is based on a discursive security perspective that is ideologically located on a constructive perspective, namely discursive security, where security is a political statement on an issue or phenomenon, in which it is independent of the definition of "security" from the perspective of mainstream security namely the peace perspective (Liberal) and war (realist)¹⁰¹. Regional Security Complex theory (RSCT) is an approach to creating security at the regional level due to the closeness between state units in the complex that feel that their security interests are more closely related to other countries outside the complex.

The next regional security concept is the concept of security community. Security Amitav Archarya raises the perspective of Karl Deutchs in seeing the unification of a region, which is seen from the perspective of realism. An approach to security community which is born from long-running communication¹⁰². However, even so, what Moodie explained was also interesting in looking at the reality of regional security, especially ASEAN/Southeast Asia. Cooperative security is affirmed by Moodies

¹⁰⁰Lulian Chifu, *Societal Security: An Agenda For The Eastern Europe*, disadur dari http://www.cpc-ew.ro/pdfs/societal_security.pdf; accessed at 28/07/2018

¹⁰¹Bary Buzan dan Lene Hansen, 2009, *The Evolution Of International Security Studies*, Cambridge: Cambridge University Press. p. 34

¹⁰²Amitav Acharya. 2001. *Constructing A Security Community In Southeast Asia: ASEAN and the problem of regional order*. London and New York: Rotledge. p. 1

as a process of cooperation between countries with the same interests to alleviate tension and suspicion, resolve or reduce disputes, build a sense of trust, and maintain regional stability. conflict, but minimize the impact of differences in perceptions and interests¹⁰³.

The concept of defense diplomacy has various meanings, from all forms of efforts to increase mutual trust between countries¹⁰⁴. On the other hand, defense diplomacy can be said to be a strategy involving diplomacy, industry and defense¹⁰⁵. Gregory Winger¹⁰⁶ concluded that defense diplomacy was "evolution of the armed forces as a tool of statecraft beyond its capacity for violence". Gregory Winger concludes after looking at Defense Diplomacy (Defense Strategic Review 70) through activities carried out by the British Ministry of Defense in developing regional defense institutions of the former Soviet Union which are more regionally oriented in order to achieve a thought about mutual security.

Geostrategy, as Meriam Webster's definition, also saw how Morgenthau's

power element in explaining the struggle for Power in his book *Politics Among Nations* involves geography in it as a tool in achieving its international interests. Likewise Alfred T Mahan who saw geostrategy in 4 things, namely, geography situation, natural wealth, state territory configuration, and population. Furthermore, Reyline sees as a strategy, geopolitics will influence how relational power is owned by a country. Indonesia itself adheres to the Hasta Gatra concept¹⁰⁷.

Stability as a part of the concept that is inseparable from security is a condition in which it is self-sufficient and or able to withstand a variety of circumstances that will change the ideal situation desired. Stability is needed to create the resilience and flexibility of a particular organization, country, or group¹⁰⁸. The concept of Dynamic Equilibrium according to Gregory B Poll is a mechanism for relations between countries in the Southeast Asia region that think the same as Indonesia, which are jointly integrated to have the same power as major power countries in the Indo-Pacific region so that they have a bargaining effect for the

¹⁰³Michael Moodie, *Cooperative Security: Implications for National Security and International Relations*. (Cooperative Monitoring Center Occasional Paper, 2000), p. 5.

¹⁰⁴Pedrasan, R. 2015. *ASEAN's Defence Diplomacy: The Road to Southeast Asian Defence Community?*. Heidelberg: Universitat Heidelberg, p. 15

¹⁰⁵Idil Syawfi. 2009. *Aktivitas Diplomasi Pertahanan Indonesia Dalam Pemenuhan Tujuan-Tujuan Pertahanan Indonesia (2003-2008)*. Jakarta: Universitas Indonesia.

¹⁰⁶Gregory Winger, 2014, *The Velvet Gauntlet: A Theory of Defense Diplomacy*, Retrieved from:

<http://www.iwm.at/publications/5-junior-visiting-fellows-conferences/vol-xxxiii/the-velvet-gauntlet/>

¹⁰⁷Morgenthau, A.T. Mahan, Reyline. In Dwi Sulisworo, TriWahyuningsih, DikdikBaehaqi Arif, 2012, *Geostrategy of Indonesia*, Jogjakarta: Universitas Ahmad Dahlan, Retrieved From: <http://eprints.uad.ac.id/9436/1/GEOSTRATEGI%20Dwi.pdf>

¹⁰⁸Cabayan, H. Sotirin, B. 2010. *Perspectives on Political and Social Regional Stability Impacted by Global Crises – A Social Science Context*. Retrieved from: <https://nsiteam.com/political-and-social-regional-stability-impacted-by-global-crises/>

country - a major power country in contact with a community of countries incorporated in it. the goal is not in order to create a domination but an attempt to avoid too strong a party on the other side or excessive domination. However, it is also not exclusive but very inclusive, thus creating a balanced dynamic relationship¹⁰⁹.

Indonesia in the Conception of Dynamic Equilibrium was to prevent the escalation of conflict in the South China Sea and ensure regional order and ASEAN solidity to pursue the position as the core of the region. In addition, the results of this study also show that Dynamic Equilibrium Conceptions are carried out by using the ASEAN extended organizational rules mechanism as a platform for cooperation while trying to realize a formal security regime called Indo Pacific Community to deal with security issues in the region¹¹⁰. Marty Natalegawa himself interpreted "Dynamic Equilibrium" as a mutual understanding in cooperation between countries that interact peacefully and create a sense of mutual absence without a single dominant force in the region.

The Defense Doctrine is a noble value of a nation in shaping its strategic policies that

look at the dynamics of the existing strategic environment. The goal is clear as a guide in making decisions. In Indonesia the doctrine of defense is very important in order to create a unit of action for all elements of the nation involved in the defense and security system of the people of the universe. In peacetime, the Doctrine of National Defense is used as a guide and guide for national defense providers in preparing strengths and defenses in the framework of power for deterrence that can prevent any nature of threats and preparedness in eliminating threats, both from outside and emerging domestically¹¹¹. In Indonesia there are three doctrinal stratifications, namely 1. Basic doctrine which is the doctrine that forms the basis of all existing doctrines, 2. The master doctrine, which is to become a military defense doctrine, 3. The doctrine of implementation, namely a doctrine in which it becomes a doctrine according to the needs of dynamics and applies both military and non-military defense.

¹⁰⁹Gregory B. Poling. 2013. *Dynamic Equilibrium: Indonesia's Blueprint for a 21st Century Asia Pacific*. Retrieved from: <https://www.csis.org/analysis/dynamic-equilibrium-indonesia%E2%80%99s-blueprint-21st-century-asia-pacific>

¹¹⁰Rahmat Miftahul RizkiDr. Dafri Agussalim, MA. 2016. *Konsepsi Dynamic Equilibrium Sebagai Antikulasi Politik Luar Negeri Indonesia di Asia*

Pasifik. Jogjakarta: Departemen Ilmu Hubungan Internasional Fakultas Ilmu Sosial dan Ilmu Politik Universitas Gadjah Mada. Retrieved from: <http://hi.fisipol.ugm.ac.id/katalogtesis/konsepsi-dynamic-equilibrium-sebagai-antikulasi-politik-luar-negeri-indonesia-di-asia-pasifik/>

¹¹¹Indonesia Ministry of Defense. 2007. *Doctrine Of National Defense*. Jakarta: Indoneisa Defense Ministry

INDONESIA'S INTERESTS IN ASEAN AND EFFORTS TO MAINTAIN STABILITY THROUGH DYNAMIC EQUILIBRIUM

Indonesia's interests in ASEAN according to Suryadinata¹¹² are an interest that is not just an economy, but also regional stability which has an impact on Indonesia's stability. Since the New Order government that eliminated the foreign policy of Old Order confrontation, and together with Malaysia, Singapore, Thailand and the Philippines formed ASEAN first in 1967¹¹³. The aim is to strengthen regional stability and increase growth through investment. Security is the key to investment confidence. The union of ASEAN member countries is a big market for superpowers to invest in ASEAN.

Geopolitically ASEAN is a meeting of interests between major countries. As Kishore Mahbubani¹¹⁴ quotes the Sri Lankan proverb "when elephants fight, the grass

suffers. They also add, wittily, that when elephants make love, the grass is also suffers", which equates ASEAN will remain an area that will be affected by the state of relations between America and China as the two global powers today.

ASEAN has very potential geo-economics for the world where the ASEAN population reaches 628.9 million¹¹⁵, the total trade in ASEAN reaches 2.269 trillion US dollars. Total GDP per capita per 2015 reached 114,185 thousand US dollars¹¹⁶. Geoeconomically, Southeast Asia has become an international trade route, especially in the South China Sea, with a value of 5.3 Trillion US Dollars based on data from the US Department of Defense quoted by Max Fisher, Columnist Interpreter in the New York Times. Among them are 1.2 Trillion US Dollars on American oil merchant ship travel routes¹¹⁷. China geoeconomically

¹¹²Suryadinata, Leo. 1998. *Hubungan Indonesia dengan Negara-Negara ASEAN: Stabilitas Regional dan Peran Kepemimpinan*. dalam Politik Luar Negeri Indonesia di Bawah Soeharto, [trans,] Jakarta, LP3ES, p. 83-114

¹¹³Bambang Cipto. 2007. *Hubungan Internasional Di Asia Tenggara*. Jogjakarta: Pustaka Pelajar

¹¹⁴Kishore Mahbubani is Dean of the Lee Kuan Yew School of Public Policy at the National University of Singapore and the co-author of *The ASEAN Miracle: A Catalyst for Peace* (2017), and Amrita V. Nair is a Research Associate at the Lee Kuan Yew School of Public Policy. Retrieved from Center For International Relations And Sustainable Development website: <https://www.cirsd.org/en/horizons/horizons-autumn-2017-issue-no-9/asean-and-geopolitical-rivalries>

¹¹⁵ASEAN. 2016. *ASEAN Statistical Leaflet 2016, Selected Key Indicators*. Retrieved from website:

http://asean.org/storage/2012/05/ASEAN_Stats_Leaflet2016_web.pdf

¹¹⁵Statista. 2018. *ASEAN countries: Gross domestic product (GDP) per capita in current prices from 2008 to 2018 (in U.S. dollars)*. Retrieved from Statista website:

<https://www.statista.com/statistics/804307/gross-domestic-product-gdp-per-capita-in-the-asean-countries/>

¹¹⁶Statista. 2018. *ASEAN countries: Gross domestic product (GDP) per capita in current prices from 2008 to 2018 (in U.S. dollars)*. Retrieved from Statista website:

<https://www.statista.com/statistics/804307/gross-domestic-product-gdp-per-capita-in-the-asean-countries/>

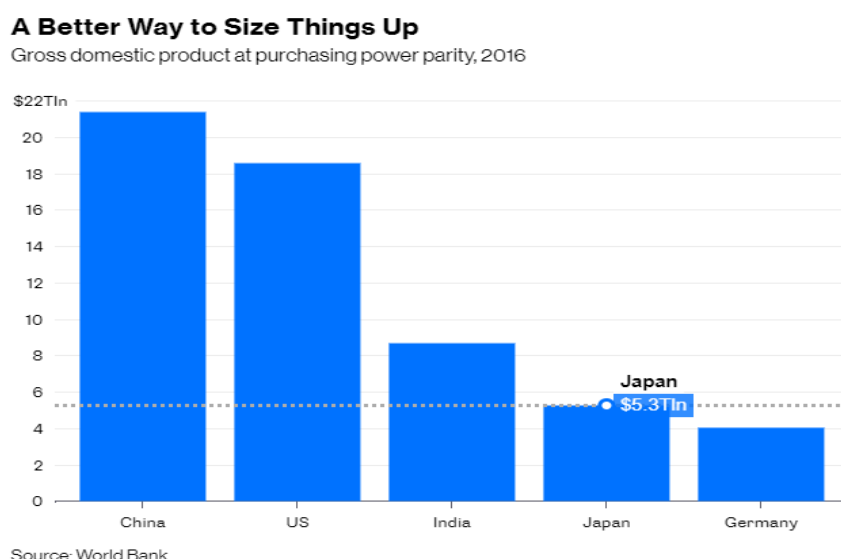
¹¹⁷Max Fisher. 2016. *The South China Sea: Explaining the Dispute*. Retrieved from: New York Times website: <https://www.nytimes.com/2016/07/15/world/asia/south-china-sea-dispute-arbitration-explained.html>

sees ASEAN through the megaproject Belt and Road Initiative. China has six BRI corridors, two of which are in Southeast Asia, namely the Bangladesh-China-Myanmar Corridor and China-Indochina Corridor¹¹⁸.

China's current rise has an influence on the existing international system. Some say that they are reformers / revisionists, but some think that China does not have the capacity to become a country that influences the international system¹¹⁹. China's GDP

based on 2017 Purchasing Power Parity of 23.1 Trillion US Dollars is almost 20% of world GDP of 120 Trillion US Dollars. In 2017, China's total investment in ASEAN amounted to 120 billion US dollars¹²⁰. even based on PPP GDP 2017, according to the World Bank, quoted by Noah Smith¹²¹, China is clearly ranked first in the world economy. The following figure is the World Bank data quoted by Noah Smith in an article on Bloomberg.com:

Figure 3.1
GDP China counted from Purchasing Power Parity



The Chinese military experienced very rapid development starting from budgeting

to increasing the armed forces and strengthening its technology. According to

¹¹⁸UNESCAP. 2017. *A Study of ICT Connectivity for the Belt and Road Initiative (BRI): Enhancing the Collaboration in China-Central Asia Corridor*. Retrieved from UNESCAP website: <https://www.unescap.org/sites/default/files/BRI.pdf>

¹¹⁹Zhihai XIE, 2011, ICCS journal Of Modern Chinese Studies, Vol. 4, Hal. 1

¹²⁰ Bank Dunia. 2018. *GDP (PPP)*. Retrieved from World Bank's website: <https://data.worldbank.org/indicator/ny.gdp.mktp.pp.cd>

¹²¹Noah Smith. 2017. *Who Ha The No. 1 Economy? Not The US*. Retrieved from Bloomberg website: <https://www.bloomberg.com/view/articles/2017-10-18/who-has-the-world-s-no-1-economy-not-the-u-s>

Breuning¹²², the ability of a country as a great power has economic, political and military power that is used to increase its influence globally. China economically began introducing One Belt One Road which to this day has become a Belt And Road Initiative. Militarily China is more centered with improved technology and troop numbers. The number of Chinese Forces currently reaches 2 million personnel with the current budget which increased 8.1% from the previous year to a total of 173.4 billion US Dollars¹²³. Technologically, China has included several additional stealth fighter technology and has new aircraft carriers. Goldstein¹²⁴ said an increase in China's economy would have implications for China's influence globally. Although China's diplomacy and economy are able to challenge the influence of American hegemony, but in terms of military technology capability, military budget, and the existence of military bases globally, China is still far behind the United States.

This reality brings a competitive spirit for US who feel China is in a position to strengthen its influence in the Asia Pacific

through Belt and Road Initiatives. Historically "Thucydides pointed out that the rise of Athens caused fear of being eliminated in Spartans. Since then, scholars continue to ponder how power shifts lead to competitive tensions, which sometimes may be managed and sometimes may lead to conflict¹²⁵. In that perception, the US then attempted through the Asian Rebalancing program during Obama's time, which aimed to offset China's influence. Muhammad Khurshid Khan & Fouzia Amin quoted Obama's speech before the Australian parliament "As President, I have therefore made a deliberate and strategic decision-as a Pacific nation, the United States will play a larger and long-term role in shaping this region and its future ... "¹²⁶. On the other hand, the Indo-Pacific, which Trump formed through quadrilateral, has become a rarity in contingent on China's strategic development which has a very strong influence in Asia, especially in Southeast Asia and West Asia which have directly benefited the Belt And Road Initiatives. This quadrilateral contains "free and open Indo-Pacific, rules-based orders, freedom of navigation and overflight,

¹²²Breuning, M. 2007. *Foreign Policy Analysis: A Comparative Introduction*. New York: Palgrave Macmillan

¹²³Christopher Bodeen. 2018. *What We Know About China's Increased Defense Spending In 2018*. Retrieved from Army Times website: <https://www.armytimes.com/global/asia-pacific/2018/03/05/what-we-know-about-chinas-increased-defense-spending-in-2018/>

¹²⁴Goldstein. 2005. *Rising To The Challenge: China's Grand Strategy And International Security*. Stanford: Stanford University Press

¹²⁵Robert B. Zoellick, *U.S., China and Thucydides*, The National Interest, June 25, 2013, nationalinterest.org/article/us-china-thucydides-8642, accessed September 24, 2013.

¹²⁶Khurshid Khan & Fouzia Amin. 2014. *Rebalancing Asia – Pacific: An Analysis*. Margalla Papers 2014. P. 85-114. Retrieved from: http://www.ndu.edu.pk/issra/issra_pub/articles/margalla-paper/Margalla-Papers-2014/05-Rebalancing-Asia.pdf

respect for international law, connectivity, maritime security, North Korea / Non-proliferation, Terrorism"¹²⁷.

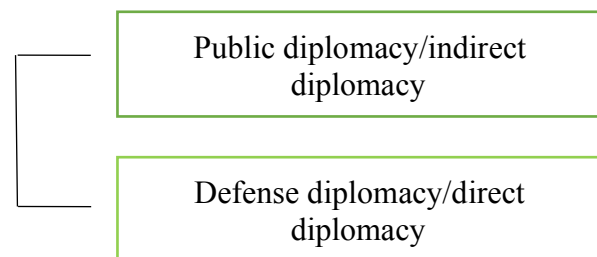
Indonesia sees this reality positively. Through Dynamic Equilibrium Marty Natalegawa, which takes the basis of foreign policy, an active-free Indonesia seeks to embody the foreign policy of President Susilo Bambang Yudhoyono "sailing in turbulence ocean". Maintaining balance in a turbulent track is not easy. Southeast Asia as a strategic location for the movement of export-import goods and the content of natural wealth under the South China Sea is very important for all major power who play in the Southeast Asia region.

Indonesia then saw Southeast Asia must be united in seeing the dualism issue so that no cold war would occur which would cause mutual suspicion among countries. As said by Marty Natalegawa in a seminar on Foreign Policy Community Indonesia said that geopolitics must be formulated and need a shared idea for it, and Indonesia must be able to be the initiator of the ideas. Where the void of ideas to form a geopolitical landscape will make the existing geopolitical architecture useless and not beneficial¹²⁸.

Marty Natalegawa's doctrine as stated by Gregory B Poling above confirms a

geopolitical perception based on a strategy that uses a soft-power approach. Gregory Winger gave a defense diplomacy scheme based on the use of power in defense diplomacy as well as the theory in the study of international relations. Gregory Winger sees defense diplomacy as a step for a country's soft power in maintaining its security. As a description of Gregory Winger's defense diplomacy in the derivation of his defense diplomacy scheme¹²⁹ starting with:

military statecraft→co-optive power



Based on the scheme above, it can be concluded that according to the diplomacy theory presented by Paul Sharp, diplomacy is included in the concept of co-optation which uses two ways, namely "two-way-street" or dual track diplomacy in which all diplomatic instruments are carried out in the interests of defense. The only thing done by Indonesia is to use the strategic advantage of its territory as well as Southeast Asia in counteracting instability due to the influence

¹²⁷Ankit Panda. 2017. *US, Japan, India, and Australia Hold Working-Level Quadrilateral Meeting on Regional Cooperation*. Retrieved from: <https://thediomat.com/2017/11/us-japan-india-and-australia-hold-working-level-quadrilateral-meeting-on-regional-cooperation/>

¹²⁸Marty Natalegawa dalam FPCI. 2018. *FPCI Public Discussion on Indo-Pacific as a Concept for Regional Architecture*. Retrieved from: <https://www.fpciindonesia.org/2018/02/09/fpci-public-discussion-on-indopacific-as-a-concept-for-regional-architecture/>

¹²⁹*Self-Designed* based on many resources

of sphere of influence rivalry between the two major powers. In this case its defense diplomacy strategy is Dynamic Equilibrium, in which Indonesia uses ASEAN to equalize its strength with major power in increasing bargaining position in diplomacy, on the other hand internally it needs to maintain turbulence or dynamics between ASEAN countries that have different views on sea conflict South China, which has become a conflict that has made the Asia Pacific region in harmony today.

Dynamic Equilibrium as explained by Gregory B Poling above relates to the understanding of cooperative security described by Moody. As Rodolfo Severino stated in explaining the importance of ASEAN unity that "A fragment of Southeast Asia does not mean good for security of the Asia Pacific or for the prosperity of the world. United States, cohesive and strong ASEAN is a potent force for regional peace and security and for the economic vitality of the Asia-Pacific and of the world¹³⁰. Here Rodolfo insists that "ASEAN" concentric approach "is described as follows. ASEAN is the driver occupying a central seat in these regional processes. It also serves as a bridge between the newer ASEAN states and the Dialogue Partners"¹³¹. The Concentric

approach marks the importance of a united ASEAN which is Indonesia's strategic partner and is Indonesia's main concern during Marty Natalegawa's administration in order to keep ASEAN stable but remain open with its various relations with Major Power in order to maintain a balance of influence, so as not to create the most dominant in the ASEAN body itself.

Indonesia, therefore, in its defense strategy, includes diplomacy as the main extension of Indonesia's defense, through preventive diplomacy in the context of confidence building measured which is one of the three pillars of defense diplomacy in addition to increasing defense capacity and its relationship with strengthening the defense industry's independence¹³². Indonesia's defense diplomacy strategy is carried out in the manner described in the following:

Picture 3.2 scheme¹³³:
Scheme for Establishing an Indonesian Defense Diplomacy Strategy



¹³⁰Asia Policy Lecture at the Research Institute for Asia and The Pacific University of Sydney, Australia, 22 october 1998

¹³¹Rodolfo Severino and Moe Thuzar. dalam Victor Sumsy, Mark Hong, dan Amy Lugg.2012.*ASEAN regionalism and the future of ASEAN-Russia relations*. Singapura, ISEAS, Hal. 22

¹³²Idil Syawfi. 2009. *Aktivitas Diplomasi Pertahanan Indonesia Dalam Pemenuhan Tujuan-Tujuan Pertahanan Indonesia (2003-2008)*. Jakarta: Universitas Indonesia.

¹³³Self-designed based on many resources

Based on the above scheme, Indonesia in developing defense strategies involves defense diplomacy as an instrument. As Liddlehart explains about the strategy, "the practical adaptation of the means is placed at a general 'disposal to the attainment of the object in view'"¹³⁴. Diplomacy is the center point of Indonesia's foreign policy, especially in the ASEAN region. ASEAN Ways which is a characteristic of ASEAN that is non-interference and non-violence is also the basis of the international regime that runs in ASEAN. The international regime is a shared framework that provides services to norms and values that are formed together¹³⁵. Geopolitics referred to in dynamic equilibrium which is the basis of Indonesia's geostrategy in the Southeast Asia region is what it is like to give understanding of Asia-Pacific geopolitics or the Indo-Pacific, so that an international regime is agreed upon. If what happens is lacunae, the geopolitics that occur become a mere mirage and are only ceremonial. As a result, ASEAN at the time of Indonesia's leadership in Marty Natalegawa's tenure in 2011, sought to clarify this regime through defense diplomacy framed in the ideas or ideas of Dynamic Equilibrium. As a policy which is an idea from Indonesia, in accordance with the definition of defense doctrine in the book of Indonesian Defense Doctrine in 2007,

defense diplomacy is the implementing doctrine, or included in the 3rd strata of defense doctrine in the field of non-military threats that are capable of threatening and challenges for the country.

The Global Maritime Fulcrum initiated by President Jokowi also has the same idea. Where the world maritime center is in Indonesia, where it means is through the ALKI 1,2,3, Indonesia is the crossroads of international sea lanes both from the Indian Ocean to the Pacific Ocean or vice versa. Indonesia must be able to play a key role in a strategic situation that is both beneficial and challenging. As a challenge, the ALKI 1,2,3 is an open international sea lane, while as an opportunity, Indonesia can become a key player in determining the international regime that runs on its own territory. By using Dynamic Equilibrium geostrategy by "borrowing" ASEAN, this is possible.

CONCLUSION

Indonesia is in a strategic area. With its status as an emerging market and "big brother" of ASEAN, Indonesia certainly has the influence to influence the geopolitical constellation in ASEAN which is certainly a step towards pursuing its interests. On the other hand, ASEAN as a developing country

¹³⁴ Liddel Hart dan Moltke dalam Fred Nickols, 2016, *Strategy: Definition and Meaning*, disadur dari https://nickols.us/strategy_definitions.pdf ; disadur pada 28/07/2018

¹³⁵ Haggard, Stephen dan Simmons, Beth A.. 1987. *Theories of International Regimes. International Organization*. Vol. 41, No. 3 (Summer, 1987). The MIT Press.

requires a lot of foreign investment and is very closely related to the superpower / major power. Indonesia strives to unite everything in the framework of "cooperative security" to be convening power by maintaining the integrity of ASEAN so that it is not dominated by one big power. Dynamic Equilibrium should be able to become a defense diplomacy doctrine adjusted to the status of diplomacy as a defense strategy instrument so that it is included in the third doctrinal strata, namely the implementation strata. Pragmatically, this doctrine, if it is able to run properly, will extract profits from every major power in the Asia Pacific or Indo-Pacific regions. With the efforts of the two major powers at this time China and the US are pursuing influence in the Southeast Asia region, Indonesia and ASEAN can take advantage of this by not participating in the war but making this stable region to prevent war and increase economic cooperation in particular.

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THE POWERLESS OF INTERNATIONAL LAW ON THE SOUTH CHINA SEA ISSUE: ANALYZING PRC'S POSITION AND INDONESIA'S RESPONSES

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ABSTRACT

This research will provide a critical analysis on the challenges faced by international law in help producing an ideal international peace and security in the South China Sea (SCS), particularly following the rise of the People's Republic of China as the next superpower. The study will begin with an ideal role to be played by the international law on the issue, in line with the competing claims coming from the claimant and non-claimant countries. Then, this research will critically analyze China's historical claims, which has been severely challenged by countries in the region. Uniquely, even though China's position was greatly challenged in the international tribunal, however, China's fantastic developments in the country had encouraged the regime to flex its military and economic muscles, which later on reducing the nature of challenges coming from the claimant countries, and indirectly justifies China's long term position.

As China's progress damaging the unity of ASEAN and the future integration of ASEAN, proved with the changing positions the Philippines, such development convinced Indonesia as the strong proponent of the United Nations Convention on the Law of the Sea (UNCLOS) at the global level and the Zone of Peace Freedom and Neutrality (ZOPFAN) at the regional level, to restructure its strategic thinking. Relying on official documents, this research will furthermore uncover Indonesia's strategic thinking on the need to promote its non-aligned principles, maintaining its leadership inside ASEAN, and also strengthening the international law principles at the same time.

Keywords: South China Sea, International Law, China Claims, Geopolitics, Indonesian Maritime Fulcrum.

INTRODUCTION

THE SOUTH CHINA SEA AND ITS GEOSTRATEGIC IMPERATIVES

Geostrategically, the South China Sea is located in the western part of the Pacific Ocean, staying between the southern part of China, western part of the Philippine,

eastern and southern of the Vietnam and the northern part of Borneo Island. It is bounded by the southern part of the Gulf of Thailand and the east coast of the Malay Peninsula. This area covers approximately 3,700,000 km² or 1,350,000 sq. miles.¹³⁶

¹³⁶ Nations Online. (n.d). *Political Map of South China Sea*. Retrieved from One Planet Nations Online:

<https://www.nationsonline.org/oneworld/map/South-China-Sea-political-map.htm>

In the same way, this region also links the Indian Ocean to the Pacific Ocean and it is considered as a critical shipping lane for the majority of the world states to pass their ships and vessels.¹³⁷ The United Nations Conference on Trade and Development (UNCTAD) estimated that the SCS carrying about one-third of the global shipping, with the transit of goods through its waters attained to \$5.4 trade million annually.¹³⁸ In fact, over 64% of PRC's recorded trade passed this water, with 42% of Japan's maritime trade passed the SCS waters.¹³⁹

As a region in itself, not only it is an important gateway for world's merchant shipping, it is also considered as a critical economic and strategic sub-region in Indo-Pacific. Unluckily, SCS has also become the site of various territorial disputes for several countries which claimed their maritime sovereignties, and therefore triggering complex territorial conflicts and tensions.¹⁴⁰ Countries involved are some members of ASEAN such as the Philippines, Vietnam, Malaysia, Brunei, as well as Taiwan and the

PRC, who had shown varieties size of the claim, by a whole or such part around Spratly region in the South China Sea.¹⁴¹ In the opinion of the United States' Energy Information Administration, the hydrocarbon reserves in this region covered the amount of 11 barrels of oil and about 190 trillion cubic feet reserve of natural gas.¹⁴² Most importantly, in one of its part, known as the Paracel Island, possessing a significant natural gas hydrate resources.¹⁴³

PEOPLE'S REPUBLIC OF CHINA'S STRATEGIC INTERESTS IN THE SOUTH CHINA SEA AND ITS IMPLICATIONS

Over years, along with the increasing the need for economic growth and energy resources, China operated great efforts to exercise its claims. The most prominent one was its historical justification, highlighting the importance of nine-dash line, in line with its incorporation of the said nine-dash line as the boundary of China's maritime territories. Inside such lines, the world records huge numbers of fish catch and

¹³⁷ Wholf, T. (2015, May 16). *5 things you should know about the South China Sea conflict*. Retrieved from PBS.org:

<https://www.pbs.org/newshour/world/5-things-didnt-know-south-china-sea-conflict>.

¹³⁸ China Power Team. (2017, August 2). *How much trade transits the South China Sea?q*. Retrieved from China Power:

<https://chinapower.csis.org/much-trade-transits-south-china-sea/#easy-footnote-bottom-1-3073>

¹³⁹ Ibid- (China Power Team. (2017, August 2)

¹⁴⁰ Lowy Institute. (n.d). *South China Sea*. Retrieved from Lowy Institute: <https://www.lowyinstitute.org/issues/south-china-sea>

¹⁴¹ Lim, B. (2012, July 24). *China - Filipino Relations under the Aquino Regime: So Far*. Retrieved from Center for People Empowerment in Governance: [http://www.cenpeg.org/2012/gov/aug/China - Filipino_Relations_under_the_Aquino_Regime-So_Far.pdf](http://www.cenpeg.org/2012/gov/aug/China-Filipino_Relations_under_the_Aquino_Regime-So_Far.pdf)

¹⁴² Ibid - Wholf, T. (2015, May 16)

¹⁴³ U.S Energy Information Administration. (2013, April 3). *Contested areas of South China Sea likely have few conventional oil and gas resources*. Retrieved from EIA.gov: <https://www.eia.gov/todayinenergy/detail.php?id=10651>

minerals, with China itself has become the largest fishing fleet in the world and the highest fish consumers.¹⁴⁴ Next to this, this region reserves 130 billion barrels of oil, along with rich of methane hydrates which could supply China's future oil needs.¹⁴⁵

In supporting its claim, the Chinese top leaders reiterated its importance in various regional and international forums.¹⁴⁶ Among others, in July 12, 2016, Beijing issued a statement on China's Territorial Sovereignty and Maritime Rights and Interests in the South China Sea, reaffirming a readiness to work in cooperation with all claimant states, under a framework of enhancing cooperation for peace in the region.¹⁴⁷

Along with diplomacy, China went further by conducting reclamation projects in its claimed areas. China among others, engaged in massive reclamation project and constructing artificial islands in disputed waters. By August 2015, China claimed 2900 acres of land, Vietnam 80 acres, Malaysia 70 acres, the Philippines 14 acres, and Taiwan

is the smallest one as it just claims 8 acres.

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THE NATURE OF THE MOST CRITICAL DISPUTE: PRC VS THE PHILIPPINES

The Philippines has become the strongest opponent to PRC's claims. The issue began in 2010, when PRC began to show its assertiveness by constructing military structures, while during the same time Manila also conducted military observations surrounding the Scarborough Shoal or Kalayaan Island Group (KIG). Their differences became more prominent when Manila claimed that China's man built islands were constructed on the Philippines-claimed Mischief Reef which located 135 miles in the west part of Palawan Island.¹⁴⁹ In the eyes of Manila, China's claim cuts its Exclusive Economic Zone covering the Scarborough Shoal and part of Kalayaan Islands in Palawan Province¹⁵⁰.

Despite such differences, the government in Manila decided to pursue diplomatic

¹⁴⁴ National Geographic. (2010, September 22). *China Tops World In Catch And Consumption Of Fish*. Retrieved from National Geographic: <http://press.nationalgeographic.com/2010/09/22/china-tops-catch-consumption-fish/>

¹⁴⁵ Maverick, T. (2015, October 5). *Motive Behind Takeover of South China Sea*. Retrieved from Wall Street Daily: <https://www.wallstreetdaily.com/2015/10/05/methane-hydrate-south-china-sea>

¹⁴⁶ Panyue, H. (2017, March 3). *National Security Law of the People's Republic of China (2015) [Effective]*. Retrieved from Ministry of National Defense of the People's Republic of China: http://eng.mod.gov.cn/publications/2017-03/03/content_4774229.htm

¹⁴⁷ Ministry of Foreign Affairs of the People's Republic of China. (2017, July 12). *Statement of the Government of the People's Republic of China on China's Territorial Sovereignty and Maritime Rights and Interests in the South China Sea*. Retrieved from Ministry of Foreign Affairs of the People's Republic of China:

https://www.fmprc.gov.cn/nanhai/eng/snhwtlcwj_1/t1379493.htm

¹⁴⁸ Lubold, G. (2015, August 20). *Pentagon Says China Has Stepped Up Land Reclamation in South China Sea*. Retrieved from The Wall Street Journal: <https://www.wsj.com/articles/pentagon-says-china-has-stepped-up-land-reclamation-in-south-china-sea-1440120837>

¹⁴⁹ Ibid Zhao, H. (2012)

¹⁵⁰ Ibid - S. R. (2017, March 18).

engagement, aimed to prevent a confrontation against PRC.¹⁵¹ However, finding itself unable to unilaterally challenge the might of PRC, especially in dealing with Beijing's confusing Nine Dash Line claims, Manila brought the case of the South China Sea dispute with China to the tribunal.¹⁵² At the same time, Manila continued to maintain its defence and security cooperation with the USA, via furthering the ongoing relations to higher level, called an 'Enhanced Defense Cooperation Agreement (EDCA)', aiming to boost its armed force, to better deal with the regional territorial dispute.¹⁵³ From the perspective of Washington, this new arrangement has strengthened the already established pillar, incorporating Australia, Japan, South Korea, and Thailand.¹⁵⁴ Until early 2019, the Tribune put favoured to the Philippine's opinion, but the government in Manila founds itself difficult to proceed any further.

INTERNATIONAL LAW AND ITS LACK OF ENFORCING POWER

In International Law, Confidence Building Measures (CBM) and Preventive Diplomacy

(PD) mechanisms have generally been focused on preventing incidents and promoting peace in SCS through the pursuit of a Code of Conduct (CoC) between China and the ten members of ASEAN, without prejudice to the territorial and maritime claims of littoral states. Bilateral efforts are also made to mitigate and avert incidents when sovereignty is being asserted by the parties concerned.

Such positive efforts were initiated in 2002 with a Declaration on the Conduct (DoC) of Parties in the South China Sea. Accordingly, all parties undertook to resolve their territorial and jurisdictional disputes peacefully, and without resort to force. They also undertook to exercise self-restraint and refrain from inhabiting islands and features that were uninhabited. The parties to the Declaration also agreed to work towards the adoption of a CoC. It was not until July 2012, that the government in Beijing announced its readiness to commence discussions leading to CoC. Regardless all difficulties, it took another six years before all parties agreed on a Single Draft Negotiating Text for the South China Sea Code of Conduct, in August 2018.

¹⁵¹ Yost, K. L. (2013). *Thension in the South China Sea: Why the Philippines is Challenging China's Improved Military Might*. Monterey: Naval Postgraduate School.

¹⁵² The Guardian. (2013, January 22). *Philippines to bring South China Sea dispute with Beijing to tribunal*. Retrieved from The Guardian: <https://www.theguardian.com/world/2013/jan/22/philippines-south-china-sea-beijing>

¹⁵³ Mangosing, F., & Santos, M. (2014, April 28). *What is the Enhanced Defense Cooperation*

Agreement and what does it mean for PH?

Retrieved from Philippine Daily Inquirer: <https://newsinfo.inquirer.net/597859/what-is-the-enhanced-defense-cooperation-agreement-and-what-does-it-mean-for-ph>

¹⁵⁴ Albert, E. (2016, October 21). *The U.S.-Philippines Defense Alliance*. Retrieved from Council on Foreign Relations: <https://www.cfr.org/backgrounder/us-philippines-defense-alliance>

The most critical issue at present is conflict between China and the United States and its allies, with the latter group of countries criticizing the nine-dotted line through 'freedom of navigation operations' and joint naval exercises.

INDONESIA'S PERSPECTIVES ON THE SOUTH CHINA SEA ISSUE

In the eyes of Indonesia, the last two decades the South China Sea has been transformed from being merely a maritime area where two or more of the littoral claimants have conflicting and overlapping island and maritime claims to an arena where China competing with other big powers and other littoral state claimants to defend and exert its claimed sovereignty over the area. Earlier on, the disputes among the claimant ASEAN member states are generally being managed peacefully in the ASEAN spirit though incidents do arise especially when countries take robust action against fishing vessels in disputed waters and adjacent waters around the Natuna Island. Under President Joko Widodo's administration, undocumented fishing vessels have been blown up or towed away and the crew taken captive by the Indonesian authorities.

However, the prolongation of the unsettled dispute brought serious consequences for Indonesian security, as incidents arise overfishing, oil and gas exploration and drilling will tend to increase

in the future. Not to mention, the presence of vessels in disputed waters, and in the construction of artificial islands (some with military installations) on disputed low-tide elevation reefs. The passage through of U.S. and allied naval vessels and overflight of military aircrafts have triggered sharp protests and encourage potentially dangerous confrontations, even though such acts are not inconsistent with widely recognized international law.

Several ASEAN claimant states, namely Vietnam, Brunei, Malaysia and the Philippines have sought recourse in the International Tribunal for the Law of the Sea to resolve their respective claims in the area and issues with PRC. The most significant was the Philippines' challenge of the legality of China's nine-dash line in 2013. China however refused to participate in the case. The Permanent Court of Arbitration ruled in the Philippines' favor in July 2016. China and Chinese Taipei rejected the ruling. China insists instead on bilateral negotiations to resolve territorial disputes. This situation is unwelcomed by the government of Indonesia.

INDONESIA'S 1ST RESPONSE: STRENGTHENING A NAVAL BASE IN THE NATUNA ISLAND

Against the backdrop of geopolitical flux in the 21st century, the People's Republic of China and the Republic of Indonesia highlighted the importance of waterways

and sea routes. ¹⁵⁵ For Indonesia in particular, there is a great concern that China's 'nine-dash line' overlaps the Indonesian exclusive economic zone in the Natuna island area where some of its most critical gas resources are to be found. Indonesia has long considered itself *not* to be a claimant to the South China Sea and hence not directly involved in the increasingly rancorous dispute in the area. But Indonesians are beginning to accept that in fact it is, as China increasingly asserts its interests in the region. ¹⁵⁶

So far, Indonesia has largely stayed out of the fray—so much so that it is rarely listed among the disputants. But it has long been one of them. As an archipelagic state, Indonesia is entitled to an exclusive economic zone (EEZ) around its Natuna Islands (or Riau Islands in Indonesia), which are located in the South China Sea. In that zone are some of Indonesia's largest offshore natural gas fields. Unfortunately, a portion of that zone also falls within China's "nine-dash line" claim that encloses most of the South China Sea. Indonesia is dismayed, that China has included parts of the Natuna Islands within the province as its territory. The Indonesian military has decided to strengthen its forces on Natuna and need also to prepare fighter planes to meet any

eventuality stemming from heightened tensions on one of the world's key waterways. While Indonesian neighbours have long acknowledged the waters north of the Natunas as part of Indonesia's EEZ, the Chinese Foreign Ministry has since the 1990s implied — and in 2016 for the first time openly declared — that they are "traditional Chinese fishing grounds"¹⁵⁷

While Indonesian neighbours have long acknowledged the waters north of the Natunas as part of Indonesia's EEZ, the Chinese Foreign Ministry has since the 1990s implied — and in 2016 for the first time openly declared — that they are "traditional Chinese fishing grounds"

History reveals that the strategic value of the marine region becomes an important variable in exploring and developing influences internationally. The historical context between Indonesia and China related to Natuna issue actually happened some time ago. Like many other territorial disputes in the South China Sea, the origin of the contemporary dispute between China and Indonesia can be found in the infamous 1947 map drawn by Nationalist Chinese diplomats featuring a dashed line encircling much of the South China Sea. The geography of the dashed line on Chinese maps varies;

¹⁵⁵ Pradhan, Sanjeevan. "China's Maritime Silk Route and Indonesia's Maritime Fulcrum: Complements and Contradictions," *Institute of Chinese Studies*, Occasional Paper, No. 12, September 2016. P.1.

¹⁵⁶ Till, Geoffrey. "Indonesia as a Growing Maritime Power: Possible Implications for Australia," *Sea Power Centre*, Issue No. 4, May 2015. P.2

¹⁵⁷ Chang, Felix, K. "Even Indonesia: Concerns Over China's Reach in the South China Sea," *Foreign Policy Research Institute*, October 2014. P.1-4.

however, in every version, one of the dashes intersects the northern boundary of Indonesia's declared EEZ north of the Natunas, around 1400 kilometres from the Chinese mainland. The waters in the disputed area are an important fishery and the seabed below is home to large natural gas reserves. Indonesia went further, because under international law any claim to maritime entitlements such as a territorial sea, an EEZ, or fishing rights cannot be legitimised without some reference to land features, and because there are no disputes between China and Indonesia over the sovereignty of land features, the line's existence is best ignored. There has been a consensus in Jakarta that disputing it would offer it a legitimacy that it does not deserve. This condition triggered the conflict between Indonesia-China in the Natuna Sea. In some conflict interactions, the engagement of Indonesian maritime forces to deal with disruptions from China has been made several times.¹⁵⁸

Since 2010, Indonesia has taken modest steps to beef up both its naval and air forces. Its 2010 Strategic Defense Plan promised to modernize its military into one better capable of defending the country from external threats. While the army would remain the military's backbone, the navy and air force would receive more funds for military procurement to create a "Minimum

Essential Force." That force envisions a "green water navy" organized into a "Striking Force" of 110 ships, a "Patrolling Force" of 66 ships, and a "Supporting Force" of 98 ships.¹⁵⁹

Facts on the ground explain that On 17 June 2016, a small Indonesian Navy corvette, the KRI *Imam Bonjol*, encountered at least seven Chinese fishing boats and two much larger Chinese Coast Guard vessels in Indonesia's EEZ near the remote Natuna Islands. The *Imam Bonjol* chased and, after firing warning shots, seized one of the fishing boats and arrested its crew for illegal fishing, before returning to its run-down base at Ranai on the island of Natuna Besar. The incident was the latest in a series of encounters in the area between Indonesian authorities and Chinese vessels. Although the Chinese Coast Guard did not risk a confrontation by attempting to prevent the arrest, as it had during a similar incident in March 2016, the Chinese Foreign Ministry protested vigorously and publicly the next day. On 23 June 2016, Indonesian President Joko Widodo, flew to Ranai, the first time an Indonesian president had visited Natuna Besar. Wearing a bomber jacket, he boarded the *Imam Bonjol*, named after a nineteenth century anticolonial hero, where he convened a limited Cabinet meeting. There, they discussed the defense and economic development of the area, which is rich in

¹⁵⁸ Connelly, Aaron, L. "Indonesia in the South China Sea: Going it alone," *Lowy Institute for International Policy*, December 2016. P. 3.

¹⁵⁹ Chang, P. 3,

fisheries and natural gas.¹⁶⁰

However, the escalating conflict lies in the activities of Chinese fishermen conducting fishing in the EEZ territory of Indonesia escorted by the China Coast Guard. This indicates that China deliberately provokes and awaits Indonesia's response in addressing the issue.

The third incident involving the arrest of a Chinese fisherman by Indonesian authorities operating near Natuna Island — this time leading to an injury of one Chinese fisherman — has raised tensions between Beijing and Jakarta. The June incident featured the second recent occurrence — the other one occurring in May— of the Indonesian Navy opening fire to force Chinese fishing vessels to comply with Indonesian demands to cease operations and allow Indonesian authorities to detain the vessel.¹⁶¹

What Indonesia does by placing the navy as a marine power to control the ZEE region from various forms of distractions and threats, especially the presence and activities of Chinese fishermen, as well as the guarding of the China Coast Guard against fishing activities shows that the Natuna Sea is really at serious threat. The deployment and deployment of Indonesian maritime power is one of primarily focuses of

Indonesia which addressed to protect its own interests around the Natuna Islands while not antagonising China. The shift in the Indonesian position has been driven by increase in Chinese incursions around the Natuna. The political steps taken by Indonesia. Indonesia insists that what Indonesia is doing is simply to safeguard state sovereignty.

Jokowi's visit to Natuna was intended to send a signal to the Chinese leadership in Beijing that Indonesia would protect its sovereign rights in its EEZ, by force if necessary. Inside and outside Indonesia, analysts critical of China's actions in the South China Sea praised what they characterised as a stiffening of Indonesia's approach to its relationship with China.¹⁶²

In short, the deployment of Indonesian maritime forces in the Natuna Sea issue is intended to protect the security of Indonesia's natural resources in the territory of the Exclusive Economic Zone of Indonesia, against China's efforts to steal fish and safeguard other natural resources in Natuna. In this case, control of the territory of sovereignty is a priority, prior to establishing a strong naval power to fully control the Natuna Sea.

¹⁶⁰ Connelly, P. 2.

¹⁶¹ Morris, Lyle. Indonesia-China Tensions in the Natuna Sea: Evidence of Naval Efficacy Over Coast Guard?, June 28, 2016, accessed from <http://thediplomat.com/2016/06/indonesia-china->

[tensions-in-the-natuna-sea-evidence-of-naval-
efficacy-over-coast-guards/](#), on August 23, 2017.
[P. 1-3](#)

¹⁶² Connelly. P. 2.

INDONESIA'S 2ND RESPONSE: HIGHLIGHTING THE IDEAS OF INDO- PACIFIC

For long, Indonesia claims itself located at the heart of the Pacific Ocean and Indian Ocean region.¹⁶³ At the same time, Indonesia views that ASEAN's proactive role is inevitable and urgent amid geopolitical and geostrategic changes in the region. Indonesia has also traditionally been viewed as having both the clout and capacity to spearhead critical regional initiatives.¹⁶⁴ To that end, Indonesia encourages ASEAN to be able to develop a collective outlook or framework with a focus on several fields of cooperation that are relevant to the development of the region's dynamics, in the areas of maritime, connectivity and sustainable development agendas.¹⁶⁵

Firstly, with regard to the Indo-Pacific ideas, it provides a philosophical foundation to claim itself as a global maritime axis, with key policy thrusts of ramping up naval capabilities, enhancing maritime trade and connectivity, and safeguarding marine resources in its territorial waters.¹⁶⁶

Secondly, at the regional level, all ideas surrounding the Indo-Pacific cooperation has a capacity to highlight ASEAN centrality, and not permitting external powers to dictate terms of Indo-Pacific cooperation. In the long run, such a development could persuade regional powers to abide by ASEAN's envisaged concept, as all powers present at the EAS adhere to and are comfortable with the ASEAN Way of maintaining ASEAN centrality, non-intervention in internal affairs, and consensual decision-making.¹⁶⁷

Thirdly, at the global level, Indonesia's – and subsequently ASEAN's – proposal of a cogent Indo-Pacific partnership strategy serves to offset great power politics by providing a view independent from the United States, China, and other interested powers like India, Japan, or Australia.¹⁶⁸

INDONESIA'S THIRD RESPONSE: ESTABLISHING A GEOPARK IN THE ISLAND OF NATUNA

Indonesia's strategic reasons behind developing the idea of Natuna Geopark lies in two of its foreign policies, namely border

¹⁶³ Djalal, H. (1995). *Indonesia and the Law of the Sea*.

¹⁶⁴ Roberts, C., Habir, A., & Sebastian, L. (2015). *Indonesia's Ascent: Power, Leadership, and the Regional Order*. Springer.

¹⁶⁵ Kemlu.go.id. (2018, September 7). Kementerian Luar Negeri Indonesia - ASEAN Akan Kembangkan Collective Outlook Konsep Asia Indo-Pasifik. Retrieved from <https://www.kemlu.go.id/id/berita/Pages/-Senior-Officers-ASEAN-Berkomitmen-Mengembangkan-Collective-Outlook-Konsep-Asia-Indo-Pasifik.aspx>

¹⁶⁶ Shekhar, V. (2018). *Indonesia's Foreign Policy and Grand Strategy in the 21st Century: Rise of an Indo-Pacific Power*. Routledge

¹⁶⁷ Yoshimatsu, H. (2012). ASEAN and evolving power relations in East Asia: strategies and constraints. *Contemporary Politics*, 18(4), 400-415. doi:10.1080/13569775.2012.728030

¹⁶⁸ Bhatia, R. K., & Sakhuja, V. (2014). *Indo Pacific Region: Political and Strategic Prospects*. Vij Books India Pvt

diplomacy and economic diplomacy.¹⁶⁹ Despite not being a claimant in the South China Sea disputes, but predicting future clashes with the PRC at its exclusive economic zone (EEZ) around Natuna Island, there are already overlapping areas with PRC's nine-dash line.¹⁷⁰ In this regard, Indonesia's border diplomacy has been utilized as a way to preserve and maintain political and economic sovereignty of the state, via promoting preventive diplomacy to build trust and avert potential conflicts.¹⁷¹ As a consequence, Indonesia commits itself to making Natuna Geopark to increase Indonesia's legitimacy and the sovereignty over the island as well as the rights it possess, including the EEZ. In this way, Indonesia has a legal base to protect its sovereign rights, including maritime rights when it comes to clash with other states' claim while in the other hand also maintaining good relations and support.

In the long run, developing the idea of Natuna Geopark will support Indonesia's strategic interests, economic development and environment

preservation.¹⁷² By making Natuna Island a geopark, it will invite international visitors, and help promoting geological heritage of the island, which at the later stage attract investment and greater international cooperation.¹⁷³

CONCLUSION

As the South China Sea issues remain unsolved, Indonesia has made itself creative, proved with its readiness to support the establishment Indo-Pacific, increasing the military status of the Natuna Island for military purposes, and also making Natuna Island as the world's geopark.

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¹⁶⁹ Dr. Siswo Pramono, L. (2018, December 12). The Indo-Pacific, Palm Oil Issue, and Geopark of the Natuna Island. *Research Communication Forum and Dissemination of Indonesia's Foreign Policy*. Cikarang, West Java, Indonesia.

¹⁷⁰ Parameswaran, P. (2016, August 26). *The Natunas: Why Is Indonesia Developing A South China Sea Flashpoint?* Retrieved from The Diplomat: <https://thediplomat.com/2016/08/the-natunas-why-is-indonesia-developing-a-south-china-sea-flashpoint/>

¹⁷¹ Myron H. Nordquist, J. N. (2012). *Maritime Border Diplomacy*. Boston: Martinus Nijhoff Publisher.

¹⁷² Ministry of Foreign Affairs. (2018). *Direction of Indonesian Foreign Policy*. Retrieved from Ministry of Foreign Affairs: <https://www.kemlu.go.id/en/kebijakan/landasan-visi-misi-polugri/Pages/Direction-of-Indonesian-Foreign-Policy.aspx>

¹⁷³ Dr. Siswo Pramono, L. (2018, December 12). The Indo-Pacific, Palm Oil Issue, and Geopark of the Natuna Island. *Research Communication Forum and Dissemination of Indonesia's Foreign Policy*. Cikarang, West Java, Indonesia.

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ASEAN AND PEACEKEEPING: 'SMART' COLLABORATIVE APPROACHES, MUTUALLY BENEFICIAL INTERESTS AND GREATER IMPACT

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ABSTRACT

United Nations (UN) peacekeeping operations are currently undergoing an important reform process with the stated objective to augment their overall performance. It has been assessed this will be realized notably through improved partnerships, including with regional organizations, with a view to fill critical capability gaps.

ASEAN could help significantly in this regard, in line with its Political-Security Blueprint 2025. Eight out of ten ASEAN countries are presently deploying 4500 troops across nine UN peacekeeping missions, albeit in a rather uncoordinated fashion. Some countries have large contingents, others very small ones; some embarked in peacekeeping as early as the 1950s, others joined only very recently. One country has left peacekeeping altogether. This makes for a rich knowledge and expertise repository which is either not sufficiently internalized within the regional bloc or 'projected' beyond.

Building on this experience as well as through other lessons learned in a UN empirical context, this paper will look at suggested innovative ways for 'enhanced' ASEAN engagement in peacekeeping for the benefit of the UN and ASEAN member states alike. These include: 'Smart pledges' or collaborative provision of key enablers; Development of harmonized training structures along specialized 'niches' of expertise; Triangular partnerships around capacity-building; Co-deployment and operational peer-to-peer learning.

By doing so, not only would ASEAN fulfill its ambition to serve as 'an outward-looking community' that plays a responsible and constructive role globally but also deepens integration and develop models of mutually beneficial cooperation in the field of peace and security.

Keywords: *Smart pledges, United Nations, ASEAN, collaborative peacekeeping operations, peace, security.*

INTRODUCTION

It is a general belief that the Association of Southeast Asian Nations (ASEAN) and

peacekeeping are incompatible and that the former is absent from the latter's reality.¹⁷⁴ This notion may hold to the centrality of

¹⁷⁴ This certainly holds true for peacekeeping deployments within ASEAN. However, this paper will focus on deployments beyond ASEAN boundaries. See notably Helmke, Belinda, 2009,

'The Absence of ASEAN: Peacekeeping in Southeast Asia', Pacific News, https://www.academia.edu/344321/The_Absence_of_ASEAN_Peacekeeping_in_Southeast_Asia_2009

‘non-interference’ and strict adherence to state sovereignty in ASEAN doctrine – both principles are enshrined in the ASEAN Charter.¹⁷⁵ The heated debate over the need or timeliness¹⁷⁶ for an ASEAN peacekeeping force about fifteen years ago may also have played a role in reinforcing that perception. However, a closer look at both the institutional framework and its practical translation on the ground seems to refute that idea.

First, the ASEAN Political-Security Community (APSC) Blueprint 2025 which lays out the Organization’s future strategic direction, marks a shift in attitudes and suggests a desire on the part of ASEAN member states to develop a greater capacity for participating in peace-related operations. It encourages Member States for instance ‘to participate in UN peacekeeping outside the region on a flexible, voluntary and non-binding basis’ [...] and calls upon them to ‘contribute collectively to global peace, security and stability’.¹⁷⁷

Second, peacekeeping is not just aspirational in ASEAN. It is also a ‘practical reality’ with eight member states of the regional bloc currently deploying more than

5000 troops to UN peacekeeping (almost 2000 more than 10 years earlier).¹⁷⁸ With all ten members being signatories of the recent Declaration of Shared Commitments on Peacekeeping Operations¹⁷⁹, the latest initiative by the United Nations (UN) Secretary-General to revitalize global engagement for peacekeeping¹⁸⁰ and make it more efficient and fit for purpose, those efforts will likely not slow down.

Against this backdrop of anticipated continued engagement in peacekeeping by ASEAN member states, the central question of this paper will therefore be: How to engage in more efficient, cost-effective, and collaborative ways to support efforts towards the maintenance of international peace and security while also advancing own interests?

Rather than analyzing what may explain this discrepancy between this opening preconception and actual figures of the peacekeeping engagement, this paper will look at ways for those countries to think ‘strategically’ about how best contributing to UN peacekeeping. In other words, it will be about accompanying their efforts towards

¹⁷⁵ See articles 2 (a) and (e) of the ASEAN Charter.

¹⁷⁶ <https://asiafoundation.org/2016/02/03/is-it-time-for-a-peacekeeping-force-for-asean/>

¹⁷⁷ <https://www.asean.org/storage/2012/05/ASEAN-APSC-Blueprint-2025.pdf>

¹⁷⁸ <https://peacekeeping.un.org/en/troop-and-police-contributors>

¹⁷⁹ <https://peacekeeping.un.org/sites/default/files/dpk-o-dfs-declaration-shared-commitments-unpeacekeeping-1812605e.pdf>

¹⁸⁰ It has been noted that the future of peacekeeping will depend on mobilizing comparative advantages (while also narrowing the gap between aspirations and reality). There is growing recognition that this will notably mean great reliance on organizations or groups of countries’ engagement.

identifying smart approaches for greater impact and success.

In these times of austerity, there is an urgent need to think about ways that reconcile urgency of savings while maintaining adequate defense capability to address both security threats and shortfalls experienced by UN peace operations. ASEAN countries are well placed to fill those gaps. They can thrive by focusing on depth over breadth and they are already beginning to forge a role for themselves.¹⁸¹ The niche expertise that they possess and could develop needs to be get further recognition. Ideally, ASEAN would mobilize comparative advantages, establish an avenue for countries to share their experiences and ultimately 'pool' the various capacities they are willing to potentially make available for deployment. In doing so, ASEAN countries will not only raise their profile, nationally and regionally, and gain reputational or operational advantages; they will also drive more value for themselves.

Suggested smart contributions in the field of peacekeeping cover two dimensions: the first one is operational and relates to combined deployments and other collaborative schemes; the second one is

about training and capacity-building which take place before or after the deployment.

By promoting collaborative approaches and models of mutually-beneficial cooperation in the field of peacekeeping, ASEAN can achieve greater trust and cohesion. In an unexpected turn of events, ASEAN and peacekeeping may turn out to serve each other's interests: the former by getting the capabilities it badly needs; the latter by making solid progress towards political and security integration.

SETTING THE SCENE

UN peacekeeping operations are currently undergoing an important reform process under the Action for Peacekeeping initiative¹⁸² with the stated objective to enhance their overall performance. It has been assessed this will be realized notably through improved partnerships, including with regional organizations, with a view to fill critical capability gaps.

Brief peacekeeping overview and main challenges faced

Peacekeeping operations¹⁸³ remain one of the most effective tools available to the UN

¹⁸¹ See Mely Caballero-Anthony, *Defining ASEAN's Role in Peace Operations: Helping to Bring Peacebuilding 'Upstream'?* https://www.academia.edu/26939904/Defining_AS_EAN_s_role_in_peace_operations_Helping_to_brin_g_peacebuilding_upstream_

¹⁸² <https://peacekeeping.un.org/en/action-for-peacekeeping-a4p>

¹⁸³ Peacekeeping, despite the UN Charter not making a single explicit reference to it, came into being in 1948 with the deployment of the first peacekeeping mission by the Security Council to the Middle East. Its role was to monitor the Armistice Agreement between Israel and its Arab neighbours, an operation which became known as the United Nations Truce Supervision Organization (UNTSO).

in the promotion and maintenance of international peace and security. Since 1948, 71 peacekeeping missions have been deployed by the UN, of which 14 are currently operating on four continents¹⁸⁴. They fall into two categories:

- Decades-old missions with the traditional and rather static task of monitoring lines of control in the Mediterranean and Kashmir, as well as the more recent mission in Abyei;
- Large and costly missions like those in the Central African Republic (CAR), the Democratic Republic of the Congo (DRC), Mali, and South Sudan and Darfur – with a so-called ‘multidimensional’ mandate¹⁸⁵. Those missions face profound challenges characterized by both the scope and complexity of their mandates ¹⁸⁶ as well as the

increasingly challenging environment in which they operate.¹⁸⁷ The combination of the two has more than often a detrimental effect: unrealistic expectations and inadequate resources ‘damaging the credibility of peacekeeping and multilateralism itself’¹⁸⁸, rise in fatalities and injuries of peacekeepers¹⁸⁹ or failures to fully deliver on their mandated duties.¹⁹⁰

Efforts for enhanced performance: The Action for Peacekeeping initiative

The first notable reform attempts at improving peacekeeping missions came in 2000 with the Brahimi Report.¹⁹¹ After 2015, further assessments and reports to strengthen UN peacekeeping and the overall peace and security architecture have gained a new momentum.¹⁹²

¹⁸⁴ <https://peacekeeping.un.org/en/where-we-operate>

¹⁸⁵ The focus of this paper including the policy recommendations it contains is on those multidimensional missions, also colloquially referred to as the ‘big 5’.

¹⁸⁶ Those are characterized by the lack of peace to keep, and/or the hostility and lack of cooperation from the host government in partnering to implement durable stabilization solutions. UN Secretary-General Antonio Guterres warned against ‘overly complex and unrealistic mandates which dilute the UN peacekeeping efforts and weaken our impact’ in an address to the Security Council in March 2018. He urged Security Council members to put an end to mandates that look like ‘Christmas trees’ and called for streamlined mandates.

¹⁸⁷ This encompasses high-risk environments with asymmetric threats including proliferation of armed groups, transnational criminal networks,

and extremist ideologies. UN peace operations are faced with violence on a larger scale as well as new forms of violence (including terrorism or direct attacks against peacekeepers).

¹⁸⁸ See Remarks by the UN Secretary-General to the Security Council High-Level Debate on Collective Action to Improve UN Peacekeeping Operations on 28 March 2018 at <https://www.un.org/sg/en/content/sg/speeches/2018-03-28/collective-action-improve-un-peacekeeping-operations-remarks>

¹⁸⁹ 2017 was the deadliest year for peacekeepers since the early 90s.

¹⁹⁰

<https://peaceoperationsreview.org/interviews/joachim-koops-and-paul-d-williams-oxford-handbook/>

¹⁹¹ http://www.un.org/en/ga/search/view_doc.asp?symbol=A/55/305

¹⁹² First with the High-Level Independent Panel on Peace Operations (HIPPO) available at

Those efforts have culminated in the UN Secretary-General's initiative 'Action for Peacekeeping' launched during the Security Council's open debate on peacekeeping in March 2018. This initiative notably calls for a 'quantum leap in collective engagement' in UN peace operations formalized by a 'Declaration of Shared Commitments on UN Peacekeeping Operations' - a set of twenty political commitments across seven themes:

- Political solutions;¹⁹³
- Strengthened protection provided to civilians;
- Safety and security of peacekeepers;
- Performance and accountability;¹⁹⁴
- Partnerships (particularly with regional and sub-regional organizations);
- Sustaining peace;¹⁹⁵
- Professionalism and Conduct of personnel.¹⁹⁶

As of November 2018, 151 countries and four supporting organizations¹⁹⁷ have signed the Declaration. ASEAN as such does

not feature among the signatories although all of its 10 member states have signed in their respective national capacity.

The future of peacekeeping is increasingly dependent on mobilizing comparative advantages for a more efficient peacekeeping (while also narrowing the gap between aspirations and reality). This is likely to involve more and more regional organizations¹⁹⁸ or groups of countries. What does it mean for ASEAN member states and what is there for them in this endeavour?

GLIMPSE AT ASEAN COUNTRIES' ENGAGEMENT IN UN PEACEKEEPING: LEGAL BASIS AND OPERATIONAL REALITY

At the outset, peacekeeping is a policy aspiration. The ASEAN policy framework contains several references to peacekeeping primarily in the context of the ASEAN-UN Joint Declaration on Comprehensive

http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/446, and then and then with the 2017 report on Improving Security of United Nations Peacekeepers, also known as the 'Cruz Report', at https://peacekeeping.un.org/sites/default/files/improving_security_of_united_nations_peacekeepers_report.pdf

¹⁹³ These notably include the need for clear, sequenced, prioritized, realistic/achievable mandates matched by corresponding resources; the Security Council is to seek views of host governments as well as important troops contributing countries (TCCs) prior to and during the mandate drafting phase

¹⁹⁴ Need to address performance shortfalls and reduce caveats; work with TCCs to generate specialized capabilities, including language skills;

Member States are required to provide well-trained, well equipped personnel after successful human rights screening.

¹⁹⁵ Notably through engagement with host government and civil society; improved cooperation with the Peacebuilding Commission.

¹⁹⁶ Zero tolerance for cases of sexual exploitation and abuse (SEA); strict implementation of the human rights due diligence policy (support to non-UN forces); sound environmental management

¹⁹⁷ European Union (EU), Organisation *internationale de la francophonie* (OIF), African Union (AU) and North Atlantic Treaty Organization (NATO).

¹⁹⁸ For overviews, see Paul D. Williams, *Global and Regional Peacekeepers* (Council on Foreign Relations, 2016).

Partnership as well as the Political-Security Community Blueprint 2025. It is also a 'tangible reality' with more than five thousand troops deployed across nine UN peacekeeping missions. Some ASEAN countries have been contributing to peacekeeping as early as the 1950s (e.g. Indonesia), others joined only recently (e.g. Viet Nam). This makes for a rich knowledge and expertise repository which should be better 'internalized' and disseminated throughout the regional bloc.

The Normative Framework

ASEAN-UN Joint Declaration on Comprehensive Partnership

ASEAN and the UN signed a Joint Declaration on Comprehensive Partnership at the fourth ASEAN-UN Summit on 19 November 2011 in Bali.

Specifically, with regard to 'Peace and Security' the Annex to the Joint declaration states that 'the partnership is to facilitate closer collaboration between ASEAN and the UN in collectively addressing the emerging global challenges' while drawing on the experiences and expertise of each organization.¹⁹⁹ Cooperation is sought to deepen with regard to strengthening the partnership on 'maintaining regional and

international peace and security in Southeast Asia and beyond'²⁰⁰ as well as in the area of multidimensional peacekeeping²⁰¹ through notably the relevant 'exchange of experiences and best practices'.²⁰²

In the Plan of Action to Implement the Joint declaration for 2016-2020, ASEAN and the UN agree on 'cooperation with the UN to provide continued training assistance in peacekeeping to ASEAN, including training in humanitarian affairs and civil-military coordination, gender issues such as the role of women peacekeepers, health, safety and security arrangements, and support ASEAN's efforts in strengthening the ASEAN Peacekeeping Centres Network'.²⁰³

The ASEAN Political-Security Community Blueprint 2025

At the 27th ASEAN Summit in Kuala Lumpur in 2015, ASEAN adopted its 'Community Vision' for 2025. ASEAN member states are notably called to 'remain cohesive, responsive and relevant in addressing challenges to regional peace and security as well as [...] contribute collectively to global peace, security and stability'²⁰⁴.

¹⁹⁹ <https://www.asean.org/storage/archive/documents/19th%20summit/UN-JD.pdf>

²⁰⁰ *ibid*

²⁰¹ *ibid*

²⁰² *ibid*

²⁰³ <https://asean.org/storage/2012/05/ASEAN-UN-POA-FINAL-AS-OF-5-SEP-2016.pdf>

²⁰⁴

<https://www.asean.org/storage/images/2015/November/aec-page/ASEAN-Community-Vision-2025.pdf>

Under the ASEAN Political-Security Community Blueprint 2025, ²⁰⁵ a key objective is to establish ‘an outward-looking community that deepens cooperation with external parties²⁰⁶ [...] and plays a responsible and constructive role globally based on an ASEAN common platform on international issues’.²⁰⁷

The peacekeeping clauses and relevant fora

Specifically, regarding peacekeeping, it is stated under Section B.4.5., that: ‘ASEAN Member States are encouraged to actively participate in peacekeeping and post-conflict peacebuilding efforts, in accordance with the capacity of respective ASEAN Member States.’ This notably encompasses efforts to:

- Promote the dissemination of best practices by the ASEAN Regional Mine Action Centre (ARMAC) in Cambodia across the region;
- Encourage further ASEAN Member States to participate in UN peacekeeping and post-conflict

peacebuilding efforts outside the region on a flexible, voluntary and non-binding basis;

- Make more use of and strengthen the ASEAN Peacekeeping Centres Network (APCN) to enhance capacity building and highlight ASEAN member states’ contributions to the UN;
- Explore the possibility of establishing a database on peacekeeping and post-conflict peacebuilding capabilities of participating ASEAN Member States;
- Enhance dialogue and cooperation with peacekeeping centres, academic institutions and think-tanks in other regions as well as the UN and other regional and international organizations on peacekeeping.

Discussions within ASEAN around peacekeeping activities normally take place under the ASEAN Defence Ministers’ Meeting (ADMM) and the ADMM-Plus Experts’ Working Group (EWG) on Peacekeeping Operations²⁰⁸. Peacekeeping is one of the seven themes covered by the Expert Working Groups.²⁰⁹ These multilateral arrangements are the perfect fora to discuss the opportunities and risks of

²⁰⁵

<https://www.asean.org/storage/2012/05/ASEAN-APSC-Blueprint-2025.pdf>

²⁰⁶ APSC notably encourages enhanced practical cooperation for those ASEAN member states willing to do so, also with external partners while maintaining ASEAN centrality. It notably calls on undertaking ASEAN Regional Forum (ARF) and ADMM-Plus joint training and planning activities, including table top and scenario-based planning exercises on peacekeeping. Ibid.

²⁰⁷ Ibid.

²⁰⁸ ADMM-Plus working group on Peacekeeping Operations is co-chaired by Indonesia and Australia for the period 2017-2020.

²⁰⁹ The other topics are: Humanitarian Assistance and Disaster Relief (HADR), Maritime Security (MS), Military Medicine (MM), Counter-terrorism (CT), Humanitarian Mine Action (HMA) and Cybersecurity (CS). Similarly, the ADMM and ADMM-Plus platforms have several configurations depending on the topics at stake: ASEAN Peacekeeping Centres Network (APCN), Logistics Support Frameworks, ASEAN Direct Communication Infrastructure (ADI), ASEAN Defence Industry Collaboration, ASEAN Militaries Ready Group (AMRG) on HA/DR and ASEAN Centre for Military Medicine.

greater and more collaborative engagement in peacekeeping.

Operational reality of ASEAN engagement in peace operations: historical and diverse

With 5,124 uniformed personnel²¹⁰ from eight ASEAN member states²¹¹ currently

deployed across nine missions²¹² (representing 5.7 percent of total troops serving under UN flag), peacekeeping in ASEAN is not just a theoretical aspiration but a reality.

Ranking troop contributing countries										
		M	W	Total	% M ASEAN	% M Total TTC	% W ASEAN	% W Total TTC	% ASEAN Subtotal	% TCC Total
9	Indonesia	2622.00	72.00	2694.00	61.19	3.07	33.80	1.55	59.89	2.99
28	Malaysia	807.00	39.00	846.00	18.83	0.94	18.31	0.84	18.81	0.94
29	Cambodia	733.00	67.00	800.00	17.11	0.86	31.46	1.44	17.79	0.89
70	Viet Nam	60.00	11.00	71.00	1.40	0.07	5.16	0.24	1.58	0.08
87	Philippines	13.00	17.00	30.00	0.30	0.02	7.98	0.37	0.67	0.03
88	Brunei Darussalam	30.00	0.00	30.00	0.70	0.04	0.00	0.00	0.67	0.03
90	Thailand	18.00	7.00	25.00	0.42	0.02	3.29	0.15	0.56	0.03
120	Myanmar	2.00	0.00	2.00	0.05	0.00	0.00	0.00	0.04	0.00
ASEAN Subtotal		4285.00	213.00	4498.00						
TCC Total		85525.00	4638.00	90163.00						
ASEAN Subtotal %		5.01	0.25	5.26						

The above chart shows the actual picture of ASEAN engagement in peacekeeping as of October 2018. The commitment of the regional bloc is neither recent²¹³ nor monolithic.²¹⁴ There is a great deal of varied knowledge gathered throughout the years

by the various countries involved which if properly analysed and shared could potentially lead to models of cooperation in defence and security that are mutually beneficial and productive for the entire ASEAN membership.

²¹⁰ As of 31 January 2019, https://peacekeeping.un.org/sites/default/files/1_summary_of_contributions_15.pdf

²¹¹ Those are Brunei, Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, Thailand and Viet Nam.

²¹² MINUSCA, MINUSMA, MONUSCO, MINURSO, UNIFIL, UNAMID, UNMISS, UNISFA and UNMOGIP.

²¹³ Indonesia, Malaysia and the Philippines sent their first peacekeepers in 1956, 1960 and 1963 respectively. See David Capie, *Evolving Attitudes to Peacekeeping in ASEAN* available at <http://www.nids.mod.go.jp/english/event/symposium/pdf/2014/E-06.pdf>

²¹⁴ The considerable diversity spans from very large to very small contingents, old timers and new-

comers, those who no longer contribute and those who may join one day:

- Old and large contingents: e.g. Indonesia, Cambodia;
- Old and small: e.g. Thailand and Philippines;
- New-comers with high ambitions: e.g. Viet Nam;
- New-comers with moderate ambitions: e.g. Myanmar;
- Those with partnerships/co-deployment experience: e.g. Malaysia, Brunei;
- Those who no longer participate but who may offer other contributions: Singapore;
- Those who never participated (but are perhaps prospective?): Lao

Two Case Studies: A Closer Look at Indonesia and Viet Nam

To illustrate this diversity, let us now look at the engagement of two countries with a very different profile bringing a unique approach and possibly lessons to be shared with ASEAN partners.

Indonesia

Indonesia currently ranks eighth in terms of peacekeeping contributions, with 3,065 personnel assigned to eight UN peacekeeping missions as of 31 December 2018. Indonesian troops represent 60 percent of ASEAN total TCCs, and three percent of the peacekeepers in the world.

Since 1957, it has been an active contributor to more than 30 UN peacekeeping operations. With the deployment of over 30,000 Indonesian troops and police personnel. Indonesia has now pledged to further increase its efforts and field 4,000 peacekeepers by the end of 2019. The country sits on the Security Council of the United Nations for the period 2019-2020 and intends to use this position to also advocate for more female

peacekeepers, promote co-deployment as well as the use of nationally-produced defence equipment in peacekeeping operations.²¹⁵

Indonesia is by all standards, a heavy-weight in peacekeeping terms. It has a long and rich history of contributions including a former President who himself served as blue helmet²¹⁶, a promising defence industry, a respected peacekeeping training facility and it first introduced the idea of an ASEAN peacekeeping force in 2003-2004.²¹⁷

Viet Nam

Viet Nam has a very different profile. Its first contribution to UN peacekeeping operations only officially began in 2014 with a modest deployment of two military observers to South Sudan. Being relatively new to peacekeeping has advantages, for instance it saves the trouble of having to compare the 'merits' of traditional peacekeeping versus the more 'robustness' and 'enforcement'²¹⁸. In the past five years, the country's involvement in peacekeeping has grown continuously. It currently fields 68 troops in UNMISS and five in the mission

²¹⁵ On 31 August 2018, President Jokowi while seeing off hundreds of personnel of the armed forces to UNIFIL and MONUSCO, expressed his pride that 'Garuda Contingent' are utilizing domestic defence equipment, such as the Bung Tomo corvette and the PT Pindad-produced Anoa-APS3 armoured vehicle. 'It is also to show how reliable Indonesia's strategic industrial products are', he said.

²¹⁶ Susilo Bambang Yudhoyono served as Chief Military Observer with the United Nation Peace

Forces (UNPF) in Bosnia-Herzegovina during the war in ex-Yugoslavia.

²¹⁷ Another symbol of Indonesia's high peacekeeping profile was the appointment of an Indonesian general as Force Commander in the UN peacekeeping mission in Western Sahara (MINURSO).

²¹⁸ On this doctrinal debate, see <https://theglobalobservatory.org/2018/04/peacekeeping-basics-is-not-backwards/>

in the Central African Republic (MINUSCA) making it the fourth largest ASEAN troops contributor.

By dispatching a Level-2 field hospital to the town of Bentiu, South Sudan, in October 2018 with more than 60 permanent staff including 25 percent of women, Viet Nam has not only filled a critically important capability gap but also showed its ability to deploy an independent unit.²¹⁹ Other indicators show the country's potential to turn into an influential powerhouse for ASEAN peacekeeping.

First, Viet Nam has already indicated its intention to dispatch an engineering company in late 2019 or early 2020.²²⁰

Second, drawing from the previous point, Viet Nam was selected by the United Nations as one of the four ASEAN countries to host the triangular training partnership on heavy engineering capabilities. More on this particular training under the next chapter of this article.

Third and last, Viet Nam will chair ASEAN in 2020 and has indicated its intention to run for the non-permanent seat on the UN Security Council open to the Asia-Pacific group which will commence on 1 January that same year (likely to compete with another TCC heavy-weight, India).

The two case studies of Indonesia and Viet Nam illustrate the variety and richness of approaches to peacekeeping within ASEAN. There are valuable experiences gathered throughout the process which could be widely shared within the regional bloc. Those views but also the qualitative experience and know-how accumulated over the years in a wide variety of operational environments, would certainly help some member states decide on the type of strategic peacekeeping contributions to make.

SMART CONTRIBUTIONS BY ASEAN TO ADDRESS PEACEKEEPING CRITICAL CAPABILITY GAPS

Not only has ASEAN experience and legitimacy to have its voice heard in the context of the peacekeeping reform but ASEAN countries are also uniquely positioned to fill some of the most critical capability gaps faced by peace operations given their niche expertise, either already recognized or still burgeoning.

'Smart contributions' are about sharing the burden of providing the capabilities that are in highest demand across TCCs and reduce operational strain on a single TCC.²²¹

²¹⁹ The fact that the Level-2 hospital is located in one of the largest protection of civilians' sites in the country providing sanctuary to nearly 115,000 people according to the UN is further evidence of the ambitious engagement of Viet Nam in peacekeeping. See

<https://peacekeeping.un.org/en/historic-arrival-vietnam-and-united-nations>

²²⁰ See <https://thediplomat.com/2018/10/whats-in-vietnams-new-peacekeeping-boost/>

²²¹ In the context of the Action for Peacekeeping initiative, Member States are strongly encouraged

Specialization by design

By identifying and solving some of UN's most pressing peacekeeping needs, ASEAN member states also ultimately drive more value for themselves. In the process of filling critical capability gaps, a TCC will likely be finding opportunities to create a flywheel for its products to power their own growth (defence industry, R&D, engineering community, medical and health sectors etc.).

Additionally, in these times of austerity and heightened security environments where peace missions operate, there is an urgent need to think about innovative and collaborative ways to generate adequate defence capabilities in a cost-efficient manner. In this regard, a sensible course of action would be to give priority to those capabilities where/which:

- A country has already achieved excellence;
- A country wants to do better and achieve excellence;
- Are most needed by UN peace operations.

Specialization 'by default' whereby a country tries to sustain all or most capabilities is costly and non-sustainable. Opting for specialization 'by design' is preferable: a given country concentrates on

national strengths and works collaboratively with others (one or a group of nations), be it at the training, deployment or post-deployment phase. This option seeks synergies, avoids duplication, and allows for cost-sharing and developing capabilities which individual entities could not afford alone.

The following lists three practical dimensions for a 'smart' ASEAN engagement in peacekeeping based on a dual analysis of current deployments as well as strategic repositioning.

Collaborative Provision of Key Enablers

Definition of key enablers

They are characterized by three main features:

- They are vital for mobility²²² and protection²²³ purposes (i.e. transport, night vision etc.);
- They have high performing capabilities;
- They are both in high demand and short supply;
- They are increasingly deployed through innovative or 'smart' means (e.g. on a rotation basis) to decrease the burden of having one TCC deploying alone.

to identify where they can jointly implement those contributions.

²²² A closer look at the enablers for mobility shows they serve two key functions: early warning (somewhat overlapping with the protection function, it consists of various assets used for intelligence gathering and situational awareness, (e.g. night vision equipment or gender/language

specific capabilities) and rapid deployment (e.g. utility helicopters for medical support for instance.).

²²³ Those key enablers used for protection or security purposes are meant for both the peacekeepers and those whom they are mandated to protect (civilians). They encompass attack helicopters or mine resistant vehicles for instance.

Enablers are not solely military but mission-wide multipliers: they benefit the entire peacekeeping mission as they greatly enhance the ability of troops and civilians to deliver on their mandated tasks. Here the challenge for UN peace operations is to get the right capabilities, not the available ones.

Multinational Rotation Contributions

Perhaps one of the most commendable initiatives underway of such efforts amongst Member States and the UN Secretariat is the establishment of a rotation plan for military transport aircraft in MINUSMA. Deploying certain high-capability and rare assets such as C-130 planes have long proven difficult in the UN peacekeeping world. In Mali, the rotation of C-130s initiated by Norway in January 2016 has been a successful example of a rotation of key enablers in partnership with other countries (Portugal, Sweden, Denmark and Belgium for the period 2016-2018).²²⁴

The multi-national rotational concept is still a novel concept in the UN but one that has received strong support and created a lot of interest and synergies. Perhaps its most

valuable contribution has been to create predictability both for the contributing countries and for the UN to a mission. It is especially attractive for a small nation 'without thousands of soldiers'.²²⁵

From the perspective of countries, the smart pledge of rotating asset plays an important role in reassuring they each have an exit strategy provided by the next rotation. For the UN, the C-130 on rotation contribution provides also a predictable contribution to fill a capability gap for a longer period of time.²²⁶

Harmonized Training and Capacity-Building Activities

Specialized 'niches' of expertise and peer-to-peer learning

Another innovative engagement has to do with the pre-deployment and debriefing phase. It echoes the call made earlier about 'specialization by design' and the need to concentrate on national strengths while also working collaboratively in other fields.

In the context of enhanced training curriculum, this could take the form of

²²⁴ A new Letter of Intent prolonging the air transport services to the Mission in Mali from November 2018 till November 2020 was signed in late 2017; <https://www.norway.no/en/missions/UN/news/peace/norway-extends-rotation-system-for-transport-aircraft-to-the-un-operation-in-mali/>

²²⁵ As Norwegian Defence Ministry, Ms. Eriksen Søreide, once put it. A small or medium-sized nation ought to think 'strategically' about how to best contribute to UN

peacekeeping. <https://www.ipinst.org/2017/05/multinational-rotation-contributions-for-un-peace-ops#8>

²²⁶ There were and still are legal, administrative, practical and operational challenges with this new type of multinational contribution, especially in the early days. However, it does not negate the fact that both the UN and TCCs involved have praised the initiative as an innovative approach to peacekeeping contributions.

‘centres of excellence’, with the six²²⁷ peacekeeping training centres in the ASEAN region each devoting one segment of their training and teaching to a focus area with the ambition to provide leadership, best practices, research, support and offer all interested parties to train on that particular area.

The focus area could be a thematic field where a country has already developed a certain level of expertise (i.e. countering-improvised explosive devices - IED- in Cambodia²²⁸, humanitarian assistance and disaster relief in the Philippines²²⁹ or ground water drilling by Thailand²³⁰ for instance) or a prospective specialization field a country wants to perfect in (i.e. MEDEVAC/CASEVAC²³¹, military communications/signals or even female engagement teams²³² or French-speaking capabilities²³³).

Similarly, empirical views formed by an ASEAN member in the context of a UN deployment on, say interoperability or pooled capabilities are useful knowledge which could benefit and inform decisions by a prospective TCC. Member states who contributed personnel, equipment or services to peacekeeping missions have gathered a unique hands-on experience. They have had to navigate through the complex administrative, logistics and financial terms governing those contributions.²³⁴ Particularly complex in this regard are the procedures for determining reimbursements to Member States for their contributions (the so-called Contingent Owned Equipment, COE) because of the recent introduction of new elements linked to premium and rapid deployment. It would be beneficial for new comers who are by definition lacking familiarity with those procedures to receive an ‘accelerated course’ from more experienced partners.²³⁵

²²⁷ Peacekeeping training centres can be found in Cambodia, Indonesia, Malaysia, the Philippines, Thailand and Viet Nam.

²²⁸ As we saw, the APSC promotes the dissemination of best practices by the ASEAN Regional Mine Action Centre (ARMAC) in Cambodia across the region.

²²⁹ The country has in-depth experience in sending civilian personnel to humanitarian post-disaster missions, the so-called ‘white helmets’; see https://www.academia.edu/5823441/DEFINING_AS_EANS_ROLE_IN_PEACE_OPERATIONS_HELPING_TO_BRING_PEACEBUILDING_UPSTREAM_C_I_V_I_L_M_I_L_I

²³⁰ Thailand made that pledge at the 2017 Peacekeeping Defence Ministerial Conference held in Vancouver.

²³¹ Medical/casualty evacuation.

²³² Female soldiers have generally a deescalating effect. They can also get access to ‘100 percent of the population, not only 50 percent’. See <https://unu.edu/publications/articles/why-un-needs-more-female-peacekeepers.html>

²³³ Three of the five largest missions are deployed in French-speaking countries: Mali, the Democratic Republic of Congo and the Central African Republic.

²³⁴ This is generally done through the signing of a memorandum of understanding (MOU) between the United Nations and the Member State.

²³⁵ In a similar vein, specific training on UN policies and procedures regarding the operational tasking and command-and-control procedures for military air assets has been identified as an area still lacking clarity. An illustration of the complexity to grasp the policies, procedures and lines of authority with regard to the tasking of aviation assets in the UN can be found in Novosseloff, Alexandra, Keeping

Another suggested engagement in the training sphere could lie in developing future doctrinal manuals. There are currently 11 UN Military Unit Manuals²³⁶ to enhance preparation, operational readiness and performance of peacekeepers. Perhaps for consideration of one or several ASEAN member states would be to prepare a Manual on operational partnerships and co-deployments (lessons learned and good practices)?

Triangular partnerships: The engineering example

Engineering is one of the most crucial, yet largely ignored elements, to the smooth functioning of a UN peace operation.²³⁷ Like many important enablers, peace missions are faced with a shortage of heavy machinery as well as personnel who can operate the equipment. Over the years, Japan has earned solid credibility for its engineering and transport units, which are indispensable for enabling operations of

peacekeeping missions. In line with the country's strategic decision to stop deploying personnel, Japan instead opted to boost the capacity of foreign forces.²³⁸ This has led to the launch in 2015 of the Project for African Rapid Deployment of Engineering Capabilities (ARDEC) in cooperation with the UN Department of Field Support (DFS) and the International Peace Support Training Centre in Kenya.²³⁹

This triangular partnership focuses on building engineering capabilities, i.e. the operating and maintenance of heavy equipment required for engineering activities in support to peacekeeping missions, especially those led by the African Union. In that sense, engineering capabilities fall under the key enabling functions described earlier.²⁴⁰

In June 2018, the UN recognized four Peacekeeping training centres in the ASEAN region (Viet Nam, Cambodia, Indonesia and Thailand) provide sequential training under the three-party partnership.²⁴¹

Peace from Above: Air Assets in UN Peace Operations (September 10, 2017). Available at SSRN: <https://ssrn.com/abstract=3068240>

²³⁶ Full list available here:

https://www.bipsot.net/index.php?option=com_content&view=article&id=226%3Aunmum-seminar-2016&catid=2&Itemid=180

²³⁷ On the various roles that engineers play in UN peace operations and the type of engineering capacities that allow for a successful functioning of a mission, see

<https://www.ipinst.org/2014/02/engineering-peace-the-critical-role-of-engineers-in-un-peacekeeping>

²³⁸

<https://www.japantimes.co.jp/news/2018/07/16/n>

ational/japan-provide-peacekeeper-training-asean-nations/#.XGZ6xbhS_D4

²³⁹ The fifth iteration of this training was held in 2018:

https://www.mofa.go.jp/press/release/press4e_002045.html

²⁴⁰ The Triangular Partnership concept is explained here:

https://fieldsupport.un.org/sites/default/files/fs_triangular-partnership-project_0.pdf

²⁴¹ The first course took place in Viet Nam in November 2018 and gathered 16 trainees from the Asia-Pacific region including Cambodia, Indonesia, Myanmar and Singapore as well as 20 specialists from Japan. The training aimed at equipping them with knowledge and techniques to power heavy

The triangular model is one that relies heavily on the engagement and proficiency of a mentor. One way to take this model to a new level would be to have a mentor from the ASEAN realm. This would increase regional integration and further enhance in-house knowledge and skills in peacekeeping. Singapore and its unique know-how with regard to tech-enabled ways to enhance peacekeeping could for instance consider mentoring other countries on information management tools.²⁴²

Operational Co-Deployment

Collaborative efforts at the ground level

Going back to current deployments, it is remarkable to note that the UN mission in South Sudan, UNMISS, is home to six contingents²⁴³ originating from ASEAN countries. No other peacekeeping missions can claim such a large diversity of ASEAN contributions.²⁴⁴ Arguably sharing experiences and trying on new models of mutually-beneficial cooperation are greatly facilitated by the mere fact of being

physically collocated far from home, some 7000km away from the most eastern boundaries of the ASEAN region.

Who thinks of Juba, Bentiu or Malakal, some of the UN outposts in South Sudan, as potential ‘incubators’ of ASEAN political-security integration? This makes for fertile ground to cross-pollinate ideas and grow closer cooperation. One military adviser or a company deployed in a far-away land for the first time will arguably try at least initially to get acquainted with fellow citizens or like-minded neighbours. The result, after a long deployment lasting generally a year, is to get exposed to diverging opinions and different methods with the hopeful benefit of broadening one’s horizons.

The Malaysia-Brunei model and other lessons from EU

The one and only example of ASEAN co-deployment involves Malaysia and Brunei. The latter is embedded in the infantry battalion of the former in the UN peacekeeping mission in Lebanon (UNIFIL)

engineering equipment like bulldozers, excavators, motor graders, and semi-trailer trucks in order to carry out the work performed by engineering units in UN peacekeeping missions.

<https://en.vietnamplus.vn/vietnam-hosts-training-course-for-un-peacekeeping-engineers/141328.vnp>

²⁴² “As a small state with limited resources, Singapore is pleased to make a modest contribution to UN peacekeeping operations [...] an information management tool that will enhance the efficiency and situational awareness of UN peacekeeping missions” said Ambassador Burhan Gafoor, Permanent Representative of Singapore to

the United Nations in May 2017 while handing over to the UN a software application to assist in better maintaining reports of casualties of personnel in peace operations.

<https://www.un.org/sg/en/content/sg/note-correspondents/2017-05-23/note-correspondents-singapore-collaborates-united-nations>

²⁴³ There were even seven until September-October 2018 when Malaysia pulled out its 6 police officers deployed to UNMISS.

²⁴⁴ UNIFIL also presents an interesting profile with four ASEAN countries representing contributing one fifth of all troops in the mission.

since 2008.²⁴⁵ It is to date the only contingent Brunei has ever contributed to UN peacekeeping, and this was made possible thanks to the close cooperation with Malaysia. As the culmination of bilateral military training exercises between the two countries since the early 1980s, Malaysia hosted a specific pre-deployment training jointly with Brunei for three months prior to departure.²⁴⁶

The 'combined team' model chosen by Malaysia and Brunei is called 'embedding': troops from Brunei are integrated within existing operational units of Malaysia to form mixed units under Malaysia's command. It has proven successful and Malaysian authorities have advocated it could serve as an example to be further replicated in an ASEAN context.²⁴⁷

There are other models of operational partnership: attached, co-deployed, and composite.²⁴⁸ The co-deployment model is a popular one which has been used extensively by EU member states also in

UNIFIL. It consists of distinct operational units from two countries, Country A and Country B, operating as part of a multinational command structure involving officers from both countries.

Finland and Ireland started their collaboration in UNIFIL in 2006 under the co-deployment model, with equal status, an integrated command and independent units.²⁴⁹

Benefits (and challenges) of smart contributions

The Brunei-Malaysia and EU²⁵⁰ examples illustrate that capability cannot be delivered without cooperation.²⁵¹ One of the immediate advantages this initiative brings is to address the uncertainty as to the length of commitment when a country is considering signing up to a UN peacekeeping mission. It directly echoes the need to create more predictability both for the contributing

²⁴⁵

<http://www.theborneopost.com/2012/11/10/rbaf-armed-forces-of-malaysia-to-cooperate-as-unifil/>

²⁴⁶ For more lessons learned from deploying combined teams in UN peacekeeping operations, see <https://www.ipinst.org/wp-content/uploads/2015/08/IPI-E-pub-Operational-Partnerships-in-Peacekeeping.pdf>

²⁴⁷ Former Malaysia Defense Minister Hishamuddin made that call in 2014: <http://www.therakyatpost.com/news/2014/07/16/asean-members-must-move-one-team-peacekeeping-mission/>

²⁴⁸ See 53

²⁴⁹ Estonia joined in May 2015 with a platoon assigned to a Finnish company, showing the flexibility in configuration this instrument allows.

Due to other national commitments both Finland and Estonia withdrew from the Irish-Finnish Battalion in UNIFIL effective 1 January 2019. See <https://www.oireachtas.ie/en/debates/question/2018-10-03/93/>

²⁵⁰ In the case of the EU, Estonia would not have been able to deploy a platoon to a UN mission other than within a Finnish framework company, and Finland would not have been able to gain the battalion-level command experience it requires for training and force development other than within the Finnish/Irish battalion.

²⁵¹ On the role of small states in UN peacekeeping and some of the specific benefits and costs of Estonia's participation in UNIFIL, see <https://icds.ee/soldiers-of-peace/>

countries and for the UN²⁵² to a mission, as seen earlier in the context of the multinational rotational concept.²⁵³

Other benefits for ASEAN countries who would consider following in Malaysia and Brunei's footsteps, or those of Viet Nam (capacity-building) and Cambodia (training), are manifold:

- Opportunity to improve own military and/or gain operational experience;²⁵⁴
- Prospect of strengthening political and military relations between partners as well as enhanced cohesion and influence of the TCCs region as a whole;
- Mentorship opportunities for junior partners while the seniors can polish their 'leaders' reputation;

²⁵² The rotational model helps avoid uninterrupted provision and availability of key capabilities. Other benefits for the UN include: broadened contributors' base; widened political and diplomatic support for its field missions; increased interoperability between its TCCs; critical needs matched on the ground.

²⁵³ Under the Irish initiative, participating countries of the EU are able to commit to a UN mission on a time-limited basis, thereby avoiding what is sometimes described as the reluctance of prospective TCCs to commit resources for an unclear extended period of time.

²⁵⁴ See article on why the yearlong UN rotations represent some of the best training anyone in the Bangladeshi military could hope for. In MONUSCO, a Bangladeshi chopper pilot each routinely flies as many as 300 hours a year, three times more than back home, according to <https://thedi diplomat.com/2010/12/why-south-asia-loves-peacekeeping/?allpages=yes>

²⁵⁵ In 2017, France started hosting Training of French-speaking Trainers sessions specifically in view of deployments to UN peacekeeping missions. See <https://onu.delegfrance.org/Training-of-French-speaking-UN-trainers>

- Opportunity to further develop niche capabilities (as seen earlier);
- Improved language skills (English or French²⁵⁵ are the most desired ones);
- Potential for future nucleus for standby arrangements²⁵⁶ or rapid deployable units;²⁵⁷
- Prospects to build diplomatic/economic inroads in new countries.²⁵⁸

There are however also challenges: risk of reduced operational effectiveness or slow deployment process; unwanted exposure to other's countries scrutiny; possible frictions or tensions between partners.

²⁵⁶ Is there a need for an ASEAN pre-identified, trained and verified standby force which could be called to intervene in theatres outside of Southeast Asia? Or should in reality rapid deployment continue to be bas-ed on the capacity, willingness and readiness of individual states to deploy to a given conflict? Those questions are relevant to all regional blocs and not just ASEAN. The EU has long debated the benefits versus costs and risks to deploy EU Battles Groups or the European Gendarmerie Force (EGF) without to date reaching a definite conclusion. The African Standby Force (ASF) was established in 2003 but never deployed. Lastly, the Cruz del Sur Joint Peace Force developed by Chile and Argentina has been existing solely on paper so far.

²⁵⁷ On this topic, see https://www.ipinst.org/wp-content/uploads/publications/ipi_e_pub_improving_un_rapid_deployment.pdf

²⁵⁸ For many TCCs, peacekeeping is a relatively inexpensive way to maintain large armies and boost the pay of select troops, while also building diplomatic inroads in poorer countries that might be rich in resources that the TTC region lacks.

CONCLUSION

There is little doubt ASEAN member states remain receptive to UN peacekeeping operations as an important element in the maintenance of international peace and security. They should, however, consider making their future contributions 'smarter'. While some ASEAN states are still uncomfortable with providing military peacekeepers within the region,²⁵⁹ at the same time there is the realization of the need to address new security challenges and to identify innovative options that seek synergies, allow for cost-sharing and greater impact.

This paper makes a number of suggestions in this regard. The proposals are either already being experimented by ASEAN countries (e.g. combined Malaysia-Brunei troops deployed to UNIFIL) or have successfully been tested by other regional blocs (e.g. rotation of key enablers by EU member states in MINUSMA). Groups of nations that are willing to provide such capacities are proving to be just as critical as those that have been contributors of 'boots on the ground'. It is an important lesson in an ASEAN context which may help dissipate

hesitations some members may have in considering their future engagement.

Pursuing integrated efforts in the field of peacekeeping is about making the regional bloc fulfil its ambition to serve as 'an outward-looking community' that plays a responsible and constructive role globally. Enhancing ASEAN defence and security cooperation can in turn generate confidence-building measures and promote greater transparency, cohesion and understanding.

The scope of this article is not to resurrect the prospect of an ASEAN peacekeeping force which may or may not exist one day, but rather focus on the nucleus, a pioneering group of ASEAN member states that would want to move further or faster than the others on those issues. The future of peacekeeping will depend on mobilizing comparative advantages. And, as we have seen, this will necessarily involve more regional organizations or groups of countries, ASEAN countries have several options in front its eyes. It remains to be seen which configuration will fit them best.

²⁵⁹ However, the ASEAN Agreement on Disaster Management and Emergency Response (AADMER) offers a unique example that 'working under a single banner' can occur and is bound to bear fruits. Humanitarian Assistance and Disaster Relief (HADR) can serve as an experimental laboratory out of which can come models of operational collaboration. What ASEAN has managed to

achieve collectively in the HADR sector, by creating a common platform and regional policy, proves that integration models can work without infringing on sovereignty principles. That is so any efforts in pursuing an integrated regional peacekeeping path must clearly be demarcated as an external projection, beyond the ASEAN boundaries.

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PART TWO: **ASEAN ECONOMIC COMMUNITY**



CONTENT ANALYSIS ON ASEAN DIGITAL ECONOMY FRAMEWORK

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ABSTRACT

Digital economy in ASEAN has shown tremendous growth in the past decade. The growth of ASEAN digital economy has reached \$72 billion in 2018 and it is expected to reach \$240 billion in 2025. ASEAN as a common market has formulated digital economy as one of the main frameworks for ASEAN integration as a result of the tremendous growth of digital economy in the region. However, there are some major challenges in implementing those frameworks. This study aims to analyze some frameworks on digital economy in ASEAN. Using content analysis as the research method towards four frameworks on digital economy, this paper found that there is still a lack of understanding of the regional stakeholders regarding to the digital economy. For one reason, the framework on digital economy in ASEAN is not quite regulated conception of digital economy and less articulate on how to construct and conduct digital economy as a tool for building the region integration and sustainability. Understanding this study may contribute to the improvement and enhancement of digital economy as the major key to more integrated and sustained ASEAN.

Keywords: Digital Economy, Content Analysis, ASEAN Integration, ASEAN Sustainability.

INTRODUCTION: WORLD OF DIGITAL ECONOMY

The number of internet users has grown rapidly over the past decade and two-fifths of the world's population is online. Increasingly equipped with smartphones, consumers depend on the internet for a growing range of everyday activities, from connecting with friends and family to shopping and banking. Business also harness the internet extensively across their operations. A complex and dynamic value chain comprising both global and local players has developed to deliver digital services to consumers and businesses. The

digital economy's value chain broadly consist of three elements devices which includes smartphones, tablets, PCs, game consoles, wearables, sensors, and the growing range of connected machines and vehicles that make up the Internet of Things, networks which mobile and satellite networks that connect devices to the internet and applications which includes online services, content rights, and the enabling technologies to deliver them (A.T. Kearney Inc., 2015).

The digital age is now a reality in many economies. Governments, businesses and individuals are migrating their activities to

the Internet at an increasing pace and the uptake of digital technologies is reaching new levels. In this environment, data and digital technologies are becoming increasingly essential for participation in the global economy (Box & Lopez-Gonzales, 2017).

Digital technologies including the Internet, cloud computing, data analytics and the Internet of Things (IoT), have facilitated commerce by making it easier for suppliers to connect with customers and improve logistics control. Technology is now making it possible to complete transactions, deliver products and services, and make payments faster, more efficiently and at lower prices. They have boosted the abilities of firms of all sizes and origin to find a niche in global value chains (GVCs) and gain access to new markets. The Internet provides a platform on which entrepreneurs can construct new businesses and commercialize their ideas, lowering entry barriers and freeing up resources for innovative activity. At the macroeconomic level, these trends hold the potential for new sources of productivity and economic growth. Evidence continues to show the positive returns on investment in digital technologies, especially when combined with investment in complementary assets such as human capital and organizational change (Box & Lopez-Gonzales, 2017).

Digitalization and new technologies change what and how we trade, but not the

economic fundamentals of why we trade. That is, trade is still subject to comparative advantage, informational asymmetries and barriers to trade both at-the-border and behind-the-border. However, new technologies which are reducing the cost of sharing ideas across borders and connecting different actors along the value chain, help overcome some of the constraints associated with engaging with international markets and may shift sources of comparative advantage. (Box & Lopez-Gonzales, 2017)

Digital platforms are increasingly replacing intermediaries to connect supply with demand. They can help reduce informational asymmetries and search costs, helping firms, and particularly small medium enterprises, upscale production and meet the costs associated with exporting, and also allowing individuals to more directly engage in international trade, both as buyers and sellers, and find better matches to their preferences (Box & Lopez-Gonzales, 2017).

New technologies and digitalization are giving rise to new 'information industries' such as 'big data' analytics, cyber security solutions or at-a-distance computing services increasingly being traded across borders. At the same time, digitalization is changing the tradability of already established service industries. This is not only a potential source of disruption in the domestic economy and a challenge for regulators, as has been seen in the case of

growing accommodation-sharing or ridesharing services, it also has implications for current and future liberalization schedules, since many commitments were negotiated before these disruptive players entered the marketplace (Box & Lopez-Gonzales, 2017).

DIGITAL ECONOMY IN ASEAN

Southeast Asia has 260 million internet users in 2016 and in 2018 has 350 million internet users across its six largest countries. This number is projected will grow to 480 million users by 2020 (Google Inc. & Temasek Holding Pte. Ltd., 2018; Google Inc. & Temasek Holding Pte. Ltd., 2016). In Southeast Asia, mobile is the internet, as more than 90% of Southeast Asia's internet users are on smartphones.

It is hard to overestimate the absolute prominence of mobile as the access point and driver of Southeast Asia's internet economy. Users in Southeast Asia are incredibly engaged, spending an average of 3.6 hours per day on mobile internet, more than in any other region in the world. Users in Thailand lead the world with 4.2 hours per day spent on mobile internet, and users in Indonesia come a close second at 3.9 hours per day. By comparison, users in the U.S. spend an average 2.0 hours per day on mobile internet; users in the U.K., 1.8 hours per day; and users in Japan, 1.0 hour per day (Google Inc. & Temasek Holding Pte. Ltd., 2017).

Indonesia, the world's fourth largest country by population, is forecast to hit \$100 billion by 2025, ahead of Thailand (\$43 billion) and Vietnam (\$33 billion), with strong growth forecast across the board. This followed with Singapore (\$22 billion), Malaysia (\$21 billion) and Philippine (\$21 billion) respectively. Indonesia and Vietnam, in particular, have seen their respective digital economies more than triple since 2015 (Google Inc. & Temasek Holding Pte. Ltd., 2018).

ASEAN digital economy currently generates approximately \$178 billion. Southeast Asia's digital economy accounts for 2% of the region's GDP in 2018, up from 1.3% in 2015 and projected to reach 6% of the GDP by 2025 (Google Inc. & Temasek Holding Pte. Ltd., 2018).

Online travel accounts for the majority of that revenue (\$30 billion) ahead of e-commerce (\$23 billion), online media (\$11 billion) and ride-hailing (\$8 billion), and that rough breakdown is likely to be maintained up until 2025 (Google Inc. & Temasek Holding Pte. Ltd., 2018).

More than 2,000 internet economy companies in the region have secured investments, with companies valued less than \$1 billion able to raise collectively almost \$7 billion in the last three years. Among them, the most dynamic segment was that of companies valued between \$10 million and \$100 million. The bedrock of the internet economy, these

companies have raised \$1.4 billion in the first half of 2018, already eclipsing the \$1.0 billion they received in all of 2017 (Google Inc. & Temasek Holding Pte. Ltd., 2018).

Venture capital investments in Southeast Asian companies signal a strong vote of confidence in the potential of Southeast Asia's internet economy by global and regional investors. Based on public information, Southeast Asia is home to seven internet unicorns, namely Go-Jek, Grab, Lazada, Razer, Sea Ltd. (formerly known as Garena) Traveloka, and Tokopedia (Google Inc. & Temasek Holding Pte. Ltd., 2017).

The acceleration of Southeast Asian e-commerce has been driven by the surge of marketplaces where SMBs sell to consumers on mobile-first platforms (SMB-2-C). Top players in this space, like Lazada, Shopee, and Tokopedia, have enabled the growth of SMB-2-C by providing scalable, readily accessible platforms where the long-tail of smaller retail players can transact online and reach new consumers within and beyond Southeast Asia. Confirming the appeal of Southeast Asian e-commerce marketplaces is also the strong user engagement with these platforms (Google Inc. & Temasek Holding Pte. Ltd., 2017).

The implementation of the ASEAN Economic Community, which pledges to promote free movement of goods, services, investment, skilled labor, and free flow of capital, has created a renewed sense of

optimism and urgency for economic integration in the region.

Growing integration should help the region's nascent digital economy realize greater economies of scale. Across the world, digital products and services are transforming industries, enriching lives, and propelling progress. The Association of South East Asian Nations (ASEAN) has an opportunity to leapfrog to the forefront of the fast-moving global digital economy (A.T. Kearney Inc., 2015). Many of the fundamentals are already in place namely (A.T. Kearney Inc., 2015):

- Robust economy generating GDP of \$2 .5 trillion, in which it is among the largest economies in the world, behind only the United States, China, Japan, Germany, the United Kingdom, and France and growing at 6 percent per year.
- ASEAN is home to more than 628 million people (± 10 percent of the world's population). The literacy rate is high at 94 percent. Some 40 percent of citizens are under 30 years of age and are digital natives. This generation is learning to champion disruptive thinking and is primed to innovate.
- Well-developed (ICT) cluster with a track record of innovation and investment in new technology in which ASEAN ICT sector has evolved at a phenomenal pace in the past few years ICT investment, which amounted to

more than \$100 billion in 2014, is now growing at more than 15 percent annually. Indonesia alone has set aside \$150 billion for ICT investments over the next three years.

- Renewed sense of optimism and urgency for economic integration with the implementation of the ASEAN Economic Community, which pledges to promote free movement of goods, services, investment, skilled labor, and free flow of capital.
- It has the potential to enter the top five digital economies in the world by 2025. Moreover, implementation of a radical digital agenda could add \$1 trillion to the region's GDP over the next 10 years.

By 2025, a digital revolution could transform daily life in ASEAN, making physical cash increasingly obsolete and cities smarter, safer places to live. With a large and youthful population increasingly equipped with smartphones, ASEAN has an opportunity to pioneer the development of new digital services, especially advanced mobile financial services and e-commerce. These sectors are likely to give rise to digital champions that will lead the way for the broader economy (A.T. Kearney Inc., 2015).

A decade from now, ASEAN's manufacturing sector is likely to have embraced "Industry 4 .0" technologies that enable machines on assembly lines to interact with the products they are producing, boosting efficiently, increasing

flexibility, and enabling greater customization. Moreover, across ASEAN, citizens will be able to access public services digitally, transforming the way they interact with both national and local governments. By 2025, most of ASEAN's citizens will be digital natives, fully empowered to use high-tech tools to enhance their personal and professional lives (A.T. Kearney Inc., 2015).

ASEAN's strong and vibrant economy, favorable demographics, ICT investments, and ongoing economic integration have laid the foundation for the region to become a global leader in the digital economy.

These gains are not automatic however, with country-level differences pointing to the importance of infrastructure and institutions, and the need for attentive policymaking, especially to ensure that the gains are inclusive. ASEAN economies are embracing digital technologies to varying degrees and leveraging them for economic and social advancement.

Recognizing all of these potentials, ASEAN had established digital economy as a tool for more integrated and sustained ASEAN that is in line with the vision and principle of AEC. It could be seen in several frameworks about digital economy that ASEAN formulated in which those frameworks would be used as a structure and basis for digital economy policy formulation in all of ASEAN member states. Some of the main frameworks are e-ASEAN Framework Agreement, AEC Blueprint 2025,

Master Plan on ASEAN Connectivity 2025 and ASEAN ICT Master Plan 2020.

ASEAN DIGITAL ECONOMY FRAMEWORKS

e-ASEAN Framework Agreement was enacted in 2000 and has six focus areas which are establishment of ASEAN Information Infrastructure; growth of e-commerce, liberalization of trade in ICT products, services and investments; facilitation of trade in ICT products and services, capacity building and e-Society; and e-government (ASEAN, 2000).

ASEAN ICT Masterplan 2020 is the continuation of ASEAN ICT Masterplan 2015 in which it focused on enabling the transformation to the digital economy and developing the human capacity necessary for this transition, facilitating the emergence of a single integrated market that is attractive to investment, talent and participation and building a digital environment that is safe and trusted (ASEAN, 2015).

AEC Blueprint 2025, which charts the direction of ASEAN's economic integration from 2016 to 2025, has an element of electronic commerce under the main characteristic of Enhanced Connectivity and Sectoral Cooperation, which makes reference to the following strategic measures: harmonized consumer rights and protection laws; harmonized legal framework for online dispute resolution,

taking into account available international standards; inter-operable, mutually recognized, secure, reliable and user friendly e-identification and authorization (electronic signature) schemes; and coherent and comprehensive framework for personal data protection (ASEAN, 2015). Last, Master Plan on ASEAN Connectivity 2025 identifies digital innovation as one of five strategic areas to achieve a seamlessly connected ASEAN, as well as a significant potential source of economic activity, and points to the need for backbone infrastructure, regulatory frameworks for new digital services, support for sharing best practice on open data, and equipping micro-, small- and medium-sized enterprises with capabilities to access new technologies (ASEAN, 2018).

Since those four frameworks are one of the main bases for AEC digital economy formulation, it is important to analyze them in order for a better understanding of digital economy practices.

FINDINGS AND DISCUSSIONS

The research method that will be used in this study is qualitative content analysis. There are four documents or frameworks that will be analyzed which are e-ASEAN Framework Agreement, AEC Blueprint 2025, ASEAN ICT Master Plan 2020 and Master Plan on ASEAN Connectivity 2025. There is a number of significant phrases of the digital economy to reveal whether research objects

encompass, use or manage diction of digital economy explicitly and implicitly. The next procedures were analyzing the four frameworks and determining the number of important phrases on the digital economy.

First, it will determine the concept and articulation of the digital economy in general. Second, it is phrases of digital economy objectives that determine the key parameter of digital economy practices.

Third, it is phrases of the main actors of digital economy management that comprises two major indicators. Fourth, it is phrases of the main actor's authority to manage the digital economy practices, whether it is in written or implementation form. Fifth, it is phrases of several forms of cooperation of inter-ASEAN or intra-ASEAN. Below are the results of the analysis.

A. Articulation of Digital Economy

There is no consensus of the acceptable meaning of digital economy. The simple and straightforward meaning is, "an economy based on digital technologies" (Bukht & Heeks, 2017). However, some experts give the explanation about the broad definition of digital economy.

Mesenbourg (2001) defined the digital economy as having three primary components which are first, e-business infrastructure is the share of total economic infrastructure used to support electronic business processes

and conduct electronic commerce; second, e-business is any process that a business organization conducts over computer-mediated networks; and third, e-commerce is the value of goods and services sold over computer-mediated networks.

Rouse (2016) defined the digital economy as the worldwide network of economic activities enabled by information and communication technologies (ICT). It can also be defined more simply as an economy based on digital technologies.

Dahlman et.al. (2016) defined the digital economy as the amalgamation of several general purposes technologies (GPTs) and the range of economic and social activities carried out by people over the Internet and related technologies. It encompasses the physical infrastructure that digital technologies are based on (broadband lines, routers), the devices that are used for access (computers, smartphones), the applications they power (Google, Salesforce) and the functionality they provide (IoT, data analytics, cloud computing).

Thus, from all of the definitions above, we can conclude that digital economy is an economy based on digital technologies and comprises of three main pillars that are Information and Communication Technology (ICT), e-

business and e-commerce.

In the examined frameworks, generally, all of them mention the concept of digital economy explicitly, even though there are several terms other than digital technology such as the internet economy, new economy, and technology economy that being coined. It shows that the policy makers have understood fully about the concept of the digital economy in terms of the only definition. It is very important because this is the first step that indicates the awareness of policymakers about the basic of the concept of the digital economy. However, this will not determine the full conclusion of the examined frameworks without comparing it with other four articulations.

B. Articulation of Digital Economy Objectives in Digital Economy Management

The writer will attempt to find out a number of explicit signs in the examined frameworks representing indicators of digital economy objectives to measure the articulation of the digital economy objectives. The EIU model of the digital economy will be used to determine the main indicators of digital economy objectives. There are six main indicators of this model. First, ICT connectivity and technology refers to how far individuals and business can access the internet

and mobile networks and the supporting infrastructure. Second, business environment refers to the overall business climate of attractiveness as a trading economy and destination for businesses. Third, the social and cultural environment refers to the impact of the differences between social and cultural factors in a certain country. Fourth, the legal environment refers to the specific laws and regulations covering the digital economy activities in a certain country. Fifth, government policy and vision refer to all of the policies, missions from the government regarding the digital economy platform. Last, sixth, consumer and business adoption refer to how far the parties of consumers and businesses use the digital economy in their respected activities (Economist Intelligence Unit, 2010).

Based on the results, the examined frameworks place more emphasis on social and cultural environment phrases with 82 % percentage and then followed by business environment phrases with 13 % percentage, government policy and vision phrases with 2 % percentage and ICT connectivity and infrastructure phrases with 2 %.

The results conclude that phrases of the social and cultural environment have a more dominant result with other

phrases with a whopping percentage of 82 %. In the other hand, phrases of the legal environment and consumer and business have zero figures on the examined frameworks. Social and cultural phrases only stand to the phrases regarding the social and cultural factors that have an impact on the practice of digital economy. Although social and cultural environment is a very important factor because of the very differences of social and cultural lives within ASEAN member states, it means that the policymakers of ASEAN place more emphasized on how to overcome the social and cultural barriers within ASEAN member because those differences are one of the main obstacles for ASEAN's integration, it could not fully conclude that the digital economy objectives have been placed evenly because of the huge percentage differences between social and cultural phrases with other phrases. Thus, it indicates that there is still a lack of understanding about digital economy objectives articulation for policymakers in ASEAN.

C. Articulation of Main Actors of Digital Economy Management

Main actors of digital economy are classified into two parts, namely private actors and public actors. This classification is based on the most

dominant and significant stakeholders that took part in the digital economy in ASEAN.

Phrases of public actors refer to all of the government and governmental organization stakeholders in the national and international level. Phrases of private actors refer to the non-governmental stakeholders such as an individual and private firm that has not binding with formal government agencies.

The results conclude that the public actors' phrases place more emphasized on the examined frameworks with 85 % percentage rather than phrases of private actors with only 15 % percentage. It then indicates that public actors have many significant roles in digital economy practices in ASEAN. This, however, is against the basic principle of the digital economy. The digital economy is a concept that has a strong vibrant of liberalization and globalization. Some may even argue that the digital economy is part of the modern progress of the liberal economy. The liberal economy is when private actors play a larger role than the public actors so that the private actors can have more freedom when doing their economic activity. With a whopping percentage of 85 %, it clearly shows that the public actors have way

more roles than the private actors in the digital economy management.

D. Articulation of Main Actor's Authority in Digital Economy Management

Phrases of the main actor's authority are based on the classification of the main actors of digital economy management (See section C above). All of the phrases of the main actor's authority are combined of both private actors and public actors. It then mixed into one big indicator which is assignment to see what authority is more dominant in the examined frameworks.

The results conclude that the examined frameworks place more emphasis on the promote phrase with 54 % percentage. While phrases like acquisition with 1 % percentage, disposition with 0.5 % percentage and expansion with 2 % percentage are less emphasized on the examined frameworks. Promote phrase is linked to the authority of public actors, as we can see in the examined frameworks that most of the promote function is for ASEAN member states. On the other hand, acquisition, disposition, and expansion phrases are linked to the private actor's authority. It indicates that these results are in line with the main actors of the digital economy, in which the dominant result is public

actor play a larger role than the role of private actors. Even though there are visions and orders to place more emphasis on the actors and authorities of private actors in the examined frameworks such as eliminate trade barriers so that the private actors can have larger freedom in doing their activity on digital economy practices, but the results of the analysis conclude otherwise.

E. Articulation of Cooperation in Digital Economy Management

Measuring cooperation in digital economy management will be divided into two big parts, namely cooperation forms and cooperation spaces. Cooperation forms refer to the forms of written and oral agreement both in the domestic and international level. Cooperation spaces refer to the many kinds of cooperation such as innovative product, cross border trade, human capital development, ICT development and investment that comprises in inter-ASEAN level and intra-ASEAN level with both stakeholders of cooperation are public actors and private actors.

The results conclude that the investment phrase has a greater position in the examined frameworks with 79 % percentage. It then followed by phrases like cross border trade with 5 % percentage, human capital development with 7 % percentage and

ICT development with 1 % percentage. All of these phrases are part of cooperation spaces forms. For cooperation forms, there are no figures shown in the examined frameworks. Investment is part of the cooperation spaces that mainly is overdone by private actors such as individuals, companies, and firms. Currently, there are more than 2.000 startup in ASEAN and all of them need funding to grow and innovate their product to the market and consumers. Investment had played a bigger role in shaping the digital economy practices in ASEAN in which investment has created a lot of new innovation and creative product of digital technologies that are readily being marketed for the consumers. It implies that the cooperation of the digital economy has met most of the criteria and parameters of the concept of the digital economy.

CONCLUSION

Digital economy management has been underway by ASEAN as one of the main pillars of ASEAN sustainability and ASEAN integration. Content analysis of four main frameworks of the digital economy in ASEAN however, resulted in mixed conclusion.

Articulation of the digital economy and articulation of cooperation of digital economy resulted in fairly positive results,

with articulation of the digital economy have clearly stated explicitly in all of the examined frameworks along with the complete understanding of the definition of the concept and articulation of the cooperation digital economy resulted in investment play a bigger role in shaping the digital economy management in ASEAN.

However, for the other three articulations, namely articulation of main actors of digital economy management, articulation of the main actor's authority of digital economy management and articulation of digital economy objectives resulted in negative results. Articulation of digital economy objectives resulted in only social and cultural environment phrases that have more dominant emphasized in the examined frameworks. Articulation of main actors and main actor's authority of digital economy management resulted in the public actors have a greater position and roles in digital economy management, in which that is against the basic liberal principle of digital economy.

All of these results indicated that there is still a lack of understanding and less articulation of the regional stakeholders in regards to the digital economy. It is then recommended to conducting a review on the frameworks of the digital economy in ASEAN in order to yield the progressive and innovative digital economy management for ASEAN integration and ASEAN sustainability.

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RETHINKING AIRCRAFT AGREEMENT “ASEAN OPEN SKY” ABOUT ITS IMPACT ON ASEAN COUNTRIES AND ITS ROLES IN ASEAN ECONOMIC COMMUNITY (AEC)

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ABSTRACT

Aircraft is considered as the most effective transportation at this time. The needs for aircraft as transportation in this global era is increasing. This is the reason for countries to make regulations between countries both regionally and globally. ASEAN open sky is a regulation regarding the liberalization of the ASEAN aviation industry market. This regulation was formed to support the ASEAN Economic Community (AEC) in 2015, so does this regulation. The ASEAN open sky regulation aims to improve the mobility of goods and people in ASEAN to strengthen AEC its-self. ASEAN Open Sky regulation also have positive and negative impact. Liberalization of flight is a strategy of mobilizing ASEAN people which will later facilitate the entry of investment and foreign tourists who become the market source for Indonesia. Liberalization of flights in ASEAN can be influence Indonesia's tourism. Negative impact of this regulation is tightening competition between airlines in ASEAN country and not every ASEAN country ready for making this agreement. ASEAN countries are required to start paying attention to possibilities that will happen, so that negative impacts can be turned into a positive impact. ASEAN Open Sky also has significant role for mobilizing human and goods among ASEAN countries.

Keywords: ASEAN Open Sky, ASEAN, negative and positive impact, ASEAN Economic Community

INTRODUCTION

Aircraft is considered the most effective transportation at this time. Aircraft can deliver hundreds of people in a short time for travel in long distance. Aircraft become so important in this globalization era. Aircraft is also considered as safest transportation so far. The crew involved in the operation of aircraft such as pilots are professionals who have been educated and trained for years to be able to flight aircraft. Aircraft can be said to be the most

maintained and controlled of any transportation. Every aircraft before takeoff and after landing should be pass process of checking the condition which is handled by educated and trained technicians.

The need of air transportation in this global era continuously increases. In this globalization era, people need to be connected. In economic sector aircraft become a media to deliver goods and trade. Aircraft as high technology transportation

is able to deliver people from place to place easily. National border in air sovereignty nowadays become one of important aspect as the increase of air transportation. The development of technology in air transportation make the country's air sovereignty become something that can be negotiate able for both side of benefit. Consequently, nowadays there are lots of new agreement, law, and norm focusing on country's aviation and sky for recognition on their sky so sovereignty.

Theoretically with state sovereignty in sky, each country can prohibit other countries from flight over their territory, unless there is agreement before. The existence of international law or agreement can manage about freedom of overflight and transit among country. International law about aviation and sky sovereignty become subject of discussion on Chicago Conference on International Civil Aviation in 1944 and the result is Chicago Convention on International Civil Aviation begin from 1974 and also forming ICAO (*International Civil Aviation Organization*). Basically, the idea of the Open Sky Policy in ASEAN appeared on December 15, 1995 at the ASEAN meeting in Bangkok Thailand. The idea of implementing Open Sky or liberalization of air transport in the ASEAN region was then continued at the ASEAN meeting in Bali in 1996. The idea of implementing the Open Sky Policy was more focused on the meeting of the ASEAN Air Transport Working Group. In the

meeting, ASEAN member countries agreed to go towards the Open Sky Policy in ASEAN in order to realize the ASEAN Road Map for Air Transport Integration in 2015 (Laurang, 2014).

ASEAN OPEN SKY

Regulation in air sovereignty between country both bilateral and regional about effectiveness aviation form an agreement called Open Sky Concept. One notable trend involves the conclusion of bilateral “open-skies” air services agreements, which provide for full market access (Uniting Aviation, 2018). Liberalization in aviation becomes one of main factor for continuous growth of air transportation. Market expansion and capital access on air transportation have resulted in enhanced connectivity. The initiative of fully liberalize the air transportation market through the open sky agreement actually first came from the United States, in 1979, to the agreement of the Single European Sky Air Traffic Management Research Program (SESAR) and the applicable Open Sky policy between the United States and the European Union since March 2, 2007 (Mahmud, 2012).

ASEAN Open Skies agreement came into effect on January 1, 2015. Open Skies, which is also known as the ASEAN Single Aviation Market (ASEAN-SAM), is intended to increase regional and domestic connectivity, integrate production

networks and enhance regional trade by allowing airlines from ASEAN member states to fly freely throughout the region via the liberalization of air services under a single, unified air transport market (ASEAN briefing, 2015). If ASEAN-SAM is successfully implemented, there will be no regulatory limits on the frequency or capacity of flights between international airports across the 10 ASEAN member countries (ASEAN briefing, 2015). For ASEAN countries, increasing competition in this globalization era has created new agreement and policy to enhance their competitiveness.

Transportation and logistic support are some factors that always need to be improved. Transportation and logistics support services play a key role in these transactions because enhance the export competitiveness of a country. Regional policies on open sky agreement have been agreed by all ASEAN member countries as stated in the ASEAN Multilateral Agreement on Air Services (ASEAN MAAS) signed on May 20, 2009 in Manila, Philippines (Forsyth, 2004). The development of aviation sector has close relationship with increasing demand for air travel. Increasing demand for air travel also increase foreign exchange income. The aviation industry in ASEAN has recorded significant growth over the past few years. The total seat capacity of ASEAN airlines experienced double-digit growth in the four- year period of 2009- 2013, and the share of low-cost

carriers (LCC) in the region increased significantly from 13.2 per cent in 2003 to 57 per cent in 2014 (Centre for Asia Pacific, 2015).

The ASEAN MAAS regional agreement is based on an agreement established in the ASEAN Bali Concord II declaration at the 9th ASEAN Summit in October 2003 in Bali. The declaration formed the ASEAN Community 2015, which contains three main pillars namely the ASEAN Security Community, the ASEAN Economic Community and the ASEAN Socio- Cultural Community. ASEAN Open Sky is an instrument in the realization of the ASEAN Economic Community (AEC). ASEAN Open Sky agreement has significant role on supporting (AEC), because air transportation is one of most important instruments for economic transaction between countries especially in regional era.

Almost 20 years after the financial crisis of 1998, ASEAN members are challenging the rest of the world in terms of civil aviation sector growth, with airlines such as AirAsia, Lion Air, VietJet and Cebu Pacific Air having expanded rapidly in the last decade (Yoma, 2017). Home to more than 600 million people or 9% of the world's population, ASEAN still has a long way to go in terms of air connectivity (Yoma, 2017). ASEAN Single Aviation Market or Open Skies policy that ratified last year, ASEAN is expecting the benefit of liberalization in terms of lower air fare, aviation industry

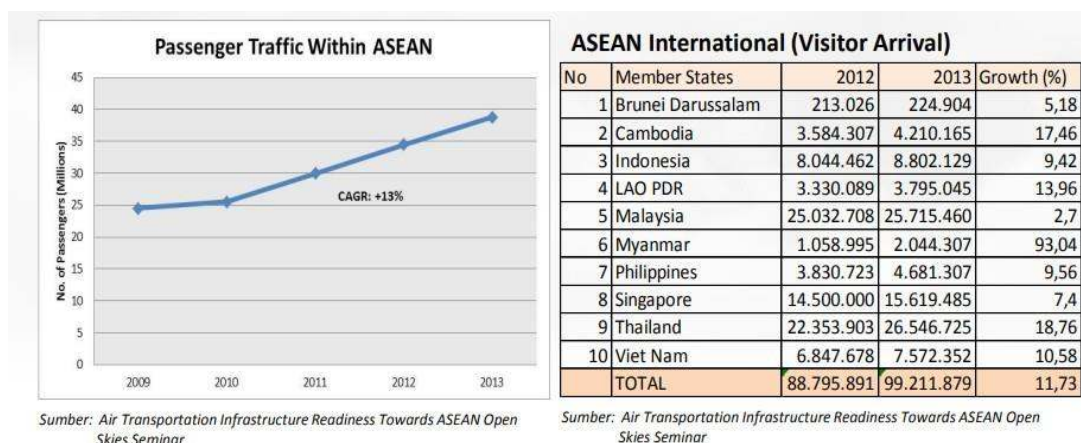
growth, more jobs, and interconnectivity. However, the policy was received with protectionist attitude from some of the member countries, leaving analysts and policy makers to wonder whether the region's aviation business will fly higher under open skies (Yoma, 2017).

CONDITION AND IMPACT REGARDING ASEAN OPEN SKY AGREEMENT

ASEAN Open Sky agreement gain many responses regarding the situation in ASEAN country its-self. This response comes from issue and impact in ASEAN country. Based on prediction airplane passenger will be increase and automatically become a

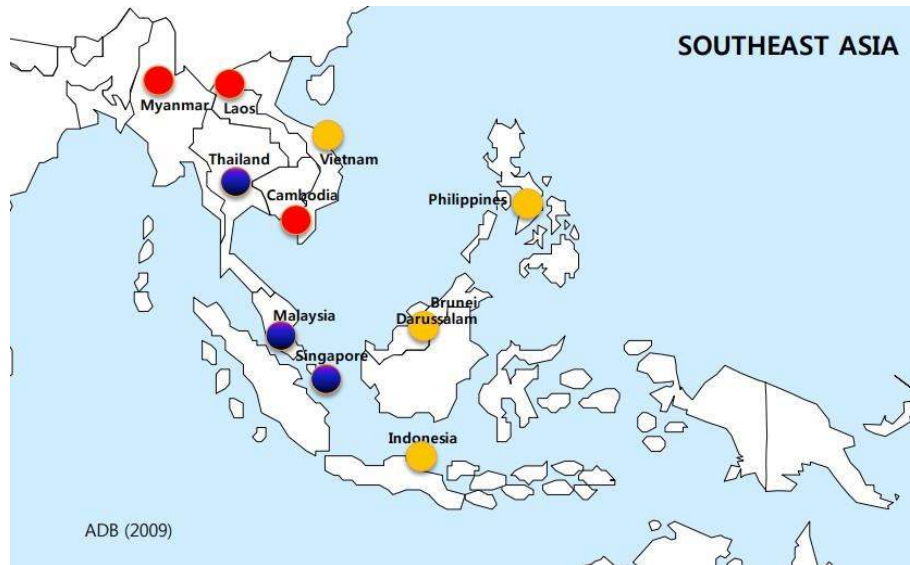
beneficial agreement because ASEAN Open Sky provide convenience in aviation.

As provide in table below, the statistic shows that passenger traffic within ASEAN. In 2009- 2010 about 25 million, that doesn't have significant growth but still has increasing point. In 2011 about 30 million, 2012 about 35 million, and 2013 almost 40 million, it shows that passenger traffic in ASEAN increase significantly only in one year. Visitor Arrival in ASEAN grow mostly have more than 5%. Visitor arrival can help economic growth on a country its- self from tourism sector, transportation sector and help local industry by selling their product as souvenir.



Brunei Darussalam and Vietnam, domestic travels rely on land transport and national airline 100% owned by government (Saraswati, 2011). Myanmar, Laos, and Cambodia still in development to market based system (ADB, 2009 on Saraswati, 2011). There are also issues with air traffic management capacity. The Malaysian Aviation Commission in 2017

flagged that seven of its airports were handling more traffic than their design capacities (Das, 2018). In Indonesia with large geography condition, when airspace in ASEAN fully 'open' the air traffic will be more crowded. If it not balanced with good air traffic controller both technology and human resources, it will be really hard to notice black flight.



Source: http://www.ide.titech.ac.jp/~hanaoka/internship_presentation_batari.pdf

ASEAN Open Sky is an agreement to give benefit to each member of ASEAN. Integrated ASEAN airspace will enhance growth in many economic sectors. Open Sky Agreement will increase competitiveness between airlines. The Indonesian Transportation Ministry confirmed that international airports in five Indonesian cities - Jakarta, Surabaya, Denpasar, Medan, and Makassar - will be ready to fully open their skies by the end of 2015 (Indonesia investments, 2015).

According to Yoma (2017) Malaysia has more ambitious plans for its aerospace industry, with export numbers having increased by 32.6% in 2016 compared with the previous year, mainly thanks to aerospace parts and components. The Philippines, in turn, has also benefited as an aircraft parts and components exporter. In 2014, the aerospace industry in Philippines recorded total exports valued at \$226.36 million. In Singapore, an ex-

military airbase Seletar airport is now transformed into Seletar Aerospace Park, home to more than 60 local and foreign aerospace companies, including Rolls-Royce and Pratt & Whitney. The aerospace park, mainly aimed for MRO services, has been contributed for more than 2% of Singapore's economy, the Strait Times reports. Tourist-crazy Thailand has recently declared its ambitious plan to become the aviation hub of the region with its Eastern Economic Corridor scheme. Under the scheme, foreigners may own a majority share of aviation businesses and benefit from lower taxes (Yoma, 2017).

ASEAN open skies might not provide a lot of benefits, the larger number of airport that contributed on ASEAN Open Sky is also have some challenge for some member of ASEAN. First challenge is increase competitiveness of airline among ASEAN country. Second, it will have more beneficial for country that has small territory, and that

is why Indonesia only ratify 5 city on ASEAN Open Sky because Indonesia notice that if Indonesia ratify every city it will make harder to control and in other side will give some disadvantage. For example, Singapore Airlines will be able to gain passengers in these five Indonesian airports, whereas airlines in Indonesia can only fly to one airport in Singapore.

ASEAN Open Sky agreement will increase the traffic of each member in ASEAN. As mention before about the heterogeneity of infrastructure of airport its-self and their technology in flight sector does not have same quality and improvement. In these circumstances has possibility for black flight. Black Flight is a flight carried out by foreign aircraft crossing a country without the permission of the country's authority (Laurang, 2014). ASEAN Open Sky considered will benefit Indonesia terms of the economy. ASEAN Open Sky is estimated to be able to contribute input of GDP of up to 7 trillion Rupiah also increase the number of workers by 32,000 so that can increase the Indonesian economy by 2025 (Laurang, 2014).

THE ROLE OF ASEAN OPEN SKY IN ASEAN ECONOMIC COMMUNITY

ASEAN 9th Summit in Bali, 2003 agreed to form an ASEAN economic community (AEC). AEC aims to create a single market and increasing the free flow of goods,

services, investment, skilled labor and the free movement of capital goods. The commitments of AEC have been signed by leaders of ASEAN countries at the 13th ASEAN Summit, 20 November 2007 in Singapore (Arifin and Budiman in Winantyo et al, 2008). AEC was attended by 10 countries; they are Indonesia, Myanmar, Thailand, Malaysia, Singapore, Brunei Darussalam, the Philippines, Laos, Cambodia and Vietnam.

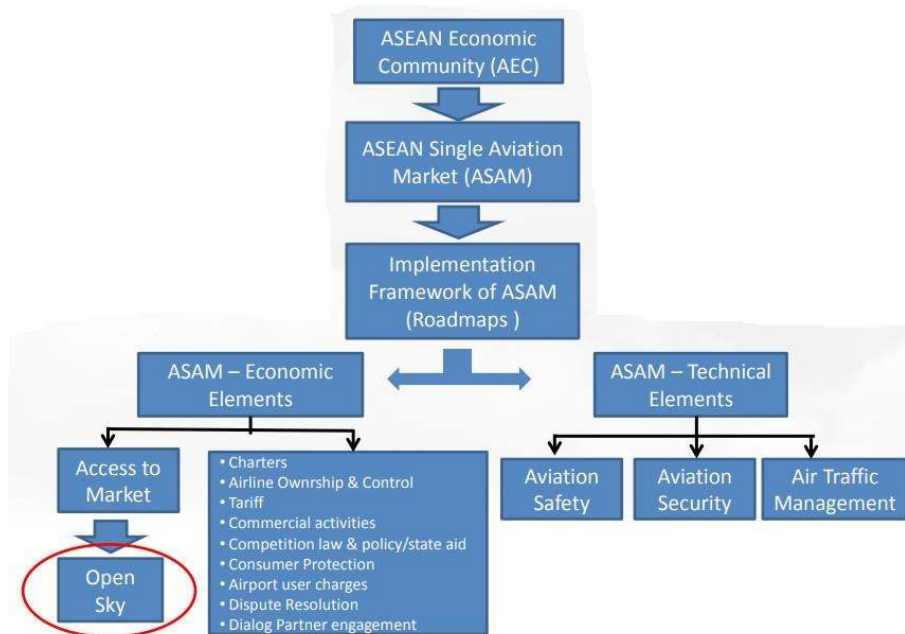
ASEAN Economic Community as it seen on economic perspective it will has positive and negative impact. Positive impact of this community is increase the bilateral and multilateral relation among ASEAN country. Give ASEAN country to develop their economic sector. Product from another country can easily be known by citizen from outside country because off global market effect. Meanwhile the negative impact is there are capitalism because of competitive business competition. As the entry of product from another country, domestic product can be less preferable than foreign products.

ASEAN Open Sky is an agreement to facilitate an open space for global market in ASEAN. The formation of global market is one of the goals of ASEAN Economic Community. The global market is used to increase economic among ASEAN Country. The global market is not only about integration of economic sector in ASEAN but also closely related to transportation

facilities. Effective transportation agreement can facilitate goods and human mobilizing. The correlation of ASEAN Open

Sky agreement and ASEAN Economic Community can be seen in scheme bellow.

Scheme 1: Correlation scheme between ASEAN Open Sky and ASEAN Economic Community



Source 1: <http://www.cse-aviation.biz/wp-content/uploads/2015/01/Open-Sky-2015-Edwin-Soedarmo.pdf>

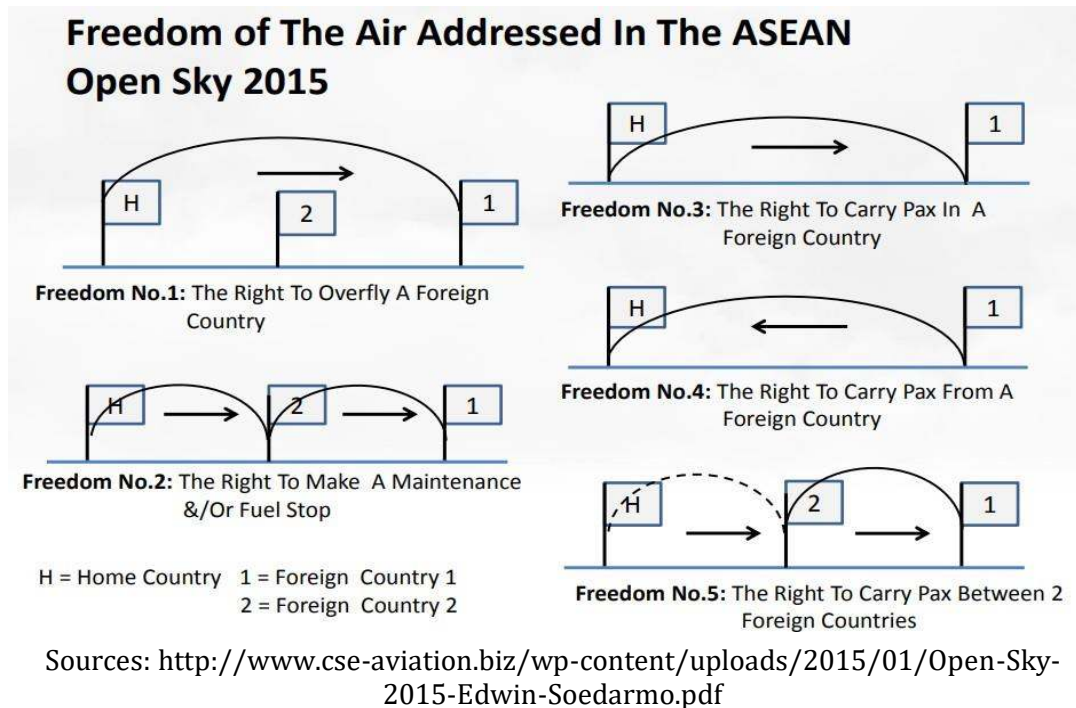
Based on scheme, known that Open Sky concept is an element from ASEAN single Aviation Market (ASAM). ASAM is one of manifestation in ASEAN Economic Community. As we know from the chart Open sky concept is a way to access markets in the ASEAN Economic Community. ASEAN Open Sky Agreement its-self divided into 3 types, they are Multilateral Agreement on the Full Liberalization of Air Freight Services (MAFLFS) agreed in November 2009, Multilateral Agreement on the Air Services (MAAS) agreed May 2009 and Multilateral Agreement on the Full

Liberalization of Passenger Air Services (MAFLPAS) agreed November 2010 (sari, 2017). The differences between the three types above are quite clear, MAFLFS regulates the transportation of cargo and goods between ASEAN countries and the ASEAN sub-region. MAAS regulates air passenger services between sub-regions in ASEAN, so they able to make flights without transit in certain international airports in the relevant country. MAFLPAS is full flight liberalization in providing passenger services.

Open sky agreement is a solution for

achieve an effectiveness market access at ASEAN region. The rationale for Open Sky is taken to be to promote competition in the airline industry, and to give all airlines from ASEAN the scope to compete on intra ASEAN routes. Open Sky will also give

airlines extra flexibility over their route development (Forsyth, 2004). Open sky Agreement also one of integration in air transportation at ASEAN region for economic purpose.



Freedom in aviation means rights to commercial flights that countries negotiate. First freedom is the right to overlay a foreign country For example, Indonesian aircraft have to flight to Malaysia utilise the first freedom to overfly Singapore airspace. Second freedom is the right to make maintenance or fuel stop, for example Indonesian aircraft have to flight to Malaysia utilize the "second freedom" to stop in Singapore for fuel and supplies, if necessary. Third freedom is right to carry pax (passenger) to foreign country. Fourth freedom is right to carry passenger from

foreign country. For example, Indonesia can deliver goods to Malaysia and otherwise. In fifth freedom is the right to carry passenger between 2 foreign countries. For example, Indonesian aircraft carries passengers from Jakarta to Kuala Lumpur "third freedom" and back to Jakarta "fourth freedom". In both directions, it may stop over in Singapore to drop off some passengers and fill the vacated seats with new passengers pick up from there. This is the "fifth freedom" granted to Indonesia by Singapore and Malaysia.

All these rights are granted by states to each other through bilateral negotiations, often with flight and capacity limits, but that was before Open Sky agreement. After Open Sky Agreement that freedom based on multilateral agreement. One of main challenges in this agreement is

heterogeneity every ASEAN country, such as number population, infrastructure condition, economic power and managerial and technical skill availability. This heterogeneity is challenging because we cannot expect same benefit from one to another.

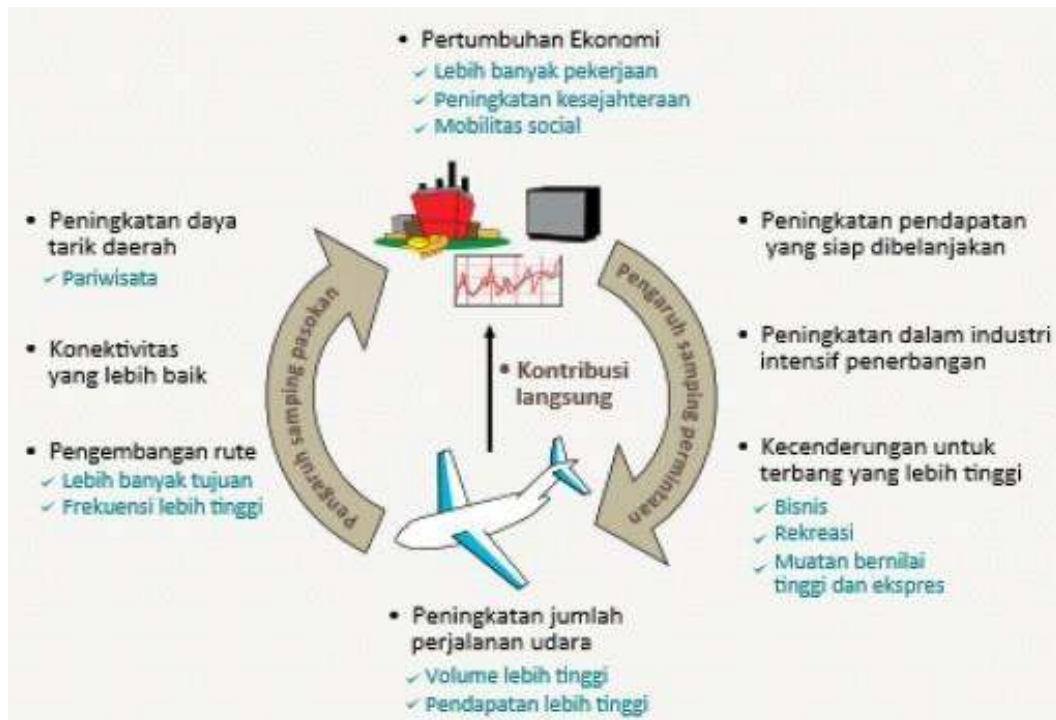


Image: *Virtuous Circle of Air Transportation*
Source: Prakarsa January 2012 edition on Nurani et.al, 2012

According to Nurani et.al (2012) the illustration above is known as virtuous circle (domino effect) in air transportation when the sector gets income, namely:

1. An air passenger not only pays the price of the ticket, but also spends money on
2. hotels, taxis, etc., and it also has contribution on development of commerce.
3. Airlines that carry more passengers will spend more money on catering

services and

4. other support services.
5. Of the two things above, the growth in approved industries / support services increases the need to travel.

By ratify, ASEAN Open Sky Agreement become one of development aspect on economic regional. ASEAN Open Sky will be driven the development of flight equipment such as fuel. Hence, a country in ASEAN can take this advantage as an intra-trade, means that a state can provide other state

equipment and also will increase the income of state.

Also written on Article 9 of the open sky agreement that:

“to pay for local expenses, including purchases of fuel, in the territories of the other Contracting Parties in local currency. At their discretion, the airlines of each Contracting Party may pay for such expenses in the territory of the other Contracting Parties in freely convertible currencies according to local currency regulation.”

The article above explains, to fulfill flight equipment, including fuel. It should be purchased from the place where the aircraft stops and must use the same currency (Nurani et.al, 2012).

CONCLUSION

The basic understanding of ASEAN Open Sky is the liberalization of ASEAN aviation industrial market. Through this agreement, airlines from other countries in ASEAN has permitted to fly to sub-region cities among 10 ASEAN member countries. The Indonesian government has integrated 5 cities namely Jakarta (Soekarno-Hatta Airport), Medan (Kuala Namu Airport), Denpasar (I Gusti Ngurah Rai Airport), Surabaya (Juanda Airport) and Makassar (Sultan Hassanuddin Airport). The Indonesian government chose 5 airports because those airports have a high growth

rate of economic sector. The facilities offered by the airport are complete and safe. Also, as the most domestic and foreign routes in Indonesia.

ASEAN Open Sky is a new agreement, as a consequence, it has different perspective in every member in ASEAN. Not every country in ASEAN is 'ready' to accept the ASEAN Open Sky agreement due to heterogeneity quality airport and their economic growth. ASEAN Open Sky agreement makes air transportation more traffic, thus we need capable human resources and high technology to prevent black markets and maintain flight safety. But on the one hand, this agreement can improve the economic sector and employment because it facilitates mobilization of goods and travel people efficiently. People easily travel to a city in an ASEAN country with a shorter time, whether for tourism or work, with the increasing number of aircraft passengers will increase the economy and a lot of new job will offer.

The ASEAN Open Sky Agreement is an agreement that has pros and cons but has a great benefit. Therefore, it is better to eliminate existing problems to maximize the benefits of this policy and the potential of ASEAN countries. Improving airport infrastructure in ASEAN countries and increasing competitiveness among airlines. Making periodic reports about the impact of ASEAN Open Sky on the economy and social

life also need to be done. ASEAN open sky is an agreement with extraordinary benefits because it can improve the country's economy but it also risky for black marketing if a country cannot be able to maximize it. Airline industry analysts are very positive on the new policy and many say that the Single Aviation Market will lead to growth and development as it opens up the market to more competition. Greater connectivity between aviation markets arising from ASEAN-SAM should encourage higher traffic growth and service quality, while lowering ticket prices (ASEAN Briefing, 2015).

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ASEAN E-COMMERCE AGREEMENT: ASEAN WAY OF DIGITAL TRADE?

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ABSTRACT

International trade nowadays does not only concern with physical goods and services, but it also involves hot buzz technology such as cloud computing and big data. At the international stage, WTO tackling the issue of digital trade through adaptation of WTO law in the digital environment, while leaving issues of digital trade to the States. ASEAN Member States concluded E-Commerce Agreement just recently. This paper studies the text of ASEAN Agreement E-Commerce with the PTAs of the ASEAN Member States containing digital trade-related chapters/provision. Firstly, I will approximately identify the depth of digital trade rules of ASEAN E-Commerce Agreement. Second, I will attempt to analyze the potential problem of implementation of the agreement and how E-Commerce Agreement will solve that. I conclude that albeit the agreement contains some soft commitment, it has created a level of playing field in ASEAN, and it reflects the ASEAN Way to digital trade rule making.

Keywords: E-Commerce, digital trade, ASEAN

INTRODUCTION

International trade nowadays does not only concern with physical goods and services, but it also involves hot buzz technology such as cloud computing and big data. However, on contrary to the rapidly evolving technology existing rules on international trade on multilateral level relied on the World Trade Organization's (WTO) legal framework which was negotiated during the internet still in its infancy. WTO tackling the issue of digital trade through adaptation of WTO law in the digital environment, while leaving emerging issues of digital trade to the autonomy of the States. Issues of the digital economy have

been addressed at the WTO's 11th Ministerial Conference, in Buenos Aires 2017, however, there was no significant outcome came out of the summit other than continued moratorium of electronic transmission customs duty.

Emerging issues in digital economy and trade the result of the interface between the 'borderless' nature of internet vis-à-vis territorial jurisdiction limitation and regulatory policy of states, among others, free flow of data, cross-border data protection, network neutrality, and so forth. In the absence of dedicated multilateral rules on digital trade, currently, States are attempting to settle various issues of digital

trade in the form specialised chapters or provisions embedded within Preferential Trade Agreements (PTAs).

Asia-Pacific region is currently being a pivot point of the global digital economy. In ASEAN region alone there are emergence successful, indigenous ASEAN digital start-ups of so-called “regional champions” with valuation reaching billions of US dollars. This emergence of ASEAN digital businesses spread across various sectors, from ride-hailing services such as Grab and Go-Jek, marketplaces such as Bukalapak, Tokopedia, Zalora, and many others. Realizing the potential, each of ASEAN Member States began to work with setting the best regulatory environment for digital businesses according to its own policies. On the regional level, the ASEAN Member States under the chairmanship of Singapore, during 2017-2018 has been negotiating the ASEAN Agreement on E-Commerce to enhance the regional digital economy under the pillar of ASEAN Economic Community. The work resulted in the signing of the Agreement at 33rd ASEAN Summit 12 November 2018. The final version of the Agreement was signed in Ha Noi on 19 January 2019, at the time of writing of this paper it has not been entered into force.

This paper studies the text of ASEAN Agreement E-Commerce with the PTAs of the ASEAN Member States containing digital trade-related chapters/provision. Firstly, I will identify the depth of digital trade rules

of ASEAN E-Commerce Agreement. Second, I will attempt to analyze the potential problem of implementation of the agreement and how E-Commerce Agreement will solve that.

There is a rising number of scholars' attention towards digital trade issues. Basic study that analyses the commonality of digital trade provisions across the PTAs provided by Wu (2017) and Wunsch-Vincent and Hold (2012), will be the building block of this paper. Regarding the regional lens, Asia-Pacific region attracts some commentators regarding the emergence of PTAs with digital trade-related provisions and has been argued as a leading region in terms of e-commerce (Weber, 2015). In the context of the emergence of the developing states-driven digital trade rules, Kelsey (2018) critically warns about the potential of digital colonialism under the pretext of liberalisation, putting the development aspect of international trade below the interests of the internet giant. Therefore, the emergence of digital trade rules should be critically assessed.

In addition to this, the rise of digital protectionism in the ASEAN Member States has been studied elsewhere by Pitakdumrongkit (2018), yet, within the two literatures the latest development of the agreement is clearly absent. This paper contributes to the scholarship on the latest development of digital trade in the ASEAN region. The paper will be divided as follows.

In the first part, I will elaborate on the international framework and the emergence of digital trade rules. Following this part, I will discuss the ASEAN approach on digital trade issues by examining the ASEAN instruments and documents published prior to 2018. The discussion will be continued on the proximate content analysis of ASEAN Agreement on E-Commerce itself. In the conclusion I will argue that despite the self-proclaimed successful outcome of ASEAN Working Programme on E-Commerce, there are potentials to inflict implementation issue in the future, considering the variation of ASEAN Member States' regulatory policy approach. Despite of the differences, I also highlight that this agreement also could serve as a common position on ASEAN bloc on the multilateral negotiations in the future other than as an *inter se* digital trade agreement.

DISCUSSION

Evolving digital trade rules: international stage

The digital industrial revolution is here. The underlying question is how international economic law could contribute to optimise of the potential of technology further while preserving fundamental rights and interests of the society at large. Borderless nature of the internet contrasted heavily with the traditional notion of jurisdiction based on territoriality. Over assertion of state jurisdiction over the

internet could create fragmentation of the internet, thus diminishing the potential for the industry. While on another hand, the internet is not a lawless barren land either. Facebook's Cambridge Analytica scandal increased public concerns over the digital industry's power over users' personal data. While assertion of national (and supranational) regulatory jurisdiction such as EU's General Data Protection Regulation impacted businesses around the world, including SMEs with compliance costs.

International standard over cross-cutting issues of technology and regulatory governance, such as illustrated above with data localisation measure, is analogous with what we know as non-tariff barriers in 'traditional' trade. International trade law balances the liberalisation of international trade while protection the society interest at stake. Yet, currently, on the multilateral stage, there is no single agreement that precisely aimed for the digital aspect of international trade. Present WTO law was the results of various negotiations 1947-1994 where the drafters of WTO agreements were unlikely able to foresee the world we have today. These trade rules are mostly drafted with traditional, analog, brick-and-mortar business on its core of rationale.

Establishment of digital tech giants occurred not long after the WTO system came into force, such as Google (1998), Amazon (1994), Yahoo! (1992). In terms of user penetration, at the end of the 20th

century, only 4.1% of the world population or 248 million people has accessed the internet. The number is significant contrast compared to 2018 data, when more than half of world population having the access the internet (Internet World Stat, 2018).

Driven by the emerging trends of internet companies, WTO started its WTO E-Commerce Programme after 2nd Ministerial Conference (MC-2) in 1998 to integrate the issue of revolving around the internet and ICT-enabled trade into the core discussion of WTO. So far, it accomplished to achieve the working definition of e-commerce as “the production distribution, marketing, sale or delivery of goods and services by electronic means.” WTO level negotiation also established the commitment for a temporary moratorium on electronic transmission customs duty. Latest MC-11 at Buenos Aires, 2017 failed to accomplish substantive reform on the e-commerce issue, rather, it achieves the status quo on the moratorium on the electronic transmission customs duty. Doha Round political deadlock also contributed to the status quo on the development of international trade rules regarding digital trade. Thus, little can be expected from post-Doha Round WTO (Burri & Cottier, 2012).

Because of the political deadlock, the introduction of new multilateral trade rules on e-commerce seems doubtful. Several commentators have proposed the reform either by expanding hardware-based trade

rules, the Information Technology Agreement (ITA) into the non-hardware realm (Lee-Makiyama, 2011), or through the introduction of new plurilateral Trade in Service Agreement (TiSA) (Weber, 2014). Currently, analogue rules of WTO law have been applied and translated into digital context through dispute at the Dispute Settlement Body. In *US-Gambling*, it was ruled that internet-based supply of service falls under Mode 1, cross-border supply of service, under the GATS. While in *China — Publications and Audiovisual Products* principle of technology neutrality was confirmed, that regardless of the format of distribution commitment of supply in service still applies. Albeit there is a possibility of rules update through dispute settlement, Burri and Cottier stressed that it cannot replace political consensus of the substance (2012). Over-reliance to the judicial interpretation of analogue rules could lead into lack of certainty and predictability in the future, particularly it barely matches fast-paced development of technology.

Regionalism of Digital Trade Rules

Status quo on the multilateral fora lead the states to channel their own needs through tailored trade rules in a preferential trade agreement. Whether it is a bilateral or regional trade agreement, and whether it is regulated under specific chapters or mere reference to a certain norm. Presently, PTAs

also serves as a laboratory for the states to experiment (Mitchell & Mishra, 2018) various rules with a various degree of binding force and form. Creation of digital trade rules through this approach create a convenient way to escape the status quo of the multilateral approach and enables the state to achieve further liberalisation. However, this approach should be seen as a patch work and temporary solution rather than long term and permanent solution (Mitchell & Mishra, 2018; Burri & Cottier, 2012).

Wu (2017) highlights the major role played by states such as the US, Australia, and Singapore in the proliferation of PTAs containing digital trade rules. Since 2000 the US sought the coverage e-commerce within its FTA formed with partner states. The first of US-model PTA with e-commerce provision is the US – Jordan FTA 2000. The US has strongly called for deregulation and strict removal of trade barriers, and strong proponent for the self-regulation approach for industries (Gao, 2018). Most recently, the update of NAFTA labeled as US-Mexico-Canada Agreement, features dedicated chapter on digital trade. EU then followed the creation of PTAs with its trading partner. However, the EU approach is rather limited and put more emphasis on the protection of personal data protection (Wunsch-Vincent & Hold, 2012). This approach also can be seen in the latest EU PTAs, such as Canada – EU Trade Agreement (CETA), and EU-Vietnam FTA (2018). Other hosts of internet giants,

interestingly China has set a rather cautious approach towards the proliferation of digital trade rules through PTAs. Chinese approach mostly emphasized to support the physical goods trade enabled by e-commerce, also commitment for the development of SMEs (Gao, 2017).

Asia-Pacific region presented a high level of dynamics in terms of the development of the e-commerce sector (Weber, 2014). Here we can observe the involvement of ASEAN Member State in the tangled web of PTAs with digital trade provision. Close trading partner of the US began to integrate provisions of e-commerce or digital trade into its content of PTAs. Thailand – Australia FTA, India – Singapore FTA, Singapore – Australia FTA, Korea – Singapore – FTA are recorded as intra-regional trade agreements with digital trade provisions (Wu, 2017). Currently, Indonesia with EU are in the middle of the process of negotiation of FTA, in which will be containing digital trade provision based on the EU proposal. Other significant development from the region is the rise of megaregional trade agreement, marked with the conclusion of the Comprehensive and Progressive Trans-Pacific Partnership Agreement (previously known as TPP-11). From the development of digital trade rulemaking in the Asia-Pacific region, it is important to note the involvement of several ASEAN Member States in the tangled networks of PTAs with digital trade provisions. Thus, the existing model provision on digital trade potentially

could influence over the rule making of intra-ASEAN instrument related with digital trade.

What Are the Rules?

As discussed above, the creation of PTAs to introduce the new digital trade rules driven by the political aim to suits the need of the negotiating states. Consequently, it created the divergence in the rules and standards found among the PTAs. This section provides rather a broad description of each of the rules with the emphasis on ASEAN Member States-related PTAs. This section follows the analysis provided by Wu (2017).

Definition of digital products

The strict dichotomy between goods & services of the WTO framework raised issues concerning convergence between goods & services. Thus, as a solution, US-led FTA often features a new categorisation that reflects the convergence. For instance, the definition of ‘digital product’ under CPTPP defined as, “*computer program, text, video, image, sound recording or other product that is digitally recorded, produced for commercial sale or distribution and that can be transmitted electronically.*” Singaporean FTA also follows a similar formulation (Wu, 2017). However, this definition is absent from the EU proposal in Indonesia-EU FTA, and final text of EU-Vietnam FTA.

Non-discriminatory treatment of digital products

The cornerstone of the multilateral trading system, the provision of non-discrimination also imported in the PTAs. This provision can be seen in Singapore – Australia FTA and CPTPP, which obliges the party to provide treatment no less favorable, to the extent that digital product is a “like product”. Thus, the likeness test approach found in the WTO case law could be applied to interpret this provision.

Customs duties

A temporary moratorium on customs duty collection on the electronic transmission is generally accepted e-commerce rules on a multilateral level, albeit provisional. Some PTAs seek a permanent commitment from the partnering states to not to impose customs duty on electronic transmission. There are also provisions that to oblige the state not to collect customs duty over the digital product itself.

Adoption of UNCITRAL Model Law

Rather draft detailed domestic legal framework on the electronic transaction, instead, CPTPP Art. 14.5 create an obligation for the parties to adopt domestic legislation consistent with UNCITRAL Model Law on Electronic Commerce 1996 or UN Convention on the Use of Electronic Communications in International Contract 2005. This provision is aimed for clarity and

harmonisation of domestic regulation governing the e-commerce transaction.

Electronic authentication

Electronic authentication is a fundamental feature that enables e-commerce transaction. This provision serves not only to oblige the government to create the commitment to recognise electronic authentication and e-signatures but also refrains the government to not impede digital trade by imposing a certain unnecessary standard. In ASEAN-Australia-New Zealand FTA, this rule is clearly stated with a hard law obligation. It requires the party to adopt the measure, but also should be based on the ‘international norms for electronic authentication.’ In addition, AANZFTA also aims for mutual recognition of e-authentication, but with the softer, non-obligatory language: “shall endeavour to work towards [mutual recognition].” (Wu, 2017).

Paperless trading

Paperless trading is arguably widely acceptable digital trade rules that widely acceptable across the PTAs. It usually features the soft commitment of parties to make available trade administration documents and to accept electronic documents as equal to the paper version for the trade administration purpose (Wu, 2017). This provision normally found in the trade facilitation chapter of the PTA.

Consumer protection

Consumer protection provision requires the parties to maintain or implement consumer protection regulation in the context of e-Commerce. This provision can be found in the US-led model like CPTPP. EU model proposal label this provision as ‘online consumer trust’ measures to “protect consumers from fraudulent and deceptive commercial practice,” in the engagement of e-commerce. Therefore, it is safe to claim that this provision has widely accepted as the norm of digital trade rules.

Personal data protection

Rules on personal data protection in PTAs mandates the parties to implement the measure to protect the data of the users of e-commerce. The language of US-model PTA, as found in CPTPP and Singapore-Australia FTA, usually refers to soft law regulation as the principles and guidelines to implement the domestic law. The us-style formulation also recognizes the variation of regulatory approach that may be taken by the state. EU as a strong proponent of privacy regime has taken a stronger approach as found in EU proposal of Indonesia-EU FTA, that the party obliged to recognise personal data and privacy as a “fundamental rights” and should be protected in the high standard to contribute to trust in the digital economy.

Cross-border information flows & data localisation

Data is a fundamental element that enables digital trade. Business and consumers anywhere in the world rely on the data that can be moved across the jurisdiction. The language in Art. 14.11 CPTPP provides regulatory space for the parties to set its own regulatory requirement regarding the transfer of information (data), however, it should only to achieve legitimate public policy objective, on the condition that it should not be applied in an arbitrary manner and disguised of trade barriers. The measure also should not be greater than the objective it aims. In the EU proposal of Indonesia-EU FTA, cross-border data flows formulated along with the prohibition of data localisation measure.

Unsolicited electronic messages

The provision on the unsolicited electronic messages requires the parties to address the issue of spam messages. However, the language of this provision usually rather weak. EU proposal in Indonesia-EU FTA contains a clear obligation to the parties to ensure the prohibition of direct marketing without prior consent. While in US-style agreement, it provides the options to, not necessarily prohibit the sender, provide the recipient to prevent the reception.

Considering the crisis of political consensus at the WTO level, it is unlikely to present condition leads to the common multilateral framework on the digital trade anytime soon. However, existing PTAs with digital trade provisions could serve as a stepping-stone towards multilateral consensus while enabling the States to experiment with multiple regulatory variables (Mitchell & Mishra, 2018). The ASEAN Member States actively conclude digital trade rules with its partner states. However, it should be stressed that the emerging rules of digital trade rooted from the interests of internet giants of Silicon Valley. Big tech companies interest influences the foreign trade policy of the rule-maker state (Kelsey, 2018). From the perspective of developing states, the proposal from coalition “Friends for E-Commerce for Development” serves as the counterproposal from the developing states. It emphasizes on the matters related to development such as e-commerce readiness, ICT infrastructure, trade logistics and payment system (Kelsey, 2018). ASEAN Member States should reemphasize its vision of ASEAN Way in the forming digital trade framework of ASEAN. Therefore, it should not take a role merely as a rule-taker, instead collaborate further to form indigenous ASEAN approach of digital trade as a unified trading bloc that takes into account the development needs.

ASEAN's approach on digital trade

Earlier discussion highlights increased participation of ASEAN Member States to negotiate and include digital trade provisions in its PTAs with each owns its partner. This underlying fact may influence the by a formulation of the intra-ASEAN instrument through importation and indirect influence of external agreements. In parallel, important to note that the conclusion of the ASEAN Agreement on E-Commerce did not come out of a vacuum nor merely pushed by the global trends. In fact, ASEAN has been studied and prioritized digital economy agenda since the late 90s as evident in the various ASEAN documents and instruments as will be discussed below.

E-ASEAN framework agreement

The role of internet to support the economic growth has already been identified by ASEAN since the late 90s. To accommodate ongoing technological development at that era, ASEAN established a dedicated task force named E-ASEAN Task Force in 1999 with the main aim to develop broad action plan to promote ASEAN e-space. Elements of E-ASEAN Task Force comprises from private sectors and government. It was given the mandate to build an action plan and strategy to narrow the digital divide among the ASEAN member state, and at the same time facilitate the growth of e-commerce in the region. Particular attention of the task force also

given to support the growth of indigenous content and services to localise the internet traffic within the region.

From the task force's initiative, e-ASEAN Framework Agreement was then concluded. This agreement is modeled to be umbrella agreement of e-ASEAN and aimed to facilitate and promote trade liberalisation of ICT products, services, and investment, and fosters the growth of e-commerce in ASEAN. The agreement the definition of ICT products and ICT services, by referencing the existing WTO agreements. In the framework agreement, the scope of ICT products refers to the WTO's ITA-1 product list, while ICT services refer to classification under CPC. The agreement also acknowledged the e-ASEAN governance to refer the prevailing international norms of electronic commerce, such as mutual recognition of digital signature, IP issue of e-commerce, personal data protection and consumer privacy and online dispute resolution. The conception of e-ASEAN Framework Agreement revolved in the classic dichotomy between goods and trade regime.

With regard to ICT products, the agreement seeks the elimination of customs duties and NTBs for intra-ASEAN trade of ICT products. Implementation of the agreement is divided into three stages to enable greater participation of ASEAN member states with lesser economic capacity. This preferential treatment is given to Cambodia, Laos, Myanmar, Vietnam, or collectively CLMV. The four countries have

more relaxed commitment to eliminate customs duties and NTBs of intra-ASEAN ICT products gradually by 2008, 2009, and 2010. In terms of ICT service liberalisation, e-ASEAN Framework Agreement refers to the rules set by ASEAN Framework Agreement on Services which was concluded earlier. The content of digital trade-related provisions set in the e-ASEAN Framework Agreement was advanced in its era. However, the implementation of the agreement faced major challenges and set back such as lack of clarity and purpose of the vision, disparities in political, economic, and technological disparities, and funding constrains (Paul, 2002).

Trade in goods & services agreement

Under the e-ASEAN Framework Agreement, ASEAN maintains the traditional dichotomy of goods & services, labelled as ICT goods and ICT services. Consequently, the existing approach to optimisation of digital trade has its pivot on the two distinctions, and each of branch, the goods, and services, regulated under separate follow-up agreement. As regional trade in goods agreement, ASEAN has ASEAN Trade in Goods Agreement which serves intra-ASEAN framework on trade in goods. ATIGA mandates further elimination of tariff & non-tariff barriers further than the commitment of the member state in the WTO. In terms of tariff elimination, ATIGA has served its purpose. It has significantly reduced and

eliminated tariff for ICT products (Lao ICT Commerce Association, 2003). However, the largest obstacle of ATIGA is the reduction of NTBs implemented by member states to exchange tariff elimination (Austria, 2015).

Another instrument is the ASEAN Framework Agreement on Services (AFAS). It was concluded in 1995, then amended in 2003. The agreement pre-existing the e-ASEAN Framework Agreement, thus there is no direct reference to the label of ICT services. The operationalisation of AFAS follows the application of GATS, it is only applicable through positive-list. AFAS serves as an intra-ASEAN mechanism for specific commitment periodical modification to achieve liberalisation more than GATS commitment of the member states. AFAS is praised successfully provide service liberalization beyond GATS commitment (Tranh & Bartlet, 2004). The practice of AFAS frequent commitment negotiation has sped up the service sector liberalisation process in the ASEAN (Dee, 2013).

ASEAN Work Programme on Electronic Commerce 2017-2025

ASEAN adopted the ASEAN Work Programme on Electronic Commerce 2017-2025, during 49th ASEAN Economic Minister's Meeting 2017. This work programme designed to tackle wide issues related to e-commerce within ASEAN, covering infrastructure, education, consumer protection, modernization of legal framework, e-transaction security, logistics,

competition, and e-commerce framework. The ASEAN chair of 2018, Singapore envisioned the faster advancement of the digital economy in the region. The priority objective is to streamline the e-commerce governance rules, reducing entry barriers and other related costs (Pitakdumrongkit, 2018). One of the key outputs of the ASEAN Work Programme on Electronic Commerce 2017-2018 is to develop the ASEAN Agreement on E-Commerce in 2018, which was completed in November 2018 during the 33rd ASEAN Summit 2018. Under the work programme, ASEAN is working on the broader aspect of e-commerce. It does not only aim to set the rules for trade aspect of e-commerce but also go beyond the trade by including e-commerce infrastructure, education, logistics, and competition.

Pena criticized the silence of the work programme on the specific aspects related to the single market, for example, VAT regimes harmonization, free flow of information is unclear. The output of this Work Programme that produced the ASEAN Agreement on E-Commerce is deserved to be praised. However, there is transparency issue remains on the during the work of this programme. The draft proposal was unknown to the public, and until the time of writing of the article, despite the positive announcement and three months after the signing, the text of signed ASEAN Agreement on E-Commerce is not available to the public.

ASEAN ICT Masterplan 2020

ASEAN ICT Masterplan 2020 contains the strategy of ICT development in the ASEAN region. It comprises of eight key strategic area: 1) economic development and transformation; 2) people integration and empowerment through ICT; 3) innovation; 4) ICT infrastructure development; 5) human capital development; 6) ICT in a single market; 7) new media and content; 8) information security and assurance. Soulinthone, Rumyantseva, and Syryamkin observes, as a part of economic development and transformation strategy, ASEAN aims to place the position of ASEAN member states to be the central hub of digital economy, particularly in digital trade and services. ASEAN target to enable 'interconnected and interoperable' digital economy as the single market. By utilizing ICT in a single market, ASEAN working to facilitate the integration, lower business costs, achieve economies of scales, and foster synergies towards greater socio-economic development.

ASEAN Economic Community Blueprint 2025

ASEAN Economic Community Four is one of the three pillars of the ASEAN Community other than ASEAN Political-Security Community, and ASEAN Socio-Cultural Community. Initially, ASEAN Community was targeted to be accomplished by 2015, however, the initial aim was not completed (Jones, 2016) within the deadline, and the implementation deadline of AEC was pushed

back to 2025. the core aim of ASEAN's e-commerce policy are identified from AEC blueprint: 1) harmonization of consumer protections laws of e-commerce; 2) online dispute resolution with reference of international standards; 3) interoperable e-ID and digital authentication regulation; 4) coherent and comprehensive framework of personal data protection. However, it is worth to note that, ASEAN also emphasized the acknowledgement of emerging trade-related issues. To future-proofing this blueprint, ASEAN also considers the importance of emerging trade-related issues. This refers to the existing debates and negotiations of digital trade norm, including those which are embedded in various PTAs involving the ASEAN Member States.

ASEAN e-commerce agreement

ASEAN E-Commerce Agreement was a result of the ASEAN's Working Programme of E-Commerce 2017-2025. The final draft of the agreement is signed at Ha Noi, Viet Nam, on 19 January 2019, and at the time of writing of this paper the agreement has not yet entered into force. This agreement aims for the creation of environment of trust and confidence on e-commerce use, and to drive inclusive growth and narrow the development gaps in ASEAN. Seen from the drafting language, the substance of the agreement contains both hard obligation and soft commitment of member state, which can be elaborated as follows:

Principles

One of the principles of e-commerce agreement mandates the ASEAN Member States to take into account existing internationally adopted model laws, conventions, principles or guidelines. Albeit it is not directly mentioned, this likely refers to UNCITRAL Model Laws and UN Convention on the Use of Electronic Communications in International Contracts 2005. In addition, other principle also calls for member state to encourage the use of alternative dispute resolution to facilitate the e-commerce dispute. E-commerce Agreement also explicitly states the adherence of technology neutrality principle. Meaning that, in imposing regulation the member state applies the same regulatory principle regardless the means of technology chosen.

Paperless trading

The provision of paperless trading obliges the state to expand the use of electronic version of customs documentation. The provision also refers to ASEAN Agreement on Customs 2012, and other agreements on paperless trading which ASEAN Member States also the parties (Art. 7.1).

E-authentication and E-signatures

This provision requires the member state not to deny the legality and validity of

electronic signatures. It also obliges the state to conform its internal regulation according to international norms of e-authentication to ensure interoperability of technology. (Art. 7.2). In addition, Cambodia, Laos, and Myanmar (CLM) are given exemption from this obligation for 5 years since the entry into force of the agreement. This is a form of hard obligation in this agreement.

Online consumer protection

Part of this does not create hard obligation as the same as previous provision. It contains soft commitment of the state to recognise the importance of adopting and maintaining transparent and effective consumer protection measure (Art. 7.3(a)). But it also creates the hard obligation to provide the same level of online consumer protection as provided for consumer protection regulation for other forms of commerce. CLM countries also given exemption from this obligation for 5 years.

Cross-border transfer of information by electronic means

In contrast with hard obligation imposes in e-commerce chapters of several FTAs, ASEAN E-Commerce Agreement uses soft commitment approach in Art. 7.4. The member has a commitment to recognise the importance to allowing cross-border movement of information for business purpose, subject to applicable laws and regulation. In addition, the members also

committed to working together towards elimination or reduction of information flow barriers, pursuant to appropriate safeguards, and other legitimate public policy objective. This commitment does not applicable to financial services as listed in GATS annex of financial services.

Online personal information protection

The agreement creates a hard obligation for member to adopt measures to protect personal online information of the e-commerce users (Art. 7.5). Compared to data protection approach found in other FTAs. This protection considered narrow, as it only protects the information of e-commerce users. Member states also shall take into account applicable international principles, guidelines, and criteria of international relevant bodies in making regulation on personal information protection.

Location of computing facilities

This provision creates a hard obligation for member states to not to impose mandatory localisation of computing facilities as a requirement of business operation. However, it still recognises the importance of regulatory autonomy to determine the requirement of the use of computing facilities. This provision excludes the financial service sector (Art. 7.6).

Other substances

Further, the agreement also features the provision that creates soft commitment for member states to conduct capacity building and cooperation to enhance the cybersecurity (Art. 8). With regard of electronic payment, it has soft commitment to recognise the safety, security, efficiency and interoperability of e-payment system (Art. 9). Interestingly, e-commerce agreement also regulates the logistics matter, although in a soft commitment language (Art. 10).

Exceptions

Rather than drafted its own exception of this agreement, the member state opt for include the application of GATS General Exception (Art. XIV GATS) and Security Exception (Art. XIV *bis* GATS) into the agreement (Art. 14). This provision enable justification for non-conforming measures to, among others, maintain public order, human animal plant life or health, prevention of fraud, and protection of privacy. As far as the non-conforming measures is not applied in a arbitrary and unjustifiable manner. By embedding GATS exception into this agreement, it can be understood that, ASEAN treats e-commerce

subject matter as a matter of trade in services and, interpretation approach of WTO jurisprudence is applicable on the exception provision.

Review mechanism

E-Commerce agreement is subject for review among the member states for every 3 years, and first review shall be done no later than 3 years since the date entry into force. This opens up the possibility of updating the obligations and commitments to chase the gap due to advancement of technology.

The contrasting domestic practice of ASEAN Member States

As elaborated in the earlier section, ASEAN has a clear vision of what it wants to achieve development through e-commerce and digital agenda, and the blueprint and plans have been translated into a concrete agreement. However, learning from the (delayed) implementation of the ASEAN Economic Community, we should not overlook the diverse level of readiness among the ASEAN Member States. In terms of digital trade-related regulatory policy, ASEAN Member States also has differing views and regulatory approach, as shown by the table below.

Table 1. Digital trade-related measure in ASEAN region

ASEAN Member States	Digital-trade related Measures
Indonesia	<ul style="list-style-type: none"> • Localisation requirement of “public service” data – Government Regulation No. 82 of 2012 • The local content requirement of 4G LTE equipment - • 30 percent local parts and components in both hardware and software • Mandatory commercial presence - draft Ministerial Regulation regarding over-the-top service provider • Plan to impose duties on digital products • Internet filtering • The requirement of foreign venture capital to seek joint venture
Philippines	<ul style="list-style-type: none"> • DCIT – mandatory use of government cloud service for public ministries • Licensing requirement: value-added telecommunication service license
Thailand	<ul style="list-style-type: none"> • The backlog of patent registration
Vietnam	<ul style="list-style-type: none"> • Online advertisement restriction • Data localisation of social networking service – government decree No. 72/2013/ND-CP
Malaysia	<ul style="list-style-type: none"> • Data users need to seek approval from the authorities before moving personal data out of Malaysian territory

Source: Pitakdumrongkit (2018)

We can see the various approaches taken by the ASEAN Member States, from the most liberal policy to the most restrictive one. However, this data do not entirely depict the illegality of the measure, the data also neither completely portraying every ASEAN Member States. Since the source of analysis is originating from policy research of the trade representatives of other states through so-called ‘label & shaming’ mechanism. Rather, it only serves as illustrative on the policy difference taken by

the ASEAN Member States. We should not overlook the policy rationale behind the implementation of such measure. It is important to remind that its, despite the liberalization commitment, the state should still attain its regulatory space to achieve its public policy objective, to the extent that it does not constitute as a disguised trade barrier and does not apply in an arbitrary manner. This includes the measure to protect important societal interest such as cultural values. The language of GATT Art.

XX/GATS Art. XIV style exception clause is commonly found in PTAs to preserve the right to regulate the state, including in the e-commerce/digital trade chapters, which also featured in ASEAN E-Commerce Agreement.

Particular attention also should be given to the ASEAN's LDCs such as Cambodia, Lao PDR, and Myanmar. The three countries were assessed by the UNCTAD through eTrade Readiness Assessment programme. From the legal framework assessment, it was revealed that Laos meets, not all of them, but some of its commitment under the e-ASEAN Framework. It particularly lacks on the implementation of data privacy and consumer protection regulation. (UNCTAD, 2018). In Myanmar the problem of implementation also faced the same difficulties, particularly concerning non-implementation of dedicated privacy and data protection regulation (UNCTAD, 2018).

CONCLUSION: ASEAN WAY OF DIGITAL TRADE?

So far, we have seen the expansion of PTAs with digital trade provision that leads to decentralised rule creation. If we follow the tangled web of PTAs, we can pull the pattern of the approach of certain states digital trade policies that influenced the rule-making, they are the US, EU, and China. Thus, this paper attempted to proximate the position of ASEAN approach in the creation digital trade rules. We already saw earlier that ASEAN concluded the agreement with

relatively modern structure which follows megatrends in e-commerce rule making. However, we also note that language of some provision only reflects soft commitment, rather than hard obligation of state to comply and align its domestic rules related to e-commerce, and the effectiveness is questionable for many. It also absents to feature 'deep' digital trade rules such as definition of digital product independent from goods/services dichotomy, permanent commitment to not to impose customs duty over electronic transmission, and unsolicited electronic messages. Considering the policy and development gap among the ASEAN Member States, it is understandable that political dynamics of negotiation of e-commerce agreement resulted in an e-commerce agreement with softer commitment, rather than highly strict standard found in the PTAs with developed countries.

Despite what seems to be the initial shortcomings of the agreement, we must praise that ASEAN has achieved a consensus to level the playing field the e-commerce sector in a relatively short time. The agreement also reflects the needs of ASEAN laid down in the blueprint, not rushing blindly follows the trends driven by the major rule maker of digital trade in international stage that chases for far-fetched liberalisation commitment with less consideration of development aspect. Inadequacies of the agreement can be revised in the future through its review

mechanism, either to reduce or add commitment of member state progressively and periodically, adjusting with its policy and technological development needs. This unique approach of ASEAN in e-commerce rule making that balances the liberalisation of e-commerce and the development needs should be taken into the next multilateral negotiation in the WTO. To conclude, answering whether the agreement reflect the ASEAN Way, we must say, it is.

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ASEAN CAPITAL MARKETS INTEGRATION: “ACMF PASS” AS A TOOL TO INTEGRATE ASEAN CAPITAL MARKET

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ABSTRACT

Capital markets integration has become a major topic in international finance and business, including the Southeast Asian region itself. In Southeast Asia, there are already state union organizations known by ASEAN. Capital markets integration in ASEAN is still a problem and need a tool to facilitate the cross-border movement of investment. Therefore, ASEAN formed ASEAN Capital Markets Forum (ACMF) and focused on harmonization 10 member states rules and regulations to achieve greater integration of the region's capital markets. In 2018 ACMF formed a framework called “ACMF Pass”, which will allow licensed professionals to provide advisory services within participating ASEAN jurisdictions, with fast-track registration and no additional licensing requirements. Malaysia, Philippines, Singapore, and Thailand are the first countries to participate in this initiative and signed Memorandum of Understanding at the 2nd ASEAN Capital Markets Conference. “ACMF Pass” emerged impacts that would affect ASEAN, both negative and positive impacts. This research paper will discuss capital market integration in ASEAN, the positive impact of “ACMF Pass” for ASEAN member countries and provide solutions for the negative impact of “ACMF pass”. The authors use qualitative methods and secondary data analysis. All the data that authors found is from physical books or electronic books, articles and journal on the internet. By making this research paper, “ACMF pass” is a facility for more integrated ASEAN capital market. Accordingly, the authors suggest that the ACMF pass should be approved and realized by members of ASEAN countries.

Keywords: ASEAN, ASEAN Capital Markets Forum, ASEAN Capital Markets Integration, ACMF Pass, Foreign Investment.

INTRODUCTION

Investment concept may seem new to many people in this modern era, but its origins can be traced by history. A brief history written by Lewis Worrow proves that investment has been around for a long time, start from Mesopotamian civilization which recorded through engravings on tablets detailing money that was lent and

recording the interest owned. Until forerunner to the modern investment concept which began in 1531 by Belgium (Worrow Lewis, 2016). In this modern era there are a lot of facilities that make easier for someone or other legal entities to invest, but with all new facilities, there will be an advantage and disadvantage for investors. Investment is defined by the Kingdom of Saudi Arabia Capital markets Authority

(2018:1) as the commitment of recent financial resources in order to achieve higher improvement in the future.

Many countries often make investments because it gives many advantages such as easy international trade, economic boost, development of human capital resources. A country's investment can be sourced domestically or international investment, therefore, international investment is closely related to national trade and international finance. The official definition of international investment itself does not exist in the various literature that the author obtained, however, refer to the elements of international investment it could be interpreted as new dynamic elements in the international economy which subject are foreign investor and investment assumed a tripartite set of actors: the home state, the host state and the investor of whom only first two had legal standing and then state arises out of been seen as the principal subject of international law (Kojima, 2011; Dolzer & Schruer, 2012; Muchlinski, 2008).

Some scholars consider that international investment as same as foreign investment, and interpreted as activities that involves the transfer of tangible or intangible assets - transfer of physical property including equipment, or physical property that is bought or constructed such as plantations or manufacturing plants- from one country to another for the purpose of their use in that country to generate wealth under the total or

partial control of the owner of the assets (Sornarajah, 2010 p.8). International investment is a sign that the process of globalization has begun which, in accordance with the Direction General of WTO's opinion, direct foreign investment (FDI) together with international trade has become the main motor of the globalization process. Investment problems are very various kinds and one of them is about integration in the field of investment. Capital markets integration has become a major topic in international finance and business, including the Southeast Asian region itself. International investment divided into four categories: Foreign Direct Investment (FDI), Foreign Institutional Investment (FII), medium-term credit and foreign portfolio investment (FII) (Royal Institute of International Affairs, 1937; Sornarajah, 2010).

Since 1967, countries in Southeast Asia, namely Thailand, Indonesia, the Philippines, Malaysia, and Singapore have established the Association of South Asian Nations organization or ASEAN. In Article 1 Paragraph 5 of the ASEAN Charter, one of the purposes of the establishment of ASEAN is to create single markets and production base which is stable, prosperous, highly competitive for trade and integrated with effective facilitation for trade and investment in which there is free flow of goods, services, and investment; facilitated movement of business persons, professionals, talents and labor and freer

flow capital. Based on this, it can be concluded that the goal of ASEAN is to develop the economy of its members. One of the aspects that play an important role in the economic development of Southeast Asia over the last two decades is the foreign direct investments (FDI).

During the period 1991-1997, the FDI inflows to South-East Asia (ASEAN) have reached about 8% of the global foreign direct investments, being placed among the world's largest recipients of FDI in the 1990s. However, the attention of the investors shifted away from South-East Asia after the 1997-1998 regional economic collapse (Laura, 2014, p 904). In 2003 investment in ASEAN has been improved again, in consequence from entry of US \$ 20 billion FDI which up by 43% compared with the previous year. This change is the highest percentage since the monetary crisis last few years ago (Hasibuan, 2006 p. 137-152) then lately investment in ASEAN has begun to rise, one of the cause is because in 2004 ASEAN already built capital markets integration, which is ASEAN Capital markets Forum (ACMF).

Capital markets integration has become a major topic in international finance and business, including the Southeast Asian region itself. In 2018 ACMF formed a framework called "ACMF Pass". ACMF Pass will allow licensed professionals to offer and provide advisory services in ASEAN jurisdictions, with fast-track registration and

no additional licensing requirements. Malaysia, Philippines, Singapore, and Thailand are the first countries to participated in this initiative and signed Memorandum of Understanding at the 2nd ASEAN Capital markets Conference.

"ACMF Pass" would give negative and positive impacts for ASEAN. Based on these explanations, this research paper will discuss about capital markets integration in ASEAN, the positive impact of "AMCF Pass" for ASEAN member countries and provide solutions for the negative impact of "ACMF pass". The authors use qualitative methods and secondary data analysis. All the data that authors found is from physical books or electronic books, articles and journal on the internet. Furthermore, from this research paper, it can be concluded that "ACMF pass" is a facility for the more integrated ASEAN capital market. Therefore, the authors suggest that as soon as the ACMF has to be approved and realized by members of ASEAN countries.

LITERATURE REVIEW

Investment in the Association of Southeast Asian Nations (ASEAN)

If we look at the past, developing countries in Southeast Asia faced many problems such as poverty and limited access to education and social services, while technological developments occur in developed countries. Based on this problems, 5 Southeast Asia countries which

are Philippines, Indonesia, Malaysia, Singapore, and from Thailand; agreed to established ASEAN on 8 August 1967, which replace the Association of Southeast Asia (ASA). ASEAN membership increased with the entry of Brunei, Cambodia, Laos, Vietnam, and Myanmar.

The founding members of ASEAN believed that the member states had shared responsibility for improving economic growth and promoting peace and stability in their region. Furthermore, this organization encompasses a number of committees, including technical committees on finance, agriculture, industry, trade, and transportation. Under the banner of cooperative peace and shared prosperity, ASEAN's chief projects center on economic cooperation, the promotion of trade among ASEAN countries and between ASEAN members and the rest of the world, and programs for joint research and technical cooperation among member governments. (Chung In Moon, 2018).

After the enactment of the ASEAN Charter, ASEAN has moved from a loose organization to a rule-based one. Therefore, it can be concluded that the activities of ASEAN shall be on the basis of law applicable to the organization. ASEAN Charter as a treaty known to international law will serve as a legal basis to all activities conducted by ASEAN, both for internal and external objectives (Damos Dumoli Agusman, 2013). ASEAN Charter endorses in Article 3 have a

legal personality by providing that ASEAN, as an intergovernmental organization, is hereby conferred legal personality. International organization means an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities (ILC, 2011). It is necessary to take into account, that this international organization could not widely regulate something in private sector, for example, investment in one country. The government of the state has the duty to consider the impact of framework or agreement made by the international organization. Besides, because of the legal personality, ASEAN automatically has 'treaty-making power'. In the ASEAN Charter ASEAN is said to have the character of law-making power (the authority to make international agreements with other international legal subjects from ASEAN) in the ASEAN region because among others:

- provide general rules;
- formed multilaterally, in the context of ASEAN is regional; and
- do not cancel other agreement obligations.

In the economic field, ASEAN has developed since its formation. One of the aspects that have played an important role in the economic development of ASEAN is Foreign Development Investment. ASEAN

facilitate the quick set-up of operations for foreign investors, lower the transaction costs of investing and operating in the host country, ensure factories are more secure. In addition, Foreign direct investment (FDI) is recognized to contribute to the benefits of economic and social development. This also a channel through which countries' different characteristics confront one another. The government seeks to promote investment to foreign investors which results in FDI inflows being considered an important complement to development efforts. Likewise, the ASEAN takes into account to conduct investment cooperation agreements for ASEAN to function as an attractive investment destination and to contribute special conditions for multinational enterprises (MNEs) in order to raise FDI into this region. Over the past decade, ASEAN's FDI inflow fluctuated as a result of the Asian financial crisis in 1997-1998, the economic slowdown in the US and Europe and the recession in Japan in 2001. In 1997-1998, Asia finance experienced a crisis, but in 1999 the recovery of FDI inflow was remarkably swift, and it continued decreased up to now due to the economic slowdown in the US and Europe and the recession in Japan. However, in 2003 ASEAN's FDI inflow recovered. Foreign investors use ASEAN to generate profits, cost-effectiveness and global competitiveness by the largest sources of FDI for example, the EU, US, Intra-ASEAN, and Japan (ASEAN Statistical Yearbook, 2011).

According to the development of ASEAN economics, the development of ASEAN is marked by the legalization of ASEAN Charter. In November 2007 The ASEAN Charter was signed and went into effect on December 15, 2008, after each country ratified it. Back to Article 1 Paragraph 5 of the ASEAN Charter as the ASEAN's economic purpose, the ASEAN Charter will play a very significant role in the development of ASEAN intra-regional economic cooperation and economic integration including the ASEAN Economic Community (AEC) (Kazushi Shimizu, 2011). The AEC is designed to create a single market and production base within ASEAN region.

The AEC will allow for the free movement of goods, services, skilled labor, and investment among the 10 ASEAN member nations and to facilitate the free flow of capital. The process of establishing the AEC is well on its way. The region's gross domestic product (GDP) grew by 5.5 percent from 2000 to 2011 (World Bank, 2013). Partially fueled by exports to China, the United States and Europe, middle-class growth in the region has been among the most rapid rates in Asia (OECD, 2013). This same middle-class growth is spurring financial services, automobile purchases, and consumer goods production as well as education and health services (OECD, 2013). However, further improving the competitiveness of the region's enterprises will require more efficient and effective investments. One of the AEC progress is

Investment liberalization. Commitments in the goods sector under the ASEAN Comprehensive Investment Agreement (ACIA) are already liberal in most ASEAN member countries, according to the benchmark of 70% permissible foreign ownership.

ASEAN Capital Markets Forum

Capital markets are the part of the financial market, financial markets are meant to be markets by economist refers to an institution or arrangement that facilitates the purchase and sale of goods and other things that related. Based the opinion from Eugene Brigham on the book entitled “Capital Market” by Gurusamy (2009, p1), the definition of financial markets is the place where people and organization wanting to borrow money are brought together with those having surplus funds. In a book written by Gurusamy, it is said in essence that the financial markets at investment plays an important role in organizing to invest funds thus collected in those units which are in need of the same. (Gurusamy, 2009 p.1-2).

Capital markets can be interpreted as an activity that collect funds from some entities and make them available to other entities needing funds which function is to improve the efficiency of transaction so that each individual entity doesn't need to do search and analysis, create legal agreement and making easier to complete funds transfer

(Kenton, 2018). Then there is another definition of the capital market, capital markets defined as the markets where long-term funds are borrowed and lent which the main purpose is directing the flow of savings into long-term (mostly for one year and above) investments (Gurusamy, 2009 p.6). In capital markets there are legal entities or people participating in this capital market, first is financial intermediaries for the example are like insurance companies, investment companies, pension fund, and others. The second is non-financial business enterprises and last is ultimate economic units, for the example, is households and Governments (Gurusamy, 2009 p.21).

Capital markets have a various general function, namely (Gurusamy, 2009 p.22-23):

- a. Allocation function, this function allows for the channelization of saving of innumerable investors into several productive avenues of investment and allocates and rations funds by the system of incentives and penalties. Which is the impact of the markets attract new investors whose are willing to make new funds available to business.
- b. Liquidity function, this function could allow better liquidity for the securities that trade, it is because of the buyers and seller can exchange securities at mutually satisfactory.
- c. Other function such as:
 - Indicative function, which acts as a barometer showing the progress of a

company and the economy as a whole through price movement of securities.

- Saving and Investment function, which provides of quickly converting a long-term investment into liquid funds, therefore producing confidence among investor and speeding up the process of saving and investment.
- The transfer function, simplify the transfer of assets (including existing assets, tangible and intangible assets) among individual economic units or groups,
- Merger function, to push voluntary or coercive take-over mechanism to put the management of inefficacious companies into more competent hands.

In terminology and based on the Cambridge dictionary, the capital markets forum was meant as activities that meeting the people so they could talk about a problem, especially of the system of financial organizations from which business entities or company and governments raise money selling stocks to investors (Cambridge Dictionary, "Forum"; Cambridge Dictionary, "Capital Market"). According to International Bar Association, capital markets forum defined as a private sector which have initiative set up to observe and support in the orderly development of capital markets, while admitting the importance of the legal role in providing a framework in which markets forces can work most efficiently, and in settling the parameters of equitable behaviour (International Bar Association, "About The Forum").

In this modern era, the capital market forum has been owned by several NGOs and also several countries. For example, on the European continent, they have the European Issuers Capital Markets Forum. European Issuers established since 2008 which the NGOs has been developing its advocacy activities and technical proficiency (EuropeanIssuer, 2018). And in Southeast Asia, ASEAN Capital Markets Forum or ACMF was established to develop a deep, liquid and integrated regional capital markets to meet the objectives of the ASEAN Economic Community (AEC) Blueprint 2015. The main tasks of ACMF are implementing works specified under the implementation plan in the harmonization of standards, mutual recognition and related liberalization, infrastructure relating to exchange linkages, and legal area work (ACMF, "About Us").

Given the varying levels of development of member countries, the ACMF adopts a pragmatic approach whereby countries opt-in to participate in ACMF initiatives based on their levels of readiness and ability to meet the requirements of the respective frameworks. Since the endorsement of the ACMF Implementation Plan 2009, the ACMF has made substantial progress on the various initiatives. These include facilitating greater cross-border fundraising activities, cross-border distribution of products and offering of services and extending ASEAN's reach to a broader investor base. (ACMF Media Release, 2016). Until now ACMF has released several regulations and held a

conference. In 2018 the ACMF released a regulation called the "ACMF Pass" which is predicted to be one way to facilitate ASEAN member countries to make foreign investments and as a way to integrate capital markets in ASEAN

ASEAN Capital Markets Forum Framework: ACMF Pass

Based on Article 38 of the Statute of the International Court of Justice (ICJ) and opinion of authors, a framework is a form and embryo of an international convention or treaty. In terminology, a framework defined as a system of rules or ideas which are made by legal entities that are used to plan or decide something to solve the problem (Cambridge Dictionary, "Framework"). According to Bob Happle (2014, p.3), the existence of framework is due to the existence of legal defects and legal vacuum, therefore a framework was made which would harmonize legislation and institutions and for improving procedures in courts and tribunal including for making the remedies more effective than before. Based on ACMF Media Release (2018, p.1). ACMF Pass is a framework made by ACMF countries member wherein ACMF Pass has the main purpose to facilitate transnational movement of investment monitor, so then will enable ASEAN investors greater access to professional services. ACMF Pass will allow licensed professionals to offer and provide advisory services in ASEAN

jurisdictions, with fast-track registration and no additional licensing requirements.

On the 28th ACMF meeting on March 19, 2018, in Danang, Vietnam, ACMF Pass has endorsed by the ACMF Professional Mobility Framework which facilitates greater mobility of professional controlling the activity of investment advice from home jurisdiction to host jurisdiction within ASEAN region. The aims of the ACMF Pass is to facilitate the mobility of professionals in carrying out investment advice activities among ASEAN countries. With the ACMF Pass, investors will have access to information and advice from professionals with the expertise on capital market products specified in the framework (Handbook on ACMF Pass under ASEAN Capital Market Professional Mobility Framework, 2019, p.5). A foreign Professional needs to apply for an ACMF Pass from each Host Jurisdiction he/she wishes to undertake any of the activities specified in the framework.

The implementation of the ACMF Pass measure is in accordance with the requirements under (1) the MOU, (2) guidance and (3) any applicable regulations regarding ACMF Pass in each Host Jurisdiction. MoU is a document that records and archives the common purpose and agreement between parties. This means there are working relationships and guidelines between collaborating groups or parties (NHS Improvement, 2018 p. 4).

Based on Craig Yeung Opinions (2018, “How legally binding is a memorandum of understanding?”), MoU in ACMF Pass have legally binding due to this MoU purpose is to be bound to enter into the formal agreement.

The very first step was taken by regulators in Malaysia, Philippines, Singapore, and Thailand. They signed Memorandum of Understanding (MoU) to participate in the ACMF Professional Mobility Framework. In the first phase, the ACMF Professional Mobility Framework will introduce the ACMF Pass. The authors agree, that ACMF Pass means the authorization by a Host Regulators to allow a professional from the Home Jurisdiction to perform activities under the framework in host jurisdiction. The scope of products and activities are limited to shares, bonds, and units of collective investment scheme including units of real estate investment trust and units of infrastructure trust (Handbook on ACMF Pass Under ASEAN Capital Market Professional Mobility Network, 2019). The ASEAN Pass holders (professionals) may give advice on a variety of ASEAN capital market products.

Data and Methodology

The methodology that the authors use in order to collect data and facts is by reviewing document studies which use various secondary data such as legislation, court decisions, legal theories, and opinions of scholars. This normative writing uses

qualitative analysis by explaining existing data with narrations.

DISCUSSION AND RESULT

Integration of Investment in ASEAN

One of the aims that ASEAN want to achieve is to create a single market and production base which is stable, prosperous, highly competitive, and economically integrated with effective facilitation for trade and investment in which there is flow of goods, services, and investment; facilitates movement of business persons, professionals, talents, labor, and free flow of capital (Asean Charter, 2008). Most ASEAN member states (AMSs) have been heavily trade-oriented, especially since the mid- the 1980s. For instances, Brunei Darussalam and Singapore are known as the largest exporter. The geographical location of ASEAN is also one of the reasons why ASEAN members having traded as their lifeblood (Economic Research Institute for ASEAN and East Asia, 2017, p. 13). With all the diversity as advantages, ASEAN has the potential to be one of the best regions to do investment.

A series of economic-related attempt has made, such as Common Effective Preferential Tariff (CEPT) scheme for the ASEAN Free Trade Area (AFTA) in 1992, the Framework Agreement on Services and Agreement on Intellectual Property in 1995, ASEAN Investment Area agreement and the Framework Agreement on the Facilitation of

Goods in Transit in 1998, etcetera. Nowadays, the attempt to integrate the capital market in the ASEAN region becomes a consent under the ASEAN Economic Community (AEC) blueprint. It already became a good integration which creates a fact that ASEAN has been successful in attracting foreign direct investment (FDI); indeed, it has competed with China as the largest FDI Investment destination in the developing world in recent years. Creating integration as an ASEAN identity in the capital market will give good impacts on investment. ASEAN Capital Market Forum (ACMF) has started in 2008. This is a forum to focus on harmonization of rules and regulations before shifting towards more strategic issues to achieve greater integration of the region's capital markets under the AEC Blueprints 2015 (ACMF.org). As related to integration in harmonizing, the member states realized they all have different mechanism, political views, even legal system.

As mentioned before, ACMF existence to liberalize the regulation which to eliminate all the barriers. Recognizing the different stages of development that ASEAN capital markets are currently at, ACMF members will endeavor to support each other in facilitating the development of their domestic markets and in building markets as well as industry readiness to enable meaningful participation in ACMF initiatives. Currently, over 10 years ACMF has been formed but has the balance and integration

of the ASEAN capital market developed and been fulfilled? Based on Huang Quang Do research data (2017 p. 28) In 2015, Indonesia, Malaysia, the Philippines, Singapore, and Thailand are very integrated with the ASEAN Capital market block, therefore the combinations of assets from these ASEAN markets incline to be inefficient.

Robiyanto has said on his research journal entitled "The Analysis of Capital Market Integration in ASEAN Region By Using The Ogarch Approach" (2017 p. 173-174), in 2015, the majority of the ASEAN stock market is controlled by Indonesia, Malaysia, Thailand, and Singapore. The data also shows that the 4 capital markets in ASEAN have integrated each other. Additionally, based on Alifa Nurul Izzati opinions (2015, p.63), Singapore, Malaysia, and Thailand, which are the three countries with the highest capital market capability ratings in Southeast Asia, these three countries are the pivot of the movement of ASEAN capital market development. And even various policies regarding ASEAN capital market integration were formed on the initiative of Singapore, Malaysia, and Thailand.

According to author opinions, integration and balance of the ASEAN capital market, which is the goal of the ACMF, actually, have not been implemented. As Datuk Ranjit Ajit Singh, chairman of the Securities Commission of Malaysia, pointed out, there

are a variety of issues which means integration efforts will require strong political will to reach the desired goals (Alexander Flatscher, CFA, 2012). The authors consider the factors of the non-implementation of integration and balance, due to differences in the ASEAN capital market in the law systems and the cultural differences of each member country. Another complicated reason is ASEAN *stigma*. On Webber's third point, he argued that ASEAN is incapable of achieving closer or successful integration primarily because there are high disparities in the economic level of member states that would obstruct any efforts toward collective actions (Benny Teh Cheng Guan, 2004, p. 81). This organization does not have a supreme body to handle political and economic climates. This summarizes that ASEAN's diversity and heterogeneous, it will be hard to trust ACMF Pass as a tool to integrate the capital region of ASEAN. In 2018, ACMF finally issued 4 regulations and one of them named ACMF Pass was considered as one of the facilities to assist ASEAN member countries so that their capital markets were integrated with the ASEAN capital market.

Problems related to capital market integration is trust issue. Specifically, developing countries, such Indonesia is difficult to join ACMF Pass or other frameworks. The problem is not always about the developing countries not knowing the framework, but this is about trust issues that these countries has been received. In

reality, we could not avoid the problem that might be happen in the future. These developing countries is not friendly with peaceful settlement dispute that makes developed countries reluctantly do not want to have economic relation.

Impact of ACMF Pass

First and foremost, all the founder of ASEAN tried to collaborate and deliver peace and welfare to all the ASEAN member states. As well as the successor of ASEAN, right now, they want to all the member states have the same equality in economic circumstances. Southeast Asia regulators have launched two key initiatives, including standards for social and sustainability bond offerings, and a framework that will allow investment advisors provide services in participating jurisdictions, in a move aimed at improving the region's capital markets (The Asset ESG Forum).

As to be known, the validity of ACMF Pass will be two years for a period and each recognized representative will be permitted to perform the activities under the framework in a host jurisdiction for the duration of its validity. The professionals, who already registered will be known as recognized representatives will give advice about specific financial advice to investors involving consideration on investor's investment objective, financial situation and particular needs, as well as the solicitation and selling of capital market products, may

be performed by local professionals under attached licensed firm in the host jurisdiction for 2 years.

This framework actually gives benefits. ACMF Pass has reduced the effect of spaghetti bowl. Asia itself has long been influenced by the effects of spaghetti bowls, this effect not only attacks the sustainability of international trade but also the sustainability of foreign investment in the Asian region. Spaghetti bowl effect due to the ineffective of the law regulates so then, the regulations would be overlapped and may not be consistent with each other, which cause the confusion of interpretation. Currently, there are approximately 3000 investment treaties and international agreement and Asian countries have signed more the 1000 investment treaties (Chaisse & Hamanaka, 2018 p. 504). Therefore, the number of investment agreements is very huge. This is also caused by the investment agreements involve the private sector and limited involvement of the public sector.

In the ACMF Pass procedure, the investor will look up for those professionals (Chaisse & Hamanaka, 2018 p. 502). Then, the professionals will give information of any ASEAN (ACMF registered) products knowledge which is ready to access and available and introduce the host countries what is prohibited and permitted in host jurisdiction. The procedure of the ACMF pass will make people outside ASEAN easier to invest their property in ASEAN member

countries, deepen the profit or capital region and reduce the costs. By using professionals from ACMF, in the future, the investor can easily avoid any failure because of the wrong interpretation and expand business without additional costs. This framework also can be seen as a trigger for the other country to involve in investment by joining ACMF.

Beside of the positive impact of ACMF Pass, ACMF Pass have several negative impacts that will destruct of investment situation in ASEAN. Foreign investors are increasingly able to invest their wealth in affluent ASEAN countries. Could have a negative impact on the balance of ASEAN capital markets and will damage the integration of ASEAN market capital. As we discussed in Integration of Investment in ASEAN, Singapore, and Malaysia are known to be the largest stock market in the ASEAN region. With the ACMF Pass, foreign investors are increasingly saving their wealth in the Singapore and/or Malaysia stock markets. This is very contrary to the main goal of ACMF, namely the integration and sustainability of ASEAN markets and will cause an economic disparity between ASEAN member countries.

In order to enhance the effectiveness of ACMF Pass, there is some solutions:

1. Promote ACMF Pass all over the ASEAN

ACMF Pass is kind a new program indeed, but it is rarely to be heard. ACMF Pass is seen just for Thailand, Singapore, Malaysia. It is hard for developing countries such as

Myanmar or Indonesia to participate. Another problem is it is impossible to trust ACMF Pass as a tool to integrate if ACMF Pass itself lacks of recognized representatives.

Generally, the type of professionals carrying out the investment activities under this framework will be (Handbook on ACMF Pass under ASEAN Capital Market Professional Mobility Framework, 2019, p.7)

- An investment advisor or research analyst;
- Broker-dealer representative providing general investment advice;
- Fund management professional who has a significant role in making the decision on investment for the fund is permitted to provide general advice on the fund as well.

With all the advancement that Thailand, Singapore, Malaysia has been received, these countries are expected to invite another member to join ACMF Pass. For example, ACMF itself and these countries will be expected to open more forum to discuss and encourage other professionals from other countries to make a trial of ACMF Pass mechanism. Although we might familiar with ASEAN Capital Conference (to exchange ideas, share insights and collaborate amongst the members to formulate actionable plans to drive the region's deeper sustainability and more connected capital markets), but it is necessary to build solely ACMF Pass conference or workshop to invite the professionals who are interested for

being recognized representatives. The conference or workshop itself has to be more specific in explaining the benefits and mechanism of being a recognized representative.

Recently, Vietnam is in progress to be the next member of ACMF Pass by harmonizing rules and regulations to achieve greater integration into the regional capital market (Shannen Wong, 2018) even though, Vietnam is still struggling to improve their capital market. The authors would like to suggest to ACMF to create a policy and convince the member states (the professionals from the rest members) to join ACMF Pass. To illustrate, as a member of ACMF, the member states have the obligation to review their legal provision regarding capital market and the mechanism to adjust the ACMF Pass mechanism within the time given by ACMF. ACMF Pass mechanism itself has to be more flexible to adjust with developing countries interest. If the mechanism is too rigid, it will difficult to join. This is the way they could participate not only in developing capital region market, but also the state's capital. Thus, there is no big gap of capital or GDP among the members and ACMF Pass will be effective tools. Also, if only a part of the ASEAN is following this framework, it will be seen ASEAN's lameness in the field of investment.

It might become a hardship to promote ACMF Pass because of the existence of ASEAN norms such as non-interference,

sovereignty, consensual decision. Those norms also provide an escape route if member states fail to agree on a common policy (Benny Teh Cheng Guan, 2004, p. 77). One state has sovereignty to create the policy to refuse the invitation. We need to remember, by applying the ACMF Pass mechanism in one state, that means that state ready to receive big improvements, such as pluralism and transnational organization.

2. Maintain the sustainability of ACMF Pass as a tool

There are four regulations from the Handbook related to maintaining the professionals who obtain ACMF Pass:

- Securities Regulation Code (SRC) and Its Implementing Rules and Regulation
- Investment Company Act and Its Implementing Rules and Regulations
- ACMF Professional Mobility Framework and The Handbook on ACMF Pass
- SEC Guidelines on the Implementation of The ACMF Pass under the ASEAN Professional Mobility Network.

First, recognized representatives from ACMF Pass members need to put more attention into the regulations above. Even the validity of ACMF Pass only for two years for all the professionals, but these professionals are expected to give more fair information, stock exchange and use equitable principles of trade by complying the regulation above. Second, host

jurisdiction is also expected to become more friendly with foreign professionals. All the host jurisdiction could also give more chance to the professionals to learn about the opportunity in their investment field. If the professionals bring advantages to host jurisdiction and help ASEAN improve the capital region, there is no way the other member states would not join the framework.

CONCLUSION

Capital markets integration has become a major topic in international finance and business, including the Southeast Asian region itself. Due to the one of the aims that ASEAN want to achieve is to create a single market and production base which is stable, prosperous, highly competitive, and economically integrated with effective facilitation for trade and investment in which there is flow of goods, services, and investment; facilitates movement of business persons, professionals, talents, labor, and free flow of capital. So then, in 2018 ACMF formed a framework called “ACMF Pass”, ACMF Pass will allow licensed professionals to offer and provide advisory services in ASEAN jurisdictions, with fast-track registration and no additional licensing requirements. Malaysia, Philippines, Singapore, and Thailand are the first countries to participated in this initiative and signed Memorandum of

Understanding at the 2nd ASEAN Capital markets Conference.

ACMF Pass is one step made by ACMF Professional Mobility Network to lift up all the barriers that the professionals (in investment) might be faced. ACMF Pass has positive impacts such as widely spread information among the professionals, fast track registration and cost reduction, help ASEAN to gain capital region, and reduce the effect of spaghetti bowl. Every policy and regulation, there are no perfect regulation and policy, nor does the ACMF Pass issued by ACMF. At the same time, ACMF Pass would worsen the ACMF's own goals. For solving and maintaining all the negative impacts, the author would to give several suggestions. First, promote ACMF Pass all over the ASEAN through the ASEAN Capital Conference or specifically workshop to invite the professionals who are interested in being recognized representatives. Second, recognized representatives from ACMF Pass members need to comprehend the regulations that mentioned in Handbook and host jurisdiction is also expected to become more friendly with foreign professionals.

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THE CONTRIBUTION OF ASEAN SINGLE AVIATION MARKET IN STRENGTHENING ASEAN CONNECTIVITY

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ABSTRACT

Aviation is an important component to the development of the connectivity of the member states of the Association of Southeast Asian Nations (ASEAN). The achievement of ASEAN Connectivity that supported by the development of aviation would complement the ongoing regional efforts to realize a people-oriented ASEAN Community and integration process within ASEAN. The rapid growth of aviation will trigger the physical connectivity development such as infrastructure development; institutional development such as trade, investment, and regional transport agreement; and socio-cultural connectivity development across the region. In order to develop the connectivity, the governments of ASEAN member states implement a liberalization policy for regional air services, namely the ASEAN Single Aviation Market (ASAM) in order to increase people- to people connectivity, economic growth, and social welfare of the region to contribute in the development of regional integration. This paper aims to give explanation about the contribution of ASEAN Single Aviation Market as a regional institutional framework towards connectivity development of ASEAN community. Theoretical discussion of this paper is carried out with the theory of Andrew Moravcsik's liberal intergovernmentalism. Based on this theory, to achieve successful ASEAN integration, the member states designed to manage economic interdependence through negotiated policy coordination in order to form a single aviation market among ASEAN members in Southeast Asia that illustrated by the achievement of ASAM. This paper also recommends further research on regional integration in international relations.

Keywords: ASEAN, Aviation, Connectivity, Regional Integration

INTRODUCTION

As aviation becomes increasingly important because of the geographical aspect of the region, its effectivity, and its impact towards Southeast Asian economics, ASEAN see aviation as one of the main components to strengthen its regional connectivity. In ASEAN itself, there are significant increases of the civil aviation statistic between contemporary situations

compared to early 2000s. From the data released by The International Air Transport Association (IATA) in 2017 it was shown that the civil aviation in ASEAN has developed significantly. It is noted that today the demand of air travel in ASEAN is reaching more than 400 million passengers per year, an increase of more than 100 percent from 2006 which recorded less than 200 million passengers per year. IATA also predicts that there will be an increase in

demand for air transportation to reach 750 million passengers per year by 2026 due to the increasing number of demand from new emerging middle- class population in the region (IATA, 2017).

At the same time, ASEAN as a regional organization also seeks to improve connectivity for the creation of an integrated ASEAN Community. Enhancing intra-regional connectivity within ASEAN would benefit all ASEAN Member States through enhanced trade, investment, tourism, people-to-people exchanges, and development, which would complement the ongoing regional efforts to realize a people-oriented ASEAN Community. ASEAN expects that ASEAN Connectivity will promote economic growth, narrow development gaps, ASEAN integration and community-building process, enhance competitiveness of ASEAN, promote deeper social and cultural understanding, as well as greater people mobility and connect its member states within the region and with the rest of the world (ASEAN Secretariat, 2014b). In November 2004, the ASEAN Transport Ministers drafted a 10-year plan under which the region's air travel sector would be progressively integrated and liberalised. Three years later, the Ministers agreed to push for open skies within ASEAN by the end of 2015. Through the Open Skies, the region is expected to move towards greater economic integration as countries experience greater connectivity (Tsjeng & Ho, 2014).

THE FORMATION OF ASEAN SINGLE AVIATION MARKET TO STRENGTHEN ASEAN CONNECTIVITY

As Haas (1970) stated that a successful regional integration can be achieved in the point where nation states voluntarily mingle, merge and mix with their neighbour state in the region to acquire new techniques for resolving cases among themselves in order to bring maximal prosperity for the community, institutional connectivity is needed to facilitate cooperation among actors in ASEAN. This need mainly arises from the growing interdependence among actors in ASEAN, which are becoming increasingly dependent on each other both in the economic sector, infrastructure, and socio-cultural relations so they need a supranational institution to regulate the existing interdependence and furthermore develop any possible opportunity in the future.

Moravcsik's (1995) theory of liberal intergovernmentalism explained that the costs and benefits of economic interdependence are the primary determinants of national preferences (in the case of the willingness to lose the factual attributes of sovereignty while acquiring new techniques for resolving conflicts among themselves that illustrated by the creation of supranational institution) while the relative intensity of national preferences, the existence of alternative coalitions, and the opportunity for issue linkages provide the basis for an intergovernmental analysis

of the resolution of distributional conflicts among government. Moreover, the theory explains that in the first stage, national preferences are primarily determined by the constraints and opportunities imposed by economic interdependence. In the second stage, the outcomes of intergovernmental negotiations are determined by the relative bargaining power of governments and the functional incentives for institutionalization created by high transaction costs and the desire to control domestic agenda. Based on this theory, to achieve successful ASEAN integration, the member states designed to manage economic interdependence through negotiated policy coordination in order to form a single aviation market among ASEAN members in Southeast Asia that illustrated by the achievement of ASAM

The achievement of the ASEAN Single Aviation Market was formed from the large amount of economic interdependent created by the development of aviation in Southeast Asia. Based on the theory explained by Haas and Moravcsik, to address the economic interdependence and to develop the connectivity, the governments of ASEAN member states implement a liberalization policy for regional air services, namely the ASEAN Single Aviation Market (ASAM) in order to increase people- to people connectivity, economic growth, and social welfare of the region to contribute in the development of regional integration as a mean to get the biggest benefit for the member states. ASEAN Single Aviation

Market (ASAM) is the work of ASEAN to establish the broader goal of ASEAN Economic Community as an economic integration plan for the region.

ASEAN Single Aviation Market is defined as one condition where:

- a) All restrictions are removed for designated ASEAN carriers on the operation of passenger and freight transport and associated commercial activities within the Member States of the ASEAN region;
- b) A common policy is adopted for user charges, tariffs, competitive behaviour and other forms of regulation; and
- c) Majority ownership and effective control of designated carriers is vested in ASEAN States and or nationals in aggregate (Thomas, Stone, Tan, Drysdale, & McDermott, 2008)

The objectives of ASAM are to develop single aviation market among ASEAN members in Southeast Asia, to become a vital component of the roadmap for the establishment of the AEC; and to replace existing unilateral, bilateral and multilateral air services agreements among member states which are inconsistent with its provisions. (Amirullah, 2018)

With the government of ASEAN member states aimed to implement a liberalization policy for regional air services, it is expected that ASAM will increase connectivity, economic growth, and social welfare. The

competition on international routes will be more intense within the region with the establishment of ASAM and it will support the emergence of new competitor such as low- cost carrier airlines to support the demand of the growing middle classes population in ASEAN. With these agreements, any airlines designated by an ASEAN Member State is allowed to operate both passenger and cargo scheduled services between its home country and a point with international airport in another Member State, and then to a point with international airport of a third Member State, without limitations on capacity and schedule.

The idea to liberalize air transport have been discussed since 1995 in the 5th summit of ASEAN Leaders in Bangkok. ASEAN wanted to create more freedom in air transport to facilitate the growing mobility and looking for the more dynamic air transport in the future. Two agreements become the basis of the ASAM related to passenger services: first, the Multilateral Agreement on Air Services (MAAS) signed in 2009; and second, the Multilateral Agreement on the Full Liberalization of Passenger Air Services (MAFLPAS) signed in 2010. In this agreement, the main provisions are relaxing market access, relaxing airline ownership and control, and the last one is a common policy in term of charges, tariffs, capacity, competitive behaviour, and other form of regulations. (Lenoir & Laplace, 2016) However, the implementation of this

agreement is still facing several challenges. To be fully implemented, the agreement must be ratified or accepted by minimum of three states before they can enter into force, and then only among those states that have ratified or accepted it. As of May 2014, all member states have ratified MAAS Protocols 1- 4, while Protocols 5 and 6 have not yet been ratified by two states, Indonesia and the Philippines. The first phase of the ASAM was completed when the 2010 MAFLPAS was ratified by Indonesia as the 10th state in April 2016. (Amirullah, 2018)

THE CONTRIBUTION OF ASAM IN DEVELOPING ASEAN CONNECTIVITY

Connectivity in ASEAN encompasses the physical (e.g., transport, ICT, and energy), institutional (e.g., trade, investment, and services liberalisation), and people-to-people linkages (e.g., education, culture, and tourism) as foundational supportive means to achieve the economic, political-security, and socio-cultural pillars of an integrated ASEAN Community (ASEAN Secretariat, 2016). Thus the implementation of ASAM is expected to contribute to the three sectors so that it can support the realization of ASEAN connectivity.

The direct gains from the contribution of ASAM will come from two sources— from developed trade, and from more competitive markets. Gains from trade in airline services come about when liberalisation leads to best

suited airlines to the particular routes gaining an increased market share on those routes. The result will be the decrease of the overall cost of serving these routes, and the increase in product quality under liberalisation, because a lower cost airline from a partner country will gain most beneficial market share.

The implementation of ASAM also create a more competitive market that puts pressure on prices, and consumers gain at the expense of airlines and aviation producers. Competition also stimulates the introduction of new products and the serving of market segments which were not well served before (Forsyth, King, & Rodolfo, 2006). The rapid growth of aviation makes airlines require greater market access to penetrate a wider variety of customers. In the past, the desire to develop a potential market for airlines in ASEAN was hampered by market monopolies, especially in important and busy routes between major cities in Southeast Asia by major state-owned full services airlines. The monopolistic practice was feared to harm the ASEAN people as the consumer because when markets are not competitive, airlines tend to be conservative in the range of fares they offer and concentrate only on supplying the higher fare markets. In this case, they ignored travelers who need low ticket prices and prepared to accept a less convenient product. To address that situation, ASAM were implemented to liberalize aviation services in Southeast Asia to provide

maximum services to consumers. The main objective from liberalisation are reduced costs of operation and improved product availability. Furthermore, with the need of ASEAN Connectivity, the direct gains of liberalization of aviation in Southeast Asia will contribute to boost the economy and the interaction between people in ASEAN Community to contribute more on the regional connectivity.

As the consequence from the lower travel fare, more people have the chance to travel. It can be seen from the significant growths in term of people travelling within ASEAN region. Singapore, Malaysia, and Indonesia had about 32 million, 33 million, 18 million and 3 million passengers in international traffic respectively in the early 2000s compared to 54 million, 52 million, 38 million, and 11 million passengers respectively in the 2014 data of ASEAN international civil aviation traffic. There is also significant increase in the other ASEAN countries that most of the countries have significant development in the international passengers traffic from their statistic in early 2000s such as Myanmar which has grown up from only about 835 thousand to about 2,5 million passengers, or Vietnam from 7,5 million to 13 million international passengers in contemporary situation (ASEAN Secretariat, 2014a) This change means a lot to trigger the people mobility and will have significant impacts to achieve people to people connectivity ASEAN Community.

In term of institutional and economic connectivity, the ASEAN Single Aviation Market policy makes the scope for all airlines to operate in ASEAN become unlimited, especially for low- cost carrier airlines that become the backbone of the development of aviation in ASEAN. They can operate in deregulated domestic market, and on specific liberalised international routes.

After the implementation of ASAM there are significant impacts for the aviation market in particular and the mobility of ASEAN community in general. The impact of ASEAN Single Aviation Market on the mobility of ASEAN people is directly see in the study case of Singapore- Kuala Lumpur routes as one of the most important routes that connect the two capital cities in Southeast Asia region. Beforehand, these routes were protected by a 34 years old service agreement by Malaysian Government to restrict that only Malaysia Airlines and Singapore Airlines can operate in this important route, creating a duopoly between these two full service state owned airlines. A major step was taken in 2008 when all airlines model including LCCs finally allowed to serve this route and later followed in December 2008 by a complete relaxation in line with Protocol 5 of MAAS, and there is now unlimited capacity between Singapore and Kuala Lumpur for all designated carriers from the two countries. The involvement of low-cost carrier airlines in this route giving very big impact in competition and the people mobility

because of the competitive pricing and rising number of flight schedule (Hanaoka, Takebayashi, Ishikura, & Saraswati, 2014). It is also expected that certain case can be also applied in other routes that can boost ASEAN Connectivity. In the recent day, several ASEAN Member States still reluctant to ratify the full agreement. In the current situation, Indonesia remains opposed to opening up its secondary cities, the Philippines has excluded Manila from the agreement and Laos has yet to free up Luang Prabang and the national capital Vientiane, citing the interest to protect the domestic potential market against foreign competitors, particularly carriers from Singapore and Malaysia (Meszaros, 2016)

The implementation of ASAM also became a major actor in promoting the free movement of labor in ASEAN. The interaction between inter-regional labor migration, economic scale, transport costs and a spatially immobile source of demand generate forces of both agglomeration and dispersion. Since some factors of production are spatially mobile, when transport costs fall below a critical level, agglomerative forces become strong enough to give rise to a core-periphery structure. As the impact of the ASAM and the development of aviation in ASEAN, the cost of transportation falling down and make the migrant worker's mobility become easier. Migrant worker is a major thing in ASEAN Economic. In 2013, there were an estimated 10,206,000 international migrants currently working

and living in ASEAN and 6,788,000 of them, that is around two-thirds of the total, are estimated to have come from within the region. International labor organization (ILO) considers better communication and cheaper transportation as driving forces for continuing demand for migrant workers. In this issue, the development of aviation industry makes possible for airlines to offer cheaper transportation cost.

The cheap fare leads to increased demand for migrant workers. In addition, the new model of transportation such as low-cost carrier airlines that implement a point-to-point access makes the migrant workers can more quickly access transportation from place of origin to the place he works. For example, in Indonesia, as one of the biggest migrant worker's countries of origin, they have several regions in the country that become the hometown of the migrant worker themselves such as Banyumas Region in Central Java, Lombok and Sumbawa in Nusa Tenggara, etc. In early 2000s, the migrant workers from that region should have a long journey to go to their workplaces abroad. Full-service airlines, the only choice at that time use hub-spoke model which makes the passengers have to transit first in the city that became a hub for flights in Jakarta and Surabaya. However, after the development of aviation industry that make possible to serve low demand point-to-point routes, migrant workers no longer need to come a long way, for example the migrant worker from Sumbawa Regency,

Nusa Tenggara, no longer need to travel the length of Sumbawa- Lombok-Bali-Jakarta-Kuala Lumpur. Nowadays after low-cost carrier operated low-cost point-to-point services, the migrant worker only needs to reach Lombok to board the plane to their destination after the establishment of Lombok-Kuala Lumpur direct route. Same as in Adisucipto Airport in Yogyakarta, the international traffic is now dominated by the migrant worker coming from region surrounding such as Central Java and the western part of East Java Province, especially in the long holiday when the migrant workers have their chance of coming home to visit their relatives.

In term of physical connectivity, the implementation of ASAM that support the development of aviation in Southeast Asia contributes a lot towards the development of infrastructure as the main component to achieve physical connectivity of ASEAN. Countries in ASEAN are tried the best in providing the best support facilities to facilitate the significant growth of aviation. Airlines push the government to provide facilities that can accommodate the growth of aviation. For example, ASEAN has seen high growth of airport development during 2010 to 2012. In two years, it has seen the rise of 21 new airports, bringing the total airports in the region to 1,189 as of 2012 (ASEAN Secretariat) Developments are expected to continue with ASEAN countries set to engage in airport construction and expansion. A US\$ 1.27 billion low cost carrier

terminal called KLIA2 in Kuala Lumpur is built along with plans to position its international airport as a regional hub. Indonesia's Soekarno Hatta International Airport is building a new terminal to allow Jakarta to accommodate 62 million passengers per year by 2014. Expansion plans are also underway for Bali Airport. Do not want to miss the opportunity; Singapore announced its plans for the S\$ 600 million-development of Changi Airport's Terminal 4. With a planned capacity of 16 million passenger movements a year, T4 will enable Changi to increase its total airport capacity from 73 million to 82 million passengers per year. Along with plans to build a fourth terminal is the construction of additional parking stands estimated to cost S\$ 680 million. Vietnam also unveiled its airport development plans that include the construction of a new airport at Long Thanh worth over US\$ 6.75 billion. The airport, to be located northeast of Ho Chi Minh City, is set to start in 2015 and will be built in three phases. (ASEAN Secretariat).

The government also seen the implementation of ASAM as an opportunity to make them as a hub of the region. It is because as a hub the countries can get a better bargaining position in international community. Becoming a hub means a bigger interdependence between the people travelling and the hub countries itself. For example, for a long time Singapore is considered as the biggest aviation hub in ASEAN region. People moving across ASEAN

must have a one- stop flight in Singapore before they reach their destinations.

It was supported by the decent infrastructure of Singapore by having Changi Airport as one of the best airports on the planet and the geographical condition of Singapore that located on "the center" of Southeast Asian Region. But one problem appears when dealing with the potential of market competitiveness in the future. Decent facilities in Changi Airport require very high costs that make the ticket price higher. It is also considered as too expensive to use such airport as a hub for low- cost carrier airlines that become the future backbone of aviation in Southeast Asia prior to ASAM. Certain conditions give more opportunity to countries to build infrastructure that can support the operation of low- cost carrier airlines. Malaysia comes first with the opportunity to build supportive infrastructure and to catch the opportunity.

With the geographical location that not too far from Singapore, Malaysia came with the building of KLIA2 as the biggest dedicate low- cost carrier terminal that expected to accommodate the growing of aviation industry in that region. KLIA2 as a terminal dedicated to low- cost carriers are built in line with the need of low- cost carriers. It is built with minimal but decent facility dedicated for low- cost passenger that can push the cost of the fare. Being a hub will bring a lot of prosperity for the city or the

country because there are so many travelers that stepped on their foot and bring a lot of money when they are stopping. Being a hub also develop the connectivity of a city to the rest of the world in general and also bring the benefit in term of economy. For example, the more places you can easily get to from the hub city, the more likely companies in those industries are to think it worth setting up investment here. In other words, the better our air connections mean the richer the hub city should be (Elledge, 2014). That is why cities in ASEAN region try to build the best infrastructure to support the development of aviation in the region.

The cities realize that becoming a hub or have supportive infrastructure for the business can bring a lot of prosperity for their economy. Not only in Malaysia, Thailand also see this business means a lot for their economy. As one of major tourism destination in Southeast Asia, Thailand want to give the best service to attract more tourist to come. Previously they have Suvarnabhumi Airport in Bangkok City as the main gateway to their country. However, after the development of air traffic especially after the rapid growing of low-cost carrier in Southeast Asia, Thailand reopened Don Mueang Airport (former main airport in the country) on 24 March 2007 after renovations. Since the opening of the new airport, it has become a regional commuter flight hub and the de facto low-cost airline hub in the country. In 2015, it became the world's largest low-cost carrier airport. The

LCCs passenger traffic at Don Mueang increased by 44% from 9.3 million in first half of 2014 to 13.4 million in first half of 2015 (CAPA, 2015).

In term of people to people connectivity, the implementation of ASAM will encourage the growing number of tourism activity in ASEAN. Tourism and trade are major factors in supporting ASEAN Connectivity in particular and ASEAN regional integration process in general. Tourism has given a big amount of money and influence towards ASEAN economics. Data in 2011 shows that ASEAN received approximately 79 million tourists in which intra ASEAN travelers amounted to 34 million equivalents to 43% of the total figures. This region is expected to receive approximately 107 million international tourists in 2015. The intra ASEAN tourism reflect the increasing regional connectivity and become the significant factor in realizing an ASEAN community (Chheang, 2013). The increasing number of tourist and the development of the tourism itself contribute a lot towards economy of the region. (Tian, Mak, & Leung, 2013). The number of the output is consistent within the number as expressed in national accounting on tourism sector such as hotels, airlines, airports, and any services that related directly to the tourism sectors. The development of tourism in the region is highly supported by the cheaper communication and transportation cost. This is where ASAM contributes substantially to the development of tourism

in ASEAN. The liberalization of air transport has contributed directly and indirectly towards the development of tourism. ASAM has a fundamental role as a means of supporting the field of transportation. Then the importance also supported with a willingness to make the ASEAN as a single destination that will be easier to be achieved with a single aviation market in the region.

CHALLENGES OF ASEAN SINGLE AVIATION MARKET

The main challenges for the realization of the ASEAN Single Aviation Market is the protectionist policy and behaviour imposed by several countries. But on the one hand we also can not immediately blame the country for the protectionist policies they are carrying out. This is not limited to countries that do not have good aviation support infrastructure, but also countries that have well-established aviation industries because each country has its own consideration of the implementation of this policy which will affect the aviation industry of their respective countries.

For countries that already have well-established aviation industries, the implementation of this policy is feared to disrupt the established order and market. Moreover, for countries where aviation development is supported by state-owned full service airlines that have strong ties with the government and are accustomed to getting privilege. Airlines which face more

competition may face a loss of market share, and which face pressure on costs, will oppose liberalisation. The employees of these airlines will also oppose change, because the possibility to lose jobs and reduced wages. The government also has the interest to preserve national airlines as entities and seek to encourage the aviation sector within their borders (Forsyth, King, & Rodolfo, 2006).

For the countries that do not have established aviation sectors the challenges may be even greater. The enactment of the Asean Single Aviation Market increases the opportunity for large-scale exploitation by foreign business actors to the aviation market in the country. This will be a very dangerous situation for under-developed Governments of countries which are the main owner of these airlines are also concerned that if their airlines fail, their air services will be reduced. Airlines and governments in this situation will oppose rapid liberalisation, though they may be willing to agree to gradual liberalisation if it is accompanied by measures which strengthen their airline industries (Forsyth et al., 2006).

To deal with these challenges, efforts to liberalize air transport in ASEAN must be carried out gradually. But every actor involved in both the state and the private sector must be committed to moving in a better direction. Countries and the private sector that have interests in the aviation

industry must have the desire to improve their services which have been protected by applicable protectionist policies. The implementation of this will be expected to increase the competitive side in the ASEAN aviation industry, so that consumers become the main beneficiaries.

CONCLUSION

The rapid growth of aviation demands broader access and flexibility in the market. ASEAN as a supranational regime feel the need to fulfill the demand of access because they also realize it can also give them a lot of benefits. Agreement to liberalize aviation in Southeast Asia will increase connectivity, economic growth, and social welfare. With the realization of the ASEAN Single Aviation Market, this indicates that aviation traffic in Southeast Asia continues to grow and can no longer be considered as domestic issues for each particular state and should be regulated regionally. To address this situation and a broader goal to achieve successful ASEAN integration, the member states designed to manage economic interdependence through negotiated policy coordination in order to form a single aviation market among ASEAN members in Southeast Asia that illustrated by the achievement of ASAM. With this agreement, the national states voluntarily mingle, merge and mix with their neighbours so as to lose the factual attributes of sovereignty while acquiring new techniques for resolving

problems that related to the ASEAN aviation in particular.

ASEAN Single Aviation Market is expected to create positive spill-over effects on other sectors such as economy, trade, investment, labor market, tourism, and various sectors that are directly or indirectly related to the development of aviation industry in ASEAN and the process to achieve connectivity in ASEAN. The implementation of ASEAN Single Aviation Market will boost the of infrastructure development in many countries that can improve the economy of a country and the region. However, as the inequality of market condition become the main challenges of economic development in ASEAN, this also applies to efforts to develop the aviation industry sector in ASEAN. The imbalance in the condition of the aviation market between countries poses a risk of market exploitation by large players to the market from a particular country so that local actors become the main victims who later can influence the country's domestic aviation development. Therefore, this liberalization effort through ASAM must be based on the spirit of increasing mutual benefits for all ASEAN countries and with the main goal of developing ASEAN connectivity in order to achieve successful regional integration.

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SHARING ECONOMY POLICY EFFECTS ON NON-INTERFERENCE PRINCIPLE OF ASEAN

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ABSTRACT

For decades, ASEAN has been using consensus for the decision-making method under the non-interference principle, where intervention in the form of military or any other form that can interfere member states' governance is prohibited. This pattern of solving problems tends to inhibit the decision-making process, especially when it comes to conflict resolution, by virtue of synchronizing decision. While other alternatives like economical sanction often resulted in too much burden to the penalized and gravitated to less integrity from the penalized state.

This paper focused on determining the extent of non-interference application on decision-making method in ASEAN based on actual cases and finding alternative method to prevent potential breach. This paper offers an alternative solution in order to create better decision making in ASEAN and its stance on domestic issues. Solution offered creates a bigger market system which is sharing economy/collaborative consumption analogous to EU's system with a stronger economic affiliation between member states whereas each country will either produce or distribute based on each natural resources and capability. It will indirectly impact states' behavior on solving domestic problem in consideration of the wide economic impact that may be created if the problem is not solved as soon as possible.

Keywords: ASEAN, Non-Interference, Consensus, Sharing Economy.

INTRODUCTION

ASEAN is one regional intergovernmental organization with promising progress. It was first established in Bangkok, Thailand as a concrete form of an idea made by the leaders of Thailand, Indonesia, Malaysia, Singapore, and the Philippines. ASEAN, since the day it was established, has the goal:

1. To accelerate the economic growth, social progress and cultural development in the region through joint endeavors in the spirit of equality and

partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian Nations;

2. To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter;
3. To promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields; [...] with the motto of "One Vision, One Identity, One Community".

ASEAN, however, consists of countries with different cultures and perspectives. Despite the similar historical background, their views and approaches to issues are different depending on the states' identity and integrity. The states' identity refers to their culture, ideology, and national goals. This condition then became the familiar struggle of ASEAN to achieve "One Vision" *per se*. To achieve the goal of the integrated regional intergovernmental organization, as the reflection of her motto, there needs to be a 'boundary' between each state in order for them to keep their national integrity under the integration mode.

This 'boundary' then became a policy that is different from any other regional intergovernmental organization, infamous as 'ASEAN Way'. In ASEAN Way, the policy is heavily rotated on the interaction between state and highly stresses the respect of sovereignty. The values mainly protect the concept of "non-interference in internal affairs, consensus-building, informality, and backdoor diplomacy; a non-harsh technique applied in dispute settlement mechanism, putting an emphasis in progressive changes, without harassing in public" (Tobing, 2016, p. 150). According to Soesastro, these norms then creates "principle of seeking agreement and harmony, the principle of sensitivity, politeness, non-confrontation, and agreeability, the principle of quiet, private and elitist diplomacy versus public washing of dirty linen, and the principle of being non-Cartesian, non-legalistic" (1995, p 3-9). This

was taken as the fundamental guidance for years. All practice of ASEAN related to those norms and principles, however, would gravitate to the big concept of Non-Interference principle.

In 2025, ASEAN has set to achieve the goal of Master Plan on ASEAN Connectivity (MPAC) 2025, where they are creating a regional network of people and infrastructure to improve the way Southeast Asians live, work and travel. To achieve that, the MPAC 2025 focuses on five key areas, namely, Sustainable Infrastructure, Digital Innovation, Seamless Logistics, Regulatory Excellence, and People Mobility. These key areas are the basic steps to reach the state of integration in economic, social-cultural, and political community. However, this paper will focus on the progression of economic integration.

The Non-Interference principle, however, is still considered problematic because of its inability to 'stand firm' to sensitive issues happening within the region (Tobing, 2016, p 150) caused by the internal affairs. With more integrated policy coming towards the MPAC 2025, if not correctly practiced, it will affect the problem-solving process Member States relating to their internal affairs. With the connectivity policies on the making, problems in internal affairs of the Member States could potentially give more direct effect on collective interest. However, MPAC 2025 can create a solution that will be the

turning point on the adaptation and interpretation of Non-Interference principle.

This paper will explain the analysis on the background, definition and common practice of Non-Interference principle in ASEAN and provide other interpretation of the Non-Interference principle. The writers' analysis will be based on the qualitative research on approaches by the scholars and on case laws that are related to this matter. The findings then will be connected to the progressing policy of economic integration in MPAC 2025 and how the policy could affect the Non-Interference principle.

NON-INTERFERENCE PRINCIPLE

Definition

In order to understand ASEAN's guiding principle of non-interference, it is important to clarify its meaning. The principle of non-interference is adopted by many organizations throughout the world and one of them is enshrined in the Charter of the United Nations (UN). Damrosch (1989) mentioned that the UN Charter itself imposed the value of Non-Interference principle, where "several key principles of the Charter reflect implicit rights correlative duties to refrain from intervention."

It is mentioned in the third principle of the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with The Charter of The United

Nations in 1970 (Friendly Relations Declaration), that:

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against it is political, economic and cultural elements, are in violation of international law.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from its advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed another state, or interfere in civil strife in another State.

Concluding the two paragraphs, all kinds of measures that can affect the host states' internal or external affairs in favor of giving state, is considered as violating international law. According to the paragraphs, the measure includes organizing, assisting, fomenting, financing, inciting, and tolerating any act that can affect a state's political, economic, and culture.

This can be found in the case of the *Nicaragua v. United States* in 1986. The U.S. was giving financial aid to the Nicaraguan paramilitary who was contrary to the current Nicaraguan government. According to the judgment, these are the international

customary law and other international law related to the case:

- the prohibition of the use of force and the right of self-defense;
- non-intervention principle;
- collective countermeasures in response to conduct not amounting to an armed attack;
- state sovereignty;
- humanitarian law; and
- the 1956 treaty.

In the *Nicaragua* judgement, the Court insisted that the principle forbade “all States or groups of States” to intervene. Here, the notion of ‘groups of States’ can be understood to mean international organizations, such as ASEAN, the Organization of American States, the African Union or the European Union. Also, the principle prohibits intervention in both “internal and external affairs” of other States. As explained by the Court, ‘internal affairs’ includes matters relating to “the choice of a political, economic, social and cultural system.” In contrast, ‘external affairs’ relates to, *inter alia*, the formulation of a foreign policy, the conclusion of political alliances, or the adoption of diplomatic positions. It is not always easy to determine what falls essentially within the domestic jurisdiction of a State. In 1923, the Permanent Court of International Justice observed in the case of *Nationality Decrees Issued in Tunis and Morocco* that “[t]he question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international

relations.” Nowadays, as more and more matters are regulated by international law, the scope of domestic jurisdiction is eroded.

However, one side of the judges considered the actions made by the United States did not violate any non-interference principle components. As David G. (2012, p. 288) mentioned that the judge believed that a trade embargo, cessation of economic aid and other economic measures did not violate the non-interference principle because the economic pressure in a government does not complete the elements of interference under the international law. In the *Nicaragua v. United States of America* case, when analyzing the principle in question, the Court begins by giving a broad and general definition of it, writing that “[t]he principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference.” The principle of non-intervention can, therefore, be presented “as a corollary of the principle of the sovereign equality of States” – a principle enshrined in Article 2(1) of the UN Charter 46 – or, as asserted by some scholars, “a corollary of every state’s right to sovereignty, territorial integrity and political independence.”

What appears to be unique to ASEAN’s conduct of regional relations is, therefore not merely the adoption of Non-Interference as a behavioral norm, but rather its particular understanding and subsequent

practices of this norm (Katsumata, 2003). As Bellamy and Drummond state:

"Despite the fact that the Association has made no attempt to define what it means by 'interference', regional practice prior to the mid-1990s suggests that it was construed as a continuum of involvement in the domestic affairs of states that ranged from the mildest of political commentary through to coercive military intervention". (2011 p.185)

The ASEAN Charter contains fundamental principles; one of them is the Non-Interference principle. The Bangkok Declaration expressed that the Member States are determined to prevent external interference in order to ensure domestic and regional stability (Stubbs, 2008). The principle later reaffirmed in the Kuala Lumpur Declaration of 1971 (Keling *et al.*, 2011). It was applied in the Cone of Peace, Free and Neutrality Declaration (ZOPFAN), which had the purpose of guarding the peace and stability against any political intervention from the United States, China, and Russia in the Southeast Asia (Keling *et al.*, 2011). It was further reinforced in the 1976 Treaty of Amity and Cooperation in Southeast Asia (TAC), in which the principle of non-interference in members' internal affairs was explicitly referred to as one of the association's fundamental principles (Stubbs 2008). It is in Article 2 of TAC where the Non-Interference principle must be followed as the fundamental principle among High Contracting Parties, or the

Member States. It applies until today, as regulated in the ASEAN Charter.

Historical experiences, *inter alia*, Colonial rule, Cold War experiences and frequent attempts by China to share her communism influence had reinforced internal conflict and led the Southeast Asian to perceive sovereignty as a key element in ensuring regional as well as domestic stability. Each state has different historical backgrounds, political perspectives, and cultures. Interventions would potentially happen and would lead to an "explosive amalgam of race, religion, and culture with their neighbors and in their internal politics" (Severino, 2006), which would harm state's integrity. As Former ASEAN Secretary-General Rodolfo Severino elaborated:

[o]ne of the reasons why Southeast Asian states value ASEAN is precisely the mutual commitment of its members to non-interference, which, to some extent, assures them that the incendiary elements of race, religion, and culture will not be used in the disputes between them and that no country will seek to promote its own value system to influence those of its neighbors. (2006).

The priority on preserving domestic stability as internal security matters also considered as one of the fundamental reason. With most of the Southeast Asian states are developing countries, in which the countries were lack of control on sociopolitical cohesiveness (Buzan, 1991, p 97-102). The countries have the fragility of the social and political order, which had

made the domestic field their main security focus (Katsumata, 2003). They were trying to protect their sovereignty (their independence and existence) and consolidating the nation as early independent states. A stable internal condition would be a key factor to boost the national consolidating process. These situations have made Internal affairs are the most concerned issues that should be prioritized. ASEAN tries to facilitate the Southeast Asian countries with this principle, to give the Member States room to grow according to their sources, culture, and integrity.

ASEAN's Authentic Perspective and Practice on Non-Interference Principle

The ASEAN States are often seen as having a very broad understanding of the Non-Interference principle, prohibiting even "public challenges, comments or criticisms of other regimes' legitimacy, domestic systems, conduct, policies, or style" in some issues (Antolik, 1992). Amitav Acharya asserted that the practice of ASEAN's Non-Interference principle often leads to:

- a. "Refraining from criticizing the actions of a member government towards its own people, including violations of human rights, and from making the domestic political systems of States and the political styles of governments a basis for deciding their membership in ASEAN";
- b. "Criticizing the actions of States which were deemed to have

breached the non-interference principle";

- c. "Denying recognition, sanctuary, or other forms of support to any rebel group seeking to destabilize or overthrow the government of a neighboring State";
- d. "Providing political support and material assistance to member States in their campaign against subversive and destabilizing activities." (2001).

This phenomenon occurred a lot during the last decades. Lee Kuan Yew, the former Singapore Prime Minister, once qualified the handling of Malaysian Deputy Prime Minister case by the Malaysian Government as "an unmitigated disaster". Reacting to that, the Malaysian government discerned that Lee's statement violated the Non-Interference principle (Noel, 2014). Another occurrence that happened as the effect of this principle is when the Thai former Prime Minister Thaksin Shinawarta threatened to walk out of the ASEAN summit 2005 if Thailand's southern conflict was going to be discussed by the Member States. Those phenomena clearly showed the practice of Non-Interference principle with a very broad sense of "intervention".

According to Eric Corthay (2016, p. 14), this broad interpretation of Non-Interference principle is not fulfilling the key point of interference, which is coercion. Coercion here refers to any action that has the intention and the pressure from a state or group of states to a target state to make any decision related to the target state's internal or external affair.

It is important to see the core intention of the intervening states, the reaction from the target state, and the effect that came after the action. If we stick to the concept of coercion, any kind of interference actually legal if it does not reflect any specific intention from the giving state. It is important for actions given are not solely in favor of the giving state and not intentionally taking advantage of the current situation, especially unfortunate situation, of the

target state Measuring the action given by the state, it can be considered a violation on Non-Interference principle if the interference was powerful enough that the host state cannot resist. As Jamnejad and Wood (Jamnejad & Wood, 2009) ever stated, "If the target state wishes to impress the intervening state and complies freely, or the pressure is that it could reasonably be resisted, the sovereign will of the target state has not been subordinated."

Identifying Coercion (Eric Corthay)			
First	The intervening state has the intention to bring advantage to target state's current situation	Yes, they have. = May lead to coercion	No, they do not have = Not a coercion
Second	Intervening state is forcing or giving an influence or favor voluntarily	Yes, they are = May lead to coercion	No, they are not = Not a coercion
Third	Target state can refuse the force and influence given by the intervening state	Yes, they can = Not a coercion	No, they cannot = A COERCION
Fourth	Affecting the state's stance and decision making on national stability and external policies	Yes, it is - A COERCION	No, it is not = Relative

Table 1. Identifying Coercion based on Eric Corthay's Method

This broad interpretation led the related policy functioned as an arrangement to prevent any acts among the ASEAN Member States that would possibly undermine the authority of the dominant political elite and

upset domestic governance in any of the Member States (Ruland, 2011). The non-interference norm therefore not be regarded merely as an ideal, but also as a political tool (Nesadurai, 2009). Notable in the

association's opposing stance towards Vietnam's intervention in Cambodia in the late 1970s that blocked the Khmer Rouge regime in its genocidal campaign. ASEAN even set out to organize an international protest against Vietnam's intervention (Bellamy and Drummond, 2011). It is, therefore, to be doubted whether the inconsistent application of the principle has necessarily undermined the principle's function as a guiding light for ASEAN's conduct in regional affairs.

In the early 1990s, following the end of the Cold War, Western countries' foreign policy was increasingly characterized by the promotion of democracy and respect for human rights. This had a significant impact on ASEAN's relations with the European Community and the United States of America. The West demanded that ASEAN would be more compliant with those cosmopolitan norms. However, ASEAN firmly rejected to adopt a policy stance more in line with ideals propagated by the West. Instead, as a response to the perceived normative assault, the 'ASEAN Way' was actively promoted as an alternative approach to regional cooperation based on shared values among Southeast Asian elites. Therefore, far from undermining the principle of non-interference, the ideational pressure from the West at the end of the Cold War reinforced ASEAN's traditional way of conducting regional affairs (Jetschke and Ruland, 2009). For example, as Nesadurai (2009) explains, the norms prescribing

flexible cooperation and non-interference "were emphasized by regional leaders as core ASEAN norms that should remain central to regional environmental governance.

The financial crisis that Asia experienced in 1997 and 1998 posed a more significant challenge to the normative underpinnings of the 'ASEAN Way'. The crisis hit a serious blow to ASEAN's rhetoric as the situation seemed to show that the 'ASEAN Way' was inadequate to organize a successful response. Pressures for adopting a different set of ideational principles increased. The consequences of the financial crisis drew attention to the unavoidable settings of a globalized economy and seemed to demonstrate that the cooperation model structured around prioritization of national sovereignty was ineffective in coping with this interdependency (Jetschke and Ruland 2009).

In the same year as the financial crisis, widespread atmospheric pollution resulting from the Indonesian forest fires posed another challenge to ASEAN's traditional stance on domestic affairs. Moreover, in the context of the growing international recognition of good governance norms centered around human security, the decision to include other Southeast Asian countries in which considerable human rights violations took place, undermined ASEAN's reputation on the global scene. Meanwhile, civil society groups have

increasingly pressured for a more people-centric security policy instead of the traditional state-centric approach that has been characteristic in most ASEAN member-state.

ASEAN leaders have maintained their traditional respect for the Non-Interference principle in the affairs of states, despite predictions to the contrary as human rights issues have come to the fore in Southeast Asia's politics. Calls for "constructive engagement" from within and outside ASEAN, in the light of grave human rights abuses in Cambodia and Myanmar, have ultimately gone unheeded by ASEAN leaders. This overt stance in favor of non-interference seems incongruous with a more subtle, historical approach of "actual interference" in each other's affairs. The two are reconciled thus: publicly ASEAN leaders adhere to the vaunted 'ASEAN Way' of non-interference while privately, behind-the-scenes, quiet diplomacy interference takes place to resolve issues causing tension between states.

ASEAN insisted on keeping the Non-Interference principle in its 2007 Charter, even though the norm itself does not determine ASEAN's pattern of interference. The ten ASEAN Member States have very different political systems, interests and priorities, and thus different valuations of this principle. Therefore, they have different levels of resistance toward changes to the non-interference norm. An examination of

ASEAN members' diverse reactions toward challenges to the non-interference principle illuminates their attitudes.

In several chances, ASEAN did not take any stance on the Rohingya's humanitarian problem, even though it was very clear that Myanmar could not seek for a further solution for its internal problem (Tobing, 2016, p. 161). In 2014, Myanmar, who held the ASEAN chairmanship, used the advantage from her position not to engage with the Rohingya case under the Non-Interference principle. It prevents ASEAN from "devising any strong policy that can prevent a member from harming its people" (Kundu, 2015). This justifies Acharya's statement (2010, p. 72) that it refrains the ASEAN Member States to criticize actions taken among the Member States on their internal issues, including human rights violations.

ASEAN's Modern Approach on Non-Interference Principle

Rather than the occasional violations described by Jones (2010), the introduction of new policy guidelines among the Member States appears to be more significant in affecting the function of the non-interference principle as interpreted according to its original meaning. New policy guidelines signify a shift in outlook and thereby pave the way for a gradual but genuine turn in ASEAN's behavior (Nair 2011). Proposals for new policy guidelines

appear to stem primarily from pressure exerted by the international community, from globalization processes, and from growing demands for democratization among citizens of the different Member States (Jetschke and Ruland, 2009).

Efforts on easing the practice Non-Interference principle to the collective interests were made by some of the Member States. In 1998, the former Thai Foreign Minister, Surin Pitsuwan, suggested the method of 'flexible engagement'. The 'flexible engagement' aimed to facilitate any kinds of discussion, critique, or suggestion given among the Member States regarding the internal issues. Surin (1998) mentioned that "it is time that ASEAN's [sic] cherished principle of non-intervention is modified to allow it to play a constructive role in preventing or resolving domestic issues with regional implications." It gives chances of interactions between states on domestic affairs without any potential on breaching the Non-Interference principle. Moreover, when Bangkok proposed this method, they were pushing an agenda of bigger openness because they had troubles caused by the related principle (Powell, 1998). Their neighborhood with Cambodia, one of the most unstable countries in Southeast Asia, also contributed to Bangkok's motivation in proposing the method. 'Flexible engagement', however, does not suit governance that does not expose herself of international criticism, it does not support

candid discussion and collective activities (Katsumata, 2004).

Manila was on the same page with Bangkok for 'flexible engagement'. Their perspective had challenged the 'traditional diplomatic manner of ASEAN' (Katsumata, 2004). On the other hand, the original members, *inter alia*, Indonesia and Malaysia strongly opposed this alternative and support the traditional way. Vietnam and Myanmar are also reluctant to the flexible approach.

Another method of a more flexible approach is "Retreat". "Retreat" was aimed to be the medium for the Member States to brainstorm (Chongkittavorn, 2019) and enables Member States to discuss concerns openly in an informal meeting. The first "retreat" was conducted in July 1999, under Singapore's chairmanship, in Sentosa Island to discuss ASEAN issues and how they might affect the rest of the world.

It continued to separate event in April 2001 and the next July. The ministers use this opportunity to discuss regional security issues, intra and inter-regional cooperation issues, and future direction of ASEAN. The foreign ministers have acknowledged the benefit of "informal, open and frank dialog ... to address issues of common concern to the region" (In Join Communiqué, 2002). This practice remains until the present time.

"Retreat" has changed its format, not just a gathering for foreign ministers where they

can candidly speak, but they have an agenda in every “retreat”. In 2016, Myanmar held a “retreat” to discuss Rakhine issue. Myanmar was not the chair at that time but they can hold a “retreat” because “retreat” is an informal meeting, the one event that the Member States very encourage. It resulted in gaining views from the Member States to be brought to the formal panel. This resulted in an easier consensus in the annual summit.

Friendly Resolution Declaration also mentioned on possible exception on Non-Interference principle. The third principle of Friendly Resolution Declaration mentioned that “nothing in the foregoing paragraphs shall be construed as affecting the relevant provisions of the Charter relating to the maintenance of international peace and security.” In this context, it leads to Article 2(7) of the UN Charter, where:

“nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of

enforcement measures under Chapter VII.”

To conclude, if any measure is considered, it needs to be under the authorization of the UN Security Council. They need to agree on the actions taken (Corthay, 2016). It is not breaching the principle even though the host State has not given her consent.

By looking at the future of ASEAN in MPAC 2025, it is very crucial to set the practice of Non-Interference principle to support the collective advantage. ASEAN has the plan to raise the character of “connectivity” in ASEAN, which will involve more interaction between the Member States. The current practice of Non-Interference principle that is too broad may cause more difficulty in the process of reaching MPAC 2025.

The practice of the Non-Interference principle must be remodeled in order to facilitate the programs in the vision of integration in 2025. However, the effect may occur otherwise. The big vision of integration will indirectly affect the Non-Interference principle, especially from the sector of Economic Integration.

Strategy	Objective
Sustainable infrastructure	Maximize investments on public and private infrastructure in the ASEAN Member States, in the most ideal measure
	Share best practices on infrastructure practice in ASEAN
	Spread the concept of smart urbanization in ASEAN
Digital innovation	Promote the use of technology in all micro to medium enterprises (MSMEs)

	Promote the use of technology in accessing financial practice
	Increase the quality of open data use between the ASEAN Member States
	Promote the use of improved data management in the ASEAN Member States
Seamless logistics	Decrease the costs of supply chains in every ASEAN Member States
	Increase the quality of the supply chain service in every ASEAN Member States
Regulatory excellence	Decrease the percentage of trade-distorting non-tariff measures in among the ASEAN Member States
	Coordinate all standards, congruence, and technical measures for products provided in key sectors
People mobility	Ease traveling in ASEAN
	Decrease the existing gap between vocational skills demand and supply across ASEAN
	Improve the percentage of ASEAN students who study abroad

Table 2. Strategies and Objectives on MPAC 2025

MPAC 2025

MPAC 2025 has the vision to “achieve a seamlessly and comprehensively connected and integrated ASEAN that will promote competitiveness, inclusiveness and a greater sense of Community”. This vision comes up with the five strategies; those are sustainable infrastructure; digital innovation; seamless logistics; regulatory excellence; and people mobility. These strategies have the objective as mentioned on Table 2 above (Master Plan on ASEAN Connectivity 2025, p. 39). MPAC 2025 agenda actually reflects the current and potential condition in the community. The ASEAN Member States mostly consists of the

The whole agenda will challenge the Member States’ productivity. The Member

consuming class. The advantage of being a region with most states that are consuming class is it would increase the level of purchase. MPAC 2015 uses this opportunity to raise the awareness of the people to shop from the ASEAN Member States’ production to give bigger chance for the local shops to develop. This also applied to the tourism field. ASEAN countries are actually offering a lot of unique cultural heritage and natural attractions. It is predicted that in 2025, Southeast Asia’s tourism sector will increase to over US\$200 billion (The World Travel and Tourism Council, p 2015).

States have different ways of holding up their trade, services, and investment. With

MPAC 2025, Member States would need to find the effective practice to increase their productivity in all sector for multiple times in order to keep up with the progressing effect of the fast pace trading progress in the ASEAN Member States. The skill of the human source will be the main core of this development. By giving proper training and education, by 2030 in Indonesia and Myanmar alone, there will be 9 million skilled and 13 million semi-skilled workers (McKinsey Global Institute, 2013). This will eventually give a great impact on ASEAN competitiveness on a global scale.

The increasing productivity will be in line with the increasing percentage of the middleweights and the development of infrastructure. It will increase the percentage of urban population in ASEAN due to catching up with all productivity. It is predicted that ASEAN by 2030 will have 90 million people moving to cities and will lead almost 40 percent of the region's GDP growth. The infrastructure development will follow this progress in a form of increasing physical development in order to sustain productivity.

In order to achieve a better result on economic development for all members of ASEAN, it is important to keep up with Global Economic Trend. Global Economic Trends are currently used by organizations and governments to make choices about international competitiveness, new product launch, economic efficiency choices,

and strategies for better economic efficiency and market competition. Global Economic Trend, similar with the concept of "fair trading" that ASEAN had implemented for years, the difference is, to synchronize the demand of supplies, ASEAN will analyze the local cultural and geographical resources to utilize the benefit of the system.

Sharing Economy in Economic Integration and Non-Interference Principle

This Paper discusses the effects of creating the state of Sharing Economy or collaborative consumption system that should be mandatory for all ASEAN's members, as the final form of MPAC 2025, to the Non-Interference principle. Sharing economy (SE) as a conceptual term, the state of sharing things and using them together is not new but is a phenomenon as old as mankind. However, the extent to which physical goods could be shared was quite limited in the past, both for the difficulty of matching supply and demand and for the lack of trust between lender and loaner. Therefore, ASEAN will work as the third party to connect the demand of goods, services, and capital supplies to synchronize the demand of needs in order to create a strong integration of economics between the ASEAN Member States.

It will fulfill the goal of ASEAN since the day it was established, which is to "To accelerate the economic growth" and "To promote active collaboration and mutual assistance

on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields". How does Sharing Economy help to solve this arbitrary practice of Non-Interference principle through economic aspect: this allows ASEAN to have an economic integration, where one state's economic decision could give a huge impact towards other nation. The writers conclude that with the MPAC 2025, more bilateral and multilateral agreements between the Member States will be made. Whereas means, countries in the ASEAN community would have more responsibility to contribute to helping to solve other state's problem. Under the reason of state's instability also affects economic productivity. This also allows other states to arrange their economic strategy that impacts the problematic state member without doing a direct economic intervention. Member States will be forced to be more considerate to the collective interest. This is where the Non-interference principle **will be forced to adjust itself to the more integrating community.**

The moment where the Member States will try to open up themselves for each other more than before, this is where the Non-interference principle also tries to open up itself to be more flexible on treating actions taken among the Member States. The Non-interference principle later will adjust to the necessity of having constant critics,

suggestions, and collaboration because it is essential to keep the system going.

This may also affect the interpretation of coercion itself. It will put the definition on the accepted force given by the intervening state to the target state into question. The implication will be heavily rotated in the effects that the actions made. The parties who gained benefit, the national stability, etc. that the act produces will need to be developed more to suit this progress of the Member States interaction.

To handle the problem of inequality, "sharing economy" as an alternative solution provided by ASEAN will become the groundbreaking solution. With the provided arrangement of the economic system, it is more than possible to prevail economic stability that will directly impact the behavior of the state.

The phenomenon of the sharing economy has undergone significant growth, especially since the 2008 crisis both media and dedicated literature showed an increasing interest towards this umbrella concept, which indicates an increasing interest of International society. It is important to keep up with the trend of global market to create more integration between ASEAN's members, like what is said in MPAC 2025 in point 10.1 where ASEAN is undertaking to achieve:

A highly integrated and cohesive regional economy that supports sustained high economic growth by

increasing trade, investment, and job creation; improving regional capacity to respond to global challenges and megatrends; advancing a single market agenda through enhanced commitments in trade in goods, and through an effective resolution of non-tariff barriers; deeper integration in trade in services; and a more seamless movement of investment, skilled labor, business persons, and capital.

Among these nations, Lawson highlights Vietnam and Indonesia as two countries that have taken steps to reduce the wealth gap.

Vietnam has the rural residents and ethnic minority groups bearing most of the burden of inequality. Although the country's poverty rate has declined rapidly (falling from 58% in 1993 to below 5% in 2015) there is still plenty to be done for those who remain below the poverty line. As when they considered themselves a "less powerful state" tend to follow the decisions of "more powerful state" as assumed to be a more correct decision for a state to have especially with the limitation of non-interference principle.

The unfair distribution of benefit, caused by the unfair competition without one center management, has affected the behavior of the state to participate in ASEAN. This includes, but not limited to, participation in conflict resolution. Boston Federal Reserve Bank gathered economists, behavioral scientists, and policymakers for its forty-eighth economic conference with the expectation that applying insights from psychology and other behavioral disciplines

would improve economists' understanding of how state make decisions as a state and more relevant for representatives of state for international importance, in the aggregate.

Under the umbrella of ASEAN as the third neutral party to arrange and organize the most strategic cooperation between states, it is profound that equal sharing of benefit will help to create more social integration between states under the reason of economic importance.

Sharing Economy (SE) early enthusiasm about, as reflected in the influential book by Botsman and Rogers (2010), was to a considerable extent driven by its expected sustainability impacts. Not only would consumers get cheap access to goods by renting or lending them from others, by doing so they would become less dependent on ownership. As a result, the total number of new goods produced was hypothesized to decline. This feeling was largely fueled by the perceived environmental benefits of car sharing. As cars stand idle 95% of the time, any type of sharing scheme that made cars accessible to non-owners would reduce the number of cars required for a given mileage level. In addition to the environmental benefits, social benefits have also been claimed for the sharing economy.

Heinrichs argues that sharing lifestyles will contribute to destroying excessive consumerism, improving social cohesion and minimizing resource use. In fact, as the

paradigm shifts from private ownership to sharing, the demand for consumer goods is declining and a new economy is emerging that can solve problems such as pollution and excessive energy use. In addition, collaborative consumption reduces the negative impact on the environment by reducing the waste of idle resources. According to Hamari *et al.*, motivation to participate in cooperative consumption is sustainability.

"Improving local capacity" and creating "local framework" will be done effectively through collaborative consumption. When supply and demand are well integrated between countries, it pushes countries to create betterment for their local resources as mentioned in the previous sub-chapter. This would guarantee the involvement of every member since every country has different local resources. For example, Indonesia and India are famous for their agriculture, Bangladesh for their workforce and Singapore for its water resources.

Sustainability can be an important factor for states who have an important role in consumption. According to Tussyadiah, collaboration consumption was motivated by the desire to become a more responsible guest in the international community.

As we noted above, sharing economy practices do not necessarily lead to stratification, since states with certain goods may be expected to differ in the socio-demographic background from renters and

borrowers. To the extent that sharing peers also create meaningful contacts, sharing practices increase social mixing that will help to create more sympathy towards other state's problems and difficulty as now the economy of all ASEAN countries are integrated and depending on each other's supply and demand.

CONCLUSION

Scholars have interpreted intervention that is violating the Non-Interference principle must have the element of coercion in it. To consider some actions have coercion element in it, it should reflect the sole interest of the intervening state to the target state to use the current target state's condition. It is coercion when the target state cannot resist the power given by the intervening state. From the theory mentioned, ASEAN's arguments on having public critics as violations on Non-Interference principle are not exactly right.

In the meantime, ASEAN is going to have an MPAC 2025, where ASEAN is intended to have a connected condition of all ASEAN three pillars. With the more intense interaction between the Member States on making policy, the Non-Interference principle will be problematic to smooth the execution.

However, looking at the future economic integration, Sharing Economy will potentially bring effect to the Non-

Interference principle. Sharing Economy will indirectly affect the Non-Interference principle because of the dependency of Member States on each other for every economic agreement. If one party is experiencing trouble, internal or externally, it would affect the economic condition involved in the agreement with the other party. The Member States then will be more sympathetic to each other's problems because it will affect them as well.

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ASEAN CIRCULAR ECONOMY: STRENGTHENING REGIONAL RESILIENCE AND REDUCING RISK OF DEPENDENCY ON GLOBAL ECONOMIC SUPERPOWER

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ABSTRACT

ASEAN Economic Community launched in the year 2015 is aspired to bring economic integration in the Southeast Asia region. Despite a significant resolution, the fundamental principle stands of the coalition had inevitably give challenges for the community to be realized. The extensive non-interfering principle had either directly and indirectly slowed the effort on standardizing and synchronizing market and regulation environment. Member countries respectively are still keen on boosting bilateral economic relations and private trade with global bigger power such as United States and China for aid and market due to significant scale impact and return. The behavior could potentially create a risk of dependency and stability due to their superior influence and control. Circular economy is seen as a necessity in ensuring sustainable economic development and growth for ASEAN.

The circular economy within the region can increase resilience especially for the small and developing countries for healthier development. The study observes ASEAN's latest progress on economic integration and members' behavior, as well as challenges and limitations. The risk of bigger power influence emphasized its negative impact. Circular economy model through established country case outlined to understand its potential in boosting local and intraregional trade and cooperation. The regional organic economic support chain and network, and maximum internal resource utilization, will synergize the members' power, ensuring demographic stability, inclusive and well-equipped economic environment. Hence, it is aiming to facilitate effort for a resolution on proactive and pivotal action towards a better future of ASEAN.

Keywords: *circular economy; resilience; stability; global superpower; dependency risk, ASEAN*

INTRODUCTION

Southeast Asia geographically located between the traditional sea route of world trading system connecting the western and eastern parts. With its strategic area position along with the rich natural resources, it has become significant towards the world

economic development. It has brought in the interest of other political power to acquire control of the region, initiating colonization movement a few hundred years ago. After World War 2, the colonization of the region started to be dissolved and the region gradually granted independence with the birth of several new state nations. The

countries struggled to develop and catching up the setback left by the colony, with the lack of expertise, capital, and stability. The former colonies are still in touch on assisting financial support. With the liberalization of the world economy, the free market could be viewed as a challenge for Southeast Asian countries to be outstanding and compete among the other developed nation.

Taking advantage of its trade-based strategic position, Southeast Asia develop their economy through an extensive initiative involving the inflow and outflow of capital, such as foreign direct investment, exporting local commodities, importing foreign technology, and act as an intermediary between the world part. The greater market potential and capacity of the global economic superpower compared to the region or respective member countries might have created a significant dependency and reliance on ensuring the growth and stability of the Southeast Asia local market. To some extent, the dependency potentially creates a conflict of interest towards the political and international relation in the region, impacting the interest of local sovereignty and its people. This could even lead to acting as indirect new kind of colonization, putting Southeast Asia member countries politic, economy, and society at risk.

The Association of Southeast Asian Nations (ASEAN) coalition has brought the region into integration and unity in its own

way. Enhancing cooperation while respecting each other sovereignty has become one of the core principles of the group. At present, the non-interfering principle of respective national affairs remains to uphold. On the other part, economic development effort has been stepping up to a new level through regional economic integration initiative ASEAN Economic Integration. The platform should be able to play part in strengthening the member countries' resilience towards better stability in growing and developing respective nation. As ASEAN progress to date, circular economy has also been taking place in the regional economic system. It is hoped to boost the improvement of resource efficiency utilization as well as reducing waste, towards a self-sustain system. The recent trade war between the United States and China, along with the increased global superpower protectionism, it has put the ASEAN resilience capacity into a test.

PROBLEM STATEMENT

To develop economy, respective member countries aim at attracting foreign investment and establish partnership in penetrating global market especially with the major market like United States (US), China, and European Union (EU) due to its potential significant amount and volume of trade, as well as bringing in cheaper goods and technology due to its economic scale of production. While the trade could be

successful based on the growth of gross domestic product (GDP) level, the result inevitably contributed mainly to the external capital inflow and outflow. Any changes in global economic policy impact the regional economic stability either directly or indirectly. Taking an example of the recent case of EU resolution in imposing a ban of palm oil by the year 2020, Malaysia and Indonesia as the largest palm oil producer are at risk in ensuring the future of their palm oil industry due to heavy reliance on the said market demand before. Besides, China Belt and Road Initiative (BRI) have attracted ASEAN countries in considering accepting the investment, to spur more foreign direct investment to the region. However, there is a claim that the term and condition might contain bias, favoring the sponsoring government at the expense of local interest and prioritization, which might result to a net outflow of economic benefit in the long term.

Therefore, sustainable development measurement is seen as a compliment in accompanying such economic growth, to ensure stability and long-term resilience. While the global economic superpower might inevitably remain important to drive the world economy, ASEAN shall diversify its economic focus, market segmentation, as well as developing its own regional market power. There will be several economic approach and policy to establish and implement, in assisting the effort. One of them could be the circular economy, aiming

at increasing the efficiency of resource utilization and reducing waste production, towards a self-sustain economic system. With respective member countries might have limited capacity and capability in having enough element for developing the required system, ASEAN as a region might be able to facilitate and cooperate further in providing sound structure, by sharing and assisting each other capacity and limitation.

Previous research had discussed on the circular economy on a specified developed nation such as Japan, as well as other country specified cities, with limited few initiative and policy implementation. ASEAN member countries themselves also had their own progress towards the national-based circular economy effort. However solid structure for the region is yet to be established. The study analyses back on current ASEAN economic integration progress and challenges, along with assessing the risk of economic stability. A further review was done to identify the existence of circular economy in the region and highlighted the needs. The circular economy model of the developed nation will be benchmarked in proposing further initiatives.

OBJECTIVE

This study aims to achieve a set of objectives, with the first is to identify the risk of ASEAN economic dependency on the global economic superpower. Circular

economy presence is to be identified in current ASEAN economic integration and challenges associated. Besides, it is to identify how circular economy model can enhance economic resilience. It is to be achieved through the benchmark of establishing circular economic model in identifying further initiatives to be proposed.

METHODOLOGY

The study conducted qualitatively through narrative, model and best evidence review approach. The ASEAN current economic issue will be reviewed based on the latest literature review, proposing the circular economic model in resolving the issue, using the best case of circular economy practice through Japan with its established policy.

ASEAN ECONOMIC INTEGRATION

Founded around 50 years ago, ASEAN initially stood as a political bloc and security in maintaining a peace region and resolving conflict. With the growth of country members consists of 10 nations, the association is progressing towards integrating the regional politic, economic, and society. ASEAN Free Trade Agreement (AFTA) was set up at the beginning of the 21st century, involving a few member countries in implementing zero or minimal trade tariffs. In embracing further

integration, ASEAN Economic Community (AEC) launched in the year 2015 to establish a blueprint for the region's whole-rounded framework to be followed and implemented.

ASEAN ECONOMIC COMMUNITY

The establishment promotes certainty and stability towards the region through a clear structure on navigating the region's future economy. The Economic Blueprint outline AEC with four pillars, with 17 core elements and 176 and 176 priority actions to be used as a reference and guideline for the member states to work on for the integration progress (Menon et al., 2015). The four pillars are single market and production base, highly competitive economic region, a region of equitable economic development, and integration into the global economy.

Single market and production base stood as the core element of AEC, merging the respective member countries' market size and volume to a single regional one. The pillar is consisting of free flow of goods, services, investment and capital, and skilled labor. The free flow of goods realized through the implementation of tariff reduction, with a major percentage of intra-region trade stood at nearly zero tariffs. Services sector liberalization shown through the mutual regional agreement on several sectors such as engineering and architecture, to ease the mobility of cross border services. The free capital and investment movement is driven through few

initiatives in assisting capital flow across the region, with the setup of ASEAN Exchanges and Asian Bond Market Initiatives, to spur further foreign direct investment among member countries (Menon et al., 2015). Free flow of skilled labor facilitated through the establishment of ASEAN Qualification Reference Network (AQRN), towards standardizing skilled labor quality for better regional mobility and local compatibility.

The second pillar stands as an effort to realize the free-market environment in creating a highly competitive economic region. Respective member countries have shown a comprehensive policy and law on competition in business and economics are in a place of their own national policy and legislation. While aiming for a totally free market, protective measures still in place concurrently in providing a safety net for developing countries to remain competitive and sustain among peer members of the group.

One of the region's equitable economic development efforts can be seen through the establishment of ASEAN Business Incubator Network (ABINet) in empowering the small and medium enterprises (SMEs) in the region. The shared platform allows member countries to have fair access to resource and development opportunities through the regional networking platform. A joint development zone involving multi-countries participation has been set up in a few shared

country neighborhood areas, creating a synergy of development capacity.

The integration to the global economy can be reflected through the progressive series of mega-regional trade agreements in place and under negotiation. An example is the Regional Comprehensive Economic Partnership (RCEP) consist of ASEAN, Japan, Republic of Korea, China, India, Australia, and New Zealand and Trans-Pacific Partnership (TPP) which consist of several countries across the Pacific Ocean region. The commitment towards such a global level free trade agreement is in line with the pillar suggestion in boosting integration beyond ASEAN geographic regional scope.

CHALLENGES

Throughout the initiation of AEC, there is the coexistence of achievement and challenges. Despite the significant result of reduced tariff barriers achievement over the past years, the non-tariff barriers and measures remain widespread across the region (Chandra, 2016). During integration effort, the protectionism of respective member countries remains in place, on top of the diversity of local national government policy. There is also a notable prioritization of local interest, another form of discriminatory policies at the expense of regional development benefit and potential, neglecting the long-term impact of the region.

Free flow of goods faces challenges in maximizing implementation due to the issue of goods source. The rule of origin compliance for a major export getting difficult due to the high import content. The trade-based economy and value-adding industry unable to neglect the dominance of major import fragments due to better external sources of material. This also addresses the non-tariff measures and barriers towards protecting the good market from being flooded by foreign dominance. With the parallel growth of global economic power, the threat is likely to remain there in justifying the protective measure existence.

While the services sector brought a level of liberalizing several professions, it is still limited and not broad enough to improve the mobility of skilled labor. For banking and financial services, member states are given the option on having customized liberalization, in excluding out any subsectors. It allows member states to engage their section based on their own country readiness. This flexibility is a measure in ensuring readiness and to be well-prepared, but on the other side, it could lead to the complexity of integration.

Prior to the ASEAN free flow of investment initiatives, a significant amount of the region's foreign direct investment provides by non-ASEAN economies such as the US, EU, Japan, and China. The presence of inter-regional investment amid ASEAN own intra-regional investment initiative progress

making it difficult to be regulated based on regional interest to align with the integration goal. The impact of external investment toward the region will rely on the extent of establishment based on ASEAN as a single market and production base (Menon, 2015) rather than an individual or a set of few member countries only.

The challenges of having a free flow of skilled labor exist due to a lack of labor flow policy in supporting the initiatives with strict labor law remain in force (Onyusheva et al., 2018). It is still based on domestic demand and supply, which mean no total free flow across the region, with no unrestricted free flow of foreign professional. The labor market in general addresses the need to govern the low- and semi-skilled labor segment, since there is significant flow across ASEAN which might have a more significant impact on AEC.

In facilitating a highly competitive economic environment, reforming the regional competition and intellectual property policy and regulation stay difficult. The variety level of development among state members might require further time in achieving uniformity of policy. Several multilateral agreements such as in air services and energy networks show another level of liberalization towards integration, however full implementation with standardizing business costing and charges remain limited and still pending to be ratified.

In providing equitable economic development, the establishment of few Subregional Zones (SRZs) might leave out other newer and less-developed nation development. The further innovative way of financing and assistance need to be found out, in expanding the equitable development scope and coverage. The sub-regional concept might limit the share of an asset, capital and expertise flow across the region beyond geographical capacity.

The integration into the global economy has brought in the challenges of negotiating the multilateral or mega-regional trade agreements to be in the best interest and advantage for ASEAN. The involvement of greater economic power in the agreements might be brought in political supremacy towards having the final resolution. Agree or not, both decisions might later have its own impact on the region, creating the risk of a dilemma on agreeing the term and condition outlined.

AEC implementation has shown a set of significant achievement, while the challenges are still around to be addressed and emphasized. The complex structure of ASEAN integration progress needs to be analyzed carefully beyond the numerical result. In realizing the main critical point of challenges, the outline of several actions taken, the result, and its challenges summarize the bigger picture of AEC progress and direction.

ECONOMIC DEPENDENCY

After the Second World War, the start of decolonization in the Southeast Asia region started to create new development initiatives for new nations. In having a rapid development, foreign direct investment (FDI) played a significant degree in bringing inflow of project capital funding. To date, major sources of funding and trading partners consist of the developed and emerging market economies, US, Europe, and the EU, Japan, South Korea, and China, with a combined population of almost 3 billion peoples. With the huge market size, economy scale and development level, it sustained a major driver for the region development. With the setup of a series of free trade agreements and liberalization of the economy, ASEAN trade volume has grown steadily. However, the extent of the positivity of the growth remains in doubt, bringing the question of trade creation versus trade diversion.

Based on the statistic (ASEAN Secretariat, 2017), in the year 2016, total ASEAN trade and services stood at US\$2.9 trillion. However, Intra-ASEAN trade only consists of 23.5%. More than three quarters shared by another part of the world, with China, US, EU, and Japan combined share amounted to 47%, nearly half of the total ASEAN world trade volume. The FDI has shown a net inflow of US\$96 billion, while on the other side with US\$24 billion from intra-ASEAN FDI inflow. Again, the external out of ASEAN

FDI consists of 80% of the total amount. While the share between import and export of merchandise and services ratio is generally the same, without yet looking at the growth trend, the ASEAN economy in general driven mainly through external major economy. The openness and liberalization of the ASEAN economy have maintained its competitiveness at remain attracted in the global economy, while inevitably brought the dominance of external major economies dependency.

RISK

The ratio of trade creation over trade diversion could communicate the state of economic sustainability. Trade creation indicates the consumption preference from high-cost producer to another low-cost producer within the region, creating further trade to be supplied for this demand from within the region. On the other side, trade diversion showed the move to be in the opposite way, preferring consumption of outside low-cost producer to be brought into the region high-cost producer segment. ASEAN has its own commodities, natural resources and value-adding facilities for having trade creation. However, limited to a set of respective member countries' core domestic economies, a huge portion of external resources and trade become compliment in mitigating a portion of higher-cost production capacity and

capability within ASEAN. This resulted in extensive import as well.

Export and import in parallel could be a balancing element of an economic system. But in the long-run, it could impose uncertainty, especially if the externalities have a significant influence on the trade cycle continuity. Internal trade played a major role in reducing risk. However as mentioned by Taguchi (2016), even if the internal or intra-ASEAN trade growing at a relatively high level across past decades, the share of internal trade is still less than 25%, which is small in comparison to NAFTA, EU or another free trade group.

IMPACT

In general, as per Das (2017), all ASEAN countries respectively have a trade deficit with China in the year 2015, except for Singapore. Amid deficit, a country like Laos and Myanmar keep China as their key export partner. Japan is also important for Thailand and Indonesia, with the US and EU stood with their own importance. Beyond the economic perspective, any dominance of major economic bloc within the region potentially creates a stronger position in pursuing their own political agenda. Reliance on China has dragged ASEAN to be at greater vulnerability on political and economic (Ah, 2017). The fragile coalition of ASEAN politics resulting in a less bold resolution in combating foreign or external dominance. ASEAN remains committed to

sustaining trade volume due to ensuring stability for economic growth.

The worst impact of dependency is when it inherited indirectly via the global economic network. Taking an example of the US dollar and China Yuan currency inflation, exchange and interest rate, even the domestic trade will be affected through changes in raw material costing and foreign currency-denominated financing fluctuation. The case of palm oil ban by the EU gives a signal to Malaysia and Indonesia as the world's largest palm oil exporter to look for new demand and interested trade partners in absorbing the trade creation supply. These few issues escalated suggested ASEAN on the need to boost regional self-sustain economic model and resilience element to remain stable and sustainable in development progress.

CIRCULAR ECONOMY

Sustainable economic development is a necessity in ensuring long-term stability and resilience over challenges and issues. Part of the sustainable initiative is by having a model that can adapt over time and flexible for diverse characteristics. While the challenges and risks of foreign trade and investment dependency might have its own degree of control and influence, ASEAN as a region may start to build their own regional economic cycle in mitigating those externalities. Circular economy is seen as one of an economic model that can

emphasize the need for sustainable structure in creating a sustainable economy.

Technically in a linear economy, materials are extracted and processed into products, to be used or consumed, and any residual or at the end of no further intention of use then goes for disposal, either to landfills or undergone incineration (Jamsin, 2014). In the long-term, the amount of end-of-cycle bi-product could impact the world negatively, environmentally, economically or even societal security. To avoid this, move is to be made towards a circular economy, in ensuring efficiency of resource processed, sustaining of product value as long as possible, and to remain valuable in across the economic cycle phase, towards zero or minimized waste production (Zutelija, 2017). Product with biodegradable can be diverted into the natural circular ecosystem, whereas non-biodegradable products will have the need for a sound circular economy structure in compensating the absence of a natural circular ecosystem. Nonetheless, both types might have their own unique value through circular economic structure, depending on the level of capacity in processing the product in the first place.

In the broader term, circular economy is about having efficient and sustainable resources management, a high level of long-term value creation, and the ability of product to be used back as a resource. The intensity of cycle is beyond the general concept of reduce, reuse, and recycle (3Rs),

with the fair focus of action from both producer and consumer. All stakeholders are going to bear responsibility on the input for a longer period, beyond physical possession in ensuring the cycle is moving.

ASEAN CIRCULAR ECONOMY

Circular economy can empower ASEAN in establishing economic, societal and environmental co-benefits, as the reliance on extraction and imports reduced in parallel with the decline of waste, emission, and natural biodiversity degradation, along with better social life well-being (Anbumozhi, 2018). The linear model adopted through the ASEAN industrialization over the past decades had brought an elevation of living standards but also yielding negative consequences on the other side. The current state of the significant presence of import commodities along with domestic one indicates the abundance of resources in total within ASEAN.

Between quality and cost of production, ASEAN through Malaysia and Singapore showed an increase in quality. On the other hand, Indonesia, Vietnam, and the Philippines acquire a competitive advantage in having low-cost production, even the quality of it stay at a relatively lower level (Anbumozhi, 2018). Rather than focusing on increasing the volume of trade on industrial production, the reuse of existing material in the circulation can simplify the cycle and

reduce the cost of procuring new raw materials. While progressing in the industrialization, keeping up to date with the latest technology development from other developed nation and economic remain a challenge for ASEAN, with the absence of pioneering advantage of technology invention and process innovation. Direct adoption of policy from developed economies might not necessarily able to bring those advantages, due to diversified cultural and societal backgrounds of ASEAN people and residents.

In creating more value out of available resources, the level of services provision can be elevated beyond physical product acquisition. ASEAN industrial sector can tap into being part of consumer consumption experience and management. The change of product ownership to be on producer allow greater potential on systemizing and regulating sustainable usage of the product. The responsibility of ensuring the product value falls on the producer, with the lesser entity involved in the control and greater capacity on reutilizing any resources allows better management of material flow. The user still able to utilize the function and benefit of the product despite the change of ownership structure. This resembled as one of a new business opportunity, in creating more services beyond the trading of commodities and able to reutilize all kinds of material and resources rather than reserve for external demand.

Most ASEAN countries might not really have the issue of land scarcity other than certain heavily populated cities. But it shall not wait for the significant rise of space or environmental alarm in having sustainable production and consumption trend. The trend producing business case among the ASEAN industrial is dependable on the capacity of the available corporation and small-medium enterprise (Anbumozhi, 2018) in terms of capital funding and financing ability. If the domestic consumption awareness being communicated on its significance towards trade security, import tendency will be less focused and preferred.

With the digitization and automation of lots of processes nowadays, ASEAN ought to take advantage of an innovative idea in empowering domestic consumption management through the decentralization of waste management movement. While generally are still hoping for the government to come out with a comprehensive plan, it could delay the effort due to public dilemma in protecting certain group on job security and societal survival from poverty. The era of industry 4.0 technologies highlighted its own risk towards ASEAN importance in the global economy, shifting from manual-labor intense of ASEAN market into automation and simplified production process. ASEAN needs to make way to adapt and elevate people's skill, otherwise, the competitiveness will fall behind other major and developed economic nations.

Free market and economic behavior could not allow driving ASEAN to focus on shifting its environment of trade behavior. Cheaper cost or easier access does not necessarily indicate a good economic opportunity. If it is involving the national and regional interest of the people, security, and environment. Foreign direct investment spur into the region must be associated with a future sustainable economic development.

JAPAN CIRCULAR ECONOMY

In having sound governance, the case of establishing circular economy society could be referred. There is the presence of circular economic development around the world with significant achievement can be seen from the major economic area such as Japan, China, and EU, including other several cities. Taking the case of Japan as a country, it has become the pioneer in establishing a national policy to incorporate circular economy into the country law and development basis and guideline.

Japan establish a national policy of its Fundamental Basic Plan on Sound-Material-Cycle Society to incorporates reduce and reuse principles in enhancing the current recycling, recovery and disposal procedure (Silva et al., 2016). The motivation behind this is in realizing their desire to reduce reliance and dependency on imports notably upon the oil crisis in the late 1970s. From its first incorporated in the year 2000 until the recent 2013 revision, the policy set a

periodic time goal for the plan to be carried out. It generally rolls out a provision for the government to centralize control over legal framework and structure implementation. This is to monitor compliance and financial assistance on deploying high-tech materials management or incineration infrastructure and facilities across the country.

There are several key performance indicators drafted, consist of numerical targets and goals. Among of it are on measuring resource consumption level per capita, carbon emission intensity, and period of usage of consumer goods. In supporting the recycling effort, several have been enforced, consist of vehicle life cycle regulation and mandatory separation of material and waste upon the end of the life cycle. The redefinition of recycling through the law has put another measure in ensuring its effectiveness by stating that recycle only considered complete if the material is able to be re-sold back to the market as a secondary resource. The cultural spirit of Japanese 'mottainai' has also led to the creation of awareness policy in promoting the careful use of the resource through early education and the local community. There are further detailed initiatives and actions taken to date by Japan, both through government and cooperation with a private entity. The synergy provides a broader business case in pursuing costly initiatives towards achieving long-term balance results and output.

DISCUSSION

The ASEAN circular economy at this stage showed a sizeable movement and development, particularly on micro-scale in respective member countries. It is conducted through the local municipality, private entity initiative or government general national policy. However, ASEAN does not really incorporate the circular economy as a structured model to be benchmarked as a development guideline. The present AEC framework at most emphasize generally more on supporting the sustainable development goal proposed by the United Nation. With the complex integration of legal framework across ASEAN diverse government, proposing a standardized framework on regulating the domestic level commodities production management might face its own challenges. It could be one of the reasons for its fair attention, in the midst of struggle in maintaining current linear economy structure stability to elevate the region's standard of living.

Most of the literature review shows a significant emphasis on circular economy importance towards the environment, with less focus on societal substituted advantages. ASEAN member countries which consist of almost developing economies might see this as quite difficult to be justified on the net gain towards the current economy. The circular economy inevitably will involve a one-off cost of

setting up the system structure, which later might pass the extra cost on producer and consumer, along with uncertainty on the short-term profitability of the system. As a developing economic region, the price-sensitive market could yield an inverted impact such as a lack of cooperation across the region in protecting domestic interest or delaying the time for more readiness. Taking the example of the entity which having difficulties of surviving the business through minimal profitability, they might prefer the cheaper unsustainable product to be their stock rather than expensive environmental-friendly material which could lead to a lesser sale and shrunk potential profit margin.

However, with the risk of foreign economic dependency, ASEAN has to agree on diversifying their market segment. Moving from one bloc to another bloc in securing trade and partnership might still impose uncertainty in the future. Therefore, organic economic development is seen as having the capability to mitigate risk. The circular economy that involved the maximization of internal resources utilization and efficient management could be convinced to be given positive consideration in improving the regulation of the economic environment. Technically the circular economy is to ensure the sustainable care of the environment, on the other side, it is about to reduce waste of resource capacity. ASEAN with its own commodities advantages and peoples should prioritize serving its region beyond

economic profitability, in ensuring local political and social well-being through the stability of the supply chain and various innovation of circulating the economy.

Study shows that circular economy is not just limited to Japan in being as a benchmark for policy model implementation. There will be several more cases to be considered from another part of the world, while Japan could be one of the most probable to look into due to its societal and geographical proximity with ASEAN. But later for the adoption, it would be better to customize it based on ASEAN capacity as a region with no supremacy of one member over another. Policymaking and framework need to be at the consensus of all members along with respecting respective sovereignty.

CONCLUSION

The study is generally on having a preliminary review of the ASEAN state of economic dependency toward major global economic superpower. In assessing the condition, the regional economic integration been studied further to understand further its framework along with current progress and challenges. With the current progress identified, the current global economic issues been assessed on its risk and impact towards the region based on the current state of economic integration. From this risk, the circular economy model has been brought in to understand its potential in assisting risk management by proposing

several measurements and initiatives be taken and setup. The relation between ASEAN, foreign dependency, and regional resilience had been concluded. Circular economy as tool found to have possession of capability in enhancing regional resilience. Progress towards realizing the economic benefit along with societal well-being and political resilience through the circular economy can be understood towards facilitating necessary regional policy development.

The study is very limited to a brief analysis of quantitative data of ASEAN economic performance and statistics. It is also limited to several literature reviews involving secondary perspectives and information. The intention of this review is to establish a basis on a future study to be conducted on circular economy financial advantages involving further quantitative model outline, in addressing the model as an alternative in developing the ASEAN economy for the post-industrial phase. It is also suggested that further study could be conducted on obtaining primary information from country official and private sector on unpublished reports of progress and development in identifying the detailed state of the circular economy incorporated.

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DEFINING A UNIFIED STRATEGY OF ASEAN IN FACING BELT ROAD INITIATIVE (BRI) OF CHINA

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ABSTRACT

One Belt One Road (now Belt Road Initiative/BRI) initiative of China has been expanding its influence since 2015. Multi-Billion dollars loans have been allocated on strategic infrastructure projects across Eurasia, especially Indo-Pacific economic corridor where ASEAN stood on. However, the intention and outcomes of the powerful autocratic regime to spur billions of money to develop a fast-growing ASEAN economy remain debatable, considering the existence of various media undermining the BRI progression. Thus, this paper contains a thorough analysis of the possible harms and benefits of BRI across ASEAN in terms of the effectiveness of the investment, possible threat to ASEAN mutual interest and geopolitical stance. The study uses a qualitative method to determine the ideal ASEAN win-win strategy in responding to the result of the harms-benefit analysis of the preliminary stage of OBOR. The study sets an ideal parameter to achieve ASEAN mutual interest in facing OBOR using raison d'être perspective and the dynamics of the world geopolitical strategy, including taking account of the preceding cases of OBOR progression in other regions.

Keywords: OBOR, ASEAN, Geopolitical strategy.

INTRODUCTION

Many media sources and international public discourse highlighting the rise of China with its Belt Road initiative. OBOR or the BRI (Belt Road Initiative) was established since 2013 with president Xi Jinping invited all leaders into his summit in Kazakhstan. There is no exact definition of OBOR for it is a sole initiative and organized by China in bilateral coordination with the recipient of the OBOR investment. According to McKinsey report, however, BRI can be

defined as a multi-billion project initiative to build a network of railways, roads, pipelines, and utility grids that aims to connect Asia, Europe, and Africa along five routes. That is the reason why the name OBOR was then substituted by BRI to avoid misinterpretation of "one road" (Shepard, 2017).

The nuance that appears in the media in reviewing OBOR is mixed. Many media point out China with its BRI is setting debt traps, building a substandard infrastructure,

expanding its hegemonic and geopolitical influences by making recipient countries overly-dependent on them. However, none of the claims is refuted by Beijing as it has not provided sufficient information, the responses from neighboring countries have been ambivalent since. In contrast, other media also encounter those arguments by perceiving the OBOR project as an attempt to rebuild the ancient silk road that will help developing countries in getting hard or digital infrastructures, as well as an energy security through a long gas pipeline from Iran by Pakistan to China. China, however, promises not only physical infrastructure investment but also a bridge the economic, policy coordination and social-cultural cooperation. China has taken follow-up actions as well. It has launched the Asian Infrastructure Investment Bank (AIIB) and set up a US\$40 billion Silk Road Fund.

ASEAN is one of the regions that lie on the OBOR mapping plan. The mixed view of international society towards OBOR makes ASEAN unable to set a unified stance in seeing OBOR. Is it a threat or the new opportunity of the emerging market of ASEAN? This article contains a thorough analysis of the possible harms and benefits of the OBOR initiative across ASEAN in terms of the effectiveness of the investment and possible threat to ASEAN mutual interest and geopolitical stance. The study uses a qualitative method that is mainly derived from the preceding cases of OBOR projects in other regions to recommend the ideal

ASEAN win-win strategy. The qualitative method by analyzing the track record of OBOR is preferable considering that the nature of OBOR is still in its preliminary stage and any change China does into OBOR will require further assessment.

BACKGROUND

1. The China Motives behind BRI Establishment

Many media see BRI projects as “too good to be true”, thus they claim China having a bad motive behind its easy-lending. However, seeing China spurring billions of dollars by risking its own economy must signify big reasons behind it. According to some articles, the reason why BRI is initiated is because of the China over-production of steel, the rise of domestic labor costs, and ensuring energy security.

Firstly, about the production of steel, China’s 0.8 billion steel production accounts for almost 50 percent of world production (Zhao, 2015). China’s biggest export and the lowering demands of steel after the 2008 post-economic-crisis make BRI be a stimulus for the world demands on steel to keep the economic boom alive (Zhao, 2016; xxx).

Secondly, there is also an aging population that haunts China’s cheap manufacturing that relies on manual labor power. This aging population accompanied by the rise of middle-income families with higher salaries demand thus resulted in a

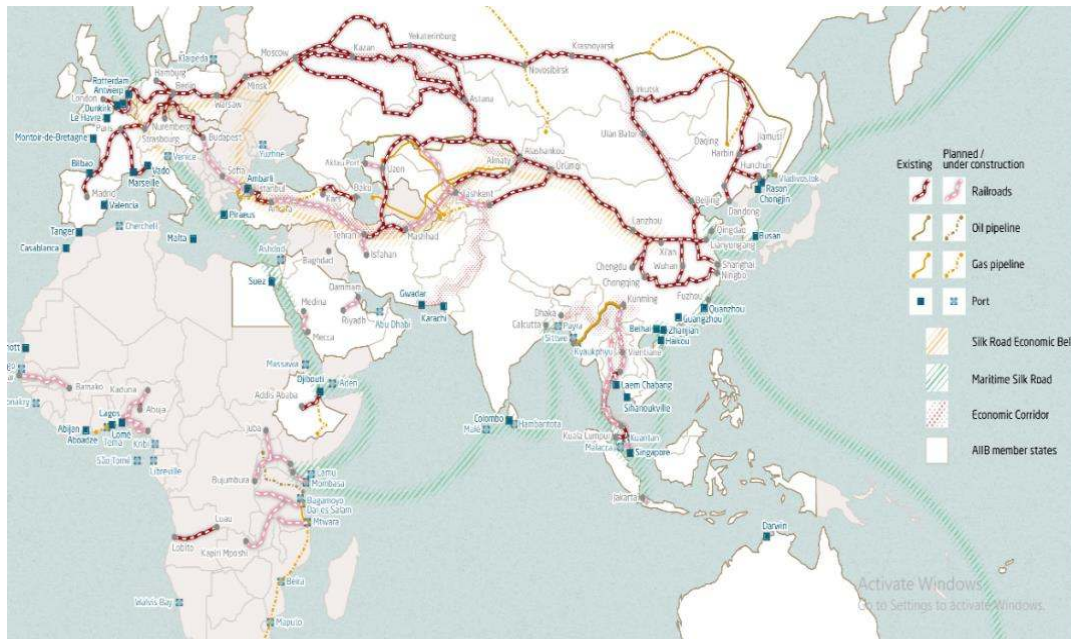
significantly increased labor cost. This condition may trigger what is called as “middle-income-trap”. This changing demographic structure is marked by the “Made in China 2025” to transform Beijing from “labor-intensive” to “innovative value-added chain” industries (CFR org, 2018). The Chinese industries' priorities on the hi-tech industries such as robots and automations will make Beijing moves its labor-intensive manufacturing facilities to ASEAN countries or Africa (Li, 2015).

Thirdly, according to Baracuhy (2013), in 2020, more than 80 percent of the world's population will be living in developing countries. According to the PWC report (2017), the rising market like ASEAN as the seventh-largest economy will be predicted to jump to the forth by 2050. This burgeoning growth of an economy is going to be a promising global market. Seeing the ASEAN market potential, China seeks to position itself as “the state in the middle” to bridge developing and developed countries to maximize the change of the geo-economics landscape (Zhao, 2016).

2. The Progressivity of BRI Across The World and Its Impact

The speech of Xi Jinping in May 2017 claiming that China's investment in the countries covered by BRI crossed US\$50 billion. Xi also claimed that Chinese companies have set up nearly 60 economic cooperation zones in 20 countries, producing over US\$1 billion of tax revenue and some 180,000 jobs in these countries. However, quite contradictory, Rana (2016) cited that only about half the announced funds actually materialize; the pledges and actual flows do not match (Wissenbach and Wang 2017).

Seeing the many resources that contradict the grand promises of China, it is less risky to take a case study by categorizing the already-established projects, under construction ones or failed ones and determine which category mostly occurs for deciding the best stance of ASEAN. Above is the picture of BRI mapping published by MERICS in 2017. The mapping explicates that the railroads have been established from China to Europe with a questionable timeline. Most of the under-constructing projects take place in South Asia, Africa, and Middle Eastern countries.



There is a growing tension in the Maldives after the Maldives Democratic Party substituted the pro-Beijing governments that make the debt-to-GDP ratio soaring at xxx% because of the excessive spending on BRI projects. In Bangladesh, authorities recently blacklisted China Harbour Engineering Company, one of the region's most active BRI construction firms, on accusations of corruption. Nepal and Pakistan have also demanded that China cancel or completely retool ongoing projects in their countries. In western Pakistan, opposition to the initiative has turned violent. Last week, Baluchi separatists attacked the Chinese consulate in Karachi, treating Chinese infrastructure investment in their region as a threat to their dreams of independence.

There is also a growing concern from the US and India on the ports construction under BRI projects that are perceived as the

strategic base to resupply navy, thus increasing the China military presence across Indo China and the eastern part of Africa. Sri Lanka's Hambantota Port and Mattala Rajapaksa International Airport projects might be a crippling debt-trap example. Sri Lanka had to hand over the port to China, through a 99-year lease in exchange for clearing a \$1.4 billion debt to China. In Africa, similar situations face Kenya, where talks are underway to surrender its strategic assets to China as a result of debts owed to Beijing. These assets may include the lucrative port in Mombasa, and the Standard Gauge Railway, to name but a few.

The main problem facing BRI is also the existence of the Ponzi scheme where China gives away most of the projects to the state-owned construction companies. This scheme hinders the expected multiplier effect to employ the domestic workforce. Out of all

contractors participating in Chinese-funded projects within the Reconnecting Asia database, 89 percent are Chinese companies, 7.6 percent are local companies (companies headquartered in the same country where the project was taking place), and 3.4 percent are foreign companies.

3. The Progressivity of BRI in ASEAN and Its Impacts

Economics is the most important barometer in deciding ASEAN united policies for the mutual economic benefit will further the integration of ASEAN. The ASEAN total GDP that reaches more than \$2.5 trillion and the economies across the region are growing steadily at an average annual rate of around 5 percent. Despite all that, economic growth inequality between ASEAN members still apparent. Sustaining the growth altogether without leaving any member behind requires the region to meet its growing infrastructure needs for the interconnectivity.

The infrastructure need indeed requires foreign investment. The regression of western power aids and the rise of isolationism signified by the US begin to pull out from TPP becomes a nightmare of the emerging ASEAN. ASEAN needs alternative aids to fund its infrastructure projects. From the uncertainty of globalism, China comes by implementing active global diplomacy, taking new international initiatives and hosting many multilateral meetings with its BRI.

BRI for ASEAN is an alluring project to meet its infrastructure needs. According to the Asian Development Bank (ADB), ASEAN needs US\$60 billion in investment per year in the road, rail, power, water, and other critical infrastructure (ADB, 2106). This astronomical amount of required funding is not hand in hand with the capability of ASEAN Infrastructure Fund (AIF) which only possesses \$485.3 million equity.

The growing infrastructure demand of ASEAN will be driven by population change, such as demographic dividend and increasing urbanization that reaches 64% in 2050. With urbanization and increased population density within city centers, and as congestion and pollution become problematic, the demand for efficient transport networks, utilities, and waste management will increase substantially.

The above long term need for infrastructure is also accompanied by an urgent factor. Today, China faces an aging population and the rising middle class that endangers its "China Miracle" for its abundant cheap human resources for manufacturing industries. As China cannot provide labor-intensive manufacturing, adequate interconnected infrastructure is needed to attract more investors to choose ASEAN among other emerging markets (I.e. India can provide 863m of rural workers).

Despite the urgent needs of the funding, there are some issues that make ASEAN cannot simply rely on China with its BRI. The

excessive debt and ASEAN geopolitics become the main highlight. Recently, the Malaysian Prime Minister objected to BRI projects as a neo-colonialism and canceled the railway projects that are initiated since former-PM Mr. Najib Razak due to corruption issues. the construction of the Lao PDR section of the Kunming -Singapore Railway has an estimated cost of US\$ 6 billion – nearly 40 percent of GDP of Laos in 2016 which can endanger the Lao that still has low growth of GDP.

The BRI in ASEAN is also backlashed with the current dispute on the nine-dash line created by china to conquer the south china sea. China builds army installation on the coral reef to strengthen its presence. China converted shoals and small rocky islands into permanent installations of airfields and modern harbors in the assertion of sovereignty in a vast ocean stretch, defined by the nebulous ‘Nine-Dash Line’, which has no legal or documentary sanctity. Some ASEAN countries, especially Philippine believes that the over-reliance on China through BRI can result in the lower political leverage of ASEAN in resolving the current dispute. The over-dependent recipient countries which are highly indebted can easily be dictated by China in making its voice in the discussion.

Apart from the failed negotiations of BRI projects, new China-Laos railway construction progresses is categorized as rapid. China has also helped Thailand in

realizing its “Thailand 4.0” by cooperating with China’s Alibaba in creating ASEAN Smart Digital Hub.

FINDINGS & DISCUSSION

ASEAN members cannot simply reject the investment by only seeing the precedent case of BRI failures because BRI is still in its preliminary stage, thus unquestionably premature. ASEAN members urgently need to take a look at the investment neutrally through tangible consequences. Therefore, parameters to synthesize the most beneficial ASEAN strategy in responding to BRI will be divided into two branches, those are: a) the impacts of BRI into the overall economics of ASEAN members; and b) the effects of BRI towards ASEAN integration and geopolitics.

The recommendation of the ASEAN strategy below is not final and it is based on the current progressivity of OBOR. The provision of two scenarios whether to accept or not are due to the dynamic of OBOR and plan B is required in case of the changing strategy of China.

1. Scenario I: Accepting BRI with these following follow up strategies

a) Demanding Transparency and Openness for Integrated Funding Sources.

The transparent investment will mitigate and debunk the debt trap issue of BRI. The transparency is meant to cross-check the economic viability of other undergoing and finished projects in

other nations. The transparency has been the global demand towards BRI. For instance, the EU trade panel asked for 'guarantees on transparency, sustainability and tendering process of BRI (Phillips 2017).

The demand for openness to ensure other banks helping China is also a must. China currently faces depreciated economic growth indicated by Beijing drawing \$116 billion from its central bank reserves in an effort to stabilize and stimulate its economy. According to a report from the Institute of International Finance, China's total debt-to-GDP ratio has surpassed 300 percent while its corporate debt-to-GDP ratio is 160.3 percent. The integrated funding involving ADB pioneered by Japan will not only ensure the sustainability of all BRI projects but also prevent Asian economic crisis triggered by China's economic collapse.

The question remains is going to be China acquiesce in opening BRI projects to funding from other sources. It is likely that China will cooperate in being transparent to get the funding aid for its foreign reserve to begin slowing down. The likeliness of China's future transparency is also supported by the precedent case of US' Hewlett-Packard cooperating with China-Europe freight trains project. However, if China still decides to enclose the report of their

foreign lending, then the motive of China will be deemed bad and ASEAN has a firm reason to reject.

b) Taking OBOR with a multilateral negotiation.

A platform for ASEAN countries in negotiating an investment with China's BRI should be established within the multilateral approach. The current bilateral approach of BRI makes the calculus for project planning becomes reckless. The bilateral approach will also enable China's assertion of power thus controlling indebted countries in UN voting or passing strategic assets like the case of Sri Lanka. Multilateral negotiation might be able to leverage the bargaining position of ASEAN in determining the accepted ROI (Return on Investment) and the interest rate of the debt. China is likely to accept a fair negotiation as its rejection may result in all ASEAN withdrawing from the BRI negotiating altogether. The feasibility of multilateral negotiation has been supported by the existing RCEP that is currently getting stronger.

The discussion between ASEAN countries should also revolve around analysis on every country's GDP and give exclusive recommendations if the GDP level is not met to uphold the upcoming debt of BRI. This is important because many recipients are counting on sustaining high GDP growth to pay back their loans, setting ambitious targets that

leave little room for error or unexpected events.

Additionally, the recommendation is not enough to pin down countries with the dire needs of infrastructure development, ASEAN should strive for a joint project as an alternative to replace the BRI should some countries fail to meet the criteria of debt eligibility. The already existing program like “ASEAN Master Plan for Connectivity 2025” (AMPC) should be materialized soon to fix the bottleneck from trade flow by taking ADB as the alternative source of funding. Seeing the case of Malaysia’s soaring national debt at roughly \$252 billion and approximately 65 percent of gross domestic product because of the reckless planning from the predecessor PM Najib send the signal of the multilateral deal. This analysis should be taken into account in a general ASEAN summit and remind every country representative to be aware of the possible domino effect of debt default.

CONCLUSION

There are potential environmental, social, and corruption risks associated with any large infrastructure project. These could include, for example, biodiversity loss, environmental degradation, or elite capture. These risks may be especially significant in countries involved in the BRI, which tend to have relatively weak governance. These

risks will need to be identified and safeguards put in place to minimize their potential negative effects. The WBG and other Multilateral Development Banks could play a role in supporting the implementation of high environmental, social and governance standards for BRI investments.

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PART THREE:

ASEAN SOCIO-CULTURAL COMMUNITY



A VICTIM OF ITS OWN BEAUTY: ANALYSING THE LEGAL AND SOCIAL ASPECTS OF OVER-TOURISM IN ASEAN REGION

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ABSTRACT

Tourism in developing countries such as Thailand, Cambodia and Indonesia, has an important role in the economic growth of these ASEAN Countries, also stolen the hearts of international residents all over the world. Unfortunately, their beauty is often being victimized as their beautiful destinations are dictated by thousands of tourists that create a lack of management and professionalism. The Authors consider this as a crucial issue as over-tourism triggers a lot of bad impacts for the local residents as well as the environment of the beautiful destinations that we are going to pinpoint in this paper. These exquisite destinations are sure to be the places that the readers have heard such as Maya Bay in Thailand, Angkor Wat in Cambodia and Bali's Beaches in Indonesia.

The Authors are going to analyze the social aspects of over-tourism and the legal aspects that interrupt the tourism industry that is supposed to create a balance between tourists' comfort and the indigenous people's needs. However, over-tourism has created a priority where tourist shall enjoy privileges that suffer the local community in the respective destination. On this particular matter, local community is deprived of water, economic wellbeing and prosperity. This paper is conducted by our research and studies based on journals, articles, websites and presentations along with domestic laws in Thailand, Cambodia and Indonesia, the whirlwind issues affected by over-tourism and the ASEAN arrangements that have been recognized, particularly the ASEAN Mutual Recognition Arrangement on Tourism Professionals (MRA-TP).

Keywords: *Over-Tourism, Social Aspect, Legal Aspect, Tourism Law and MRA-TP.*

INTRODUCTION

When being mentioned about over-tourism, people would imagine a lot of things such as the crowded *Sukhumvit* road, the overflowing of tourists sunbathing in *Kuta beach* and the full to bursting with sunset hunters in *Angkor Wat*. Although, these are the perfect examples of over tourism, the impact that over tourism has brought upon

is so much more than thousands of people overcrowding a tourist site.

Based on the definitions of UNWTO¹, *over-tourism* can be defined as the impact of tourism on a destination or parts thereof, that excessively influences perceived quality of life of citizens and/or quality of visitor experiences in a negative way. (UNWTO 2018) In the light of this definition, *over-*

¹ United Nations World Tourism Organization

tourism occurs due to the lack of good management and uncontrolled development of tourism spots. Hence, the inclusion of the concept of *tourism carrying capacity*² must always be considered when creating a management plan, due to the fact that the number that exceeds the maximum capacity are potential destruction cause for physical, economic and socio-cultural environment, as well as the visitor satisfaction level. (UNWTO 2004)

Over-tourism is considered to be a growing challenge especially for ASEAN states. Collectively, the 10 regions that made up ASEAN states are dependent on Travel & Tourism to drive their economies than all of the other regions in the world. (WTTC, 2016). Further, in the year of 2015 this sector also contributed directly into 5% of the region's total economy and 7.4% into their indirect and direct induced GDP.³ This is due to the fact that Southeast Asia is a highly sought after holiday destination that is known for its unique and diverse culture

as well as natural wonders like beaches, mountains and wildlife. (Jayaraman, 2017)

The acknowledgement of the aforesaid factors resulted into ASEAN drafting numbers of tourism regulations to strengthen cooperation between states in the field of tourism due to the mutual understanding that this region “depended” on tourism to support the field of economy as well as recognition by the “outside” world. These measures have been started since the Manila Declaration (1987)⁴ to strengthen ASEAN tourism industry that is followed by the Hanoi plan of Actions (1998) & Ministerial Understanding. Lastly, ASEAN has also reaffirmed their commitment to the Global Code of Ethics.⁵ The most recent commitment includes the creation of 2001 ASEAN Tourism Agreement. Other than these agreements, they also come up with the ASEAN Tourism MRA⁶, ASEAN CBT Based Tourism⁷, as well as establishing a joint ASEAN Tourism information Center.⁸

² The Concept of Tourism Carrying Capacity shall be defined as the *maximum number of people that may visit a tourist destination at the same time without causing destruction*

³ Data gained through the survey that is conducted by World Travel & Tourism Council (Accessed through: <https://www.wttc.org/-/media/files/reports/economic-impact-research/documents-2018/global-economic-impact-and-issues-2018-eng.pdf>)

⁴ ASEAN Manila Declaration that reaffirmed ASEAN states commitment towards Tourism Activities in the Region (Can be accessed through: <https://asean.org/wp-content/uploads/2017/11/Manila-Declaration-on-the-20th-Anniversary-of-APT-Final.pdf>)

⁵ ASEAN tourism agreement reaffirmed Global Code of Ethics for Tourism, adopted by the Thirteenth Session of the General Assembly of the World Tourism Organisation on 1 October 1999 (Can be Accessed through: https://asean.org/?static_post=asean-tourism-agreement)

⁶ ASEAN MRA in the field of Services (Can be accessed through https://www.asean.org/storage/images/2013/economic/handbook%20mra%20tourism_opt.pdf)

⁷ ASEAN CBT (Can be accessed through: <https://www.asean.org/storage/2012/05/ASEAN-Community-Based-Tourism-Standard.pdf>)

⁸ ASEAN joint tourism Information Center (Can be accessed through: https://asean.org/?static_post=agreement-of-the-

Despite the existence of these legislations, Tourism rates in the world are experiencing a raise where there's both rapid urbanization and the tourism consumption up to 11%. At the same time, it is slowly shown that ASEAN region are relatively unready when being faced with this sudden growth rate of Tourism. Slowly, numbers of tourism spot are being infected with over-tourism disease. Phillipine's *Boracay Island* is currently closed after Duterte's comments of it being a "cesspool". Following to that, The infamous Maya Bay in Thailand is also being put in a moratorium⁹ due to destruction in their coral and marine life. These 2 examples does not cover all of the tourism problem that this region have. Other than destruction to natural beauty, it also affected the life of the locals. The existence of tourism activities drives out the locals from their tourism spot home, due to the rising cost of living in the area.¹⁰ To top it off, there's also a problem of local culture that starts to fade away due to the fact that foreigners own tourism business.¹¹

This statement created a question for the writers to asked: do ASEAN have their own tourism related document? Where is the ASEAN agreement on Tourism Agreement

on this matter? In practice, does it still reaffirm global code of ethics of Tourism? Then why is the *over-tourism* problem in ASEAN are still relatively, out of control? Do they understand what's at stake when they are ignorant towards this problem? Does the bottom down mechanism really worked at each of ASEAN states tourism regulations? If so, then why the reality is still, so different?

This great disparity between the natural beauty that the ASEAN states hold and the management that they turned out to have is the main reason why the writers chose to analyze this topic further. Both writers are interested in how tourism activity in ASEAN Region acts as a double - edged sword: at one end they provide jobs security, stimulate development and promote the region but at the other end, it screams environmental destruction, congestion and loss of culture. This is why the writers define over tourism in ASEAN as to "*Victim of its own beauty*".

The other urgency for the writer to analyze *Over-tourism* matter is due to the fact that *over-tourism* problems might not only affect the locals and the environment, but it would also affect the tourist and their tourism experience. Based on the *Doxey's Irridex Model* (1975)¹², he highlighted the

establishment-of-the-asean-tourism-information-centre-kuala-lumpur-malaysia-26-september-1988)⁹

(<https://www.thesun.co.uk/travel/5566800/thailand-maya-bay-the-beach-closed-tourists/>)

¹⁰ The rising living cost are due to the development and growth of the area which is included as the impact of tourism activities (See more:

<http://www.seagrant.umn.edu/tourism/pdfs/ImpactsTourism.pdf>)

¹¹ Example in Bali, Indonesia where the estimate of 85% of tourism business is owned by foreigners. Georgetown in Malaysia also suffers from similar problem.

¹² *Doxey's Irridex Model* of tourism is a model of tourism where the response of local towards growing tourism activities is being put in stages

several level of tourism growth and the host's community attitude.

The writers fear that, by keeping up with this phase and managing tourism issue, Many tourist spots in various ASEAN states that has the tourist – local relationship at stage 2 might arrive at stage 3 of this table in a very near future and some spots¹³ might have the potential of already nearing into stage 4 of this graph. In that sense, tourism activities might be detrimental to everyone:

the locals can be hostile towards the tourist, the locations to suffers from congestion and the tourist are not gaining the best experience of travel to Southeast Asia.

Hence, the writer would like to analyze on what went wrong within the ASEAN tourism management through **A) Social** and **B) Legal Aspects**. In the end, the writers would like to come up with conclusions and solutions that combine both of these aspects.

Stages	Host Community Attitude	Characteristics
Stage 1	Euphoria	<ul style="list-style-type: none"> • Small Numbers of Tourist • Tourists want to merge with host • Host Community Welcome Tourism • Limited Commercial Activity
Stage 2	Apathy	<ul style="list-style-type: none"> • Visited number increases • Visitors taken for granted • Formalized relationship between host and tourists
Stage 3	Irritation	<ul style="list-style-type: none"> • Significant growth in tourist number • Increased competition for resources between tourists and residents • Local concerned about tourism
Stage 4	Antagonism	<ul style="list-style-type: none"> • Open hostile for locals • Attempts to limit damage and flow of tourism

SOCIAL ASPECTS

Social Aspects plays an important role within the very essence of tourism. Most people tend to forget that a tourism destinations is not a one dimensional place, and they often overlook the fact that these destinations are not merely a foreign tourist fantasy but places that was used to sustain

the livelihood of a group of people who share common values, and lifestyle. Together, they made up as a foundation of the local society and this is why the wellbeing of the local society need to be considered when talking about tourism.

The new paradigm of tourism has created an impression that nowadays, tourism

(can be accessed through:
https://epubs.scu.edu.au/cgi/viewcontent.cgi?article=1016&context=gcm_pubs)

¹³ See Social Aspect: Part A, B & C

activities shall not be focused merely towards the economic means but as a new form of human rights¹⁴, that should benefit all parties who's involved within the equation. This paradigm creates an urgency for the writer to analyze the reality of tourism in ASEAN region since this region is home to diverse cultures and natural beauty with relatively lack of acknowledgement of this notion above and resulted in over exploitation of tourism spots.

Based on that objectives, the methods that is going to be used in this paper shall applies a survey that has already conducted by the *World Travel & Tourism Council and McKinsey*,¹⁵ where they have associated 5 (Five) social problems that can be associated with overcrowding tourist spots. These problems can be listed down as follow:

No	Problem Code	Type of Problems	Description
1.	A	Alienated Local Residents	Rising rents, noise, displacement of local retail and changing neighborhood character, as well as leakage of economic benefits.
2.	B	Degraded Tourist Experience	Experience become degraded due to queues, crowding and mere annoyance
3.	C	Overloaded Infrastructure	Commerce, hygiene and commuting, problems towards energy consumption and waste management.
4.	D	Damage to Nature	Pollution, overuse of natural resources, poor waste management and harm to wildlife.
5.	E	Threats to Culture & Heritage	Threatening a destination spiritual and territorial integrity.

Further, the writer are going to associate the problem that is happening within ASEAN soil using the example of states who's currently experiencing *over-tourism* as well as diagnosing which of these social problems above that is associated with the aforesaid

problems, and simultaneously analyzing whether or not they have complied with the execution of tourism in a sustainable manner as regulated within the Global Ethics of Tourism.

¹⁴ The new outlook of Tourism Activities shall also consists of enrichment and self-development as a new form of Human rights and not merely as an economic activities (see more:

http://eprints.uwe.ac.uk/12137/2/Ch_7_cole_and_eriksson.pdf)

¹⁵ This Survey is a collaboration project between WTTC and McKinsey that is concluded in the year of 2017.

A. Maya Bay, Thailand.

The rising popularity of Maya Bay in Thailand was first started with its exposure towards the global community through Danny Boyle's 2000 Movie "*The Beach*". This movie creates a wave of infatuation among tourists who's coming to the area hoping to see a private paradise hiding with turquoise water, luscious coconut trees and bioluminescent plankton that glows when illuminated against the moonlight.

The combination of these factors resulted in the "parent" marine park of Maya Bay, *Hat Noppharat Thara-Mu Ko Phi Phi* Marine National Park earning 362 Million Baht from 1.2 million tourist from the course of 2015 – 2016, 77% of them being foreign.¹⁶ Not long after then, this spot are turning into Thailand's prized cash cow where the government benefits from its contribution up to 18% to Thailand's GDP¹⁷ as much as the locals benefited from tourism support services business that ranges from tourist operators, boat renting services, tour guides extending to beachfront hotels and cottages.

However, when nature started to be over commercialized; it started to lose its charm. The impact of thousands of tourists to visit this area has resulted in the destruction of marine life, as well as the island suffering from drinking water crisis.¹⁸ Research that has been conducted by marine biologist also found out large parts of the area of coral reefs are gone, and that many fish have vanished. (*Thamrongnawasawat, 2018*)

This problem escalates to February, where the Island administrative chief issued a moratorium effective in June 2018. Based on the data, the 5000 tourists visiting the island per day has resulted into a serious ecological damage¹⁹ and the island administrative chief appealed for help from Thailand's government and stated that this issue is too big to be solved alone.

This condition is due to several social problems where the research²⁰ that has been conducted by the writer affirms the reality that Maya Bay suffers from Problem **A, C & D**. The responsible parties in the island has failed in controlling the high number of tourists visiting the areas (especially foreign ones) since most of

¹⁶ (See more: <http://www.nationmultimedia.com/detail/thailand/30346026>)

¹⁷ Overview. (n.d.). Retrieved from <https://www.worldbank.org/en/country/thailand/overview>

¹⁸ A research team from Thailand's Kasetsart University's Faculty of Engineering has discovered

that the drinking water shortage on the area's main Phi Phi Don island is worsening and reaching desperate levels

¹⁹ The statement from the director of the national parks department, *Songtam Suksawang*.

²⁰ The Socio & Environmental Impact due to tourism activities in *Maya Bay, Thailand*.

these tourists shows irresponsible behavior in this area and as the front liner, the private sector in the area suffer from lack of awareness too and this is aggravated through the lacking of awareness and promotional materials for international visitors. Second, there are a lack of community involvement in these tourism spots that are the impact from the national park policy as the main internal management where they doesn't require any involvement from other stakeholders to take care of these areas other than the national park authority. (Emphandu, 2012)

Lastly, the locals are not educating tourists on how to go around responsibly on these areas, and some tours sometimes also encourage the tour participants to feed the fishes as well as to stand or take the corals. (Emphandu, 2013) Many of these people work in a small and medium business owned by locals and in reality, since these tours are competing to ensure the tourist with satisfaction, it is not impossible for these tours to not report the number of visitors who's coming with their boats to the Authority (Handayani, 2013). In the long run, the reality of tourism in Maya Bay can affirms the theory of Burns & Holden

in 1995 where Tourism Provides "socioeconomic benefits at one extreme and dependency and reinforcements of social discrepancies at the other."

B. Angkor Wat, Cambodia

Angkor Wat is one of the World Heritage Site ²¹ that consists of spectacular temple, vast hydrological work as well as network of archaeological sites. More than 100.000 modern *khmer* live in traditional village lives within the area who are the descendants of Angkor and they still have significant spiritual connections to the place. In relations to the success of the Royal Cambodian Government effort & strong international cooperation from rescuing Angkor Wat from danger²², it now face a new issue of *over-tourism* and threat to the damage of values of the Tourism site.

As a major source of foreign income in a developing economy, Angkor Wat visitor numbers is arising annually to the number of approaching 3 million annually. This reality created an effort of creating the APSARA ("APSARA National Authority")²³ to create a system of visitor management but in reality are proven insufficient to protect the values,

²¹ Considered as one of the World's Heritage Site (Can be accessed through: <https://whc.unesco.org/en/list/668>)

²² As the main tourist attraction in the country, the government has made effort in relations to the

preservation of the Angkor with cooperation with the Australian government

²³Can be accessed through: <http://apsaraauthority.gov.kh/?page=detail&menu1=422&menu2=752&ctype=article&id=752&lg=en>

environmental sustainability as well as guarantee the overall tourist experience.

There is a myriad of issues that is both strong and interconnected that is resulted from the overcrowding issue of Angkor Wat. First, there is an issue of uncontrollable visitor number in Angkor Wat's main complex that caused severe congestion and fabric damage. In relation to this, there's also an underlying problem of environmental degradation, traffic congestion as well as degraded pathways. (Sullivan, 2013) Further, the existence of numerous foreign tourists also concerns about the integrity of some traditions and cultural practices since these visitors dominate the "cultural landscape" of the site, since most of these tourist aim into visiting the site lies on seeing the architecture of the place, other than learning about the heritage values of the Angkor. (Sullivan, 2013)

The aforesaid explanation shows that the Angkor Wat in Cambodia suffers from several problems that include **A, B & E**. the site is heavily overpopulated due to the fact that there's a relatively little acknowledgement of a place carrying capacity. There has been an effort to manage the number of tourists in the site but there are also existence of other problem that shall also include the fact that the cultural landscape of Angkor is the locals as well as their religious belief, shall act as a wake-up call for Cambodia

to manage their tourism activities using the methods of community based tourism, that is both inclusive and fulfilling for the tourist and the locals. The mentality, that tourists and locals are not equal shall be eliminated since inclusiveness and respect shall be utilized in order to maintain the integrity and cultural values of one tourist spot.

C. Bali, Indonesia

"Itchy ocean? Just add it to Bali's growing list of seemingly intractable problems: water shortages, rolling blackouts, uncollected trash, overflowing sewage-treatment plants and traffic so bad that parts of the island resemble Indonesia's gridlocked capital Jakarta."(Time, 2011)."

The writer feels the urgency to write about one of the *over-tourism* problems that is currently happening in one of the best islands in the country. As depicted by the aforesaid passage from Time Magazine in 2011, Bali currently suffers from the problem of *over-tourism* with both Environmental and Socio – Economic implication.

Research has shown that, out of 10,406,759 people of foreign tourists visiting Indonesia in 2015, a total of 3,766,683 people (36.39%) come directly to Bali (Antara & Sumarniasih 2017). Due to this number, the Indonesian government allocated a quite large

amount of money to promote tourism activities in hope to increase foreign arrivals. (*Antara & Sumarniasih 2017*).

However, the lack of oversight and strict guidelines by the tourism activities in the tourism area has resulted into several beaches in Bali is contaminated with waste, especially plastic waste. This has resulted into the Authorities in Bali declaring Bali to be in a status of “*Emergency Plastic Waste*” and there are existences of movement to clear up the beach from the scattered waste that is conducted by non-governmental bodies and concerned parties.

Other than environmental pollution, *over-tourism* in Bali also changes the social structure and shared values among Balinese people. A Sociological research that has been found by the writer found out that the booming of Tourism Activities has resulted into the shift of values of local Hindunese people into becoming more individualistic, and materialistic. This is due to the fact that Balinese tourism sells *cultural heritage* (*Ardika, 2007*) and there shall be an inevitable result of relating culture into profit based business, and that would result in the commercialization of culture. (*Geriya, 1983*).

Based on this explanation above, the writer indicated that Bali currently have problems of code **C, D & E** where the overcrowding of tourists has resulted in environmental pollution due to the waste problem (both on land and sea) as well as overloading infrastructure that isn't adequate to support the number of tourists that is coming in to the island. Lastly, there's a huge part of **Problem E** where the inevitable assimilation of culture that happened between the tourist and the locals has resulted into the locals to be more profit oriented as well as the issue of commercialization of culture where cultural activities are done in order to gain profits instead of doing so for religious *Hindunese* reasons. (*Putra, 2006*).

LEGAL ASPECTS

As set forth in the Preamble of the ASEAN Charter²⁴, it is stated that ASEAN member states are “RESPECTING the fundamental importance of amity and cooperation, and the principles of sovereignty, equality, territorial integrity, **non-interference**, consensus and unity in diversity”. The reader would also notice in Article 2 (e) of the ASEAN Charter regarding Principles that “ASEAN and its member states shall act in accordance with the non-interference in the

²⁴ The ASEAN Charter serves as a firm foundation in achieving the ASEAN Community by providing legal status and institutional framework for ASEAN. It also codifies ASEAN norms, rules and values; sets clear targets for ASEAN; and presents

accountability and compliance. (ASEAN Charter. (n.d.). Retrieved from <https://www.asean.org/storage/images/archive/21069.pdf>)

internal affairs of ASEAN Member States”.

Now the reader might wonder, what is the Non-interference Principle?

Non-interference principle comes from the traditional notions in legally binding international relations that member states must respect the sovereignty, good relations of cooperation as well as maintaining the privacy of the domestic affairs of the respective ASEAN members.²⁵ This is because they have consequent right to exclusive sovereignty.

The purpose of this principle is to create a sort of *Modus Vivendi*²⁶ between ASEAN members to exist together peacefully. This principle emerges based upon the Constructivist theory where international relations do not happen by itself but rather, the result of the actor's construction. This implies that non-interference principle application was established based on the benefits and interests that the ASEAN members have already constructed.²⁷ However, this resulted in a low essence on

having a binding mechanism because non-interference policy discourages ASEAN members from enforcing their agreements to intervening with each other's internal affairs as in accordance with Article 2 (e) of the ASEAN Charter.

In regard to Tourism Law, it seems that ASEAN has actually realized its utmost potential with their beautiful heritage and natural sites since its plan of action on ASEAN Cooperation in Tourism in 1976. Since then, ASEAN member states are more than pleased to create agreements that would boost their tourism and economic integrations. In evident, Tourism Law in ASEAN has actually been long established and overdue. This is due to the fact that ASEAN has a lot of ambitions that they have set up since the ASEAN Tourism Forum in 1981.²⁸ In this present day, these ambitions are in the form of the ASEAN Tourism Strategic Plan 2025²⁹, expanding ASEAN tourism products, and the ASEAN Framework Agreement on the facilitation of

²⁵ Ramcharan, R. (2000). ASEAN and Non-Interference: A Principle Maintained. 22(1), 60.

²⁶ A **modus vivendi** is an instrument recording an international agreement of temporary or provisional nature intended to be replaced by an arrangement of a more permanent and detailed character. It is usually made in an informal way, and never requires ratification. (Modus Vivendi. (n.d.). Retrieved from <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/modus-vivendi/>)

²⁷ Hasan, M. H., & Yudarsan, M. A. (n.d.). The Relevance of Non-Interference Principle in ASEAN (Study Case: Rohingya) [Review]. 21. Retrieved from

http://www.worldresearchlibrary.org/up_proc/pdf/649-148758126521-24.pdf

²⁸ Plan of Action on ASEAN Cooperation in Tourism. (n.d.). Retrieved from https://asean.org/?static_post=plan-of-action-on-asean-cooperation-in-tourism

²⁹ By 2025, ASEAN will be a quality **tourism** destination offering a unique, diverse ASEAN experience, and will be committed to responsible, sustainable, inclusive and balanced **tourism** development, so as to contribute significantly to the socio- economic well-being of ASEAN people. (ASEAN Tourism Strategic Plan 2016-2025. (n.d.). Retrieved from <https://www.asean.org/storage/2012/05/ATSP-2016-2025.pdf>)

Cross Border Transport of Passengers by Road Vehicles (CBTP).³⁰ Despite these ambitions, there are challenges that blind the current plans from being enforced such as travel restrictive policies, skills mismatch, lack of logistics and infrastructure and last but not least, over-tourism.

As the Authors have explained, over-tourism has created a low point for Travel and Tourism in ASEAN as not only it creates an overwhelming management, but it also burdens the locals from having a pleasant living. This is why Tourism Law would make a great contribution to recover over-tourism. Agreements that could overcome over-tourism have actually been recognized. Although, there are multiple tourism arrangements, there is a credibility gap between tourism agreements and Non-interference principle. On this particular matter, credibility gap relates to the ASEAN members having an exclusive sovereignty affected the Tourism Agreements from not being exclusively implemented. This credibility gap creates an ineffective development, as it is not ensured whether Tourism arrangements would be administered in every ASEAN member state

or not. The writers take into account the lack of legal enforcement of the ASEAN Mutual Recognition Arrangement on Tourism Professionals (MRA-TP) where it is designed to facilitate a satisfactory tourism management through common reference for qualifications.³¹

MRA-TP contains a handbook of managing tourism with an essential reference to the key policies, processes and implementation guidelines for National Tourism Organizations (NTOs) in ASEAN.³² Nonetheless, it was not imposed in a discipline manner as over-tourism is currently destroying the ASEAN Travel and Tourism industry. In other words, it is stipulated in MRA-TP that it is “challenging” to enforce MRA-TP because there are no agreed international tourism standards, which can act as a basis for conformity assessment for the MRA-TP.

A. Thailand Legal Aspect

We can take into account the unfortunate event of the Thailand's Maya Bay being closed to tourists indefinitely.³³ Thailand is famous for having one of the most beautiful beaches in the Southeast

³⁰ This framework will facilitate the unified cross-border mobility of tourists and will promote overland travel between ASEAN member states. (ASEAN Framework Agreement on the Facilitation of Cross Border Transport of Passengers by Road Vehicles. (n.d.). Retrieved from <http://agreement.asean.org/media/download/20171208153146.pdf>)

³¹ *ASEAN Mutual Recognition Arrangement on Tourism Professionals*, 1. (2013).

³² *ASEAN Mutual Recognition Arrangement on Tourism Professionals*, FOREWORD. (2013).

³³ Gizauskas, R. (2018, October 03). Maya Bay - the Thai beach from the Leo Dicaprio movie The Beach closes indefinitely. Retrieved from <https://www.thesun.co.uk/travel/5566800/thailand-maya-bay-the-beach-closed-tourists/>

Asian countries. However, it is recently infamous due to over-tourism. In legal perspective, Tourism Law in Thailand has contributed to this matter as their government has intensified tourism development since their financial crisis in 1997. The intensification of travel and tourism in Thailand has been victorious to the point where the government is resistant to liberate their industry as in accordance with the regional economic integration of ASEAN Economic Community (AEC) in 2015.³⁴ This is because there are constant challenges that concern Thailand of not being compatible with its ASEAN counterparts. This can be classified into, the English capability, the quality of human resources and the makeover of legal structure.

In relation to the legal structure, credibility gap plays a part as Thailand has its own legal structure specifically to boost their tourism industry such as the act of tourism of B.E. 2522 where the Tourism Authority of Thailand (TAT) is established to promote Thailand's tourism and the act of Tourism Council of Thailand of B.E. 2544 where they would present tourism business operators in coordinating with the government and

private sectors. In terms of tourism as a whole, the prevailing law would be Thailand's Tourism Business and Guide Act B.E. 2551. In comparison, we can see that it would be insufficient for Thailand to enforce MRA-TP as in Section 50 of B.E. 2551 it is stipulated that the standards of tour guide license "shall being of Thai nationality" this does not meet the expectations of MRA-TP that aims to have a free movement of labor between ASEAN member states. This creates a narrow path for ASEAN as an intergovernmental organization and MRA-TP to confide, especially with the non-interference policy, thus triggering over-tourism.

Thailand minded the fact that, in order to extend their travel and tourism industry they must be delicate with Thailand's natural environment, ecotourism supports and local communities. Thailand has made an effort to protect these issues by applying the "Visit Park Thailand 2000" campaign³⁵ of the Royal Forest Department for nature-based tourism and Community-Based Tourism (CBT) where it aims to include and benefit local communities, particularly indigenous peoples and villagers in developing

³⁴ Current Challenges Facing the ASEAN Economic Integration | Thailand Law by Siam Legal. (2014, August 08). Retrieved from <https://www.siam-legal.com/thailand-law/asean-economic-community-an-update-on-the-current-challenges-facing-the-economic-integration/>

³⁵ This campaign was recognized as a response to the fast-growing demand for nature-based tourism and the emerging trend of protected area development in Thailand. (Mahdayani, W. (n.d.). Ecotourism in the National Parks of Southern Thailand [Review]. 160.)

countries. It also aims to create a socially sustainable tourism where it balances power within the community that overflows with tourists and foster traditional culture through a responsible stewardship of the land.³⁶ The Tourism Authority of Thailand (TAT) mostly initiates this where the Thailand government to stabilize marketing and create attention for sustainable tourism establishes them.

In addition, Thailand has fabricated its own strategy within the 11th national development plan of Thailand (2012 – 2016) and the Thailand National Tourism Development Plan (2012 – 2016). The former is to develop tourism by empowering the community in order to enhance domestic tourism management; the latter seeks to develop infrastructure and logistics linking with international tourism also the rehabilitation of tourism sites with the upgraded rules.³⁷ It can be said that these two policies are synonymous with the MRA-TP as they are simultaneously aiming to launch a human resource development.

B. Cambodia Legal Aspect

Similar to Thailand, Cambodia also has been facing the same challenges as Angkor Wat, a protected religious monument, is currently on the verge of collapsing as it burdens the Siem Reap residents economically, has a heavy traffic and inefficient conservation techniques.³⁸ It can be said in terms of legal system Cambodia is at a development stage as there is an unclear delineation of responsibilities among government agencies that are sometimes conflicting between one and another.³⁹ This can be seen that they do not have a specific law on the government bodies that would contribute to the betterment of tourism itself but rather they comply institutional arrangements, rights and duties of tourism stakeholders and the licensing of tourism operators into one short law containing only fifty articles. However, it can be seen that Cambodia has a soft spot for inspection and security of their tourism industry. As stipulated in the Tourism Law of the Kingdom of Cambodia, Chapter VII of the Institutional Arrangements, there is a tourism police that would contribute in maintaining

³⁶ Wirudchawong, N. (n.d.). *Policy on Community Tourism Development in Thailand*. Speech.

³⁷ Wirudchawong, N. (n.d.). *Policy on Community Tourism Development in Thailand*. Speech.

³⁸ Smith, K. (2010, October 17). Angkor Wat under threat. Retrieved from <https://www.phnompenhpost.com/national/angkor-wat-under-threat>

³⁹ The Tourism Law in Cambodia: Balancing regulation and facilitation of the sector. (n.d.). Retrieved from <http://documents.worldbank.org/curated/en/818741468239390575/pdf/444050BRIOENGL10BIB1151CAM01PUBLIC1.pdf>

public order, be “specially trained in tourism related matters” and “shall be proficient in international languages.” This creates a soft spot for MRA-TP as it pursues to create qualified labors for tourism no matter where they come from. The fact that they need these Tourism Police to be specially trained means that Cambodia would be willing to establish trainings as based on MRA-TP tourism education and training providers in each country need to provide voluntarily.

C. Indonesia Legal Aspect

Bali’s tourism has left a broad economic, social and cultural footprint from domestic and international tourists. Bali is also considered to be the ultimate destination for people to go on a honeymoon and a recreational place for family to confide in. However, due to its exceptional beauty that tourists often romanticize, Bali’s beaches are doomed because of the excessiveness of tourists who want to witness Bali. According to research and recent issues, over-tourism in Bali has created there outcomes; environmental problems, economic

discrepancies and disadvantages of Balinese residents.

In terms of environmental problems, it is proven that an estimated 60 percent of Bali’s water is consumed by the tourism industry and it created most households being deprived of water as resorts are drilling deeper wells, sucking up their neighbors’ water.⁴⁰ This outcome contradicts with Indonesia’s tourism law, Article 23 of Law No. 10 of 2009 where the government shall create a “conducive climate” towards the tourism business development and “maintain, develop and preserve” the national assets being the tourist attractiveness.

In terms of economic discrepancies, the government recently established a new investment law (Law No. 25 of 2007) that encourages direct investments through easy procedures for investors to invest and build businesses in Indonesia.⁴¹ The reality and the basic principle of equal treatment for domestic and overseas investors seem to contradict as it is estimated that 85 percent of tourism businesses are owned by non-balinese.⁴² It is said that local beach vendors who have been selling cold

⁴⁰ Wright, T. (2018, September 17). Beneath the surface of tourism in Bali. Retrieved from <https://theconversation.com/beneath-the-surface-of-tourism-in-bali-64673>

⁴¹ Foreign investment in Indonesia The Legal Aspects under the New Indonesian Investment Law. (n.d.). Retrieved from <https://www.researchgate.net/publication/323341>

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⁴² Wright, T. (2018, September 17). Beneath the surface of tourism in Bali. Retrieved from <https://theconversation.com/beneath-the-surface-of-tourism-in-bali-64673>

drinks and snacks for years in popular beaches such as Kuta, Jimbaran and Seminyak were forced to move and replaced by beach clubs that are owned by foreigners.⁴³ This event also contradicts with Article 17 of Indonesia Tourism Law, where the government shall “develop and protect” the micro, small and medium businesses and cooperatives in the tourism business sector.

In terms of the disadvantages of Balinese residents, the issues above and the deficiency in implementing domestic tourism law are shown to be disadvantaging Balinese residents. Therefore, the inclusion of MRA-TP shall contribute to a great extent in tackling discrimination towards indigenous people as well as over-tourism. This is because MRA-TP provides the ASEAN Common Competency Standards for Tourism Professionals (ACCSTP) for professionals in retail, wholesale companies and housekeeping, which aim to upgrade tourism services.⁴⁴ This will lead to a considerate manner towards the local residents to enjoy their own privileges.

⁴³ Wright, T. (2018, September 17). Beneath the surface of tourism in Bali. Retrieved from <https://theconversation.com/beneath-the-surface-of-tourism-in-bali-64673>

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⁴⁴ ASEAN Mutual Recognition Arrangement on Tourism Professionals, 7. (2013).

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ASEAN COOPERATION ON DISASTER MANAGEMENT: A LIBERALIST ANALYSIS ON REGIONAL INTEGRATION

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ABSTRACT

As one of the non-traditional security issues, today, natural disaster has become one of the main concerns and global challenges that receive special attention from ASEAN member states. Consequently, the ASEAN Leaders have agreed to intensify the regional cooperation in disaster management by adopting the ASEAN Agreement on Disaster Management and Emergency Response (AADMER) in 2005. This article discusses the roles and challenges of ASEAN Member States in conducting the regional disaster management cooperation, particularly in the aftermath of the tsunami and earthquake in Central Sulawesi in 2018. To examine the roles and challenges of ASEAN, we conducted a literature study on relevant previous researches, government reports, and statistical data. The authors further question whether or not the ASEAN cooperation in this field matters to the integration of the region from the liberalist lenses. The ASEAN member states have increased its regional cooperation to create the resilient, stable and peaceful community. Other than that, the non-intervention principle which claimed to obstruct the disaster cooperation is managed through the continuous institutionalization process. The openness of the affected country to the international aid as done by Indonesia does matters in disaster relief. The urgency of disaster issue and the interdependence between the member states have driven to the more frequent and closer interactions and communication between ASEAN countries. In the end, cooperation in handling disasters that were previously domestic and national issues in the process of development has turned into a source of deeper integration of ASEAN.

Keywords: ASEAN Integration, ASEAN Cooperation, AADMER, Disaster Management

INTRODUCTION

Generally, the initial goals of the formation of regional organizations are improving relations between countries, regulating security between countries, and strengthening the communities contained in the organization. In a similar manner, Southeast Asian countries formed the Association of Southeast Asian Nations (ASEAN) in August 1967 to promote

economic and social development in order to increase the foundation for prosperous and peaceful community in Southeast Asia (ASEAN, ASEAN Establishment, 2019). However, the emerging numerous problems particularly regarding non-traditional security issues in modernized world contributes to the complexity of regional integration, including to ASEAN. Therefore, to defend its relevance as regional

organization, it requires ASEAN to further improve its cooperation and deepen its integration.

One amongst many non-traditional issues, that ASEAN has progressed, is disaster event. ASEAN is a region that possesses a relatively high threat of natural disasters. Therefore, disaster events have attracted the attention of the ASEAN Leaders to discuss this issue in the high-level meeting of the ASEAN. Many claimed that the tsunami and earthquake which hit several Southeast Asian countries in 2004 –Indonesia, Thailand, Malaysia and Myanmar, generated the reform of law at domestic, regional and international level (Simm, 2018). Responding to the phenomenon of disasters, ASEAN leaders agreed to intensify their cooperation in tackling various problems in the field of disasters that occurred at all levels. The ASEAN cooperation on disaster management was legally official along with the adoption of ASEAN Agreement on Disaster Management and Emergency Response (AADMER) on July 2005. The cooperation aimed at handling efforts from preparedness, emergency response to disaster recovery.

Moreover, to improve the integration of ASEAN, ASEAN needs to develop the cooperation amongst its members' organization so that it is capable of realizing long-term visionary ideals through enabling the community to address the challenges in the future. The transformation of ASEAN

from a mere forum of political elites into a community that takes people into account for the development has increased its significance in a global context. ASEAN Community that comprises of three main pillars, ASEAN Political Security Community (APSC), ASEAN Economic Community (AEC), and ASEAN Socio Cultural Community (ASCC) should become a connecting bridge that benefits the people of ASEAN. The ability to translate "vision" that lies on ASEAN Community Vision 2025 into "mission" in a timely and effective manner is important. Yet, the disasters that occur in several ASEAN countries obstruct the realization to the so-called resilient ASEAN Community in the present of time and the future. This challenge certainly requires the prompt and timely responses from ASEAN Leaders to deal with disaster issue. Thus, this article discusses the roles and challenges of ASEAN Member States (AMS) in addressing the disaster issues in the region, with a case study of tsunami and earthquake which hit Central Sulawesi in October 2018. More importantly, this article questions whether or not the disaster cooperation matters to the integration of ASEAN. To accomplish the objective of this article, the liberalism approach is used to examine the topic.

LITERATURE REVIEW

Regional integration, a multidimensional phenomenon on one hand and also a

multifaceted phenomenon on the other hand (Heinonen, 2006; Dougherty & Pfaltzgraff, Jr, 2001), remains controversial conceptually (Bolanos, 2016). Despite its controversial concept, regional integration seems to be the global trend. The multidimensional character of regional integration signifies the regional cooperation in various sectors (economic, politics, socio-culture, security, etc.). For instance, the integration of European Union (EU) started in the post-World War II claimed by many as the most advanced regional integration, and thus has been popularly studied (Mitrany, 1946; Hoffmann, 1966; Haas, 1968; Nye, 1970; Schmitter, 1970; Moravcsik, 1998; Rosamond, 2000). EU's concrete structure as a supranational organization has enabled cooperation amongst the member states in almost all sectors.

In the other parts of the world, the integration process also began to emerge, particularly in Southeast Asia in the late 1960s. Through ASEAN (Association of Southeast Asian Nations), the region grows its relevance and significance over the past decades. Unlike the EU, ASEAN integration has shown different characteristics of integration in comparison with the EU (Kim, 2014). The ASEAN Way, the principle of ASEAN synthesizes the different regional

mechanism, in which no power is delegated by the ASEAN Member States (AMS) to the common institution. Therefore, ASEAN is better known as an intergovernmental organization, rather than a supranational organization. Just like any other regional integration, ASEAN has expanded its cooperation along with the establishment of the ASEAN Community in 2015 comprising three important pillars. These three pillars are, ASEAN Political-Security Community (APSC), ASEAN Economic Community (AEC), and ASEAN Socio-Cultural Community (ASCC).

Generally speaking, the study on ASEAN Integration is undertaken by many. However, both academic literature and policy paper aimed at exploring the specific ASEAN cooperation remains sporadic, including the disaster management cooperation. In this context, the literature on ASEAN disaster management cooperation mainly focuses on, but not limited to the progress and implementation of the cooperation.⁴⁵ Sawada & Zen (2014) argued that ASEAN as the most vulnerable region to disasters in the world remains non resilient although it has successfully achieved economic growth and poverty reduction. They addressed the need of effective strategy and regional cooperation in coping

⁴⁵ The literature on ASEAN disaster management cooperation refers to the study on disaster management cooperation from international relations study, especially the regional integration study. It is to exclude the thousands of the natural

science-based disaster-related research in Southeast Asia that has been conducted to date. See the ASEAN Science-based Disaster Management Platform's website: <http://www.asdmp.ahacentre.org>

with the disaster risk. The cause of and effort for addressing the ineffectiveness of the ASEAN cooperation in disaster management are also being questioned (Gentner, 2006; Lai, 2009; Lucero-Prisno, 2014; Floristella, 2016). The ASEAN Way of non-intervention remains as the cause of ineffective coordination in disaster relief in the region (Gentner, 2006). Floristella (2016) concluded that the factors hampering the effectiveness and efficiency of ASEAN disaster agency, include aspects such as the lack of adequate resources, and the uneasy reconciliation between state-centric nature of AMS and the principle of solidarity. It is suggested the establishment of ASEAN Disaster Response Training and Logistic Centre is the alternative solution for disaster management considering the complex regional political structure (Lai, 2009). In the same manner, Lucero-Prisno (2014) also realized the ineffectiveness of ASEAN disaster body, and thus a stronger coordinating body is needed to deploy immediate interventions in the disaster-affected country in the region. Although the ASEAN Coordinating Centre for Humanitarian Assistance on disaster management (AHA Centre) was established in 2011 as mandated by the AADMER, this ASEAN disaster body has failed to prove its effectiveness in the Haiyan Typhoon that struck the Philippines in 2013. However, the positive side of ASEAN disaster law is noted as it is enabling the non-state actors such as civil society and the private sector in

institutionalizing and implementing the law (Simm, 2018). In addition to the literature, the nature of disaster management cooperation amongst the AMS also is also being addressed. Rum (2016) suggested the international norm of disaster management influences the AMS to internalize the norm into the regional disaster management cooperation.

To the best of the authors' knowledge, there is still a lack of literature in this field. With the hope to enrich the scope of the research in this study, thus, the authors further discuss the role of AMS and challenges in disaster cooperation by evaluating the Central Sulawesi tsunami and earthquake in 2018. Furthermore, this article also aims to explore the significance of this sectoral cooperation towards the integration of ASEAN. By that, this article is expected to contribute to the literature in this topic area.

THEORETICAL FRAMEWORK

In order to be able to address the query on the regional integration, the authors use the neo-functionalism, known as a liberal theory of regional integration, as the analytical tool. Neo-functionalism is well-known amongst many regional integration theories and remains relevant to date. It is derived from its intellectual precursor, the work of David Mitrany and functionalism (Dougherty & Pfaltzgraff, Jr, 2001). The European Union is the most studied case in

this theory. The most prominent scholar and known as the one who introduced the neo-functionalism was Ernst Haas (1924-2003) (Viotti & Kauppi, 2012). Unlike functionalism that dismisses politics, Haas (1968) argument was contradictory that politics is essential to the integration process (Dougherty & Pfaltzgraff, Jr, 2001; Viotti & Kauppi, 2012; Jackson & Sorensen, 2013). This means that the political leaders and private elites of the given region should perceive the integration in the pursuit of their interests, such as economics, health, environment, and other sectors. In the case of EU, the European Coal and Steel Community (ECSC) that took into force in 1952 was possible due to the actors' decision to integrate as it best served their interests (Dougherty & Pfaltzgraff, Jr, 2001).⁴⁶

The integration in itself constitutes the continuing process. It starts from the cooperation at the surface and further moves deeper collaboration. The logic of integration in neo-functionalism synthesizes the spill-over thesis. The spill-over thesis lies on the assumption that the economic integration leads to the increase of interaction amongst actors which results in the collaboration in other functional policy areas –functional spill-over. This is realized, not for the other reasons, the maximum benefits. The spill-over concept is classified

into two types, namely functional spill-over and political spill-over. The political spill-over is indicated by the formation of the political union with the supranational governance model just like EU today. This concept is in line with the Balassa's theory of economic integration, arguing that the different depths of integration forms different stages of regional integration. There are six stages of integration, those are 1) preferential trade agreements (PTAs), 2) free trade agreements (FTAs), 3) custom unions (CUs), 4) common markets (CMs), 5) economic union, and 6) political union (Balassa, 1961). Balassa asserts that political unification is important to complement full economic integration, and thus he placed it at the last stage (Bolanos, 2016). In relations to the spill-over concept, neo-functionalism does not explain the reverse process of integration. Yet later Schmitter (1970) revisited the integration theory and suggested that spill-over can be emplaced along with the spill-back as the strategic options available to actors. The spill-back itself is defined as the withdrawal of the integrative organization towards the previous situation both in scope of functions and authority (Dougherty & Pfaltzgraff, Jr, 2001). In its original version, Haas concluded that the regional integration should be understood in a larger context

⁴⁶ The actors of ECSC refers to those elites in politics and private sectors of six founding countries; Belgium, France, Italy, Luxembourg,

Netherlands, and Germany signed by the Treaty of Paris in 1951.

through the more general theory, interdependence theory.

In applying this theory, the authors notice the deepening integration process in ASEAN. As the interdependence between AMS is getting more intensified, the deeper integration is highly needed. ASEAN has particularly integrated in economy since a decade after its establishment. The first economic integration of ASEAN was signed by the preferential trade agreement in 1977. In 1992, the ASEAN passed the ASEAN Free Trade Agreement (AFTA). Currently, it integrates its economic deeper which closer to form the customs union by AEC that took into force on January 1st, 2016 (Das, Sen, & Srivastava, 2015). Hypothetically speaking, the deeper integration of ASEAN economy is affecting the cooperation of ASEAN in other sectors. This article specifically inquiries the ASEAN disaster cooperation in relations to the integration of ASEAN.

RESEARCH METHODOLOGY

This study uses the qualitative research method. The data and information analysed in this research are acquired from the secondary sources. The secondary data is obtained from books, journals, reports, government policy and law, as well as documents from websites. The main literature used in this article is prominently about the ASEAN cooperation on disaster management and emergency response. In

particular, the data and information about the tsunami and earthquake in Central Sulawesi are also collected and evaluated in this article to discuss the roles and challenges of AMS in addressing the disasters in the region. The authors apply the theoretical framework to answer the research question proposed in this article. The conclusion is drawn after the findings of this research is discussed and analysed by the authors.

RESULTS AND DISCUSSION

The historical context of disaster cooperation

Historically speaking, cooperation in handling natural disasters within the ASEAN framework has essentially been built since a long time ago. It began with the Bangkok Declaration of 1967 which marked the foundation of ASEAN which was to mutually strengthen regional cooperation in order to enhance stability, security, and regional development among its members. Earlier, ASEAN started to strengthen the cooperation in disaster issue by held the first meeting ASEAN Expert Group on Disaster Management in 1971. This summit led ASEAN to reach an agreement on cooperating in searching for aircraft and ships and on a Food Security Reserve (Simm, 2018). After that, ASEAN one step ahead improved their cooperation on the issue of natural disasters by establishing a Declaration on ASEAN Concord that

addresses mutual assistance on natural disasters particularly in the point 4 which stated that:

“Natural disasters and other major calamities can retard the pace of development of member states. They shall extend, within their capabilities, assistance for relief of member states in distress (ASEAN, 1976)”.

Furthermore, the Indian Ocean tsunami which attacked Indonesia, Thailand, Myanmar, and Malaysia in 2004 became the ground-breaking of ASEAN cooperation in disasters (Gentner, 2006). Prior to the Indian Ocean tsunami, ASEAN conducted the 1st ASEAN Ministerial Meeting on Disaster Management (AMMDM) in Phnom Penh, Cambodia on 7th December 2004. However, the aftermath of the tsunami showed that ASEAN did not have a regional mechanism which was sufficient for handling large-scale disasters. In addition, the experience that can be taken from this disaster event was the joint emergency region response could not be immediately deployed to the field because there was no agency in ASEAN that specifically coordinates disaster management. In response to this problem, the Government of Indonesia took the initiative to organize Special Meeting of ASEAN Leaders in Jakarta on January 6, 2005. This meeting produced the Jakarta Declaration which focused on Action to Strengthen Emergency Assistance, Rehabilitation, Reconstruction and

Prevention of the Impact of Earthquake and Tsunami Disasters (Simm, 2018).

In spite the result above, this meeting also created several other important points from the Jakarta Declaration relating to the ASEAN program that could be divided into three points; Firstly, ASEAN encourages to use civil and military assets in disaster relief operations. Secondly, ASEAN established the Humanitarian Assistance Centre (AHA Centre). And lastly, ASEAN increased the use of network with Information and Communication ASEAN for Disasters. From these points, ASEAN expanded this agreement through fruitful negotiation process within the ASEAN Committee on Disaster Management (ACDM) in order to generate ASEAN Agreement on Disaster Management and Emergency Response (AADMER) which eventually came into force on December 24, 2009 after the ratification by ASEAN member states. Hence, AADMER has a function to establish a regional level disaster management framework that contains the action programs to strengthen the cooperation on disaster management, starting from the early warning system, handling on emergency response period, rehabilitation and reconstruction phase, and reduction disaster risk (AMCDRR, 2018). The humanitarian challenge that rose ASEAN led to the activation of The Standard Operating Procedure for Regional Standby Arrangements and Coordination of Joint

Disaster Relief and Emergency Response Operations (SASOP) (ASEAN, 2010).

Legal and institutional framework of disaster management and emergency response

As it has been discussed above, the creation of AADMER became the foundation of legal and institutional framework of disaster management and emergency response that leads ASEAN to providing effective mechanism in dealing with disaster issues. The mechanism of AADMER is categorized comprehensive and integrated since it covers all aspects and cycles of disaster management such as disaster risk identification, assessment and monitoring, prevention and mitigation, early warning, preparedness, emergency response, and rehabilitation (ASEAN, 2016). Additionally, AADMER also acknowledges the difference on “capabilities, needs, and situations” for the cooperation each ASEAN member states in responding to disasters. At this point, it proves that ASEAN recognizes disaster issues as the threat of the development of ASEAN member states. Responding to this problem, one of the most important components in the AADMER agreement is the establishment of the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre) in 2011 (ASEAN, 2016). In 2013, ASEAN continued declaring its commitment to enhance cooperation in disaster

management during the 23rd ASEAN Summit in Brunei Darussalam.

In conjunction with the establishment of ASEAN Community by the end of 2015, the ASEAN Leaders also envisioned to further strengthen the regional capacity in reducing disaster losses and strengthen the collective response to disasters. Therefore, ASEAN has endorsed the ASEAN Vision 2025 on Disaster Management during the 3rd AMMDM and 4th Conference of Parties (COP) to AADMER in December 2015 in Cambodia (ASEAN, 2016). Consequently, AHA Centre formulated the ASEAN Joint Disaster Response Plan (AJDRP) in 2016 to initiate the One ASEAN, One Response initiative (AHA Centre, 2017). It aims to facilitate cooperation and coordination not only among ASEAN member countries but also with non-related ASEAN actors such as the United Nations and various organizations in responding to disasters inside ASEAN and outside (ASEAN, 2016). This initiative of One ASEAN, One Response has been realized in 2016 towards the responsiveness of ASEAN on disaster issues in the Asia-Pacific region.

During its implementation, AHA centre itself can monitor all types of natural disasters in the Southeast Asia region directly with the AHA Centre’s disaster monitoring system, and when natural disasters are detected in one ASEAN member states, the AHA Centre can quickly coordinate with all ASEAN member states. Alongside the coordination and joint

response to natural disasters, it can minimize the impact of natural disasters. By looking at this, ASEAN already has a regional framework for collaboration in disaster risk reduction and emergency response in ASEAN (APEC, 2015). This is in line with ASEAN's vision to build a nation that is resilient to disasters and a safe community in 2025.

Tsunami and earthquake of Central Sulawesi: Roles and Challenges of ASEAN

It is not the first, second or third time in the 21st century that disasters hit ASEAN countries. Indonesia, one of the most vulnerable countries to disasters in the region, was hit by a 7.4 magnitude earthquake and tsunami in 28 September 2018, to be exact in the Central Sulawesi, eastern part of Indonesia. It is reported that there were four most-affected areas, those are Donggala, Palu city, Sigi, and Parigi Moutong. Consequently, as of 20 November 2018, there were 4,438 major injuries; 1,373 people missing/buried; and 2,101 fatalities. In addition, there were 281,759 displaced persons, the highest in total on 16 October 2018. Since 12 October 2018, there were 68,451 damage houses; hundreds of schools, houses of worship, stores, offices; and also numbers of damaged hospitals and health facilities (BNPB Indonesia, 2018). According to Indonesia's National Disaster Mitigation Agency, this phenomenon also resulted in considerably huge economic losses of at least \$911 million or equal to IDR 13.82

trillion in total, accumulated from IDR 1.99 trillion in lost income and IDR 11.83 trillion in physical damage (Tehusijarana, 2018).

In assessing the role of ASEAN in this context, at the core point, it is understood as the regional organization per se whereby the regional mechanism for disaster management has designated. There are three important roles of AHA Centre in disaster management, namely the disaster monitoring, preparedness and response, as well as capacity building. Firstly, disaster monitoring is the effort to monitor and share information about hazards and disasters in the region which is expected to reduce potential losses in the face of disasters. Secondly, preparedness and response is the effort to accelerate the mobilisation of resources between ASEAN Member States and its partners in times of disasters through developing various tools and guidance, such as the stockpiled relief items, and standard operating procedures. Thirdly, the AHA Centre also conducts the capacity building as an effort to support the National Disaster Management Authorities across ASEAN Member States to build a disaster-resilient region through ASEAN Emergency Response and Assessment Team (ASEAN-ERAT) (AHA Centre, 2019).

In the context of the Sulawesi earthquake, the ASEAN countries are united through AHA Centre, the coordinating agency for disaster management and emergency response in the ASEAN region. It

has played and maximized its pivotal role in the aftermath of Sulawesi earthquake and tsunami with the given measures. The One ASEAN, One Response operation of AHA Centre in times of this disaster was brought into force after it has fulfilled the SASOP and

in accordance with the AJDRP. Table 1 describes the three classified activities undertaken by AHA Centre in responding the M 7.4 earthquake and tsunami that hit the Sulawesi (AHA Centre, 2019).

Table 1. AHA Centre's Activities (Sulawesi Earthquake and Tsunami in 2018)

Type of Activities	Implementation
Disaster monitoring	<ul style="list-style-type: none"> • Working closely with Indonesia's National Disaster Mitigation Agency (BNPB) in monitoring and sharing the detailed information about the Sulawesi earthquake and tsunami through Disaster Monitor & Response System (DMRS); • Reporting the disaster event to ASEAN Disaster Information Network at http://adinet.ahacentre.org/reports/view/1319; • Providing regular updates on the situation through its online site since 29 September – 25 October 2019 that can be accessed at https://ahacentre.org/indonesia-central-sulawesi-m-7-4-earthquake-and-tsunami-updates/
Preparedness and Response	<ul style="list-style-type: none"> • Facilitating the deployment of capacities available in the region, such as from ASEAN Standby Arrangement in the time of disasters; • Providing relief items from the Disaster Emergency Logistic System for ASEAN (DELSA); • Organizing Emergency Briefing and Coordination Meeting with the Government of Indonesia's officials, local governments, domestic and international NGOs, private sectors, representative of ASEAN Dialogue Partners and UN Bodies; • Establishing Joint Onsite Coordination Centre for ASEAN (JOCCA) and Reception Departure Centre (RDC) in coordination with BNPB; • Establishing Joint Operations and Coordination Centre for International Assistance (JOCCIA); • Housing joint-efforts for assessment and information management with related stakeholders.
Capacity Building	<ul style="list-style-type: none"> • Mobilizing ASEAN Emergency Response and Assessment Team (ASEAN-ERAT) coming from some ASEAN countries;

Source: (AHA Centre, 2018)

Furthermore, it has been able to coordinate the humanitarian assistance both from ASEAN-related actors such as ASEAN

countries and ASEAN dialogue partners, and non-ASEAN related actors such as UN Agencies, domestic NGOs and international

NGOs, and private sectors (*see table 2*). Type of assistance that coordinated by AHA Centre from those actors were mainly donation, airlift support, emergency response team, medical supplies and team, assessment support, information, mapping and network support, and relief items (AHA Centre, 2018).

Coincidentally, six days after the tsunami in Sulawesi on 4 October 2018, the annual Conference of the Parties (COP) to the AADMER was convened for the seventh time in conjunction with the 6th AMMDM in

Putrajaya, Malaysia. AHA Centre has updated the 7th COP to the AADMER and the 6th AMMDM the real-time situation in Central Sulawesi. The condolences and heartfelt sympathies to the affected community were expressed and extended along with the meetings by all ministers (Chairman's Statement of the 7th Meeting of the COP to the AADMER and the 6th AMMDM, 2018). The visit of the chairman of that annual meeting was held on 10 October 2018 accompanied by the other members of the Government of Malaysia.

Table 2. Response towards Central Sulawesi Earthquake and Tsunami

ASEAN-related actors	
<i>ASEAN countries</i>	<i>Type of Assistance</i>
Brunei Darussalam	2 ASEAN-ERAT
Cambodia	US\$ 200,000 donation
Lao PDR	US\$ 200,000 pledged donation
Malaysia	US\$ 241,000 donation; airlift support (1 A400 fleet, 2 C-130 fleet, 1 helicopter); 4 ASEAN-ERAT; and relief items
Philippines	USD \$300,000 donation; airlift support (C-130); 3 ASEAN ERAT; and relief items
Singapore	US\$ 172,000 donation; airlift support (2 C-130 fleet); 5 ASEAN-ERAT; and relief items
Thailand	US\$ 152,197 donation
Vietnam	US\$ 100,000 pledged donation
<i>ASEAN Dialogue Partners</i>	<i>Type of Assistance</i>
Australia	AU\$ 58,000 donation; US\$ 9.5 million in emergency humanitarian assistance; US\$ 500,000 donation to PMI airlift support (C-130); emergency medical team (EMT); and relief items
China	Relief items
European Union	€ 1.5 million in emergency humanitarian assistance
France	Emergency response team (48 fire fighters); and humanitarian cargo

India	Airlift support (C-130J and C-17); 3 Indian naval ships (INS Tir, INS Sujatha, INS Shardul); medical supplies; and relief items
Japan	Japan Disaster Relief Team (JDRT); and relief items
New Zealand	US\$ 1.5 million; airlift support (C-130), and relief items
Norway	US\$ 3 million donation through UN CERF and IFRC
Republic of Korea	US\$ 1 million donation; Korea Disaster Response Team (31 personnel); aircraft lift; and relief items
Spain	€ 300,000 donation
Switzerland	Emergency response team; and relief items
The United Kingdom	£ 7 million donation; 2 professional personnel; airlift support (A400M Atlas) and relief items
The United States of America	US\$ 750,000 donation, and relief items
Non-ASEAN related actors	
<i>Foreign Government</i>	<i>Type of Assistance</i>
Venezuela	US\$ 10 million donation
<i>Private Sectors</i>	<i>Type of Assistance</i>
Digital Globe	Satellite-based observation
Sentinel Asia's Emergency Observation Request (EOR)	Observation to International Disaster Charter
Temasek Holdings	Relief items
The Philippine Disaster Resilience Foundation	Emergency response team
<i>Humanitarian NGOs</i>	<i>Type of Assistance</i>
ACT Alliances	US\$ 3 million (1 year); and relief items
ACTED	Assessment support; and regional emergency response experts
Action Against Hunger	Emergency response team; and relief items
Airlink	Responder's air transportation support
Arbeiter-Samariter-Bund	Assessment support
Asian Development Bank	US\$ 3 million donation; and relief items
Association of Medical Doctors of Asia	Medical services and team
ASEAN Women's Circle	US\$ 2,000 donation; and relief items

CARE Indonesia	US\$ 15 million donation (4 years); and emergency response team;
Catholic Relief Services	Emergency response team; and relief items
Convoy of Hope	Relief items
DHL	Emergency response team
Direct Relief	US\$ 30 million of medicine and health supplies; US\$ 100,000 donation to MDMC and YayasanBumiSehat; and medical and equipment
Gugah Nurani Indonesia	Assessment support
Hong Kong Red Cross	HK\$ 200,000 donation
HOPE International	Airlift support (Hercules Aircraft);and medical team
Humanitarian Forum Indonesia	315 personnel in field
ICRC	Information and network
International Medical Corps	Emergency response team; and medical services and team
LPBI NU	Medical team
Lutheran World Relief	US\$ 100,000 donation; and relief items
Malteser International	€ 100,000; and regional emergency response experts
MapAction	Remote mapping support
Médecins Sans Frontières	Mental health assessment and support
Mercy Relief	Emergency response team; relief items
Mission Aviation Fellowship	Remote internet connectivity support; airlift support (3 fleet and 1 helicopter)
Muhammadiyah Disaster Management Centre (MDMC)	Medical services
Muslim Aid UK	£ 50,000 donation
NetHope	Emergency telecommunication equipment; and emergency response team
OPEC Fund for International Development	US\$ 400,000 donation to PMI
Open Street Map	Data and information publication
Oxfam	Relief items

Palang Merah Indonesia	IDR 100 million operation fund; emergency response team (494 personnel); airlift support (3 helicopters, and 2 Haglunds); psychosocial support program (PSP); and relief items
Peace Winds Japan	Emergency response team
PERUATI	Trauma healing support
PKPU HI	Assessment support
Plan International	Assessment support
Project Hope	Medical services and team
Qatar Red Crescent Society	US\$ 200,000 donation; and relief items
RedR	Trainings and skill transfers
Red Cross Society of China	US\$ 200,000 donation to PMI
Save the Children	Assessment support; relief items; and education supplies
SOS Indonesia	Relief items
Télécoms Sans Frontières	Emergency telecommunications equipment
The Salvation Army	Pastoral and emotional support
The Taiwan Red Cross	Relief items
Turkey Red Crescent	US\$ 10,000 donation; airlift support (2 aircrafts); and relief items
World Bank	US\$ 1 billion loans
World Renew's International Disaster Response	Emergency response team
World Vision Indonesia	Evacuation effort and assessment support of affected areas
Yayasan Plan International Indonesia	Rapid need assessment; and relief items
UN Agencies	Type of Assistance
FAO	US\$ 200,000 donation
IOM	US\$ 200,000 donation, support the displacement tracking, social welfare, and psycho-social needs
UN CERF	US\$ 15 million donation
UN OCHA	Ground assessment, secondary data collection; basic support examination; and staff and UNDAC members deployment
UNDP	US\$ 650,000 donation
UNFPA	US\$ 100,000 donation; health assessment

UNHCR	US\$ 1 million donation
UNICEF	US\$ 4 million donation; support the displacement tracking, social welfare, and psycho-social needs; and safe schools development
WFP	US\$ 1.5 million donation; emergency response team
WHO	US\$ 3 million donation; 480 medical personnel; and health assessment

Source: (AHA Centre, 2018)

Despite its success of one-door response in the time of the earthquake, it did not regardless of any challenges. The challenges were mainly the result of devastating impact of disasters, such as the wide coverage of the affected areas, the roadblocks due to landslides and infrastructure damages, the unstoppable increase of victims in numbers, limited electricity, and the loss of legal document. The cataloguing, prioritising, and distributing process for humanitarian assistance to the affected-community were hampered (AHA Centre, 2018). Additionally, the lack of human resources also became a challenge in discovering the victims in out of reach areas. However, AHA Centre and Indonesia's Government have managed to address those challenges with the support from other parties.

Disaster Cooperation: Deepening ASEAN integration?

As a regional organization, ASEAN has evolved into a more integrated community, particularly in the economic sector. This integration has brought ASEAN as the 7th largest economic in the world. However, the integration process in ASEAN always comes

with challenges, both from internal or external parties. Becoming the most prone region to disasters is one out of many challenges faced by ASEAN countries to deepen the integration. It is reported that in 2018 alone, the impact of disasters in ASEAN region is affecting more than 27 million populations and costing billions of economic losses, which increased from 2017 (AHA Centre, 2019). In the post-Indian Ocean tsunami in 2004, the international community began to doubt on the relevance of ASEAN in coping with the disaster events that hit its member states. The tsunami and earthquake that caused nothing but devastating impact to the disaster-affected countries also have reformed the disaster law at all levels. The 2005 Hyogo Framework of Action (HFA) becomes the foundation of global, regional and local community in tackling disasters (Rum, 2016). In the same year, ASEAN also passed the AADMER as the proactive and robust regional framework in responding and managing disasters and emergency situation.

Along with the more integrative relations, the regional framework of ASEAN in tackling disaster events has also

progressed from only a piece of legal document into a comprehensive collective action on disaster management and emergency response. At first, ASEAN Leaders have concerned that the mutual assistance on natural disasters is required as it would retard the development process of ASEAN countries. The concerns on natural disaster have intensified after the absence of regional disaster management mechanism in dealing with the Indian Ocean tsunami that hit some ASEAN countries. The AADMER which entered into force in 2009 becomes the tipping point for ASEAN to further strengthen the disaster cooperation in legal and institutional contexts.

ASEAN Leaders realize that the regional development should go hand in hand with the regional resilience to reach the full potential of ASEAN. The development of ASEAN member states and the region as a whole is in relation with the economic interdependence between the ASEAN countries, in which requires a stable and secure region from any threats including disasters. The ASEAN Community is a major milestone in ASEAN history which brings its members closer to integration. The deeper economic integration of ASEAN is signalled by the establishment of ASEAN Economic Community, which somehow affects the strengthening of ASEAN disaster cooperation under the ASEAN Socio-Cultural Community to realize resilient region. ASEAN' efforts to shape overcoming

problems on disaster problems in the region allow each member states to realize their development potential as much as possible in order to increase the spirit of ASEAN friendship.

CONCLUSION

This article has an objective to discuss the roles and challenges of ASEAN Member States in managing and responding to disaster and emergency situation within the region. The history of ASEAN in itself constitutes the commitment of ASEAN Leaders on disaster management. ASEAN has established the legal and institutional framework for regional mechanism on disaster management. As reported by the UN Special Rapporteur, AADMER is a progressive and comprehensive regional disaster law. AHA Centre becomes the important regional institution within the disaster cooperation in coordinating the humanitarian assistance for disasters in the region. The evaluation on the roles and challenges of ASEAN in the Central Sulawesi earthquake and tsunami in September 2018 has yielded two important arguments.

Simm (2018) argued that ASEAN through AHA Centre has failed to proof its role in the Haiyan Typhoon that hit the Philippines in 2013. Many ASEAN countries preferred to deliver the aid bilaterally to the Philippines rather than through AHA Centre. However, the authors assert the

effectiveness of AHA Centre in the earthquake and tsunami that hit Sulawesi. AHA Centre has played an important role to be the first responder by offering humanitarian assistance to Indonesia. Indeed, AHA Centre was able to effectively coordinate the aid which came from both ASEAN countries and the international community including foreign countries, international organizations, humanitarian organizations, and private sectors. The activities such as disaster monitoring, preparedness and response, as well as capacity building are done by AHA Centre in ensuring the better and faster disaster response to the affected community. Secondly, the ASEAN Way of non-intervention seems to be managed by ASEAN through the continuous institutionalization process. ASEAN has been continuously comprehended its disaster cooperation by optimizing the existing legal and institutional framework. The openness of Indonesia's Government to international aid in the aftermath of tsunami and earthquake in Indonesia matters to the success of one-door ASEAN's response.

Finally, this article sought to examine whether or not the ASEAN disaster cooperation matters to the integration of ASEAN. As the neo-functionalist said, the economic integration leads to the increase of interaction amongst actors which results in the collaboration in other functional policy areas. In this context, ASEAN has vigorously

integrated in economic sector by establishing the ASEAN Economic Community. It has caused the more frequent and close interaction and communication between its members, which is to the lower degree integrate ASEAN in political-security and socio-cultural sectors. Consequently, the functional cooperation in certain policy areas is possible, such as in disaster management. Disaster management cooperation in ASEAN is devised under the ASEAN Socio-Cultural Community (ASCC). The occurrence of disasters can destabilize the socio-economy and affect the development of particular disaster-affected country, and/or even ASEAN at large. By that, this sectoral ASEAN cooperation on disaster management ensures the AMS to get full benefits of ASEAN integration – resilience and development. The authors indicated the functional spill-over in ASEAN integration, in which the expansion on functional cooperation amongst ASEAN Member States on disaster management drives the deeper integration of ASEAN.

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REINFORCING NATURAL DISASTER MANAGEMENT IN INDONESIA THROUGH ASEAN SOCIO-CULTURAL COMMUNITY

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ABSTRACT

Natural disasters almost occur in every country in around the world including Indonesia, therefore management of natural disasters is very important in order to minimize the damage and number of victims. Indonesia is one of the countries with the most active volcanoes, both in Southeast Asia and around the world with more than 100 active volcanoes. With so many volcanoes, natural disasters due to volcanoes are inevitable in Indonesia. In addition to natural disasters caused by volcanoes, there are still many natural disasters that occur in Indonesia such as floods, earthquakes, landslides, tsunamis and so forth. Unfortunately, management in dealing with natural disasters in Indonesia is still lacking so that the damage to infrastructure and the number of victims still cannot be minimized properly. The lack of disaster early warning technology also still an obstacle for Indonesia in facing natural disasters. Then, in order minimize damagae and casualties due to natural disaster in Indonesia, it is necessary to reinforcing the management of natural disasters. In the ASEAN Community, ASEAN Socio-Cultural Community is one of pillars along with the ASEAN Economic Community and the ASEAN Political-Security Community, where the issue of natural disasters and the environment becomes an important aspect. Therefore, reinforcing natural disaster management in Indonesia through the ASEAN Socio-Cultural Community is one of the important things to do, beside being able to improve the resilience of natural disaster in Indonesia, it is also can measure how far the ASEAN Socio-Cultural Community influence for disaster management in Indonesia. Furthermore, this can also strengthen Indonesia relations and cooperation with another ASEAN countries and especially advancing sustainable ASEAN Community.

Keywords: ASEAN Community, ASEAN Socio-Cultural Community, Natural Disaster Management, Indonesia

INTRODUCTION

Disaster management is a necessity for every country to be able to reduce the risk of disasters, so it is important for each country to be able reinforcing their own country disaster management. Indonesia is one of the disaster-prone countries in southeast asia. According to ISDR, Indonesia ranks seven in

lthe list of countries most hit by natural disaster in 2005. This is also inseparable from the fact that Indonesia is located between the tectonic plates of Asia and Australia, which are zones of high tectonic activity which often result in earthquakes and tsunamis.

Furthermore, rows of mountains and active volcanoes spread across the islands, which form part of pacific ring of fire ⁴⁷. Hydro-meteorological hazards (floods, thypoons, drought, etc) are the most frequent examples and affect the greatest number of people, whilst geophysical hazards have caused the most death in Indonesia⁴⁸. Taken together, there are many factors that cause frequently natural disaster in Indonesia. Furthermore, given its high exposure to a range of natural and climatic hazards as well as considerable social vulnerabilities. Therefore, reinforcing disaster management, especially toward natural disaster in Indonesia, becomes an important issuess in order to minimize losses and damage caused by natural disaster, epsecially in terms of reducing casualties.

In this article, author limited the study where the kind of disastser that become main focus is natural disaster. This is because natural disaster are one of the most frequent disaster in Indonesia compared to non-natural disatser or human-intervere disasters. In addition, natural disaster usually suddenly and unpredictable, so natural disaster sometimes cause greater damage and casualties than non-naturan disaster or human-intervere disaster. Therefore, study about strengthening natural disaster management in Indonesia become important to study about, especially

in the framework of the ASEAN Community where it is important platform for Indonesia as one of the member states of ASEAN. Furtheromore, disaster management is one of the main aspects in the ASEAN Community, namely ASEAN Socio-Cultural Community.

CLASSIFICATION OF DISASTER

The term of 'Disaster' is already familiar where almost all mass media, both printed media and electronic media have often reported about disaster, both natural disaster and human-caused disaster. There are many definitions about disaster where the term disaster itself owes its origin to the French word "Desastre" which is a combination of two words 'des' meaning bad and 'aster' meaning star. Thus the term refers to 'Bad or Evil Star'. A disaster can be defines as an acident or event caused by nature or human-intervere that cause harm and damage to both human and the environment, such as animals, plants, and other.

Disaster definition by law number 24 of 2007 concerning Disaster Management states that disaster are events or series of events that threaten and disrupt the lives and livelihoods of people caused by natural factors and/or non-natural factors and human factors resulting in human casualties, environmental damage, property losses and

⁴⁷ Suppasri et al. 2012 in Disaster Management

⁴⁸ EM-DAT 2016 in Disaster Management

psychological impacts. Disaster usually occur rapidly, instaneously and indiscriminately thus causing a lot of casualties because the victims did not have time to save themselves from the disaster. Meanwhile, according to United Nations International Strategy for Disaster Reduction (UNISDR) 2009 defines disaster as “a serious disruption of the functioning of a community or a society involving widespread human, material, economic or environment losses and impact, which exceeds the ability of the affected community or society to cope using its own resources.” Then, the Disaster Management Act (2005) defines disaster as “a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.”

UNISDR consider disaster to be a result of the combination of many factors such as the exposure to hazard, the condition of vulnerability that are present and insufficient capacity or measure to reduce or cope with the potential negative

consequences. Furthermore, disaster impact may include loss of life, injuries, disease and other negative effects on human physical, mental and social well-being, together with damage to property, destruction of assets, loss of services, social and economic disruption and environmental degradation⁴⁹.

The disaster can be broadly classified into three classes based on inducing parameters, such as:

- a) Disaster Induced by Natural Processes called ‘Natural Disaster’
- b) Induced Natural Disaster by human interventions, and
- c) Exclusive Human-Made Disasters

Natural disaster is a disaster caused by nature where the natural destruction part of dynamic and cyclic geosystem processes lead to various kinds of natural disaster like Earthquakes, Volcanoes, Landslides, Tsunamis, Floods, Land Subsidence, Torrential rainfall, drought, forest fire, etc⁵⁰. Meanwhile, induced natural disaster is a disaster caused by human intervention. For the past two decades, the human intervention into the earth’s natural processes increased by very rigorously and simply neglecting the demolition of non-renewable natural resources through such interventions⁵¹. The example of the human-intervention disaster such as landslide, land

⁴⁹ National Disaster Management Plan, page 7

⁵⁰ Disaster Management, 2015, Centre for Remote Sensing Bharatidasan University, Tiruchirappalli-620 023

⁵¹ Disaster Management, 2015, Centre for Remote Sensing Bharatidasan University, Tiruchirappalli-620 023, page 25

slips and rock falls along that road sections due to toe removal, rigorous soil erosion in deforested area, flooding in cities/town with ill planned drainages, etc. The last is exclusive human-made disaster where a disaster that exclusively made by only human error, such as stampede, pollutions, accidents, etc.

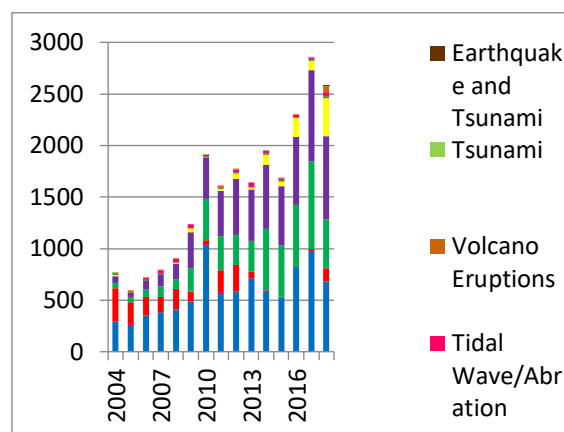
On the other hand, the classification of disasters according to the law number 24 of 2007 concerning Disaster Management states that disasters is divided into 3 types of disaster, namely natural disasters, non-natural disasters and social disasters. According the law number 24 of 2007 states that natural disaster are disasters caused by events or a series of events caused by nature such as earthquakes, tsunamis, volcanic eruptionss, floods, droughts, hurricanes and landslides. Non-natural disasters are disasters caused by events or series of non-natural events which include technological failures, failure of modernization, epidemics, and epidemics. And, lastly social disasters are disasters caused by events or a series of events that are caused by humans which include social conflicts between groups or between community communities, and terror.

DISASTER IN INDONESIA

Indonesia is one of the countries in ASEAN that often experiences natural disasters. The following are data on natural disasters in Indonesia which were recorded

by the National Board Disaster Management (BNPB) during 1998 to 2017. For more details, the following is a graph of the number of natural disasters in Indonesia from 2004 to 2018:

Graphic 1. Number of Natural Disaster in Indonesia in 2004-2018



Source: BNPB Indonesia

From the data above, it can be seen that the number of natural disasters in Indonesia fluctuates annually, where during the year 2004 to 2018 the highest number of disasters was in 2017 with 2853 disasters. Natural disasters in Indonesia are dominated by floods, droughts, landslides and tornadoes as the most frequent disasters in Indonesia every year. In addition to these four disasters, other natural disasters also decorate Indonesia every year such as forest and land fires, tidal waves / abarations, earthquakes and tsunamis, volcano eruptions and climate change. The many types of natural disasters that hit Indonesia also did not escape that Indonesia was indeed located between the tectonic plates of Asia and Australia, which a zone of a high tectonic activity that frequently result in

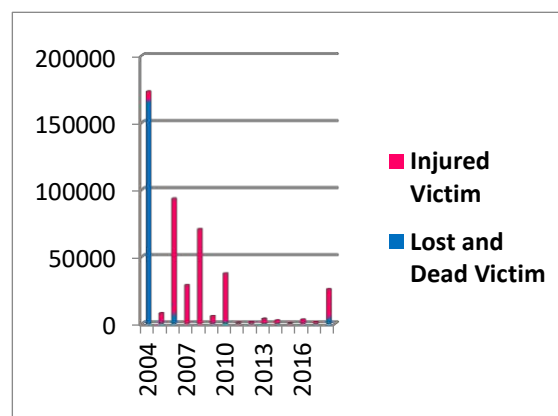
earthquake and tsunami. The number of volcanoes in Indonesia is also another cause.

With the many natural disasters that occurred in Indonesia also caused a large number of victims, both dead and lost victims, also injured victims. Based on data from BNPB, the largest number of victims of natural disasters occurred in 2004 with more than 160 thousand people dead. This is also due to the fact that in 2004 a tsunami occurred in the Indian Ocean, and Indonesia became one of the countries in Southeast Asia with the most fatalities. Even though it does not occur every year, the tsunami has indeed become one of the natural disasters that caused the most deaths in Indonesia. On the other hand, based on the data above, although flooding is one of the disasters that always occur every year in Indonesia, but the floods have relatively not caused many victims. However, from disasters in 2004 until 2018, injuries victims always be found in Indonesia.

The following Graphic 2 shows more details regarding the number of the victims of natural disasters in Indonesia from 2004 until 2018 in Indonesia. Through the chart, it can be seen that every year, natural disasters that occur in Indonesia are increasing. Beside, the number of casualties also happens every year. With the increasing number of natural disasters occurring in Indonesia, government should pay much attention to further improve the management of natural disasters so as to

minimize the casualties, both those who died and injuries or physical damage that occurred. Therefore, disaster management system is an important issue that must be improved and developed every year in Indonesia in order to minimize the number of casualties every year. Additionally, collaboration with various parties also become one of the important things in an effort to improve the disaster management system in Indonesia.

Graphic 2. Number of Victims Due to Natural Disasters in 2004-2018



Source: BNPB Indonesia

DISASTER MANAGEMENT AGENCY IN INDONESIA

Disaster caused by environmental hazards are becoming increasingly costly and severe in Indonesia. Since the Tsunami disaster in Aceh in 2004 which claimed many lives, Indonesia has begun to seriously deal with disaster issues. Disaster management issues in Indonesia are currently held by the National Disaster Management Agency, better known as BNPB, where the institution was formed due to the development of disaster management during independence

until natural disasters in the form of a massive earthquake in the Indian Ocean in the 20th century. The origin of the disaster

management formation in Indonesia from the beginning of its formation in 1945 until now as follows:

Table. 1 Indonesia Disaster Management Agency in 1945-now

No	Year	Name of Agency
1	1945-1966	Relief Agency for the Family of War Victims (better known as Badan Penolong Keluarga Korban Perang)
2	1966-1967	Central Natural Disaster Management Consideration Agency (better known as Badan Pertimbangan Penanggulangan Bencana Alam Pusat (BP2BAP))
3	1967-1979	National Disaster Relief Coordination Team (better known as Tim Koordinasi Nasional Penggulangan Bencana Alam (TKP2BA))
4	1979-1990	National Disaster Management Agency (better known as Badan Koordinasi Nasional Penanggulangan Bencana Alam (Bakornas BPA) for central region Coordination Unit for the Implementation of Natural Disaster Management (better known as Satuan Koordinasi Pelaksanaan Penanggulangan Bencana Alam (Satkorlak PBA) for the province region
5	1990-2000	National Disaster Management Agency (better known as Badan Koordinasi Nasional Penanggulangan Bencana (Bakornas PB)) At this stage, disaster management agencies not only cover natural disasters, but also non-natural and social disasters
6	2000-2005	National Disaster Management and Refugee Response Coordinating Board (better known as Badan Koordinasi Nasional Penanggulangan Bencana dan Penanganan Pengungsi (Bakornas PBP))
7	2005-2008	National Disaster Management Agency (better known as Badan Koordinasi Nasional Penanganan Bencana (Bakornas PB))
8	2008-now	National Board for Disaster Management (better known as Badan Nasional Penanggulangan Bencana (BNPB))

Source: BNPB Indonesia.

From the data above, it can be seen that disaster management agencies in Indonesia have experienced several changes which adjust the conditions of Indonesia at that time. It can be seen that at the beginning of the establishment, in 1945, the purpose of the establishment of disaster agencies was to overcome the victims of the war. In 1966, the aim of the institution changed to address the problem of natural disasters, and in 1990 the aim of the institution was not only to cover natural disasters, but also non-natural disasters and social disasters. Until today, the BNPB covered three types of disasters, namely natural disasters, non-natural disasters and social disasters.

The establishment of the National Board for Disaster Management (BNPB) based the Disaster Management Law 24/2007 (DM Law) and a series of regulations. The DM Law provides a broad mandate to national disaster management agency, BNPB and its role further elaborated in Government Regulation PP 8/2008. Based on DM Law, disaster management system is a comprehensive regulatory system regarding institutions, implementation, work procedures and mechanisms and funding for disaster management.

BNPB is directly accountable to the President, and is led by an appointed Head, a Disaster Management Steering Committee, and a Disaster Management Executive Committee. Based on DM Law (art 9), for sub-national structure of the national

disaster management agency, regional governments have general authority over disaster management in their regions. Furthermore in DM Law (ch.4 part 2, arts.18-25), the BPBD (Regional Disaster Management Agencies) are established by the Regional Governments and are responsible for local level preparedness, response and recovery. Meanwhile, the funding and budget related to disaster management was allocated broadly, including preparedness, response, recovery and DRR. Then based on DM Law (art 6), the national government's responsibility for disaster management under the DM Law shall include allocating a sufficient disaster management budget from the National Budget and also making a budget allocation in the form of a 'ready fund'. In addition (based on DM Law art 8), regional governments are also required to budget for disaster management. Furthermore, It specifies that the National Government is to provide: disaster contingency fund; ready funds; and grant-patterned social assistance funds (DM Law art. 5(3)).

No. Disaster Risk Management (DRM) type is Board DRM system which is DRM type that covers full spectrum of disaster risk management, such as some elements of Disaster Risk Reduction (DRR), prevention, preparedness, early warning, mitigation, emergency management/response, and early recovery. Regarding disaster management, DM Law No. 24 of 2007 stated "Implementation of disaster management is

a series of efforts which include the establishment of development policies that risk the emergence of disasters, disaster prevention activities, emergency response, and rehabilitation”.

The formulation of disaster management from the Act contains two basic understandings, namely: (a) Disaster management as a series or cycle; (b) Disaster management starts from the establishment of development policies that are based on disaster risk and are followed by the stages of disaster prevention activities, emergency response and rehabilitation. According to DM Law No.24/2007, disaster risk is the potential loss caused by a disaster in a certain area and time period that can be in the form of death, injury, illness, life threatening, loss of security, displacement, damage or loss of property, and disruption of community activities.

Furthermore, regarding to DM Law, here are some other definitions related to disaster management:

- a) Prevention activities are a series of activities carried out in an effort to eliminate and / or reduce the threat of disasters
- b) Preparedness is a series of activities carried out to anticipate disasters through organization and through appropriate and efficient steps.
- c) Early warning is a series of activities to give warning as soon as possible to the community about the possibility of a disaster at a place by an authorized institution.
- d) Mitigation is a series of efforts to reduce disaster risk, both through physical development and awareness and capacity building in the face of disaster threats.
- e) Disaster emergency response is a series of activities carried out immediately at the time of a disaster event to deal with adverse impacts, which include rescue activities and evacuation of victims, property, fulfillment of basic needs, protection, management of refugees, rescue, and restoration of infrastructure and facilities.
- f) Rehabilitation is the repair and recovery of all aspects of public or community services to an adequate level in the post-disaster area with the main goal of normalizing or running all aspects of government and community life in the disaster area.
- g) Recovery is a series of activities to restore the condition of communities and living environments affected by disasters by re-functioning of institutions, infrastructure, and advice by carrying out rehabilitation efforts.
- h) Disaster prevention is a series of activities carried out to reduce or eliminate disaster risk, both through

reducing the threat of disasters and the vulnerability of parties threatened by disaster.

Based on DM Law No.24/2007, the implementation of disaster management consists of 3 (three) stages including: a. pre-disaster; b. during emergency response; and c. post-disaster. The implementation of disaster management at the pre-disaster stage as referred to in DM Law includes: a. in situations where there is no disaster; and b. in situations where there is potential for catastrophe. Related to disaster management in pre-disaster situations where there is no disaster occurs include: a) disaster management planning; b) disaster risk reduction; c) prevention; d.) integration in development planning; e) disaster risk analysis requirements; f) implementation and enforcement of spatial plans; g) education and training; and h) requirements for technical standards for disaster management. Then, organizing disaster management in pre-disaster situations where there is a potential for disaster to occur includes: a) preparedness; b) early warning; and c) disaster mitigation.

Meanwhile, implementation of disaster management during response emergency include: a) rapid and precise assessment of location, damage, and resources; b) determining the status of a disaster emergency; c) rescue and evacuate affected communities; d) fulfillment of basic needs; e) protection of vulnerable groups; and f)

immediate recovery of vital infrastructure and facilities. Lastly, implementation of disaster management at the stage post-disaster include: a) rehabilitation; and b) reconstruction. Rehabilitation done through activities such as improvement of the disaster area environment, repair of public infrastructure and facilities, providing assistance for repairing community houses, social psychological recovery, health services, etc. Meanwhile, reconstruction carried out through more development good activities, includes rebuilding infrastructure and facilities, rebuilding community social facilities, re-awakening of socio-cultural life society, etc. Untuk lebih jelasnya, berikut bagan penanggulangan bencana menurut DM Law No.24/2007.

Furthermore, the following are instructions, policies, plans and strategies related to disaster management at the national level in Indonesia such as: a) 2010-2015 National Disaster Plan, b) 2015-2019 BNPB Strategic Plan; c) 2017 National Disaster Response Framework (NDRF). Related to laws, decrees and regulation about management disaster management in Indonesia including:

- a) 2007 Disaster Management Law
- b) 2008 Disaster Management Regulation
- c) 2008 National Agency Disaster Management Regulation PP21/2008

- d) 2008 Disaster Aid Financing and Management Regulation PP22/2008
- e) 2008 Participation of International Institutions and Foreign NGOs in Disaster Management Regulation PP23/2008
- f) 2016 Head of BNPB Regulation No.3 of 2016 Emergency Response Command System (replaces BNPB Regulation 10 of 2008)
- g) BNPB Special regulation on DRM Training
- h) BNPB Regulation on Contingency
- i) 2010 BNPB Guideline 22/2010 on International assistance and Foreign NGOS

INTERNATIONAL COOPERATION IN INDONESIA DISASTER MANAGEMENT

The 2004 Indian Ocean Tsunami become turning point in risk reduction and management in Indonesia. Institutional strengthening is based on the birth of Disaster Management Law 24/2007 (DM Law). The acceptance of the Global Champion on Disaster Risk Reduction award in 2011 from the UN Secretary General to the President of the Republic of Indonesia has attracted the world's attention that Indonesia can be a reference from other countries to study disaster management in Indonesia.

Currently, BNPB is a disaster management focal point in Indonesia and as a means of excellence continues to build partnerships and cooperation with national and international communities that can be carried out in the pre-disaster, emergency response and post-disaster stages. This collaboration can be seen as humanitarian assistance and political aspects (soft diplomacy). Following are several international cooperation agreements between Indonesia and international parties, including:

- a) ASEAN Agreement on Disaster Management and Emergency Response (AADMER).
- b) Subsidiary Arrangement between the Government of the Republic of Indonesia and the Government of Australia concerning the Australia-Indonesia Facility for Disaster Reduction.
- c) Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of the Republic Turkey on Disaster Management
- d) Agreement on the Establishment of the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management.
- e) Memorandum of Understanding between the National Agency for Disaster Management of the Republic of Indonesia and the Presidency of the Council of Ministers of the Italian Republic-Department of Civil Protection on

- Cooperation in the Field of Disaster Management.
- f) Memorandum of Understanding on Disaster Management between the National Agency for Disaster Management of the Republic of Indonesia and the Ministry of Emergency Situations of the Republic of Belarus.
 - g) Memorandum of Understanding between the National Agency for Disaster Management of the Republic of Indonesia and the National Disaster Management Authority of the Republic of India on Cooperation in the Field of Disaster Management.
 - h) Record of Discussion Between the National Agency for Disaster Management of the Government of the Republic of Indonesia and the Ministry of Land, Infrastructure, Transport and Tourism of the Government of Japan on Disaster Management.
 - i) Memorandum of Cooperation between the National Disaster Management Authority of the Republic of Indonesia and the Ministry of Foreign Affairs and Trade of New Zealand on Cooperation in the Field of Disaster Risk Management.
 - j) Memorandum of Understanding between National Disaster Management Authority of the Republic of Indonesia and Caritas Germany concerning Inclusive Disaster Risk Reduction.
 - k) Agreement between the Government of the Republic of Indonesia and ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management on Hosting and Granting Privileges and Immunities.
 - l) Partnership Arrangement between the National Disaster Management Authority of the Republic of Indonesia and the Ministry of Foreign Affairs and Trade of New Zealand on National Disaster Response Framework Development.
 - m) Grant Agreement between the National Disaster Management Authority (BNPB) of the Republic of Indonesia and the Ministry of Foreign Affairs of the People's Republic of China for Strengthening Capacity in Forest Fire Management.
 - n) Subsidiary Arrangement between the Government of the Republic of Indonesia and the Government of Australia relating to the Australia Indonesia Partnership on Disaster Risk Management.
 - o) Memorandum of Understanding between the National Disaster Management Authority of the Republic of Indonesia and the Ministry of Rural & Maritime Development and National Disaster Management for the National Disaster Management Office of the Republic of Fiji on Disaster Risk Management.
 - p) Memorandum of Cooperation between The National Disaster Management Authority of The

Republic of Indonesia and The World Food Programme Concerning Cooperation on Disaster Management.

- q) Action plan for the Implementation of a Memorandum of Understanding between the Republic of Indonesia National Disaster Management Agency and the Republic of Fiji Ministry of Rural and Maritime Development and Disaster Management.
- r) Memorandum of Understanding between The National Disaster Management Authority of the Republic of Indonesia and The Singapore Civil Defence Force of The Republic of Singapore on Disaster Management.

Based on data from BNPB, there are 18 international agreements between Indonesia and international parties in terms of disaster management. Regarding the cooperation agreement between Indonesia and ASEAN in terms of disaster management, it can be seen that there are at least 3 disaster management agreements between Indonesia and ASEAN, namely ASEAN Agreement on Disaster Management and Emergency Response (AADMER), *Agreement on the Establishment of the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management* and lastly is *Agreement between the Government of the Republic of Indonesia and ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management on Hosting and Granting*

Privileges and Immunities. One of the results of the implementation or output of the cooperation agreement between Indonesia and ASEAN is the operation of the ASEAN Humanitarian Association (AHA) Center in the BNPB Indonesia building. Additionally, BNPB is the National Focal Point AHA Center.

DISASTER MANAGEMENT THROUGH ASEAN SOCIO-CULTURAL COMMUNITY

The ASEAN Socio-Cultural Community (ASCC) is one of the three pillars of ASEAN Community. Meanwhile, the other pillars of ASEAN Community are ASEAN Economic Community and ASEAN Political and Security Community. These three pillars of ASEAN Community, including ASEAN Socio-Cultural Community officially adopted in the 13th ASEAN Summit in November 2007 held in Singapore. For more details, here are some events in ASEAN's journey towards the establishment of the ASEAN Community.

Table. 2 Events on the Trip Formation of ASEAN Community

No	Year	Event
1	1967	Bangkok Declaration
2	1997	ASEAN Vision 2020
3	2003	Bali Concord II
4	2007	Cebu Declaration
5	2015	ASEAN Community

Source: ASEAN Community

ASEAN Socio-Cultural Community as one of the three pillars of ASEAN Community

have the primary goal that is to contribute to realising an ASEAN Community that is people-oriented and socially responsible with a view to achieving enduring solidarity and unity among the peoples and Member States of ASEAN by forging a common identity and building a caring and sharing society which is inclusive and harmonious where the well-being, livelihood and welfare of the peoples are enhanced⁵². The ASCC itself is characterised by a culture of regional resilience, adherence to agreed principles, spirit of cooperation, collective responsibility, to promote human and social development, respect for fundamental freedoms, gender equality, the promotion and protection of human rights and the promotion of social justice.

Disaster management is one of the aspects in the ASEAN Socio-Cultural Community of coordination for the mechanism of ASEAN Integration. Furthermore, building disaster resilience nations and safer communities is one aspect of the social welfare and protection areas, which is one of the key focus areas in the ASEAN Socio-Cultural Community Blueprint that substantially implemented from 2009 to 2015. Meanwhile, in the ASEAN Socio-Cultural Community (ASCC) Blueprint 2025 which is a continuation of the ASCC Blueprint 2009-2015 explaining several aspects that are an important part of the current ASCC 2025. A

resilient community with enhanced capacity and capability to adapt and respond to social and economic vulnerabilities, disasters, climate change as well as emerging threats, and challenges become one of the goals of ASCC 2025.

The Bali Declaration on ASEAN Community in the Global Community of Nations "Bali Concord III" during the 19th ASEAN Summit, November 2011 in Bali, Indonesia mentioned about Disaster Management through Socio-Cultural Cooperation. It states strengthening cooperation between the ASEAN Coordinating Center for Humanitarian Assistance on Disaster Management (AHA Center) and relevant regional and international organizations and agencies for prompt and smooth communication in times of disaster as well as enhancing the coordination mechanism to facilitate the flows of the support in a timely manner. Strengthening cooperation in disaster management also stated as well as in the ASEAN Leaders' Declaration on Enhancing Cooperation in Disaster Management during 23rd ASEAN Summit, October 2013 in Brunei Darussalam.

In order to address the current risk and future threats and to adapt to the changing humanitarian landscape, ASEAN Committee on Disaster Management (ACDM) come up with "ASEAN Vision 2025 on Disaster

⁵² ASEAN Socio-Cultural Community Blueprint. ASEAN Secretariat. 2009. Page.1

Management”, which was endorsed by the 3rd ASEAN Ministerial Meeting on Disaster Management (AMMDM) and the 4th Conference of the Parties (COP) to AADMER in December 2015 in Phnom Penh, Cambodia. Furthermore, in the "ASEAN Vision 2025 in Disaster Management" states that further institutionalization of AADMER is strategic element that identifies the need for multi-layered and cross-sectoral governance approach driving integration of the ASEAN Socio-Cultural Community, ASEAN Economic Community and ASEAN Political Security Community on disaster management and emergency response. It can be seen that AADMER being an important element not only in disaster management for ASEAN member states, but also integration for three pillars of ASEAN communities.

AADMER

AADMER becomes an important regional agreement between Indonesia and ASEAN in order to strengthening disaster management system after Tsunami incident in 2004. ASEAN Agreement on Disaster Management and Emergency Response or AADMER is initiated by ASEAN Committee on Disaster Management (ACDM) since early 2004, supported by ASEAN Leaders in the Special ASEAN Summit in January 2005 after the Indian Ocean Tsunami. AADMER which come into force in December 2009, set the foundation for regional cooperation,

coordination, technical assistance, and resource mobilisation in all aspects of disaster management and emergency response.

ACDM is the main sectoral body under AADMER, where ACDM Focal Points are also AADMER National Focal Points. They are Head of National Disaster Management Organisations/Agencies in ASEAN Member States. Furthermore, ACDM is the founding fathers of AHA Centre and serves as Governing Board. Once a year, there will be ACDM meets and ACDM's chairmanship also rotates every year. Furthermore, AADMER is the common platform for disaster management in ASEAN.

AHA CENTRE

AADMER is the legal basis for the establishment of the AHA Center, where the AHA Center is an intergovernmental organisation that formed by the ten ASEAN member states. The aim of the AHA Centre is to facilitate cooperation and coordination of disaster management amongst ASEAN member states. The Agreement on the Establishment of the AHA Center was signed by the ASEAN Foreign Ministers, witnessed by all Heads of State / Government, on November 17, 2011 at the 19th ASEAN Summit in Bali, Indonesia. AHA Centre currently focus on two main areas that is: (a) disaster monitoring; and (b) preparedness and response.

In operationalising its mandate, the AHA Centre primarily works with the National Disaster Management Organisations (NDMOs) of all ten ASEAN Member States. Furthermore, the AHA Centre also partners with international organisations, private sector, and civil society organisations, such as the Red Cross and Red Crescent Movement, the United Nations, and AADMER Partnership Group. Based on agreement on the establishment of the AHA Centre the ASEAN Committee on Disaster Management (ACDM) functions as the Governing Board of the AHA Centre. Therefore, aside from being a governing board from Indonesia, BNPB also as a collaborative partner with the AHA Center in disaster management in Indonesia.

The governing board of the other ASEAN member states such as National Disaster Management Centre (Brunei Darussalam), National Committee for Disaster Management (Cambodia), National Disaster Management Office Department of Social Welfare (Lao PDR), National Agency for Disaster Management (Malaysia), Relief and Resettlement Department (Myanmar), National Disaster Risk Reduction and Management Council and Administrator (Philippines), Singapore Civil Defence Force (Singapore), Department of Disaster Prevention and Mitigation (Thailand) and the last is Department of Natural Disaster Prevention and Control (DNDPC) (Vietnam).

AHA Centre assignments of disaster management include disaster monitoring,

preparedness and response and capacity building. Furthermore, AADMER also requires the development of an effective Standard Operating Procedure for Regional Standby Arrangements and Coordination of joint disaster relief and emergency response operation (SASOP), where in here AHA Centre is tasked to perform works such as:

- 1) Notification of Disaster
 - Analyse the initial report and notify the other party/entity of the disaster
 - Analyse each Situation Report and immediately notify the other party/entity of the significant development (a) periodically, (b) by 10.00 am (Jakarta time)
- 2) Request for Assistance
 - Forward the request to other party/entity
 - Explore other possible assistance
- 3) Offer of Assistance
 - Forward the offer to the receiving party
- 4) Disaster Situation Update
 - Receive report within 24 to 48 hours of arrival assistance at disaster site
- 5) Joint Assessment of Required Assistance
 - Facilitate mobilisation of ERAT
 - Receive update of any plans and findings of joint assessment
 - Receive copy of Contractual Agreement of Assistance
- 6) Mobilisation of Assets and Capacities
 - Facilitate the processing of exemption for provision of assistance and facilities, transit of personnel and equipment
- 7) Demobilisation of Assistance and Reporting

- Receive and update of this development
- Received within 2 weeks of departure from the affected country

The AHA Centre task in above is an assignment carried out by the AHA Centre when large-scale disaster take place in Southeast Asia and AHA performs most of the aspect under SASOP. Emergency Response and Assesment Team (ERAT) is formed to upport the National Focal Points in the initiaphase of disaster.

The AHA Centre has responded to approximately 13 disasters in ASEAN member countries. In the case of Indonesia, the disaster that was responded to by the AHA center that is the Jakarta Flood in January 2013 and the Aceh Earthquake in July 2013, also Mentawai earthquake and tsunami in 2010. AHA Centre also supported by ASEAN Dialogue Partners, such as Australia, China, European Union, Japan, New Zealand and United States of America. In Aceh Earthquake in July 2013, the AHA Center responded to people affected by serves air transport for relief items, shelter tool kits and building family tents for refugees. The first batch of AHA Centre Executive (ACE) Programme was succesfully completed with 13 officers of National Disaster Management offices from 7 ASEAN Member States, which is Indonesia is

included in it. The rest of the other member states are Cambodia, Lao PDR, Myanmar, Malaysia, Thailand, and Vietnam.

STRENGTHENING DISASTER MANAGEMENT IN INDONESIA

In disaster management in Indonesia, the role of BNPB is very important, both in pre-disaster, during emergency response and post-disaster. But unfortunately, in handling disasters in Indonesia there are still some obstacles. The Minister of Finance of the Republic of Indonesia, Sri Mulyani Indrawati states that the obstacles came from several problems. First, Indonesia experienced social economic transformation. Urbanization in Indonesia says that it is one of the fastest in the world because of the migration of people to the city 4.1% per year⁵³. Second, is coordination between the National Disaster Management Agency (BNPB) and the Regional Disaster Management Agency (BPBD). Coordination is not only in the use of the budget, but also knowledge, experience, how to manage when facing emergency, rehabilitation and reconditioning. The third obstacle is increasing capacity, include training provincial and district level BPBD members, and increasing community participation. The last is Indonesia's climate is something that the government cannot deny⁵⁴.

⁵³ Ramadhani Prihatini, Pemerintah Akui Banyak Hambatan Atasi Bencana Alam, 2019. Diakses dari

<https://nasional.kontan.co.id/news/pemerintah-akui-banyak-hambatan-atasi-bencana-alam>

⁵⁴ Ramadhani Prihatini

Meanwhile, according to BNPB states that one of the obstacles in overcoming disasters was the budget. In addition to the budget, the absence of a data center and location (pusdalok) for disasters is limited, the limited of capacity and infrastructure are also obstacles for BNPB and BPBD in carrying out their duties. Another difficulty in dealing with disasters is that disaster management issues have not been prioritized in regional development though Indonesia is a disaster-prone area ⁵⁵ . Furthermore, BNPB also states that the early warning system and mitigation culture have not reached all elements of society, so the number of victims and material damage due to natural disasters is still quite high in Indonesia.

The AHA Center is an ASEAN disaster mitigation agency, but it turns out that the AHA Center still cannot cover Indonesia's weaknesses in terms of disaster management, which is related to disaster mitigation. The AHA Center is also not involved in all natural disasters in Indonesia, where currently the AHA Center is only involved in 3 disasters that occurred in Indonesia. Whereas since the establishment and operation of the AHA Center in Indonesia there have been many disasters in

Indonesia, but only a few disasters where the AHA Center is involved in it. The lack of the AHA Center's role is a concern given that the AHA Center is a key element in the disaster management agreement initiated by Indonesia in the ASEAN platform. Representative of BNPB said that the reason was because Indonesia had not requested assistance from ASEAN. Furthermore, according to disaster expert, Hening Parlan said that it is very rare for a country's government to ask for assistance to ASEAN, so it should be that the "AHA Center can make itself effective to help" affected countries. He added that "not all countries want to open themselves up for other people to enter. That's actually why we have never seen the role of the AHA Center in various disaster responses"⁵⁶.

Therefore, in this case, the improvement of disaster management in Indonesia through the ASEAN Socio-Cultural Community, precisely through the AHA Center, must be done right away considering that the role of the AHA Center is still very minimal in disaster management in Indonesia. Increasing collaboration between BNPB and the AHA Center in disaster management both in pre-disaster, during emergency response and post-disaster must

⁵⁵ Suprpto, Inilah Kendala Atasi Bencana di Indonesia versi BNPB, 2019. This article has been aired on Wartakotalive with the title This Is the Problem of Overcoming Disasters in Indonesia Version of BNPB, <http://wartakota.tribunnews.com/2015/02/11/inilah-kendala-atasi-bencana-di-indonesia-versi-bnpb>.

⁵⁶ BBC News Indonesia, As far as the Role of the ASEAN Disaster Mitigation Agency, AHA Center, 2017. Accessed from <https://www.bbc.com/indonesia/indonesia-42237888>

be improved. AHA Center assignments of disaster management include disaster monitoring, preparedness and response and capacity building must also maximized for special areas in Indonesia, such as areas near the sea or volcano which is a region prone to disasters by tsunamis and earthquakes and volcanic eruptions. Furthermore, AHA Centre must strengthening the relationship not only with the local government, but also of the community so that it can increase the potential for disaster management in the region. Each regional leader should also coordinate or strengthen the relationship with the AHA Center so that it can maximize the potential for disaster management cooperation in the region.

CONCLUSION

From the discussion above, can be concluded that the implementation of management disaster through AADMER was still not the maximum yet in Indonesia. In addition, the role of the AHA Center in order to help overcome disasters in Indonesia is still not optimal yet, where since it was first established, only three disasters in Indonesia have been covered by the AHA Center, while all the remaining disasters have not yet been covered. Therefore, it is important for Indonesia to strengthen cooperation and relations with the AHA Center so that in addition to maximizing the potential of disaster management in Indonesia, it can also improve officer of

BNPB and BPBD skills in disaster management, given that disaster mitigation in Indonesia is still weak and the capacity of disaster management officers still needs to be improved.

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AMIDST CRISIS AND ENVIRONMENT: THE ASEAN TOWARDS ENVIRONMENTAL SUSTAINABILITY IN THE CASE OF TRANSBOUNDARY HAZE POLLUTION

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ABSTRACT

Environmental crisis and issues have already demonstrated the need for closer cooperation and mutual collaboration among states. Regional organizations also address the need for collective and interdependent states actions to solve these issues. One of the environmental issues is the transboundary haze pollution which led the ASEAN to convene and resulted in the ASEAN Agreement on Transboundary Haze Pollution that was signed last 2002 in Malaysia. It is the first regional arrangement in the world that binds a group of contiguous states to tackle transboundary haze pollution resulting from land and forest fires. This paper will discuss and examine the compliance, enforcement, challenges, and issues of the different states, in regards to the ASEAN Agreement on Transboundary Haze Pollution. It will also discuss the effects on the relationship between those states and their actions to balance the national and regional interest when facing that kind of problem. This will give insights on the role of environmental issues on how it curbs or contributes to the integration of ASEAN. The paper argues that the regional cooperation towards environmental within the region is weak that instead of regional action, it became a self-state sufficient and self-reliance to solve the crisis within the region. Thus, result in what kind of identity the ASEAN has towards environmental crisis and sustainability.

Keywords: ASEAN, Environmental Sustainability, Haze, Regional Cooperation, Crisis Management.

INTRODUCTION

The environmental crisis and problems are to be taken as the outcome of historically established social processes, especially production and consumption of natural resources that have been and continue to be the structure set by political and economic institutions. Bookchin (1992) argued that contemporary environmental problems are rooted in an irrational, anti-ecological society and that piecemeal reforms cannot address them. These problems originate in a

hierarchical, class-ridden, competitive capitalist system, a system that nourishes a view of the natural world as a mere agglomeration of “resources” for human production and consumption.

Environmental degradation delivered bad effects on health, challenge the governance, economic setbacks, affects the tourism industry and damaged the daily life of the people in the affected states. Environmental problems cannot be limited to the state borders but also devalue borders

of the state in relation to other state territories. Contemporary environmental geopolitics is an interplay between international cooperation and the self-interest of states (Flint, 2017).

Environmental and pollution spillover can adversely affect the life within the borders of the state, especially where it is located by one municipality in the close proximity of the boundary. Management of territorial boundaries can be jointly managed and often become the catalyst for the creation of regional identity. It needs an interstate or regional action addressing the destruction, prevention or solution to the existing problems. Environmental problems started to acknowledge as a global problem during the 1970s in the Stockholm United Nation Declaration with co-existence of the rise of the green movement. By the 1990s, International Relations started to recognize the environment as a new source for questioning the discipline. Assessing the role of both state and non-state actors in this kind of security problem.

Transboundary haze pollution is an example of an environmental problem that is not limited to one state in the Southeast Asian region. Haze consists of sufficient smoke, dust, moisture, and vapor suspended in air to impair visibility. Haze pollution can be said to be “transboundary” if its density and extent is so great at the source that it remains at measurable levels after crossing into another country’s air space. It affects

the life of the people of almost 10 states in the region and generated problems that affect the health, economic and tourism condition in the region.

The Association of Southeast Asian Nations (ASEAN) was able to establish an agreement that addresses the problem of haze pollution. Last 2002, in Kuala Lumpur, the ASEAN constituted the ASEAN Agreement on Transboundary Haze Pollution. It is the first regional arrangement in the world that binds a group of contiguous states to tackle transboundary haze pollution resulting from land and forest fires.

This paper argues that the regional cooperation towards environmental crisis and problem is weak that instead of multilateral or regional actions, it became a self-state sufficient and self-reliance to solve the problem. This reflects the weak level of institutionalization of ASEAN as a regional organization, with consideration of norms, values, that drives a failing regional action and capability in resolving the problem. Thus, this leads to a slow process of environmental regional integration and failing to address the issue in the soonest time. Giving an impact and weak capacity to the long drive of the ASEAN to achieve environmental sustainability in the region. The absence of regional framework and actions can reflect also on desire-driven actions of different states to maximize one’s own utility function where that function does not include the utility of another party.

Though, in this kind of environmental regime, state power is also used to secure ideal outcomes and enhance the values of specific actors within the system.

The scope and limitation of the paper; do not propose policy solution to the problem of haze pollution and did not use foreign policy analysis to analyze foreign policy actions of each state but merely lean on illustrating the different policies of these four states. This paper is not chronological in nature and will only discuss the important actions of each state where compliance and enforcement are manifested. Countries such as Indonesia, Malaysia, the Philippines, and Singapore will be the center of discussion in this paper. This can give input and illustrate the actions of the ASEAN in achieving environmental sustainability in the region. Important, dependable data from various institutions and scholars shall be exhibited in this paper.

The objectives of this paper are the following: (1) to discuss how the agreement runs, its goal and development; (2) to discuss the compliance and enforcement of those four states; (3) to discuss the challenges and issues currently facing and finally; (4) on how that compliance and enforcement with dealing with the challenges and issues affecting the regime effectiveness and its effects on paths crossing by ASEN towards environmental sustainability in the region.

The paper focused on primary and secondary sources with governmental

documents, newspaper, reports from ASEAN to domestic actions of each state that will be discussed in this paper. Important, dependable data from various institutions and scholars shall be exhibited in this paper. The “Structural causes and regime consequences: regimes as intervening variables” by Stephen Krasner will be used as a framework in this paper

STRUCTURAL REGIME AND THE ASEAN AGREEMENT ON TRANSBOUNDARY HAZE POLLUTION

A regime, as defined by Krasner (1983), is “principles are beliefs of fact, causation, and rectitude. Norms are standards of behavior. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice”. Regimes must be understood as something more than temporary agreements that change with every shift in power or interest and it was a set of governing agreements.

Krasner (1983) explored and explain the development of regimes. As he identified the basic forces that can develop regimes. These are interest, power, and values. In his *Egoistic self-interest* explanation of the development of regime, he refers to it as the desire to maximize one’s own utility function where that function does not include the utility of another party. The second basic causal variable he used to explain the political power in which he divided into two approaches. The cosmopolitan and

instrumental where powers are used to secure ideal outcomes for the system as a whole. Second, the particularistic and potentiality where power is used to enhance the values of specific actors within the system.

The norms and principles are critical in defining the characteristic of any given regime. It influences the regime in particular issue-area. Sovereignty stood as the most important diffuse principle in international relations. Knowledge creates a basis for cooperation by illuminating complex interconnections that were not previously understood. Knowledge can not only enhance the prospects for convergent state behavior and it also guides public policy designed to achieve the social goal (Krasner, 1983).

The assumption is that as early as 1985, the environmental regime in Southeast Asia started to be seen as ASEAN began to acknowledge the haze pollution as a regional concern that needs to be undertaken in that year. ASEAN started to adopt different agreements over time such as the Agreement on the Conservation of Nature and Natural Resources, the 1990 Kuala Lumpur Accord on Environment and Development and the 1992 Singapore Resolution on Environment and Development. The results of the first Workshop on Transboundary Pollution and Haze that was held in Indonesia in 1992, was the acknowledgment of haze pollution as one of the environmental problems in the

region. The 1994 ASEAN ministerial meeting on the environment begins the visible efforts to combat haze pollution. The effort was driven largely by Singapore, which pushed for multilateral cooperation to address the problem because it realized that it could do nothing further domestically to reduce the impact of haze (Varkkey, 2014).

It was followed by different agreements such as the Cooperation Plan on Transboundary Pollution in 1995, where Haze Technical Task Force (HTTF) is the outcome. The establishment of ASEAN ministerial meeting on Haze in 1997, leads to formulate the Regional Haze Action Plan (RHAP) to provide further commitment and detail to the cooperation plan. In 1999, the zero-burning policy was established by ASEAN urging the member states to implement necessary laws and regulations to enforce it.

On June 10, 2002, in Kuala Lumpur, Malaysia, ASEAN member nations instituted the ASEAN Agreement on Transboundary Haze Pollution. This agreement was the first regional proposal in the world that aimed to mitigate and prevent haze pollution through concentrated nationwide efforts and intensified regional and worldwide cooperation (ASEAN Secretariat, 2002). It aims to prevent and monitor transboundary haze pollution resulting from land and forest

fires.⁵⁷ The agreement came into force on November 25, 2003, and as of January 2015, the 10-member states of ASEAN have signed and ratified the agreement.

The agreement advocates doing national and regional efforts⁵⁸ to combat haze pollution, ensuring the responsibilities of the states to do no harm and cause no damage to the environment within the activities of their jurisdiction⁵⁹. It can be assessed in the agreement the non-binding obligations because of the absence of sanctions and penalty clauses. The agreement also promotes technical cooperation between the member states. When it comes to dispute, the agreement advocate that states should take consultation or negotiation to solve the dispute.

Beyond the technicality and the establishment of the agreement in 2002, haze pollution continues to be experienced until last 2015. In 2015, haze emanating from Indonesia blanketed the country as well as Malaysia and Singapore for more than seven weeks, causing thousands of schools to close in Malaysia and severe repercussions for wildlife in Borneo (Leong, 2016). Reports suggest that the 2015 haze cost Indonesia alone around US\$ 16 billion

losses (Hami, 2017). Most burning has occurred on the Indonesian island of Sumatra and on the island of Borneo, which compromises the Indonesian province of Kalimantan and the Malaysia provinces of Sabah and Sarawak.

This is to state that the 10 states who ratified the agreement do not constitute an effect that can result to limit the haze pollution. But it is important to note the changes of behavioral actions of Indonesia, as the last country who ratified the agreement last 2014, and other states mirror the effectiveness of the ASEAN agreement.

COMPLIANCE AND ENFORCEMENT

Compliance means that the actor's behavior conforms to an explicit rule of a treaty (Chaves, 2003). A change of behavior can best be observed in the level of compliance to the regime rules indicating the willingness of members to adjust their behavior to the recommendations of the regime (Litta, 2012). Observance of rules is the most commonly used measure of regime effectiveness (Vogler, 2000). Compliance is used as an indicator to describe changes in the cognitive settings of involved actors

⁵⁷These occurs during hot and dry seasons that create ideal conditions for forest and fires. Haze increasingly occurs in peat lands. Peat land is boggy, abandoned land with acid grounds consisting of partly decomposed vegetable matter. Sixty percent of the world's tropical peat lands are found in Southeast Asia.

⁵⁸ Article 2 states "to prevent and monitor transboundary haze pollution as a result of land

and/or forest fires which should be mitigated, through concerted national efforts and intensified regional and international cooperation

⁵⁹ Article 3 states that "the parties have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment and harm to human health of other states or of areas beyond the limits of national jurisdiction.

(Jacobson & Brown, 2003). The state might comply because of their broader concern with their reputation and their long-term interest in a rule-governed institutional system. The states can prepare and establish enforcement frameworks and programs and charge members to implement obligations in multilateral environmental agreements (UNEP,2006).

Indonesia's actions are very critical towards the regional agreement. Indonesia sets to be the most producers of haze pollution in the region because of the production of oil palm plantations. The undeniable influence and because of corruption within the parliamentary, Indonesia took almost 12 years to ratify the agreement. Indonesia signed it last September 2014 and it was deposited with the ASEAN Secretariat on January 20, 2015.

Indonesia's signature would be an important symbol to express the country's acknowledgment of the problem and its serious will to solve it. Indonesia has the interest to improve its actions against haze pollution because they have caused their neighbor's many troubles and also within its own territory. The proclamation of Balthasar Kambuaya, the environment minister, stating that "it is the right step for Indonesia to show its seriousness in tackling transboundary haze pollution" (Thuzar, 2016). Thus, there is the necessity to improve the mitigation within their own territorial boundaries.

The motivation behind the Indonesian move to finally ratify the agreement seems to be twofold, express the country's desire to both strengthen its international profile and react to the increased international attention after the record-high levels of haze pollution in 2013 (Heilmann, 2015). Indonesia grabbed the chance to end the haze issue which caused a diplomatic disturbance at almost every ASEAN meeting regarding forest fire and haze pollution.

The intention of the central government to end haze pollution seems to be ineffective at the ground-level. Although, the action of the central government, as President Jokowi merged the ministry of forestry and the ministry of environment is a good move to ensure coordination between two important sectors. Its effectiveness in reducing deforestation and haze still remains to be seen. Weak central coordination among different agencies dealing with issues will also confine implementation. Indonesia has taken some steps to address the haze crisis. Last 2015, the Indonesian police have arrested executives from seven companies suspected of slash and burn tactics (Thuzar,2016). Even though the agreement entered into force since 2003, Indonesia's late ratification causes Singapore and Malaysia to do own progressive actions in combating haze pollution. It seems that Indonesia was driven to act because of the haze bill passed in Singapore.

Singapore's government statistics estimated that haze cost the Singaporean economy between US\$9-10 billion, with an additional US\$1.5 million for assisting with firefighting in Sumatra in 1997. Singapore as the most vulnerable to the haze pollution sets to initiate the creation of the regional agreement. The economic impact of haze drove the parliaments of Singapore to enact a domestic proposal that can punish and sanctions the one who produces haze pollution, where the ASEAN agreement lacks the most. This is one of the actions of Singapore in dealing with the haze pollution from the time they ratified the agreement last January 13, 2003. The government of Singapore has shown concern by advancing the Transboundary Haze Pollution Bill to keep businesses answerable for their activities that cause haze in Singapore (Bay, 2014).

On September 25, 2014, Singapore's new transboundary haze pollution act came into operation. The act is an initiative piece of legislation that creates extraterritorial liability for entities engaging in setting fires abroad that cause transboundary smoke or haze pollution in Singapore. This cause to exist because of the serious haze pollution that hit Singapore in June 2013 that came from Indonesia. Apart from criminal liability, the act also creates statutory duties and liabilities (The Online Citizen, 2017).

It was a clear move for Singapore that it will not tolerate any actions that can cause

haze pollution. Foreign Minister, Vivian Balakrishnan, stated that the act "is not intended to replace the laws and enforcement actions of other countries, but it is to complement the efforts of other countries to hold companies to account". He added that "we, in Singapore, cannot simply wait and wishfully hope that the problem will be resolved on its own. The Singapore government would want to send a strong signal that we will not tolerate the actions of errant companies that harm our environment and put the risk of the health of our citizens" (Koh, 2016)

The transboundary haze pollution act lays out an attempt to criminalize and attach civil liability on agribusiness companies involved in using fires outside Singapore, whether be Singapore linked companies or otherwise. The act involves sanctions clause with fining the convicted entity not exceeding S\$ 100,00 (US\$ 80,000) for every day or part thereof that there is haze pollution in Singapore (Singapore Gazette, 2014). The failure of the entity to do, cause an additional fine not exceeding S\$50,000 (US\$40,000) for every day or part thereof that the entity fails to comply with the notice (Ibid, 2014). Overall, the court must not impose an aggregate fine exceeding S\$ 2 million (US\$ 1.6 million). However, it must be noted that jurisdiction of the act extends only to legal persons and entities and does not refer to state responsibility.

The seriousness of Singaporean government to combat haze pollution resulted to serve notices to six companies linked to the fires, most commonly caused by palm plantation being set ablaze after harvest. Two of the companies responded and one director was given a warrant for arrest (Leong, 2016).

Singapore's action towards the transboundary haze pollution took into consideration by the Malaysian government. The haze pollution posed problems not only in the maritime and aviation sector of Malaysia, but it also affects and resulted to the temporary closure of schools in Sarawak, Selangor, Negri Sembilan, Malacca, Kelantan, and in Kuala Lumpur and Putrajaya. Major outdoor events were canceled due to the poor air quality. In 2015, Malaysia studying the possibility of also introducing a law to punish companies' responsibilities for haze-causing in Indonesia. But due to Singapore's experience prompted Malaysia to reconsider. Due to the assessment of the Malaysian government, it came to decide that diplomacy is a better option than enacting a law similar to Singapore's Transboundary Haze Pollution Act.

The difficulty of Singapore's actions with their own act gave Malaysia to continue the initial plan. Malaysia's minister of natural resources and environment Wan Junaidi bin TuankuJaafar proclaimed "if you look at the experience Singapore had the

implementation of the law is not simple as we consider it to be because you need the person to be in Singapore before you can take action." Malaysia gives much respect in the sovereignty of the other states in conducting the mitigation of haze pollution. As additional, Minister Jaafar said, "we work together to overcome any problem, but we can't bulldoze through... we must respect others sovereignty" (Leong,2016).

Malaysia's actions suggested that they want to maintain the country's good image; avoid discouraging tourism and maintain good relations with Indonesia and ASEAN as a whole. The strong respect of Malaysia in sovereignty manifested in their argument too strongly oppose the use of satellite data for haze monitoring purposes at the regional level during the early years of haze.

Even before the Philippines ratified the ASEAN Agreement on Transboundary Haze Pollution, the Philippine Clean Air Act of 1999 (RA 8749) already came into force. The act was signed into law on July 27, 1999. Republic Act 8749 is an act providing for a comprehensive air pollution control policy and for other purposes was landmark legislation in Philippine environmental protection. The law promotes the need for a clean habitat and environment by providing for an integrated air quality improvement framework.

The Philippines reaffirms its commitment to the 19 June 1990 Kuala Lumpur Accord on Environment, the 1995

ASEAN Cooperation Plan on Transboundary Pollution, and the Hanoi Plan of Action, all of which call for the cooperation among ASEAN member-states in the prevention and mitigation of land and forest fires and haze, thus sponsoring this bill. The Philippines was the second to the last country to ratify the agreement. It can be interpreted that the prior creation of the agreement, Philippine has its own domestic policy in dealing with air quality improvement. This result in the late ratification of the Philippines to the agreement. Though, it was already acknowledged by the government in 2007 that there was a necessity to address this issue (ASEAN, 2007). Different advisories were published and announced for public safety when haze pollution reached the Philippines in 2015 (Gazette, P.O., 2015).

Regional actions can be manifested in the establishment of ASEAN Specialized Meteorological Center (ASMC) based in Singapore. It performs monitoring and assessment of land and forest fires and the resulting smoke haze. The ASEAN Transboundary Haze Pollution Control Fund (Haze Fund) was established for the implementation of the ASEAN Agreement on Transboundary Haze Pollution (ATTHP). The ASEAN member states have agreed that each member will contribute to the fund to achieve an initial seed fund to support relevant activities to implement the agreement and for emergency uses.

ISSUES AND CHALLENGES

It cannot be ignored the role of the lobby groups who are trying to influence the state actions towards the regional agreement. As these groups, such as the oil palm operators and companies, are the mere affected of the agreed actions as this was wanted to address the created problem by their operations. The creation and decision of the state actors had been tried to influence or it already influenced by those sectors in dealing with the ratification, implementation or preventing those unethical productions of the companies. And it has also a big question in the enforcement and jurisdictional decision of the courts towards the violators. These practices from the lobby group, political institutions and judiciary were arguably the issues that are why combating haze pollution has become a difficult task in the region.

In the case of Indonesia, the strong influence of the lobby group in the oil palm operators is one of the reasons why it took almost 12 years before it ratifies the agreement. The main players in this lobby group are the Indonesian Palm Oil Association (Gabungan Pengusaha Kelapa Sawit Indonesia or GAPKI) and the Indonesian Sustainable Palm Oil Commission. These groups dominate recommendations and changes in rules and regulations in favor of industry's interest (Furuoka & Nazeer, 2017). The Indonesian Palm Oil Association is a powerful industry

lobby group with close links to many ministers and parliamentarians in Indonesia and has the influence in the decision on the late ratification of Indonesia. One major concern of GAPKI was the fact that the agreement allowed for additional protocols, and GAPKI was worried that this may include enforcement and liability clauses related to peatlands and use of fires, which would threaten the sector's interests and practices.

The non-ratification status of Indonesia doesn't mean that their actions in trying to punish violators are not within the practice of the institution. As a result of the problems, Indonesia tries to hold accountable the oil palm companies and executives at least before the agreement was created until the last year before the ratification of Indonesia in 2015. As of 1998, there are 176 companies identified to the forest fires with 5 prosecuted but only 1 found guilty with the unknown verdict in Indonesian courts (Tan, 2015).

In 2000, an Indochinese-Malaysian joint venture company, PT Alei, was prosecuted for starting fires. The manager was sentenced to 2 years' imprisonment and a 250 million Rupiah fine (US \$22,500). On appeal, the sentence was reduced to 5 month's imprisonment and a 100 million rupiah fine (US \$9,000). this was upheld by the supreme court in 2002. In 2014, PT Kallista Alam was found guilty in a criminal case that the same company's director was

guilty of illegally clearing peat forest. The company's case is currently in an appeal on both rulings, and it is too early to celebrate the case as a victory for strict enforcement given the fact that the supreme court has tended in the past to reduce penalties dramatically (Tan, 2015).

It can be seen that the rampant influence of the lobby group after the ratification may still and continue to exist in the decision case for the violators as it tends to minimize the punishment for the convicted and found guilty. It seems the laws in Indonesia have simply and impotent enforcement against the majority of the operators with the few cases taken to hold accountable the violators with inadequate and ineffective penalties. In this continuing practice, Indonesia's failure to live up to its obligation to prevent transboundary haze pollution is inevitable to see in the future.

The economic interest of Malaysian and Singaporean investors in Indonesia oil palm plantations has become an issue for not raising the state responsibility in dealing with the problems. As of 2009, Malaysian and Singaporean companies hold more than two-thirds of Indonesia's total plantation area (Tan, 2015) and in fact, Malaysia is the biggest investors in Indonesian oil palm sector with estimation of 162 plantations with linkages to Malaysian companies. In this matter, oil palm has become an increasingly important

economic sector for Indonesia, Malaysia, and Singapore (Pichler& Brad, 2011).

In the matter of interest among the companies and elites in the Malaysian government, the government appears to protect the oil palm operations in Indonesia. As for example, the Malaysia government lent its support to the advancement of the Malaysian oil palm plantation firms in Indonesia and set-up lobby group for this purpose. Lobby group includes the Malaysian Palm Oil Association, the Malaysian Palm Oil Board, and the Malaysian Palm Oil Council. Malaysia's significant role in the Indonesian Oil Palm industry and also because of the closely associated companies to the Malaysian ruling elite, the Malaysian government arguably is inclined to protect and defend the actions of these firms in Indonesia (Varkkey,2012).

The economic interest of the oil palm plantation sector is the leading actor that limits the ASEAN to fully execute and remain adhered to the prevailing existing policy condition that cannot resolve haze pollution and can limit environmental cooperation within the region. Conflicting interests might hinder cooperation. This paper suggests that the protection of these elite interests was more important than responding to environmental issues.

ASEAN IN ENVIRONMENTAL INTEGRATION AND SUSTAINABILITY

In the underlying structure of regime defined by Krasner, environment regime in Southeast Asia exists. As the states perceive themselves that constraint by principles, norms, and rules that prescribe and proscribed the varieties of their behavior. ASEAN Agreement on Transboundary Haze Pollution is a set of rules and decision-making procedures that are a constraint in the principles and norms. It is agreement that seeks to prevent and solve haze pollution in Southeast Asia without the existence of penalty clauses as the manifestation of ASEAN Way. The agreement resulted in the dynamics and development of power and interest in the region regarding environment problem.

It can be said that the domestic institutional structure and actions of specific state constrain the full implementation of the regional agreement but initiated critically demanded actions for another state to solve the problems. That the regional solution becomes self-reliant actions for the state variable to solve the problem and regional reliance becomes weak. Although there are some regional actions such as the ASMC and Haze Fund, it didn't directly address the root causes of the haze pollution in the region and escalation of haze pollution is inescapable.

Each state discussed tried to maximize one's own utility functions and the usage of

the natural resources for economic profit. It witnessed in the case of Indonesia, Malaysia, and Singapore. As much as Indonesia tried to mitigate haze pollution, it difficult for them to compromise the economic interest and it also deals with the weak capability to mitigate haze pollution. Singapore and Malaysia that owned almost two-thirds of the industry to it linked companies that have its own measurement of actions. There were attempts to sustain and protect the existing production and piecemeal reforms that don't effective in combating haze.

In the manner of political power, it assumes that states focused on particularistic and potentiality approach as they used to enhance and protect the values of oil palm operators. These lobby groups from the oil palm operations are one of the reasons why Indonesia took almost 12 years before it ratifies. This sets to limits state actions where it comes to mitigation not only for Indonesia but also for Singapore and Malaysia as oil palm operations have become an increasingly important economic sector for them. There were some juridical executions and punishments made but the success is yet to be seen in legal battle against companies concerning this industry.

Regional actions such as the establishment of ASEAN Specialized Meteorological Center and the ASEAN Transboundary Haze Pollution Control Fund was kind of cosmopolitan and instrumental approach of the regime that used to seek

ideal outcomes as a whole. But these regional actions can't resolve and address the root causes. But, importantly, it gives knowledge for the state on how public policy design should be used to address and solve haze pollution.

The adherence to the norms and principles in ASEAN appears to be the challenge for the state members in solving and preventing the problem at the soonest possible. Consistent with the ASEAN members' commitment to the norm concerning the peaceful settlement of disputes, but it represented a departure from avoidance of formal mechanisms, characteristic of the ASEAN Way, and a detraction from its norm of seeking regional solutions to regional problems (Acharya, 2001).

The ASEAN Way has been criticized for creating a tendency to filter out or exclude contentious issues from the formal multilateral agenda and was criticized for being responsible for ASEAN's weak response to the crisis. This result towards conflict avoidance rather than conflict resolution that led to the conflict to not address properly and critics have found it to be of limited value as conflicts may reappear in the future.

As the states choose to adhere to the ASEAN Way when dealing with the haze to preserve crucial economic interest and the decision to not further undertake to call and pressure state, this might have resulted to be

more protective when it comes to elite corporate interest, preserve state sovereignty and the failure and ineffective decision on the haze issue. Regional environmental governance can be instrumental in finding solutions to collective action problems, this kind of action in the context of ASEAN does not work when dealing with environmental challenges such as fires and haze this might because of the ASEAN Way practices in the region. Aggarwal and Chow (2010) insist that ASEAN states 'undoubtedly desire the elimination of the haze problem' but were unable to balance this desire with their stronger desire to comply with broader ASEAN Way norms of non-interference and decision making by consensus.

This manifest to the collective problem-solving methods when it tries to solve the natural resources issues, as other state decided not to pressure members in their actions and adhere to the collective interest and norms. ASEAN might struggle in initiatives in respecting their neighbor's government right to self-determination and cooperatively mediating the haze situation which ultimately affects the entire region. The outcomes of this practice seen as ineffective in the result, when it comes to a long-term solution and workable solutions for haze in the region.

The ASEAN Way set to hinder the full implementation of the agreement as it limits the state intervention to stop and limit the

industry that produced haze pollution. That also set the limit to challenge and pressure state actions in regard to the problems. Acharya (2011) argued that the ASEAN has difficulty in handling such transboundary problems because of the old norm of non-interference. And try to question that what was morally and functionally justified approach in the past seems increasingly less so in the era of complex global and regional interdependence ASEAN finds itself in (Acharya,2011).

Norms and principle set to define the characteristics of the environmental regime but assessing it in Southeast Asia, it lacks effectiveness in combating haze pollution. The regime might success in respecting and maintaining the sovereignty of each country. But it limits and it is one of the hindrances for the effect of the environmental regime and limits one state actions like the Philippines to act accordingly to what is necessary to combat haze. That norms and principles become a burden that the ASEAN needs to find alternative ways, to address the increasingly and unacceptable damage of haze to the human race.

It can situate the failure of the region to cooperate and have a regional framework in this considerate regional problem. It initiates an act of critical demand for countries that are concerned and independent enough to solve problems. What exists in the initial escalation of the problem is the person who has the desire to

make regional actions to overcome the problem. This also led them to enact domestic law to counterpart the regional agreement who lacks the binding agreement. This demand for action was due to the failure of the Indonesian government to address and mitigate haze pollution that causes damages not only in their own territoriality. The economic interest was in stake in this kind of issue for Indonesia. The interest to profit for the businesses who are in this industry that affect how the government of Indonesia address this on their own. The strong demand of the system perpetuated by the regime and the demand of other states, made Indonesia ratify to the agreement for their image building in the international community. Though, the problem seems to exist because of the weak capability to mitigate haze, the behavioral changes and ratification of Indonesia to the agreement has to be the effect of the regime.

Malaysia's strong adherence to the norms and values, especially in ASEAN Way, shows the domestic and different action of it to the concerns state here. As Singapore created their own domestic counterpart, Indonesia wanted to strengthen their enforcement, Malaysia still has a reservation in this agreement because of the respect on sovereignty and non-intervention and promoting negotiation as the last resource for a dispute. The Philippines also has different concern and different framework to combat the haze. Its own domestic policy hampered the state to ratify in the earlier

period of creation of the agreement. This reflects the weak level of institutionalization of ASEAN as a regional organization. The non-binding obligation of the states rooted in the norms and values leads to a weak and slow regional integration dealing with the environment issue. Failure to have a clear and binding regional framework and failure to make ASEAN as a strong institution will curb and will continue to hinder the ASEAN to the path towards environmental sustainability in the region.

CONCLUSIONS

The paper discussed the different actions towards the transboundary haze pollution in the Southeast Asian region. From institutional actions of ASEAN to different domestic counterpart and policy of the four states just to situate how the region address the problem. A regime can be seen in the region. It can be concluded that there is a failure to integrate and initiate a regional action that permitted and determine how the concern states resulted to act differently to each other. Aside to the absence of non-binding obligation in the agreement, norms and values curb the way states will act and address it regionally. This reflects the weak institutionalization of the ASEAN thus deliver a weak integration and failure to achieve environmental sustainability in an increasingly integrated and interdependent world.

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RETHINKING THE ROLE OF LOCAL GOVERNMENTS IN SOUTHEAST ASIA: THE CASE FOR LOCALIZATION OF REGIONALISM FOR A SUSTAINABLE ASEAN COMMUNITY

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ABSTRACT

Two decades back, the vision set by Southeast Asia's leaders was clear: place the Association of Southeast Asian Nations (ASEAN) at the center of regional architecture by creating a community integrated on the aspects of economy, politics and security, and socio-cultural affairs. The vision became more ambitious and urgent when leaders agreed to accelerate the process of integration from 2020 to 2015. The regional organization however has yet to see fully the fruits of its labor. The challenges in Southeast Asia remain the same, but are also evolving—glaring socio-economic inequalities, poor urban centers, and serious development gaps in terms of health, education, and housing. It is also a site of major flash points, examples include territorial disputes and internal armed struggles. Finally, there is an increasing push to revisit the organization's consensus decision-making as it hampers significant advances to regional governance. Such a backdrop calls for numerous courses of action, and the paper points to one of Southeast Asia's strongest points—local governments as partners for sustainable ASEAN Community. Two important insights in this paper support this argument: one that ASEAN is home to states that are organically localized and community-based, as evidenced in pre-colonial history but also as reflected in majority of the decentralized structures of government in the region. Second, existing mechanisms of city-to-city cooperation are low-hanging fruits that should be harnessed to accelerate deeper regional integration. These activities bring to the fore broader public awareness and participation as LGUs enjoy proximity and is the frontline agency for service delivery. A sense of public ownership is essential to have a firmer grip on regional community-building, and LGUs are viable stakeholders for effective regional development and growth.

Keywords: cities, ASEAN community, regional integration, multi-level governance.

INTRODUCTION

When the Association of Southeast Asian Nations (ASEAN) first embarked on the goal of regional community-building, the first question was that of feasibility. Can nation-states with diverse culture and nascent sovereignty be brought together, agree on

shared principles and values, and construct a common identity? Assuming that such an ambitious goal can be done, an equally provoking question is its sustainability. Could the project extend beyond the terms of the leaders who worked on it, and subsequently be passed on to the succeeding

generations of Southeast Asians? The questions are valid as it attempts to parse rhetoric and beautifully crafted statements into actual results and concrete actions. They are significant at a time where ASEAN recently celebrated its 50th Founding Anniversary, a rare milestone in regionalism after several economic crises that struck the European Union and then Brexit⁶⁰.

What compounds the question of sustainability is the fact that the Southeast Asian region has been grappling with the same political and socio-economic challenges, and that these have evolved into more pressing concerns in need creative responses. After all, the heart of the regional community-building project is a better life for all of Southeast Asia, one that would bring about shared values and strengthen common identity in the future.

⁶⁰ ASEAN celebrated its 50th Founding Anniversary on August 8, 2017. ASEAN is at the center of global discourse, particularly the sustainability of the organization following the British Exit (Brexit) from the European Union on June 23 2016. It brings to the fore the strength of supranational organizations and regional aggrupations as effective mechanisms for coordinated governance and stronger ties. It also comes at the height of populism and newer forms of leadership that were arising across the globe, as well as the observed phenomenon of democratic regression at least in Southeast Asia (for a more extensive discussion, see Joshua Kurlantzick, "Southeast Asia's Regression From Democracy and Its Implications," *Working Paper for Council on Foreign Relations* May 2014).

⁶¹ ASEAN has been a strategic peacemaker in several critical events in the region. Examples include Vietnam's invasion of Cambodia in 1978, managing the political stalemate in Cambodia between Prime Minister Hun Sen and first Prime Minister NorodomRamariddh in 1997, settling the

On several accounts, the question of feasibility has been answered. In 1967, ASEAN was founded on a vision of strength and collaborative regional governance. Overtime, the power of the regional organization expanded and deepened, welcoming five (5) more states into its fold, and even triumphing over the ideological battles that once marred the history of nations. It has transcended from a mere "talk shop" towards an organization committed to addressing the ills that beset its region⁶¹. It also took bold steps towards introducing reforms particularly through the involvement of public intellectuals, civil society organizations (CSOs), and other non-state actors into broader community-building endeavors⁶².

Sustainability is a different and more challenging question. Should it be seen as a

PreahVihear border dispute between Cambodia and Thailand in recent years.

⁶² ASEAN established its disaster and relief operations office, the ASEAN Humanitarian Center (AHA Center). It also expanded the tracks for engagement which now included CSOs through Track 3, the ASEAN Peoples' Forum, and the ASEAN Intergovernmental Commission on Human Rights (AICHR) (accessed: <https://asean.org/mobilising-civil-society-leaders-across-asean-for-greater-regional-integration/>). While these are bold steps towards broader engagement, several CSO leaders believe that much has to be done to fully realize inclusivity in the regional organization. For instance, the ASEAN bureaucracy remains lengthy and cumbersome before reaching a consensus among its members; and governments remain wary of CSO inclusion in several discussions particularly on controversial issues of human rights and environmental protection (accessed: <http://seajunction.org/asean-governance-role-civil-society/>).

hurdle to overcome or a milestone to be achieved for a relatively young organization such as ASEAN? Much like any development reforms, the sustainability of regional community-building can be assessed on two prongs: first, if it is operational and capable of gaining concrete accomplishments; and second, if there is public ownership which stems from increased awareness and participation in activities related to regional community-building. At this rate, one could observe that regional integration is operational and marked with several accomplishments, but the more important milestones and broader public ownership would be further accelerated if other stakeholders are actively involved.

The paper proposes a larger and more integrative engagement with local government units (LGUs) relative to the regional community-building project as they are strategic and effective in this aspect. Two important insights support this argument: one that ASEAN is home to states that are organically localized and community-based, as evidenced by pre-colonial history but also as reflected in the majority of the decentralized structures of government in the region. Second, LGUs have long begun the process of community-building through the enduring practice of sisterhood, twinning cities, and other forms of city-to-city cooperation; ASEAN just has to recognize and promote its potential. These activities bring to the fore broader public awareness and participation as LGUs enjoy proximity

and is the frontline agency for service delivery. A sense of public ownership is essential to have a firmer grip on regional community-building, and LGUs are the best vehicles to undertake that goal.

The paper is divided into three major sections. The first section characterizes ASEAN's regional community-building project, and how it has operationalized the project after 2015. It attempts to discuss how ASEAN has fared in terms of sustainability using the two standards presented: operation ability and capability of gaining concrete accomplishments; and awareness transcending to public ownership. In the previous years, ASEAN has been focused on state-to-state actions. Particularly, dialogues and summits among heads of government and concerned ministers and secretaries have been done to secure agreements and standardized regulations on the fields of trade, investment, and labor mobility, to name a few. While there are efforts for Track 2 actions, they are wanting and in need of a boost if ASEAN is committed to meeting its goals of a closer regional community. The second section highlights the strategic importance of LGUs as partners in regional community-building. It discusses in length the supporting cases for this argument: first, that LGUs are the backbone of the political structures that govern Southeast Asian states, and therefore should be maximized to meet the goals of regional integration; and second, existing mechanisms of city-to-city

cooperation are low-hanging fruits that should be harnessed to accelerate deeper regional integration. Further, it utilizes the insights provided by various government and non-government agencies involved in the process of LGU engagement and international relations in the Philippines and Asia-Pacific, which in turn, highlights the potential significant contribution of LGUs in a more sustainable ASEAN community. The paper concludes with policy recommendations particularly on creating an ASEAN desk for LGU international relations, continued research and policy support from the academic community, and promotion for a more active role for LGUs on the part of domestic government agencies.

ONE SOUTHEAST ASIA?

The Association of Southeast Asian Nations (ASEAN) was established on August 8, 1967 through the initiative of its five (5) founding states: Indonesia, Malaysia, Philippines, Singapore, and Thailand. From its humble beginnings, it has come a long way by positioning itself as a major stakeholder in regional and global affairs⁶³. It has since gained further traction when it

announced in 1997 the ASEAN Vision 2020, which aims to create a “concert of Southeast Asian nations” that is “outward-looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies.” The vision was a precursor to the ASEAN Community and deeper regional integration. Three pillars converge to create the ASEAN Community—Economic Community (AEC), Political-Security Community (APSC), and Socio-Cultural Community (ASCC). Each of these pillars are supported by sub-pillars and objectives, and when fulfilled, ASEAN would have made significant inroads to closer integration. The community building project has since been accelerated to be met by 2015 instead of the original 2020 timeline.

Among the three (3) pillars, ASEAN is more likely to accomplish the AEC having completed an average of 76.5% of its objectives. Each AEC sub-pillar inches closer to the hundred-percent target⁶⁴. Several concerns were expressed as to the flexibility allowed for each country to reach the identified objectives and implement the agreements and economic arrangements⁶⁵.

⁶³ASEAN, “History,” accessed: <https://asean.org/asean/about-asean/history/>. ASEAN’s motto is “One Vision, One Identity, One Community”.

⁶⁴ AEC Scorecard was taken from the ASEAN website. Note that the scorecards were published on 2008-2009, when it was first launched; and on 2010-2011. Succeeding years were only discussed by the ASEAN Secretariat in forums and other

ASEAN meetings, but publications are nowhere to be sourced (Menon and Melendez 2015).

⁶⁵ Jayant Menon and Anna Cassandra Melendez, “Realizing an ASEAN Economic Community: Progress and Remaining Challenges,” ADB Economics Working Paper Series No. 432 (May 2015): 16. Several caveats were identified in the paper: the scorecard is a self-assessment tool and as such data may be presented in favor of the member-state preparing it. It also measures

Nonetheless, the leadership is confident that the figures would help realize a closer economic region until 2025. In terms of political security⁶⁶, the Treaty of Amity and Cooperation (TAC) has 32 contracting parties. The Treaty serves as the key instrument in conducting inter-state relations in the region. The Secretariat also notes that 78 non-ASEAN member-states and organizations underwent accreditations for their ambassadors to ASEAN. It has also established stronger ties across the globe, particularly in ASEAN Committees in Third Countries to raise awareness for the organization and boost its profile. Finally, ASEAN published the first ASEAN Security Outlook in 2013 “to promote greater transparency and deepen understanding of each other’s defense policy as well as the security environment of the region⁶⁷.”

Awareness on the existence of ASEAN and the sense of community with fellow Southeast Asian peoples have also significantly increased from 56% in 2014 to 87% in 2017⁶⁸. This bodes well for the socio-

cultural community which banks on realizing a people-oriented and socially responsible ASEAN community, and forging a common identity as foundation for a caring and sharing regional society. The recent report released by the Economic Research Institute for ASEAN and East Asia (ERIA) also showed the cross-cutting and common concerns within the region and within the domestic states: a compelling reason for further integration and promoting concerted efforts to address common challenges⁶⁹. Specifically, one can observe this on the numerous milestones in ASCC: new declarations on non-communicable diseases, and elimination of violence against women and children; instituting a Sub-Regional Haze Monitoring System, ensuring disaster management through the ASEAN Coordinating Centre for Humanitarian Assistance (AHA Centre); and finally developing a regional instrument for the protection and promotion of the rights of migrant workers⁷⁰.

aggregates but glosses over the possible challenges hurdled and/or faced by countries implementing the scorecard. In effect, the audience does not see the full picture of realizing the regional economic community; and also passes up the opportunity to flesh out possible concerted responses to common concerns. Finally, the countries implementing the scorecard undertake the process at varying speeds and degrees of readiness. This then affects the timeline, as well as the quality of deeper regional integration. It also does not help that economic sanctions or stronger pressures to implement the scorecard are absent, hence its flimsy foundation.

⁶⁶ AKP Mochtan, “The 2015 ASEAN Community Building & Post 2015 ASEAN,” undated

presentation; ASEAN Secretariat, *ASEAN Community Progress Monitoring System*, ASEAN: Jakarta (2017)

⁶⁷ *ibid.*

⁶⁸ PoncianoIntal Jr, Lydia Ruddy, Edo Setyadi, YuanitaSuhud, and TyagitaSilkaHapsari, “Voices of ASEAN: What Does ASEAN Mean to ASEAN Peoples,” in *ASEAN @ 50: Voices of ASEAN What Does ASEAN Mean to ASEAN Peoples*, edsIntal and Ruddy; Vol 2 (2017). For a more extensive discussion, this volume provides at length the findings for each ASEAN member-country.

⁶⁹ *ibid.*

⁷⁰ Mochtan, “The 2015 ASEAN Community Building & Post 2015 ASEAN,” undated

Amid these accomplishments and the optimism of the ASEAN leadership, the rest of the region and observers from across the globe remain skeptical. This stems from three (3) factors: glaring development gaps, hesitation of member-countries to pool sovereignty, and the ASEAN Way. First, the region suffers from numerous socio-economic inequalities: Singapore has an impressive human development index (HDI) and is the investment hub for most offshore financial companies; while Brunei has a solid economic base with their oil and gas deposits. They would most likely reap the benefits of regional integration. On the other end of the spectrum are its more recent members: Cambodia, Laos, and Myanmar would find it hard to keep up with the pressure of integration given its lackluster economic performance and the presence of authoritarian governments. The other states seem to be poised for competition but would also bear greater risks than benefits once integration ensues. Indonesia, Malaysia, Philippines, Thailand, and Vietnam have performing economies but are evidently regressing from democracy⁷¹. Economic growth and development should never come at the expense of civilian liberties and enhanced political participation⁷². Note also that these broad forms of inequalities as well as weakening political institutions lend further instability in the region. It creates a

restless population in need of basic services to make them better participants to domestic and regional activities—an enhanced citizenry that would demand transparency and accountability from their respective governments, and a valuable asset to the regional labor force. If such precarious situation continues in the long run, no doubt that the foundations of integration would weaken or turn out to be beneficial only to the powerful few.

Second, ASEAN member-countries are cautious on opening up their governments to deeper regional integration. Such hesitation is a product of several experiences—that of oppressive colonial rule, and the regressing allure of democratic governance in the region. These are two different but interacting factors. Colonial baggage fueled distrust in institutions set up or adapted from Western societies and have also heightened nationalist sentiments from among the public and country leaders. They find it quite intrusive and off-putting for other countries to tell them how to address their domestic issues and squabbles. They believe that they owe it to themselves to resolve these struggles and work for the betterment of their societies, not from outside help. These are well-meaning sentiments but are often taken advantage of by opportunistic political leaders who then use their nationalist stance to set up single-

⁷¹Kurlantzick, "Southeast Asia's Regression From Democracy and Its Implications," 2014

⁷²This is consistent with Amartya Sen's proposition of freedom as both an end and means towards human development.

party governments or authoritarian states⁷³. This then leads to the other interacting factor: the rise of populism and/or authoritarianism. Democratic states in Southeast Asia have been showing signs of regression in the past half a decade. Other elements are at play: public disenchantment with democratic institutions, the continued existence of weak political institutions, poor promotion of democratic rules from its previous leaders, and technological advancement that contributes to eroding public opinion and free speech⁷⁴. One also has to note that the scorecards developed by ASEAN are self-assessments, and agreements are often implemented at the pace of the member-country⁷⁵. One then wonders how regional integration could be very well achieved amid this socio-political context.

The third factor is directly related to the previous discussion as it delves on the value

of ASEAN Way. Amitav Acharya describes it as “a highly informal process of consultations and consensus-building in which leaders were a phone call away and who engaged in mutual backslapping conversations⁷⁶.” In the same discussion, Acharya argues that this had been fruitful when ASEAN was starting compared today when it has expanded to double its size⁷⁷. The ASEAN Way was instrumental in ending Malaysia and Indonesia’s *Konfrontasi*, overcoming Malaysia and Philippines’ Sabah territorial dispute, and securing a diplomatic settlement over Vietnam’s invasion and occupation of Cambodia. But it has also been dismissive of many other important issues that adversely affect the peoples of the region: increasing human rights violations, unfair trade policies and agreements that undermine small businesses, authoritarian governments and crackdown on journalists and civil society leaders, and environmental concerns⁷⁸. These issues if not addressed

⁷³ Kevin Y.L. Tan

⁷⁴ For instance, in Gary Hawke, “The Promise and Challenge of ASEAN and AEC in a Fast-Changing East Asia,” in *ASEAN @ 50 Volume 5: The ASEAN Economic Community Into 2025 and Beyond*, he outlined several anti-trade trends today. The Trump Presidency is against trade stemming from his “Make America Great Again” rhetoric, as well as the recent Brexit. Hawke notes that while circumstances in the Americas and Europe would not fully predict ASEAN economic development, the challenges of reorienting ASEAN economies that have come to be interdependent with these large markets would pose some serious issues to meaningful regional integration. China seems to be the likely fulcrum of ASEAN economies as of the moment, and fair grounds for competition would also be an equal challenge to regional integration (96-97).

⁷⁵ Menon and Melendez 2015

⁷⁶ Amitav Acharya (2011), “The Future of ASEAN: Obsolescent or Resilient?” in *ASEAN Matters*, Lee YoongYoong ed. NUS: Singapore, 286

⁷⁷ Ibid.

⁷⁸ ASEAN faces several challenges to fully addressing these aforementioned concerns. For instance, the exodus of Rohingyas in Myanmar as well as the South China Sea territorial disputes all raised questions as to the strength of ASEAN in areas of common concern. It also did not help that institutions initially set up are not fully up to the challenge: the AICHR has officials appointed by governments of member-states so impartiality is quite a concern. Several articles that discuss these issues at length may be found here: Mie Oba, “ASEAN and the New South China Sea Reality,” *The Diplomat*, June 15 2018, accessed: <https://thediplomat.com/2018/06/asean-and-the->

would most likely breed more problems that would eventually bring about the demise of the organization and its vision of community-building.

To be sure, ASEAN regional integration is unlike European Union (EU). A supranational regional government is far from being instituted, nor would a single currency be established throughout Southeast Asia. What it tries to create is a sense of family or community. Ellen Frost defines a community as a body of persons or nations that “coexist peacefully and cooperate with each other according to common sense, courtesy, and habit (16).” It shies away from pooling together disparate sovereignties especially that these Southeast Asian nations are naturally protective of their hard-fought victories against centuries of colonial rule. Consistent with these, ASEAN postulates a harmonized community where the economy seamlessly works for the benefit of all, with coordinated domestic policies that would address transnational political and security challenges, and common identity reflective of Southeast Asia’s diversity. But such differences do not invalidate the observations identified in the previous statements. The researchers compared ASEAN’s sustainability in terms of

operations and public ownership of the regional identity, vis-a-vis these factors.

Community-building transcends both regionalization and regionalism. As a regionalization initiative, the project moves alongside the deepening processes of globalization but operates on a less formal and more spontaneous track. Community-building through regionalization relies on people-to-people relations, as well as the business deals forged by various companies in regionalizing states. Several benefits include increased intra-regional tourist traffic, better appreciation for the cultures of fellow Southeast Asian peoples, and a rising number of business agreements in the region—primarily on the economic and socio-cultural aspects. The community-building project should also be seen on the lens of regionalism, which is defined as a political movement and therefore follows a more formal lens of integration. States are primary drivers for community-building and are often expressed through free trade agreements, resolutions and standardization rules, and diplomatic dialogues or formal state summits.

The question of sustainability is revisited: in terms of operation and accomplishments, ASEAN has laurels on its head. But dampening the hopes of achieving the

new-south-china-sea-reality/ ; Hui Ying Lee, “ASEAN’s Limited Role in Solving the Rohingya Crisis, *The Diplomat*, October 12 2018, accessed: <https://thediplomat.com/2018/10/aseans-limited-role-in-solving-the-rohingya-crisis/> ; and Pavin

Chachavalongpun, “Is Promoting Human Rights in ASEAN an Impossible Task? *The Diplomat*, January 19 2018, accessed: <https://thediplomat.com/2018/01/is-promoting-human-rights-in-asean-an-impossible-task/>).

Community are issues outside the organizational challenges and are worth pondering upon. One finds that regional community-building in ASEAN is unique and difficult. The definitions alone show the daunting process of launching state-sponsored regionalism initiatives, as well as utilizing the arms of globalization to the advantage of regional integration. Further, ASEAN pursued an entirely different path from those initially pursued by the EU—a notable and remarkable action done by ASEAN but nonetheless difficult to work on. Such difficulty is compounded by the myriad development gaps and socio-economic challenges that cripple half of Southeast Asia. The ASEAN Way also has to be revisited for all its value and support to the organization's continued survival. How and when should it be used, and should it be ditched in favor of a more aggressive ASEAN, how should it then be operationalized without hampering the sovereignty of each member-state? Pursuing regionalism at its current state would definitely create a bleak future than paving a brighter outlook ahead. As such, other stakeholders are necessary to help move the vision of a regional community towards fruition.

LOCAL GOVERNMENT UNITS AS STRATEGIC PARTNERS

Sustainability of the community-building project relies both on operations and accomplishment, and then on participation

and public ownership. National governments are more likely to deliver the needed integration results than any other stakeholder, and for that the accomplishments outlined in the previous discussion could be attributed to them. They hold the power and mandate of its constituency, as well as the resources necessary to accomplish these identified goals.

But governments are often saddled by heavy and slow bureaucracy, diverse priorities, and relatively uneven appreciation for technology, and these hamper the full potential for regional integration to prosper and bear fruit. Note also how spontaneous and informal processes accelerated by globalization such as the developmental and institutional issues identified in the previous discussion overpower the benefits with risks and more disadvantages. There is merit therefore in utilizing an able and strategic partner to achieve a sustained and fruitful effort towards integration. Local government units (LGUs) fit such mold.

LGUs have long been seen as partners in the ASEAN integration project. In one of the speeches of then-Secretary General Ong Keng Yong, he affirmed the large role played by provincial governments in “assist(ing) in building the ASEAN Community and help(ing) bind the ties that are required for a

solid and prosperous community⁷⁹. During the years closer to 2015, several more forums would highlight their increased support for the regional integration project. But even with the recognition of this critical role, a cursory review of ASEAN policies would not yield any formal policy stemming from the speech or any other recognition of LGU support towards regional community-building. The paper therefore strengthens the case for active LGU involvement in this community-building project, and towards the end provides several concrete recommendations to finally ensure their clear role in this worth endeavor.

The proposition for LGU use is simple: “dispersion of governance across multiple jurisdictions is more efficient than concentration of governance in one jurisdiction.”⁸⁰ LGUs share the political and governance responsibility with their counterpart central governments. The upper reaches of government set out policies and standards, sign treaties and agreements, and carve out directions to secure more milestones, while LGUs act as agents of regionalism initiatives, making sure that their smaller communities contribute to

achieving the goals necessary to build a larger regional community. The argument for an optimal engagement with LGUs are supported by these two insights: first, ASEAN is home to states that has operated under a decentralized set-up for the longest time; and second, they are also practicing small-scale initiatives towards community-building through various forms of city-to-city cooperation. As frontline service agencies they are natural tools for building broader public awareness of regionalism initiatives and participation in concrete activities which would eventually create a sense of ownership of the regional community-building project. A brief discussion of each insight would help enlighten the proposition further.

Decentralization and regionalism

Majority of ASEAN member-states have utilized a certain level of decentralization. They have subdivided territorial jurisdictions into regions, provinces, cities and/or municipalities, villages, and other smaller units of delegation, each with varying degrees of autonomy, functions, and fiscal capacity⁸¹. Decentralization is defined

⁷⁹ Ong Keng Yong, “Building an ASEAN Community: Role of Provincial Governments,” delivered during the Closing Ceremony of the 1st Summit of the Network of Regional Governments for Sustainable Development (NRG4SD), March 10-12, 2005, Lake Toba, North Sumatra, Indonesia.

⁸⁰Liesbet Hooghe and Gary Marks (6)

⁸¹Merilee S. Grindle, *Going Local: Decentralization, Democratization, and the Promise of Good*

Governance (New Jersey: Princeton University Press, 2007); James Manor, *Directions in Development: The Political Economy of Democratic Decentralization*, (Michigan: World Bank, 1999); Shinichi Ichimura and Roy Bahl, eds. *Decentralization Policies in Asian Development* (Singapore: World Scientific Publishing Co. Pte. Ltd., 2009)

as simply the transfer of powers from the central government to smaller or local units of government⁸². It has variations: political, administrative, fiscal, and economic or market decentralization. In the case of

Southeast Asia, political, administrative, and fiscal aspects of decentralization may be observed. Table 1 below roughly illustrates how decentralization is practiced in several parts of Southeast Asia:

Table 1: Decentralized Structures in Southeast Asia

ASEAN Member-Country ⁸³	Form of Government	Decentralized Units	Examples of Devolved Functions ⁸⁴
Indonesia ⁸⁵	Indonesia has a unitary, decentralized set-up. It allows for local autonomy and co-administration. Law No. 22/1999 and 25/1999 provide for administrative decentralization and financial administration respectively)	The government is divided into three (3) tiers: national, provincial, and local (kabupaten). It has 33 provinces, two of which are given special autonomous status (i.e. Aceh and Papua).	Social Affairs Education Public Works Politics and National Unity General Affairs
Malaysia	Malaysia follows a federal set-up; but with a highly centralized system of governance. Several states were given nominal autonomous powers.	The government has two tiers: parliament at the national level, and provincial governments, most of which are ruled by sultans.	Waste Management Public Transport

⁸²Decentralization is seen to have expanded and enabled democratic societies. The devolution of powers paved the way for local government units to include their constituents in policy making and evaluation, disaster and risk reduction planning and management and other mechanisms for deliberation and decision-making; which have been oddly kept within the walls of centralization.

⁸³ Member-states indicated here have relatively complete and reliable data concerning decentralization. The others were excluded as further information could not be derived as of the moment.

⁸⁴ The matrix emphasized functions uniquely devolved to LGUs. See supporting footnotes for further information about decentralization in each of these member-states.

⁸⁵ For further discussions about Indonesian decentralization, these references provide the necessary information: Rodd McGibbon, "Secessionist Challenges in Aceh and Papua: Is Special Autonomy the Solution?" *Policy Studies* 10 (2004); Amrizal, Faisal Rani, BudimanGinting and PendastarenTarigan, "Asymmetric Decentralization

Aceh; Governor Consultation and Consideration Context on Central Government Administrative Policy," *IOSR Journal of Humanities and Social Sciences (IOSR-JHSS)* 20:9 (September 2015) 1-10; Syaikh Usman, "Regional Autonomy in Indonesia: Field Experiences and Emerging Challenges," presented during the 7th PRSCO Summer Institute/The 4th IRSA International Conference: "Decentralization, Natural Resources, and Regional Development in the Pacific Rim," June 20-21 2002; Marcus Mietzner, "Indonesia's Decentralization: The Rise of Local Identities and the Survival of the Nation-State," presented during the Indonesia Update Conference, September 20 2013, Australia National University; Wolfgang Fengler and Bert Hofman, "Chapter X: Managing Indonesia's Rapid Decentralization; Achievements and Challenges," in *Decentralization Policies in Asian Development*, ed. Shinichi Ichimura and Roy Bahl (Singapore: World Scientific Publishing Co. Pte. Ltd., 2009); "The Structure of Government," *Country Studies*, accessed April 18, 2018, <http://countrystudies.us/indonesia/84.htm>

Thailand	Thailand is a parliamentary democracy, but also exercises monarchy. Several LGUs are given special powers to exercise local autonomy.	There are three tiers of government: parliament at the national level, provinces, and municipalities. Often the powers granted are graduated, relative to their absorptive capacity.	Intergovernmental shares Education Public Affairs
Philippines ⁸⁶	The Philippines follows a unitary, decentralized set-up. It relies on the Local Government Code of 1991 (RA 7160) as basis for decentralization.	The government is divided into two levels: central and local. They are connected by regional offices for administratively decentralized functions; and regional development councils (RDCs) as broad aggrupation of LGUs. At the local level, government is further divided into four: provinces, cities, municipalities, barangays. There is one autonomous region (i.e. Muslim Mindanao), and one administrative region (i.e. Cordillera).	Agriculture Health Environment and Natural Resources

Paul Hutchcroft recently compared the levels of decentralization employed in selected countries in Southeast Asia⁸⁷. The Philippines and Indonesia for instance have higher degrees of decentralization even under a centralized set-up—LGUs have

devolved functions in health, social welfare, agriculture, local economic development, and environment and natural resources; and then to a certain extent, supplementary

⁸⁶For further discussions about Philippine decentralization, these references may be used: Alex B. Brillantes and Donna Moscare, "Decentralization and Federalism in the Philippines: Lessons from Global Community," presented at the International Conference of the East West Center, Kuala Lumpur, Malaysia, July 1-5, 2002; Benjamin E. Diokno, "Decentralization in the Philippines After Ten Years—What Have We Learned?" in *Decentralization Policies in Asian Development*, ed. Shinichi Ichimura and Roy Bahl (Singapore: World Scientific Publishing Co. Pte. Ltd., 2009); Rosario G. Manasan, "Local Public Finance in the Philippines—Balancing Autonomy and Accountability," *Decentralization Policies in Asian Development*, ed. Shinichi Ichimura and Roy Bahl (Singapore: World Scientific Publishing Co. Pte. Ltd., 2009); Aurea Hernandez-Sempio, "A Closer Look at Unfunded Mandates," CPBRD Discussion Paper 4 (October 2016); Romulo E.M. Miral, "Public Sector Governance and Decentralization in the Philippines," in *Local Governance Under Stress: Fiscal Retrenchment and Expanding Public Demands on Government* (Tokyo: Eropa Local Government Center, 2009) 47-70; MendiolaTengCalleja, Ma. Regina M. Hechanova, Ramon Benedicto A. Alampay, and Edna P. Franco, "A Model for Local Government Transformation," in *Transforming Local Government*, eds. Hechanova, TengCalleja, and Franco (Manila: Ateneo de Manila University Press, 2017) 139-162.

⁸⁷Paul Hutchcroft (2017), "Federalism in Context: Laying the Foundations for a Problem-Driven Process of Political Reform," in *Debate on Federal Philippines: A Citizen's Handbook*, Araralet. al. (Quezon City: Ateneo de Manila University Press)

support for education and housing ⁸⁸ . Malaysia enjoys a federal form of government but is highly centralized⁸⁹. This does not hinder their LGUs from pursuing several development initiatives on social welfare and general public services. Cambodia, Laos, Thailand, and Vietnam also have centralized set-ups but their LGUs have also been keen to institute community projects and development initiatives for the welfare of their constituents.

Communities are a central part of Southeast Asian political development. History shows how these villages brought forth religious freedom, enabled commercial ties and trade linkages, and launched a vibrant arts and culture heritage ⁹⁰ . Territorial boundaries are blurred, as community interaction is paramount and necessary to ensure the survival of the ancient Southeast Asians. These would change once colonial rulers entered the fray and instituted artificial partitions over lands and territories⁹¹. Suffice to say that history has proven to be an anchor for community-building early on in Southeast Asia; and these same communities are the foundations

for modern-day regional integration. States and national governments are vital for consolidated actions and decision-making, but the vehicles that would drive stronger and deeper regional integration lie on the communities that historically founded the region.

Modern-day communities and cooperation

Much like their predecessors, modern-day Southeast Asian communities and villages have embarked on international linkages to learn and enhance local administration and governance. ASEAN saw the establishment of the Greater Mekong Sub-Region (GMS), the Indonesia-Malaysia-Thailand Growth Triangle (IMT-GT), the Singapore-Johor-Riau Growth Triangle (SIJORI), and the Brunei-Indonesia-Malaysia-Philippines East ASEAN Growth Area (BIMP-EAGA). Based on the terms used, these sub-regional groups aim to induce greater economic activity among adjacent territories and neighboring countries, along with “building blocks of infrastructure and

⁸⁸Wolfgang Fengler and Bert Hofman, “Chapter X: Managing Indonesia’s Rapid Decentralization; Achievements and Challenges,” in *Decentralization Policies in Asian Development*, ed. Shinichi Ichimura and Roy Bahl (Singapore: World Scientific Publishing Co. Pte. Ltd., 2009); “The Structure of Government,” *Country Studies*, accessed April 18, 2018, <http://countrystudies.us/indonesia/84.htm>; Syaikh Usman, “Regional Autonomy in Indonesia: Field Experiences and Emerging Challenges,” presented during the 7th PRSCO Summer Institute/The 4th IRSA International Conference:

“Decentralization, Natural Resources, and Regional Development in the Pacific Rim,” June 20-21 2002; Amrizal et al, “Asymmetric Governance Aceh,” 4

⁸⁹Hutchcroft, “Federalism in Context” 2017: page

⁹⁰Milton Osborne, *Southeast Asia: An Introductory History*, Allen & Unwin: New South Wales, Australia, (2017)

⁹¹ Edward Farmer, et. al. discusses extensively European colonialism in Southeast Asia and its implications in *Comparative Histories of Asia*.

narrowing of the development gap among the members⁹².”

It should be noted that these sub-regional groups overlap in terms of membership and their initiatives are often part of an ASEAN-wide program. While this is true, they still vary in structure and level of membership. For instance, GMS was established by the Asian Development Bank (ADB) and is primarily driven by private sector and development organizations’ investment. On the other hand, SIJORI, IMT-GT and BIMP-EAGA are government initiatives with local governments as beneficiaries while an independent government-attached body acts as secretariat and steering agency⁹³.

Because not all governments are keen to create different growth areas in various sections of their geographic location and because of the existing constraints to establishing these growth areas (i.e. structure, political will, financial support), there is value then in finding an alternative

exchange system for ASEAN local governments:

“In ASEAN, local governments play an important role in fostering cooperation in the regional integration process as well as in strengthening mechanisms for competition. Let us do it among local governments in the Philippines with complementary strengths. For example, metro cities can form coalitions with suburban municipalities. This will be more elaborate forms [sic] of sisterhood... components can be economic, cultural and educational. This cooperative arrangement [sic] will help us fill each other’s gaps, for better competitive advantage.”⁹⁴

These are embodied in what is generally termed as “city-to-city cooperation” and includes variations such as sisterhood agreements, twinning cities, and local partnerships. Sister city relationships are usually pursued by countries or cities that share a common heritage, advocacy, or jurisdictional policy initiative ⁹⁵ . The motivation to enter into cooperative agreements stem largely from the

⁹²Sanchita Basu Das, “Enhancing Regional and Sub-regional Co-operation and Connectivity in ASEAN.” ISEAS Working Papers, 3, (2013): page. Accessed: www.iseas.edu.sg.

⁹³ David Carpenter, Izyani Zulkifli and Mark McGillivray, “Narrowing the Development Gap in ASEAN: Context and Approach.” in *Narrowing the Development Gap in ASEAN: Drivers and Policy Options*, eds McGillivray and Carpenter, (New York: Routledge. 2013) 1-20.

⁹⁴ Herbert Bautista, “Quezon City in Preparation for the ASEAN Economic Integration.” Presentation made at the ASEAN Economic Integration: The Role of Local Governments Forum, Pasay City, Metro Manila, October 10, 2014

⁹⁵ Lloyd 2010. The conception of city-to-city partnerships, or more commonly known as “sister city/ies,” can be traced back to the Second World War. The casualties were grave; inspiring the nations to come together and pool their resources and ideas to quickly rebuild their destroyed cities. The partnerships back then also encouraged cultural and educational exchanges to promote camaraderie among them. These exchanges bore deeper understanding and respect for other people’s culture. Today, countries and/or cities have used it as a platform to solve other national issues and harvest inclusive development.

opportunities and benefits offered; and is assumed to be mutually beneficial. In the case of ASEAN, where members are coexisting harmoniously, it is expected that each of them has their interests to forward. This is where the adjustments and negotiations are made to ensure that the partnership will bear the fruit that both parties desire. The aforementioned idea implies that partnerships are not restricted to a single project but are wide range, which is one of the features of a sisterhood agreement⁹⁶.

Moreover, partnerships of these kind are purposive and aligned with the government's goals and objectives for further development. The space for innovations never runs out since the longer the relationship is, the more opportunity for the two to collaborate and share their best practices. This is very much applicable in partnerships which involves a more developed or developed country/city and a less developed country/city. The less

developed country is more likely to partner with countries with booming economies for them to learn what steps they need to take to rise to that level of development. On other cases, two LGUs from different countries work together to craft a policy or program, or one adapts an innovative model by another village or LGU. Often, the partnerships are successful; but in cases that they do not achieve what was initially set-up, cooperative agreements are often amended to meet revised objectives and expectations, as well as variations in their working environments.

The spread and growth of city-to-city links and other partnership schemes have increased exponentially over the years, each according to their own rationales. However, aside from the just the partner cities being involved in the partnership, one can allow other stakeholders to take part in the process and support it. Several aspects of this type of partnership are described in the matrix below:

⁹⁶Zelinsky 1991; Jonathan Ballantine, "How sister city partnerships can play a new role in a global economy," *Cities Today* (2014)

Table 2. Aspects of City-to-City Cooperation and International Linkages⁹⁷

ASPECTS	DESCRIPTION
Facilitating structures	The presence of the indestructible support of local government associations within their own countries in advocating for city-to-city partnerships highly impacts the morale of the cities who engage in it. First and foremost, it encourages them to pursue participation in this kind of linkages. It provides an assurance that they are not alone in their journey in searching for a workable and amendable strategy for inclusive development in their localities. Of course, there are also international organizations who rally for the unity of the local governments and the pooling of their sovereignty. This is anchored on the belief that ultimately, city-to-city links results to global harmony.
Funding and resources	Like any other expedition, the key to a successful partnership and/or exchange is the financial resources of all parties involved. It assures the sustainability of any project, and therefore, in city-to-city linkages, funding is of paramount importance. This is where we appreciate the fruits of democratization and decentralization where more autonomy is given to local government units, and that they themselves can ask for a budget that suits their needs. But its advantages extend up to creating the necessity to expand capacity-building activities at the local level, since more autonomy would require wider, improved skillset of the manpower.
Support modality	A wide network as a form of support to sister city partnerships poses excellent potential for promoting unity amongst the cities in ways in which isolated cooperation cannot and would not. A systematic workflow can link cities with one another in various combinations considering their own interests. These linkages are valuable and useful, because these are the immediate response to the demands of a city, and thus, will continue to grow in importance.

Using the Philippine experience on city-to-city cooperation as model for the region

The mechanisms to organize sisterhood agreements between and among local governments inside the Philippines vary

depending the type of partnership involved. Often, forms of city-to-city cooperation in the Philippines are usually between a more developed city and a municipality in the rural area, the more developed partner

⁹⁷ United Nations Centre for Human Settlements (Habitat), United Towns Organisation (UTO/FMCU), and World Association of Cities and Local Authorities Coordination (WACLAC), "City-to-City Cooperation: Issues Arising from Experience," presented during the 25th United Nations General Assembly Special Session, Nairobi, Kenya, May 2001

would share its strategies and best practices may it be in policymaking, strategic planning, monitoring and evaluation. The less developed city would now use lessons learned and practices adopted to tailor it according to the needs of their constituents. If anything, it pushes the cities to be smarter in terms of modifying their partner's programs to fit it in their own. Compared to establishing sub-regional groups, this may prove to be relatively easier with memorandum of understanding and cooperation or agreement may be forged to enforce the collaboration. There are no official figures related to sisterhood agreements or twinning arrangements in the Philippines, especially on the number of agreements enforced. Suffice to say that majority of the cities in the Philippines have initiated a sisterhood agreement with a fellow Philippine city and had been reaping the benefits of capacity building and training on various innovative governance practices.

The Department of the Interior and Local Government (DILG) along with the Leagues of Local Government have been instrumental in setting up these local partnerships and informal mentoring programs. The benefits include material and financial support to poorer LGUs, but also enhanced relationships and knowledge exchange from among the local

governments. Such a framework broadens appreciation for local governance in the country, and at the same time adaption of certain models and policies allows a more careful assessment or scrutiny of which to follow and which to innovate further. This way, LGUs set higher and stricter standards and quality before laws are implemented in their locality. Examples include Marikina City's pioneering plastic use ban, and how it has since evolved into more stricter regulations on the use of single-use plastics, straws, and other non-biodegradable materials across the country. Another notable example would be Davao City's anti-smoking ordinance, which has since been adopted in numerous LGUs, and recently signed into a nationwide executive order. Cebu City, Tagbilaran City, and another municipality from Negros Occidental pioneered stronger investments on basic education, along with Naga City's expanded local school board membership—these innovative policies have since been copied and adapted by other LGUs through facilitated mentoring sessions and sisterhood agreements. Makati City has been the most aggressive when it comes to sisterhood partnerships—acting like a big brother by doling out ambulances, school supplies, and other forms of material assistance to its partner-LGUs.

Table 3. Impact of City-to-City Cooperation on Local Decision-Making and Policymaking

RESPONDENT	RESPONSE
DILG-BLGS	According to DILG, it is good for city to replicate policies from another city that have practice the same program or projects as a way of sharing goods or best practices. Collectively, cities coming up with better policies through twinning can create a local ASEAN model. Entering to sister city agreements could possibly affect LGU's decision-making due to the influence of politics as a little city can be dominated by a bigger one that would overshadow the real purpose of sister city-promoting mutually beneficial type of partnership. DILG has no power to sanction sister cities if the goal of the MOA is not achieved. They are just practicing "carrot and stick concept" which award LGU's who would practice good governance and would do good in their own programs and partnerships.
City Net	Sisterhood agreements give cities opportunities to reflect on their governance by looking at other perspectives and conditions, by examining what works and does not work and be able to apply it apply it in their own setting. Through this, they may be able to minimize the risk and increase their competitiveness in the long run and can reflect this on their policy directions.

If this is done regionally, the learning among local governments will multiply. As of current, the Partnership for Democratic Local Governance in Southeast Asia (DELGOSEA) continuously facilitate workshops and opportunities for study visits on innovative local governance practices among Southeast Asian cities and municipalities. They have also been active in assisting local governments replicate their chosen innovative practice⁹⁸. Other region-based groups such as CityNet Asia Pacific and the United Cities and Local Governments (UCLG) Asia Pacific have also been instrumental in facilitating international partnerships from among LGUs. For instance, the City of Cotabato in the Southern

Philippines and Bandung, capital of West Java Province in Indonesia signed an agreement that aims to promote cultural, trade and tourism ties between the two emerging cities in the Brunei-Indonesia-Malaysia-Philippines East Asean Growth Area (BIMP-EAGA) region or a group designed to ascend the economy of the countries considered as one of the most resource-rich regions. As quoted from Cotabato City Vice Mayor Graham Dumama, the two cities have very much in common when it comes to governance to share to each other. The pact contains agreements on economic and trade potentials, but most especially the city's intense desire to strictly implement city government's crime-

⁹⁸ Accessed: www.delgosea.eu

prevention programs enforcing discipline on its constituents.

City-to-city cooperation is a workable and viable model for broader and more sustainable cooperation. Several aspects should however be polished, as can be observed in the case of the Philippines. First,

partnerships have to be established at a more equal footing so as not to overwhelm resource LGUs. Second, there is no umbrella organization that has the authority to closely monitor corporations that do not fulfill their commitment.

Table 4. Enhancing City-to-City Cooperation in the Philippines and for ASEAN

RESPONDENTS	RESPONSES
LCP	For LCP, cities need to develop a strong monitoring tool to ensure that the resource city and the beneficiary city would both enjoy the perks of the resolution/agreement. More so, the agreement should embrace the element of mutuality. Ideally, sister city relationships should not have a 'resource city' and a 'beneficiary city' because both shall practice give and get something in return.
DILG	The framework needs to be revisited according to DILG. There should be clear guidelines on what the city really wants to achieve in these partnerships, that the agreement produces actual outcomes where both cities benefits from it.

If adapted by ASEAN member-states, concerted efforts may be undertaken to respond fully to these issues. In a larger scale, globalization remains a major factor and an influential phenomenon that pushes countries or cities to interact and create more pathways for exchange, learning and collaborative management⁹⁹. Competition and complementation among countries respond to the need to meet growing and evolving demands by its citizens. The current framework while viable, entails a lot of work to ensure that it becomes sustainable, more beneficial to both parties and less susceptible to bad politics. Though ASEAN may be far from adapting this on the

regional scale, but it can be gradually achieved through the proper study of the existing model and the creation of a monitoring mechanism.

MOVING FORWARD WITH REINFORCES ROLES FOR LGUs

ASEAN can already reap the fruits of these partnerships, cultivate them further to harvest more in the future, and ensure a brighter outlook for regional community-building. LGUs would always find it good and beneficial to work with fellow LGUs from other countries as it presents various opportunities for local economy enhancement, cultural enrichment, and

⁹⁹Levent, 2004

broadened knowledge pool. Further, it offers them room to explore the rest of the region and really work towards sowing real people-to-people interaction. These forms of relationships are difficult to forge when we only rely on the conventional diplomatic summits and business agreements.

Three recommendations are posited in this paper:

1. Establish an ASEAN Desk for City-to-City Cooperation and International Relations. This body will be essential in ensuring that the necessary awareness for ASEAN community-building reaches the grassroots and that the majority Southeast Asians understand it. Moreover, the group may work on programs and initiatives specific for local governments, particularly on creating platforms for partnerships and networking. The group may also provide policy recommendations particularly on engaging ASEAN local governments in ASEAN endeavors to pursue and attain the specific targets for each pillar of the ASEAN Community.
2. Continue research and policy support from the academic community. Regionalism and regionalization initiatives are often points of interest for scholars. But the role of local governments in terms of expanding international relations have yet to be fully explored. The academic

community may endeavor to deepen research efforts and policy support relative to these topics. In particular, ASEAN's network of universities may spearhead these forms of research and in the process, spread awareness and spark further academic interest.

3. Promotion for a more active role for LGUs on the part of domestic government agencies. Central governments may work individually towards encouraging their respective ministries for local governance to craft policies and regulations relative to framing local cooperative partnerships and/or agreements. In the Philippines, one of the main issues is the absence of a concrete system for partnership which in turn setbacks potential collaborative efforts. Further, there is no umbrella organization to facilitate these linkages.

ASEAN as the network of these countries can monitor these partnerships. Shortcomings or flaws of the partnership can be used in research to develop a better model. In a larger scale, globalization remains a major factor and an influential phenomenon that pushes countries or cities to interact and create more pathways for exchange, learning and collaborative management (Levent, 2004). Competition and complementation among countries respond to the need to meet growing and evolving demands by its citizens. The

current framework, at least in the Philippine setting, is viable for the LGUs; but it entails a lot of work to ensure that it can be maintained for longer periods, more beneficial to both parties and less susceptible to patronage politics.

CONCLUSION

The paper crafted a case to rethink a more integrative role for local governments in regional community-building. Several issues beset the region such as development gaps and weak institutions, hesitation against interventions and regressing democratic principles, and the possible setbacks that can be incurred by following the ASEAN Way. On all of these factors, not one solution can be provided, and these may hamper the envisioned ASEAN community and regional integration. Engaging local governments into the process does not fully solve these expansive development concerns, but they present a viable strategy to ease the pressure on community-building and ensure broader awareness from among the public. Local governments are historically and structurally geared towards community-building as can be gleaned from the previous discussions; but that they have also engineered mechanisms to undertake cooperative agreements that can be foundations for better and more sustainable community-building in ASEAN. Three recommendations are in place: establish an ASEAN Desk for local cooperation and

international relations, foster a more vibrant research interest from the academic community, and encourage domestic governments to institute policies aimed at strengthening the frames and standards for LGU cooperation. Towards this end, the goal of a sustainable ASEAN community would be closer to reality.

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THE CONSTITUTIONALITY OF THE ASEAN CHARTER: HOW THE INDONESIAN CONSTITUTIONAL COURT INTERPRETED THE INTERNATIONAL AGREEMENT TO FORM ASEAN

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ABSTRACT

Not too many people know that opposition to the formation of the ASEAN economic community continues. Even to cancel the free market at the Southeast Asian level, a group of people conducted a test of the law that ratified the ASEAN Charter. This paper will examine the reasons for the request for testing and how the Constitutional Court as the central court in Indonesia gives opinions on ASEAN in general and also on the formation of the ASEAN economic community in particular. Furthermore, this paper intends to examine, first, how if the highest norms in an ASEAN country contradicted with an international agreement in casu ASEAN Charter, second, how can the international legal regime be confronted with the state legal regime. The experience of Indonesia through the decisions of the Constitutional Court can be an essential reference if in the future the same problem occurs in other ASEAN countries.

Keywords: ASEAN Charter, Indonesian Constitutional Court.

INTRODUCTION

What is the central relationship between the ASEAN Charter and the Indonesian Constitutional Court (*Mahkamah Konstitusi*)? The relationship between the two was answered when on Tuesday (2/26/2013) the Constitutional Court issued a verdict regarding the Review of Law Number 38 of 2008 concerning Ratification of the Charter of the Association of the Southeast Asian Nations (ASEAN Charter) against the 1945 Constitution.

This decision with case number 33/PUU-IX/2011 was read by the Chief Justice of the Constitutional Court, Moh. Mahfud MD accompanied by eight other constitutional justices with a decision to reject the application. The decision is to provide the intersection studies of constitutional law and international law.

According to Damos Dumoli Agusman, some part of the Court's argumentation has revealed the Indonesian legal politics of international treaties which have been a mystery and in the literature are still debated.

¹⁰⁰ A researcher at the Indonesian Constitutional Court

The Constitutional Court firmly gave a message that as long as the international agreement was made in the form of a Law, all international agreements could be tested by the Constitutional Court. That is, all other international agreements can be tested and have the potential to be declared contrary to the Constitution.¹⁰¹

This article intends to reveal the views that developed in the trial for this crucial issue. Also, this article will explain the full picture of the Constitutional Court's argumentation by providing analysis to be an essential law reference.

THE ESTABLISHMENT OF ASEAN

The Association of Southeast Asian Nations, or ASEAN, was established on 8 August 1967 in Bangkok, Thailand, with the signing of the ASEAN Declaration (Bangkok Declaration) by the founding parents of ASEAN, namely Indonesia, Malaysia, Philippines, Singapore, and Thailand. The Association represents the collective will of the nations of South-East Asia to bind themselves together in friendship and cooperation and, through joint efforts and sacrifices, secure for their peoples and posterity the blessings of peace, freedom, and prosperity.¹⁰²

According to the Bangkok Declaration, the aims and purposes of the Association shall be:

1. To accelerate the economic growth, social progress and cultural development in the region through joint endeavors in the spirit of equality and partnership to strengthen the foundation for a prosperous and peaceful community of South-East Asian Nations;
2. To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter;
3. To promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields;
4. To assist each other in the form of training and research facilities in the educational, professional, technical and administrative spheres;
5. To collaborate more effectively for the greater utilization of their agriculture and industries, the expansion of their trade, including the study of the problems of international commodity trade, the improvement of their

¹⁰¹ Damos Dumoli Agusman, "Status Perjanjian Internasional menurut Pandangan Mahkamah Konstitusi RI (Kajian Kritis terhadap Keputusan MK tentang Piagam ASEAN)", [<http://perjanjian-internasional.blogspot.com/2013/10/status->

perjanjian-internasional-menurut.html], accessed 24/02/2019.

¹⁰² [<https://asean.org/the-asean-declaration-bangkok-declaration-bangkok-8-august-1967/>], accessed 14/02/2019.

transportation and communications facilities and the raising of the living standards of their peoples;

6. To promote Southeast Asian studies;
7. To maintain close and beneficial cooperation with existing international and regional organizations with similar aims and purposes, and explore all avenues for even closer cooperation among themselves.

In their relations with one another, the ASEAN Member States have adopted the following fundamental principles, as contained in the Treaty of Amity and Cooperation in Southeast Asia (TAC) of 1976:

1. Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations;
2. The right of every State to lead its national existence free from external interference, subversion or coercion;
3. Non-interference in the internal affairs of one another;
4. Settlement of differences or disputes by peaceful manner;
5. Renunciation of the threat or use of force; and
6. Effective cooperation among themselves.

Article 3 Treaty of Amity and Cooperation in Southeast Asia (TAC) of 1976 states that,

¹⁰³[<https://asean.org/treaty-amity-cooperation-southeast-asia-indonesia-24-february-1976/>], accessed 14/02/2019.

“In pursuance of the purpose of this Treaty the High Contracting Parties shall endeavor to develop and strengthen the traditional, cultural and historical ties of friendship, good neighborliness, and cooperation which bind them together and shall fulfill in good faith the obligations assumed under this Treaty. To promote closer understanding among them, the High Contracting Parties shall encourage and facilitate contact and intercourse among their peoples.”¹⁰³

The Association is open for participation to all States in the South-East Asian Region subscribing to the aims above, principles and purposes. Brunei Darussalam then joined on 7 January 1984, Viet Nam on 28 July 1995, Lao PDR and Myanmar on 23 July 1997, and Cambodia on 30 April 1999, making up what is today the ten Member States of ASEAN.¹⁰⁴

ASEAN COMMUNITY AND ASEAN CHARTER

The ASEAN Charter serves as a firm foundation in achieving the ASEAN Community by providing legal status and institutional framework for ASEAN. It also codifies ASEAN norms, rules, and values; sets clear targets for ASEAN; and presents accountability and compliance. The ASEAN Charter entered into force on 15 December 2008. A gathering of the ASEAN Foreign Ministers was held at the ASEAN Secretariat

¹⁰⁴[<https://asean.org/asean/about-asean/overview/>], accessed 14/02/2019.

in Jakarta to mark this very historic occasion for ASEAN.¹⁰⁵

With the entry into force of the ASEAN Charter, ASEAN will henceforth operate under a new legal framework and establish some new organs to boost its community-building process. In effect, the ASEAN Charter has become a legally binding agreement among the 10 ASEAN Member States. It will also be registered with the Secretariat of the United Nations, under Article 102, Paragraph 1 of the Charter of the United Nations.¹⁰⁷

The importance of the ASEAN Charter can be seen in the following contexts: new political commitment at the top level; new and enhanced commitments; new legal framework, legal personality; new ASEAN bodies; two new openly-recruited DSGs; more ASEAN meetings; more roles of ASEAN Foreign Ministers; new and enhanced role of the Secretary-General of ASEAN; other new initiatives and changes.¹⁰⁸

Singapore Declaration on the ASEAN Charter¹⁰⁶

WE, the Heads of State/Government of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, Member Countries of ASEAN, on the occasion of the 40th Anniversary of ASEAN and the 13th ASEAN Summit in Singapore;

REAFFIRMING our conviction, as expressed in the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter on 12 December 2005 and the Cebu Declaration on the Blueprint of the ASEAN Charter on 13 January 2007, that the Charter shall serve as a legal and institutional framework, as well as an inspiration for ASEAN in the years ahead;

REITERATING our full resolve and commitment to narrow the development gap and to advance ASEAN integration through the creation of an ASEAN Community in furtherance of peace, progress, and prosperity of its peoples; and

HAVING SIGNED the ASEAN Charter;

DO HEREBY DECLARE:

To faithfully respect the rights and fulfill the obligations outlined in the provisions of the ASEAN Charter;

To complete ratification by all Member Countries as soon as possible in order to bring the ASEAN Charter into force; and

To undertake all appropriate measures in each Member Country to implement the ASEAN Charter.

ADOPTED in Singapore, this Twentieth Day of November in the Year Two Thousand and Seven.

¹⁰⁵[<https://asean.org/asean/asean-charter/charter-of-the-association-of-southeast-asian-nations/>], accessed 14/02/2019.

¹⁰⁶[https://asean.org/?static_post=singapore-declaration-on-the-asean-charter], accessed 14/02/2019.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

JUDICIAL REVIEW OF ASEAN CHARTER?¹⁰⁹

Petition of Judicial Review Law Number 38 of 2008 (Law 38/2008) concerning Ratification of the Charter of the Association of Southeast Asian Nations (ASEAN Charter) against the 1945 Constitution of the Republic of Indonesia (UUD 1945) submitted by the Perkumpulan Institut Keadilan Global, *etc.* in 2011. The case registration is 33/PUU-IX/2011.

The ratification law of the ASEAN Charter itself consists of two articles. Article 1 states, "Ratifying the Charter of the Association of Southeast Asian Nations whose copies of the original manuscripts are in English and its translations in Indonesian as attached and are an integral part of this Law. Article 2 states, "This Law shall come into force on the date of promulgation."

The background of the ratification of the ASEAN Charter is seen in section Law Considering, namely:

- a. Foreign relations based on free and active politics are one of the manifestations of the objectives of the government of the Republic of Indonesia, namely to protect the entire nation and Indonesia, promote public welfare, educate the nation's life and participate in carrying out world order

based on independence, eternal peace, and social justice;

- b. The development and intensity of interaction, both at international and regional forums, has confronted the Indonesian people as part of the ASEAN to be more adaptable and responsive in facing various forms of threats, challenges and new opportunities through ASEAN transformation from The Association becomes an ASEAN Community based on the Charter;
- c. Indonesia has a strategic interest in ASEAN in strengthening Indonesia's position in the region and achieving maximum national benefits in various fields, especially in the political and security, economic, and socio-cultural spheres;
- d. At the 13th ASEAN Summit, in Singapore, on November 20, 2007, the Government of Indonesia has signed the Charter of the Association of Southeast Asian Nations;
- e. Based on the considerations as referred to in letter a, letter b, letter c, and letter d, it is necessary to ratify the Charter of the Association of Southeast Asian Nations.

¹⁰⁹ See Decision at [https://mkri.id/public/content/persidangan/putusan/putusan_sidang_33%20PUU%202011_ASEANch

arter_telah_baca_26Feb2013%20final.pdf], accessed 24/02/2019.

In Decision Number 33/PUU-IX/2011 Legal Considerations, the Constitutional Court stated that the Petitioners' petition was about the constitutionality of the norms of Law, namely Article 1 number 5 and Article 2 paragraph (2) letter n ASEAN Charter which is an attachment and an integral part of Law 38/2008¹¹⁰, thus, the Court has the authority to adjudicate applications.¹¹¹

Article 1 number 5 ASEAN Charter which is an integral attachment of Law 38/2008 states, "To create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for goods, services and investment; facilitated movement of business persons, professionals, talent and labor, and freer flow of capital." Article 2 paragraph (2) letter n ASEAN Charter states, "Adherence to multilateral trade rules and ASEAN's rules-based regimes for effective implementation of economic commitments and progressive reduction towards all barriers to regional economic integration, in a market-driven economy."

Regarding the legal standing of the Petitioners, the Court also considered that the Petitioners as private legal entities

and/or groups of individuals with similar interests, and individual Indonesian citizens, *prima facie*, had constitutional rights deemed to be impaired by the enactment of the norms in Law 38/2008 petition for review, namely the right to work and decent livelihood for humanity, as well as economic rights as contained in Article 27 paragraph (2), Article 33 paragraph (1), paragraph (2), and paragraph (3) of the 1945 Constitution.

The Petitioners' constitutional rights contained in the 1945 Constitution are:

Article 27 paragraph (2) of the 1945 Constitution which states: "every citizen has the right to work and livelihood that is appropriate for humanity."

Article 33 of the 1945 Constitution which states: "(1) The economy is structured as a joint effort based on the principle of family. (2) Production branches that are important to the state and which control the livelihood of many people are controlled by the state. (3) The earth and water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people".¹¹²

Their losses are actual or at least potential, specific, and there is a causal relationship (*causal verband*) between the intended loss and the entry into force of the

¹¹⁰ Read Article 1 Law 38/2008.

¹¹¹ Two Constitutional Justices through dissenting opinion objected to the argument that identified Law No. 38/2008 with the law in general. According to these two judges, it is true, formally Law 38/2008 is a law, but the material is not a law and

cannot be used as an object of testing laws which are the authority of the Court.

¹¹²

[<https://mkri.id/public/content/infoumum/regulation/pdf/uud45%20eng.pdf>], accessed 24/02/2019.

norms of the Law 38/2008. Thus, the Petitioners have the legal standing to file the petition.

According to Damos Dumoli Agusman, this argument is very logical and understandable. The Constitutional Court has chosen the flow of law which has been a controversy so far that the law which ratifies the ASEAN Charter is not different from other laws and finds no convincing reason why this law must be distinguished from other laws, even though doctrine or references are available which state otherwise.¹¹³

INDONESIAN CONSTITUTIONAL COURT'S DECISION¹¹⁴

In the opinion of the Court, provisions of Article 1 point 5 of the ASEAN Charter are primarily intended to make a free trade area in the territory of ASEAN member countries which includes the flow of goods, services and investments, facilitate the movement of business people, professionals, experts, labor, and freer capital flows. These provisions did not apply immediately to the adoption of Law 38/2008 on November 6, 2008. The Article 5 paragraph (2) of the ASEAN Charter states, "The Member States shall take all necessary measures, including the enactment of appropriate domestic legislation, to effectively implement the

provisions of this Charter and to comply with all obligations of membership."

Based on these provisions, the establishment of the ASEAN trade area depends on ASEAN member in implementing the provisions of Article 5 paragraph (2) of the ASEAN Charter. According to the Court, in addition to the obligations contained in Article 5 paragraph (2), each ASEAN member country must also act according to the principles stated in Article 2 paragraph (2) letter n ASEAN Charter which says, "adherence to multilateral trade rules and ASEAN's rules-based regimes for effective implementation of economic commitments and progressive reduction towards eliminating all barriers to regional economic integration, in a market-driven economy."

Related to international law, the Court has the opinion that international agreements made by the State of Indonesia are based on the existence of sovereignty owned by the State of Indonesia. Indonesia has full freedom to bind itself or not commit itself to other countries in an international agreement, enter or not enter, participate in or not participate in existing international agreements.

Even though the Indonesian State has bound itself in an international agreement, but as a sovereign country, Indonesia still

¹¹³ Damos Dumoli Agusman, *Op.Cit.*

¹¹⁴

[https://mkri.id/public/content/persidangan/putusan/putusan_sidang_33%20PUU%202011_ASEANcharter_telah_baca_26Feb2013%20final.pdf], accessed 24/02/2019.

has the right to independently decide to the international treaty that has been made or to which the Indonesian state is bound, after internally considering good profits or losses to remain bound, or not bound by weighing the risks of the decision to exit an international agreement.

The Court states the ASEAN Charter which is an agreement between ASEAN countries is a macro policy in the field of trade which could be changed if the system does not provide benefits especially if it brings losses. In that policies, failures can occur in specific sectors or fields, while in other sectors or fields these policies can generate profits.

According to the Court, sectoral policies can be carried out to overcome the sectoral losses that arise by considering the consequences of taking these policies including the possibility of reactions from other countries affected by the administration and if it turns out macro and massive losses can only be reviewed. In this case, the ASEAN Charter can be evaluated; it can even be terminated based on the provisions of Article 18 letter h of Law Number 24 of 2000 concerning International Agreements stating, "International agreements expire if: ... h. there are things that are detrimental to national interests."

In the opinion of the Court, trade is a dynamic and fast-changing activity, so that at a particular time a policy can benefit nationally, but at other times it can also be

detrimental. Assessing whether a trade policy brings profit or loss involves evaluating the trade balance based on data, so that the government and the parliament (DPR) are the right state institutions to assess at any time the profit and loss of trade policy. It is under the function of the government as an executive and the role of the DPR as a supervisor. Because the implementation of the ASEAN Charter is still dependent on each ASEAN country to make its rules as specified in Article 5 paragraph (2) of the ASEAN Charter, the Indonesian government in making the implementation rules must be by national interests based on the 1945 Constitution.

Because the Law applies as a legal norm, then the state of Indonesia and other countries, in this case, ASEAN countries must be legally bound by Law 38/2008. The problem is whether this is true, how a sovereign state must submit to the laws of other countries. The obligation imposed on a state by an international treaty is not born because the relevant international agreement has been ratified as a Law by another country, but the obligation is taken because the parties, in this case, are the subjects of the law that have agreed to an agreement.

The Court argues that it is based on the principle *pacta sunt servanda*. In international law, international treaties are the second source of law after international custom, while the Law of a country is not

referred to as a source of international law [vide Article 38 paragraph (1) Statute of the International Court of Justice]. The DPR's approval of an international agreement is an internal mechanism of the Indonesian state.¹¹⁵ Its based on the consideration that international agreements can give rise to rights and obligations to the state so that the President in making international agreements requires the approval of the DPR as people's representatives.

In order for an international agreement externally to have binding legal force, that is, towards other countries which also immediately bind the Indonesian state, a different mechanism is needed from the internal device, namely a consent to be attached as stipulated in Article 2 paragraph (1) b of the Vienna Convention on the Law of Treaties which states that, ““ratification”, “acceptance”, “approval” and “accession” mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty” and is described in more detail in Article 11, Article 12, Article 13, Article 14, and Article 15 of the Convention.

According to the Court, Article 11 of the 1945 Constitution does not state that the

legal form of an international agreement is a Law, but says that the President with the approval of the DPR makes an international agreement. If it is associated with the making of law, Law is a legal form produced by the President with the DPR, but this does not mean that every legal product made by the President and the DPR is in the form of a Law. Another juridical aspect that must be considered is whether other countries can use legal remedies in the Indonesian legal system if they find that the Indonesian side has violated an international agreement.

JURIDICAL CONSEQUENCES OF THE CONSTITUTIONAL COURT DECISION

Through its decision, the Constitutional Court has determined that the doctrine of sovereignty is used in viewing the relations of national law and international law. The principle of sovereignty is very well known in international politics and had developed in the early 20th century period in international law known as the national law's primal doctrine of international law. However, according to Damos Dumoli Agusman, the doctrine of sovereignty has been eroded by international law in force today.

¹¹⁵ Article 11 of the 1945 Constitution states, “ (1) The President with the approval of the People’s Representative Council declares war, makes peace and concludes treaties with other countries; (2) The President when concluding other international treaties that give rise to extensive and fundamental consequences to the life of the people related to

the financial burden of the state, and/or compelling amendment or enactment of laws shall be with the approval of the People’s Representative Council; (3) Further provisions regarding international treaties shall be regulated by laws.” [https://mkri.id/public/content/infoumum/regulation/pdf/uud45%20eng.pdf], accessed 24/02/2019.

Vienna Convention on the Law of Treaties 1969 has strictly regulated how a state can withdraw from an agreement and no longer opens the space for unilateral acts of withdrawal as long as the action is agreed by the parties. Also, this Convention prohibits the State from reneging on agreements by using national legal shields.¹¹⁶ Indonesia had carried out this action when its withdrawal from the United Nations membership in 1965 but international law never recognized it as a legitimate withdrawal because the UN Charter did not open the space for withdrawal.¹¹⁷

On March 1, 1948, Hans Kelsen published his research entitled "Withdrawal From the United Nations." Kelsen wrote that in contradiction to the Covenant of the League of Nations, the UN Charter does not contain provisions for withdrawal, nor is it possible to find such clauses in the Dumbarton Oaks Proposals. It was argued, among other things, that the possibility of withdrawal would give recalcitrant members the opportunity of securing concessions from the Organization by threatening to leave it.¹¹⁸

In the opinion of Vienna Tasya Wenasatama, the absence of a withdrawal clause in the Charter of the United Nations was planned

carefully to avoid states abusing such clause as a threat to peace and security of the global community – and the organization cannot afford for that to happen.

Similarly, withdrawal from ASEAN is also not made possible through the ASEAN Charter, as the treaty provides no clause on it. As withdrawal from a constituent instrument would mean membership withdrawal, the ASEAN Charter then challenges the valid reason when a state wants to call it quits.¹¹⁹

According to Termsak Chalermpananupap, since ASEAN makes policy decisions by consultation and consensus, technically speaking, there may be no consensus to allow any member to leave. In practice, however, a member government can stop attending ASEAN meetings. ASEAN could then be paralyzed, because of the absence of one of its members. The member government that wants to leave can also withhold its contribution to the budget of the ASEAN Secretariat.¹²⁰

Article 56 (1) Vienna Convention on the Law of Treaties 1969 states, "a treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to

¹¹⁶ Damos Dumoli Agusman, *Op.Cit.*

¹¹⁷ Luthfi Widagdo Eddyono, "Indonesia Keluar dari PBB", *Majalah Konstitusi*, January 2019, p. 72.

¹¹⁸ Hans Kelsen, "Withdrawal From the United Nations",

[<https://doi.org/10.1177%2F106591294800100103>], accessed 14/02/2019.

¹¹⁹ *Ibid.*

¹²⁰ Termsak Chalermpananupap, "No Brexit Repeat in ASEAN", [<https://thediomat.com/2016/06/no-brexite-repeat-in-asean/>], accessed 14/02/2019.

denunciation or withdrawal unless: (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or (b) a right of denunciation or withdrawal may be implied by the nature of the treaty.”¹²¹

In Indonesian context, Damos Dumoli Agusman states the situation. “The Constitutional Court's decision will open a Pandora box on agreements that have been ratified by Indonesia through the Law because constitutionally can be annulled by the Constitutional Court and will make default in the realm of international law. This situation will lead Indonesia to a legal dilemma, namely compliance with national law will make violations of international law, and *vice versa* compliance with the agreement resulted in violations of the constitution. This dilemma has become increasingly difficult in the context of the constitution because the 1969 Vienna Convention has banned the state from taking refuge behind its national law to disobey international agreements.”¹²²

Damos Dumoli Agusman suggests countries generally avoid judicial review of international agreements. The reason that prevents the state from judicial review is that national courts cannot test the products of international law. Even though the state requires a mechanism to check this

agreement for reasons of constitutional legitimacy, this test is carried out not on international agreements but on laws that transform it.¹²³ Germany, for example, recognizes the mechanism of judicial review of laws that ratify after the law is issued and before the agreement is valid in the realm of international law.¹²⁴

CONCLUSION

The experience of Indonesia which has faced the judicial review of ASEAN Charter should be a lesson for other ASEAN countries. It cannot be imagined if the Indonesian Constitutional Court states that ASEAN Charter is contrary to the constitution. The difficulty is that the ASEAN Charter does not regulate efforts to the withdrawal of ASEAN if this happens. For this reason, it is necessary to present an internal mechanism for each member country to deal with the testing of constitutionality.

In principle, national courts cannot test the products of international law. Even though the state requires a mechanism to check this agreement for reasons of constitutional legitimacy, this test is carried out not on international agreements but on laws that transform it. Practice in Germany can be a reference, namely recognizing the mechanism of judicial review of statutes that

¹²¹

[http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf], accessed 14/02/2019.

¹²² Damos Dumoli Agusman, *Op.Cit.*

¹²³ *Ibid.*

¹²⁴ *Ibid.*

ratify after the bill is issued and before the agreement applies in the realm of international law.

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CAN ASEAN DO A EUROPEAN UNION? THE PROSPECTS OF A EUROPEAN LEGAL FRAMEWORK IN SOUTHEAST ASIA

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ABSTRACT

Following the proclamation of the ASEAN Community, regional integration in the Southeast Asian region has been progressing at an exponential rate. Naturally, the future of legal integration in the ASEAN comes into question. ASEAN and the EU has often been compared with each other, with the EU being seen as a case study for ASEAN integration. The ASEAN Inter-Parliamentary Assembly (AIPA), which is originally on track to become an ASEAN Parliament, remains as a weak consultative body. Critics are calling for ASEAN to evolve into a more powerful institution, and thus the European model is a contentious one. On the other hand, freedom of movement is also highly relevant as a political-security, economic and socio-cultural issue. This paper seeks to address the possibility and potential effects of a Europe-like framework implemented in the ASEAN, looking into one institution (European Parliament) and one practicality (Schengen Area) respectively, to examine whether ASEAN can take on a similar path. This entails identifying the merits and drawbacks of such an idea, the concerns certain states may have and how they can be resolved through incorporating Southeast Asian elements which take into account the local circumstances in institutional design. Ultimately, this paper aims to provide a direction for the course of further ASEAN integration to take place.

Keywords: ASEAN, European Union, legal framework, ASEAN Community, regional integration.

INTRODUCTION

The Association of Southeast Asian Nations (ASEAN) was established with a Bangkok Declaration signed by the five Founding Fathers on 9 August 1967 ("The ASEAN Declaration (Bangkok Declaration)", 1967). In the five decades that followed, the ASEAN

has evolved from a small forum into a vibrant ecosystem.

The ASEAN Community was launched in 2015 with three major pillars: the Political-Security Community, Economic Community, and Socio-Cultural Community (Association of Southeast Asian Nations, 2015). With all forms of integration being implemented

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under the three umbrellas, the possibility of legal integration comes into question.

The European Union is not an end goal, but certainly has been and will continue to be a model for the ASEAN to refer to in its course of integration. With a robust legal framework, the EU serves as the best point of reference for the ASEAN.

There is a multitude of institutions and practicalities in the topic of legal integration - this paper seeks to focus on one case study in each aspect, namely a regional legislature and freedom of movement.

Section II justifies the case studies chosen for this paper and lays the contextual background for the rest of the paper. This paper proposes bold innovations with responses to constraints Section III focuses on the idea of a regional legislature in Southeast Asia while Section tackles freedom of movement. Section V serves as a recap illustrating general challenges and directions for the ASEAN. Finally, Sections VI and VII concludes the paper.

Ultimately, this paper shall offer analysis on the merits and constraints of an EU-like integration, to provide policy suggestion on further ASEAN legal integration. It seeks to inform readers of the potential pathways ASEAN may take, and potentially influence

the course or discourse of ASEAN's political and legal development.

SIGNIFICANCE

This paper is of great significance and timeliness for the reasons that shall be illustrated below.

There is already an abundance of literature on the comparison between ASEAN and the EU, as well as the possibility of legal integration within the ASEAN - however, there appears to be a lack of scholarly literature that looks into the possibility of ASEAN adopting a European legal framework. This paper seeks to be a bridge for the missing link, filling the gaps between presently available scholarship.

This Section shall give a brief overview to the various institutions being compared, and justify the selection of case studies.

ASEAN - a rising regional power.

The first two questions that needs to be addressed when making sense of this paper, is what ASEAN is and why it matters.

The ASEAN has been expanding in an exponential rate in recent years, from a loose organization to a sophisticated ecosystem with over 1000 meetings a year (Prime Minister's Office, Singapore, 2015), involving the governmental, corporate and civil sectors.

The ASEAN's formative years have been rather stagnant - some 33 ASEAN Summits have been held up till this date, in which 3 were held in the first two decades and 20 in the last 10 years ("ASEAN Summit", n.d.). Towards the end of the second decade in the 21st century, ASEAN's development achieved an exponential rate.

In 2007 ASEAN celebrated its 40th anniversary and a historic landmark which would be the ASEAN Charter. The Charter was signed by all heads of states in Singapore at the Thirteenth ASEAN Summit, on 20 November (Association of Southeast Asian Nations, 2007). This Charter confers an international legal status to this intergovernmental organization for the first time.

ASEAN is best known for its non-interference principle. The regional bloc has its roots in a time where Southeast Asia struggled to construct their own national identities. Sovereignty has been a major concern in efforts for further integration, and will be a potential obstacle regarding legal integration.

Another distinctive feature of the ASEAN is the consensus-based decision-making mechanism, often characterized as a central tenet of the "ASEAN Way". Unanimity among all 10 ASEAN member states is requirement in making decisions.

There are many reasons as to why one should care about legal integration in the ASEAN. From maritime territorial disputes

to human trafficking and transboundary pollution, Southeast Asia faces a multitude of multilateral legal challenges which needs multilateral solutions. The Rohingya crisis, extrajudicial killings in the Philippines and the rise of religious fundamentalism, has once again brought the ASEAN human rights issues under the spotlight. ASEAN needs to be able to rise to the challenge.

As such, it could be said that the ASEAN is now on a crossroads to decide its future. The above factors make this piece of literature a timely one. The next question is, why EU?

European Union - the best mirror for ASEAN.

The most obvious reasons for the European Union as a point of reference, is that the EU is the only regional organization of its kind. With a Commission, Parliament and Court, the EU is the most prominent regional organization.

Built upon the ashes of WWII, the European Union started off as the European Coal and Steel Community (ECSC) of 6 member states. The Treaty of Rome (also known as Treaty on the Functioning of the European Union) was signed on 25 March 1957 (Treaty of Rome (EEC), 1957).

According to Article 13 of the Treaty on European Union, the EU comprises 7 institutions ("Glossary of summaries", n.d.):

the European Parliament;
the European Council;

the Council of the European Union;
the European Commission;
the Court of Justice of the European Union;
the European Central Bank;
the Court of Auditors.

Naturally, the European Union has always been a point of reference for ASEAN in its development.

There are also other regional blocs such as the African Union, Arab League, and Organization of American States - while these organizations are all unique in their own right, none of them have achieved the same level of sophistication like the EU has.

EU as a benchmark seems an easy and rational choice - the next two sections shall elaborate on why the European Parliament is chosen specifically out of all 7 institutions, and why out of various issues. The upcoming sections shall also lay out the basic information to equip readers with the necessary background for understanding the arguments that will be put forth.

A tale of two regional legislatures.

Out of the various institutions, the possibility of a regional legislature in the ASEAN region is deemed the most worthy of discussion.

The European Parliament (EP) is widely recognized as a powerful institution, perhaps the most powerful supranational legislature. It has the ceremonial significance of being the "first institution" of the EU,

always mentioned first among all institutions.

However, the EP has a humble beginning too - The European Parliament began as the Common Assembly of the European Coal and Steel Community (ECSC), even predating the whole concept of a "European Union". They first met on 10 September 1952, with its 78 members being taken from the domestic legislatures of the constituent member states.

The Treaty of Rome in 1957 had a provision that the European Parliamentary Assembly be directly elected (Treaty of Rome (EEC), 1957), and this was eventually implemented. The held its first session the following year, on 19 March 1958.

In 1962 the institution took the name of "European Parliament", and in 1979, the EP's members are directly elected for the first time, as stipulated in the Treaty of Rome.

The Treaty of Lisbon entered into force on 1 December 2009 (European Parliament, 2018), strengthening the power of the European Parliament. It also recharacterized the MEPs as "representatives of the Union's citizens", as opposed to "representatives of the peoples of the States".

ASEAN too, has its own ASEAN Inter-Parliamentary Assembly (AIPA). The AIPA General Assembly is the highest policy-making body and convenes once a year, with up to 15 parliamentarians from each member parliament attending

("Organization Structure", n.d.). Under the framework there is also the Executive Committee, Standing Committee, Study Committee and Ad Hoc Committee.

The Indonesian House of Representatives initiated the idea of having an organizing comprising the parliaments of ASEAN member states ("History of AIPA", n.d.). Thus, the first ASEAN Parliamentary Meeting (APM) was convened in Indonesia 8-11 January 1975. Towards the end of the third APM which was held in Manila September 1977, the statutes of the ASEAN Inter-Parliamentary Organization (AIPO) was signed, giving birth to this new regional organization. The idea of an ASEAN Parliament was raised by the Philippines at the third AIPO General Assembly in Jakarta 1980, which was supported as a long-term goal by consensus. This end goal is seen as desirable and could "project the image of ASEAN cohesiveness".

In his article *Institutional Reform: One Charter, Three Communities, Many Challenges*, then-ASEAN Secretariat member Dr. Termsak Chalermpananupap describes this name-change as an implication that the AIPA will become an ASEAN-linked parliament in the conceivable future, "perhaps even comparable to the European Parliament" (Chalermpananupap, 2009).

In 2008, the AIPA Caucus was created in accordance with Resolution No. 28GA/2007/Pol/03. Though an ad-hoc committee of the AIPA, this is a

groundbreaking mechanism which seeks to "to develop common legislative initiatives with the objective in harmonizing the laws of ASEAN Member States" ("AIPA Caucus", n.d.). 9 AIPA Caucus meetings have been held to-date.

Up until now, the AIPA remains a weak consultative assembly without lawmaking or oversight powers.

The above histories of the EP and AIPA made them a brilliant pair for comparison. With an AIPA at the stage of being consultative assembly, it seems to be at a bottleneck which the EU managed to overcome.

Though the European Court of Justice (ECJ) is widely regarded as the "Engine of European Integration (Hoffmann & Pollack, 2003), making a regional court happen in the context of present-day ASEAN still appears to be somewhat too distant for a realistic comparison with present-day ASEAN. On the other hand, ASEAN does have the AIPA which could be considered as "en route" to becoming a Southeast Asian equivalent of the EP. As such, there is more room for comparison between the two parliamentary organizations.

This paper shall analyze the bottlenecks of a fully-legislative ASEAN Parliament, and how this may be overcome.

An ASEAN Schengen

The degree of freedom of movement in a regional bloc is a direct indicator of the level of integration. Whether it is economic or socio-cultural integration, the topic of freedom of movement is of great relevance to the goals of ASEAN today. In the ASEAN Economic Blueprint 2025 (Association of Southeast Asian Nations, 2015), the AEC seeks to “transform ASEAN into a region with free movement of goods, services, investment, skilled labour”. This shows that ASEAN is already equipped with the mindset of propagating freedom of movement.

The above features explain the relevance and significance of discussing freedom of movement in the Southeast Asian subcontinent.

The Schengen Area is a dissolution of border checks along EU internal borders, benefiting EU citizens and non-EU citizens in the region. The freedom of movement for travel, employment and residence is a central tenet behind it. The Schengen Area is conceived with the 1985 Schengen Agreement which was, obviously, signed in the village of Schengen in Luxembourg. The Convention implementing this agreement was signed in 1990 and by 1995, implementation of the Schengen Area started with 7 EU member states.

There are 4 criteria that have to be met before joining the Schengen Area ("Schengen Area- Migration and Home Affairs - European Commission", n.d.):

1. Controlling external borders and issuing visas on behalf of the Schengen states;
2. Cooperation with law enforcement agencies in other Schengen states;
3. Application of the common set of Schengen rules (The Schengen acquis - Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, 1985);
4. Connection to the Schengen Information System (SIS).

The Schengen Information System is a sophisticated information sharing system ("Schengen Information System", n.d.) to make up for the abolition of internal border checks. Its scope is defined by a few regulations. All Schengen state must pass through a process known as the Schengen Evaluation to qualify ("Schengen Area", n.d.), and will go through the same process periodically afterwards.

ASEAN too, has been taking measures to prepare for greater regional integration in the form of freedom of movement.

In Kuala Lumpur on 25 July 2006, the ASEAN Framework Agreement on Visa Exemption was signed. This Agreement calls for the exemption of visa requirements for 14 days for ASEAN nationals.

AN ASEAN PARLIAMENT WITH LEGISLATURE POWERS

The “ASEAN Parliament” depicts a vision for a full-fledged regional legislature that shall gradually phase out the AIPA; the term Member of ASEAN Parliament, or “MAP”, shall refer to its members.

In the following paragraphs, the evolution from AIPA into ASEAN Parliament will be discussed. This section will begin with looking into the current deficiencies of the AIPA and building the case for directly elected ASEAN Parliamentarians. There are concerns and unique challenges, which shall be addressed in the institutional design.

The European Parliament is tasked with multiple duties, some of which are unique to the operation of the EU. There are 3 key functions of the EP, as with most domestic legislatures, that this paper shall focus on:

1. Legislative;
2. Budgetary;
3. Scrutiny.

As of now, the role of ASEAN Parliament has been taken up by the AIPA in name, having nationally elected member parliament members representing the voices of the people; yet the actual body with the real power to influence ASEAN decisions would still be vested in the heads of governments and ministers.

Current Challenges

Lack of commitment towards AIPA

A problem of having the AIPA parliamentarians taken from its constituent parliaments is that there is a lack of dedication towards the institution itself.

Parliamentarians do not have the incentive to invest much in the AIPA - rather, it takes time away from caucusing in their national legislatures in which they hold elected office. Even when it does not, AIPA parliamentarians might be better off spending their time garnering support from their constituencies, or funding from their donors.

When these candidates run for a national election to be elected into their legislatures, their platform hardly included any policy points on what they would do in the AIPA. This is all for a very simple fact - AIPA does not matter to their voters, and therefore AIPA does not matter to them.

As long as ASEAN parliamentarians are not directly elected, having AIPA being taken seriously would be tremendously difficult.

Lack of public awareness

An intrinsic function of the legislature is that it represents the people’s voice in making decisions, and this cannot be done when the supposed constituents are not even aware of the existence of this mechanism.

Following the 2015 kickoff of the ASEAN Community, the three pillars of Political-Security, Economic and Socio-Cultural have gained widespread attention. When even the ASEAN Intergovernmental Commission on Human Rights (AICHR) has been brought to attention, the AIPA remains largely unknown. Many ASEAN citizens would be oblivious towards the existence of such an institution.

The case for a directly-elected ASEAN Parliament

In order to tackle the above problem, introducing direct elections is one of the first steps needed.

A direct election is in itself, informative. The media coverage, civic education and candidate campaigns associated with it would raise awareness among ASEAN citizens. Because MAP candidates are running for a seat in the ASEAN Parliament, their campaigns and manifestos have to be tailored to fit the scope of this regional institution – forcing regional parliamentarians to take this institution even more seriously than before.

These two effects would add impetus towards to the establishment of the ASEAN Parliament. Having a directly elected ASEAN Parliament is one of the first in baby steps towards a functioning regional legislature.

Members of ASEAN Parliament as a part-time commitment

There are two technicalities to be addressed in the formational years of the ASEAN Parliament:

1. Work

There might not actually be that much work that warrants full-time commitment;

2. Funds

There may be a difficulty in allocating funds to pay the salaries.

There is an easy solution to these, which is to make the early batches of Members of ASEAN Parliament a part-time job. This is still better than the existing model where national parliamentarians are conferred another position, where their dedication or performance does not affect their prospects of reelection at all.

Member state parliamentarians can even run for a concurrent seat in the ASEAN Parliament. Dual mandate may not be the best solution ultimately and should be discouraged, if not prohibited, when the ASEAN Parliament gradually achieves a certain degree of professionalism.

Under the status quo AIPA members are holding regional office alongside national office at the same time anyway - the dual mandate model may work in a transitional period from the current AIPA into a full-fledged Parliament.

Institutional design

When it comes to the decision on the design of a Parliament, the question that arises is whether it should be based proportionally on the population of each constituency or on equal representation.

Disparity in Population.

In terms of institutional design, a unique challenge faced by the ASEAN would be the large disparity in terms of population.

The European Parliament today has 751 Members of European Parliament (MEPs) (European Union, 2016), which are elected directly from member states and in some cases, subdivided constituencies within nations. The number of seats are proportional to the population. However, the European Parliament's model on constituencies alone cannot be applied to an ASEAN Parliament completely, for a reason that shall be illustrated below.

Data Query

Total Population by sex (thousands)

Data	Notes			
Location	Sex	2016	2017 ↑	2018
Brunei Darussalam	Both sexes combined	423.196	428.697	434.076
Singapore	Both sexes combined	5,622.455	5,708.844	5,791.901
Lao People's Democratic Republic	Both sexes combined	6,758.353	6,858.160	6,961.210
Cambodia	Both sexes combined	15,762.370	16,005.373	16,245.729
Malaysia ⑧	Both sexes combined	31,187.265	31,624.264	32,042.458
Myanmar	Both sexes combined	52,885.223	53,370.609	53,855.735
Thailand	Both sexes combined	68,863.514	69,037.513	69,183.173
Viet Nam	Both sexes combined	94,569.072	95,540.800	96,491.146
Philippines	Both sexes combined	103,320.222	104,918.090	106,512.074
Indonesia	Both sexes combined	261,115.456	263,991.379	266,794.980
South-Eastern Asia	Both sexes combined	641,775.797	648,780.040	655,636.576
Asia	Both sexes combined	4,462,676.731	4,504,428.373	4,545,133.094

Indonesia's population is gigantic compared to its ASEAN neighbors. According to figures from the United Nations DESA Population Division, Southeast Asia had a total population of 648,780.040 thousand in 2017 (United Nations DESA Population Division, 2017). Out of this number, Indonesia alone accounted for 263,991.379 thousand, or 40.6% of Southeast Asia.

Indonesia's sheer population means that one nation alone might be able to control the plurality in the ASEAN Parliament.

To make things worse, the entirety of Brunei's population only amounts to 428 thousand. Indonesia's population is over 1500 times of Brunei's. Even Singapore, the second smallest ASEAN member state by population, has 5.7 million. This makes the

Singaporean population 13 times larger than Brunei's. Theoretically if Brunei is to claim 1 seat in the ASEAN Parliament, Singapore would have to have 13 "MAPs" and Indonesia 1513 "MAPs", which is obviously an absurd number.

This is a unique challenge faced by the ASEAN. Germany, the biggest constituency, has 96 MEPs while even the smallest states like Cyprus and Malta have 6 MEPs. The microstates of Europe, such as Andorra and Monaco, are not EU members and thus do not have this problem. As the Brunei Darussalam is a full-fledged member state of the ASEAN, it would be an outright absurd idea to exclude Brunei from the ASEAN Parliament or leave them with one single "MAP" in an institution of hundreds.

For the above reasons, a precise and delicate balance has to be made. A base number should be decided upon so that Brunei does not hold just one single seat amidst a chamber of hundreds; or that Indonesia alone would wield the power of a the next few states combined.

Bicameral model

A possible and perhaps quite plausible design would be to have an ASEAN Parliament with two chambers. There are numerous benefits to this that we shall see.

A legislature that is purely proportional to population has two drawbacks: the dominance of certain heavily populated member states; or the voice of a small state

drowned amidst a chamber with much more influential states. A precise and delicate institutional design is needed. With an upper house of equal representation, this could be achieved. The "upper house" can be somewhat akin to Council of the European Union. The hundreds of MEPs represent the people of the EU, while the Council comprises representatives of the member state governments.

A distinct advantage of this model is its compatibility with the ASEAN Way - unanimity can be kept as a requirement for the Upper House, at least for the formative years.

Powers of the ASEAN Parliament

Having tackled the institutional design for the ASEAN Parliament, the next question would be, "What exactly can this ASEAN Parliament do?" or "What power does it have?".

In tackling this question, a factor that has to be considered is "What kind of powers are the ASEAN member state leaders willing to give". After all, setting up a regional legislature like the ASEAN Parliament is to some extent, subjecting a country's legal system under a greater authority.

Legislation

At this point, endowing an ASEAN Parliament with legislative powers seem to be a task out of reach. There are, however, certain powers that can be conferred to the

ASEAN Parliament to bolster its legitimacy - budget may be a suitable starting point.

Budgetary

The ASEAN annual budget stands at \$20 million USD as of 2016 shared equally by all members (The Jakarta Post, 2017), with a Secretariat of around 300 employees. This number is dwarfed by the huge EU budget, amounting to €165,619,355 million EUR in the 2019 draft budget (European Commission, 2019). As such, there should be little controversy in this matter.

Oversight

The ASEAN Parliament may have oversight over the work of the Secretariat. This does not go against the non-interference principle as no member states' sovereignty is being infringed upon.

Appointment

As of now, the ASEAN Charter decrees that the Secretary-General of the ASEAN be appointed at an ASEAN Summit.

Even if this role may be considered largely ceremonial, it could at least add some credibility to this new institution. The converse is also true - having the Secretary-General appointed by a body of directly-elected representatives makes the ASEAN more credible and accountable to its people.

The United Nations General Assembly model

In some sense, the future of an ASEAN Parliament can begin with a model similar to the United Nations General Assembly. The United Nations Charter outlines the functions and powers of the General Assembly (Charter of the United Nations, 1945), which the ASEAN Parliament could use as a point of reference.

The President of the General Assembly is elected in the annual plenary - the speaker of the ASEAN Parliament can be produced through a similar fashion as well.

The role of the Secretary-General is essentially selected by the United Nations Security Council, and then appointed by the General Assembly. Perhaps a similar approach could be adopted - the ASEAN foreign ministries take turns to nominate a candidate for the top position of this regional organization the way it has been done for years. However, instead of being appointed at the ASEAN Summit, the ASEAN Secretary-General could be appointed by the ASEAN Parliament.

Implementing the ASEAN Parliament

Traction from member states is needed to create the ASEAN Parliament in the first place. The question one may ask is, how might all member states come to agree to this?

The fact is, the ASEAN Parliament is not a completely new idea. The principle of one

such body has attained the unanimous support of all members back then in 1980 ("History of AIPA", n.d.).

It is worth noting, however, that when the idea of an ASEAN Parliament was first raised ASEAN did not have the 10 members it now boasts. Despite this fact, it is natural to expect that the newer member states should somehow adhere to the preexisting consensus of the organization.

Further implications

The creation of an ASEAN Parliament paves the road for future legal integration.

When the ASEAN Parliament passes a new bill legally-binding upon its members for the first time, an ASEAN court would be in order to enforce these legislation and decisions.

DISSOLVING THE BORDERS OF ASEAN

The "ASEAN Zone" is used to depict the imaginary concept of a Schengen Area in Southeast Asia. There are two major facets in the topic of freedom of movement in ASEAN:

1. Greater labour mobility within the ASEAN Zone.
2. A common visa policy for foreign visitors entering into the ASEAN.

The former is an internal aspect; the latter is external. This paper argues for a gradual implementation - from tourism to labor, from certain member states to incorporating all of ASEAN.

Current efforts enhancing intra-ASEAN movement

In most international airports of ASEAN member states, express lanes are set up for fellow ASEAN nationals. All ASEAN member states have visa-free or visa on arrival, usually lasting between 2 weeks and a month. This is the very least ASEAN can do for enhanced mobility within the region. The next step would be to expand this ease of travelling to incorporate labors.

Challenges

There are, however, certain challenges uniquely faced by the ASEAN, and have to be taken into context. The following paragraphs outline the concerns and their impacts, as well as a feasible action plan.

Large exodus of labour

The varying economic capacities of ASEAN member states means that living conditions are much better in some states than others, and would naturally lead to a large outflow of population in some states and an influx in the rest. Southeast Asia is already facing a brain drain problem (Yap, 2017). Many citizens are emigrating in search of higher living standards and brighter job prospects. There have already been a large number of ASEAN citizens wanting to work in Singapore. If the ASEAN Zone is to be implemented under the current state of affairs, this would result in worsening of the issue.

The potential large scale migration renders the freedom of movement for labour unfeasible at this point of time. Such a proposal would not be favored by countries on both side of the equation - emigration and immigration.

Building trust among ASEAN Zone states

In order to make an ASEAN Zone happen, a high level of mutual trust in participating states is a precondition.

There are two aspects regarding national security that would be entrusted in the hands of neighbours if the ASEAN is to adopt a Schengen Area model:

1. Border control;
2. Issuing of visas.

As in the Schengen Area, one country issuing a Schengen visa opens up access to the entire Schengen Area. When Spain hands out a visa to a non-European visitor, they are effectively opening to gates of France and Germany to the same visitor. Other Schengen states would have to rely on Spain's judgment in assessing the visa applicant.

There needs to be adequate trust between each ASEAN member state to entrust their own visa policy to a fellow neighbour.

Border concerns

The Southeast Asian region today is not a completely peaceful one. The fringe of certain member states have sparked security concerns.

The Golden Triangle refers to the part of the Mekong River where the borders of Myanmar, Thailand and Laos converge ("Attractions : Golden Triangle", n.d.), its notoriety in illicit drug production and trafficking has made this name synonymous with an opium-production stronghold. A United Nations Office for Drug and Crime report released in 2018 revealed that methamphetamine production has intensified (UN News Centre, 2018) - manufacturing crystal meth and heroin at an estimate of \$40 billion USD in regional market.

Southeast Asia is also riddled by numerous insurgencies - the longest-running civil war in Myanmar, secessionists in the south of the Philippines. For these reasons, dissolving passport checks at this point seem like a counter-intuitive move.

Solutions

For the above concerns, it is reasonable to say that a complete adoption of the Schengen Area at once is neither desirable nor feasible. To address and mitigate the above them, there are a few tweaks which the ASEAN can go about in building this ASEAN Zone.

Beginning with tourism

There are 3 aspects outlined in the Schengen Area: labor, residence and tourism. The ASEAN Zone should begin with allowing for short term travels for tourism purposes first. Instead of completely

abandoning passport checks, visas on arrival can be granted to ASEAN member state visa-holders. This would already be a boost to ASEAN, as neighbouring countries can reap the benefits of greater tourism inflow.

Gradual inclusion

A reference that can be borrowed from the Schengen Area is that an ASEAN Zone does not have to incorporate all member states at once.

1995's European Union boasted 15 member states ("Countries | European Union", n.d.), yet on 26 March the same year when the Schengen Area officially came into force, only 7 countries were in it ("The history of the European Union - 1995 | European Union", n.d.): Belgium, France, Germany, Luxembourg, the Netherlands, Portugal and Spain. Up till this day, EU membership is not equivalent to Schengen Area membership. The United Kingdom, for one, never joined this agreement up till this date.

Taking a gradual approach makes the idea of an ASEAN Zone much more feasible. A few member states with comparable level of border security protocols and are confident in each other's border control may start first.

Inclusion of non-member states

Another feature from the Schengen Area is that non-EU states have also been de facto

participants, and this could also be implemented in Southeast Asia.

For instance, Timor-Leste and Indonesia have reduced border control along their common borders - Indonesian nationals crossing the border by land do not need a Visa Application Authorization beforehand ("Tourist & Business Visa | Immigration Service of Timor-Leste", n.d.). In the future, this could easily be expanded to other ASEAN nationals. In the case that they still have not been admitted as a member state, they could still be a part of the ASEAN Zone.

ASEAN Zone Information System

Like the Schengen Information System (SIS), the ASEAN Zone needs a counterpart like a "ASEAN Zone Information System". This resonates with the previous proposal of an ASEAN Parliament, to introduce legislations that provide a legal basis for the ASEAN Zone. Preexisting ASEAN entities may also be incorporated into this System, such as the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) ("ASEAN Ministerial Meeting on Transnational Crime (AMMTC) - ASEAN", n.d.) and ASEAN Chiefs of Police (ASEANAPOL) ("Objectives and Functions", n.d.).

COMPARATIVE ANALYSIS OF THEN-EUROPE AND MODERN SOUTHEAST ASIA

The course of developments in international relations may be influenced by the actions of visionary individuals, yet the

developmental processes are also inevitably subject to the historical precedent and existing conditions.

A post-conflict Europe seeking to end centuries of enmity is probably the biggest factor propagating integration, including legal integration. Modern Southeast Asia has not been at war with each other for decades. For most parts of modern history in Modern Southeast Asia, military conflicts like the Indochina war is the rare exception.

On the implementation aspect, ASEAN's unique situation adds on a greater challenge. Southeast Asia is by far one of the most diverse regions in the world. Within 10 member states, there could be various political systems ranging from Brunei's monarchy to Vietnam's communism. There are hundreds of ethnicities, numerous languages and religions, not to mention the varying stages of economic development.

The need for identity building

A robust regional organization like the European Union began with the strong will of visionary individuals. What kept the whole EU framework going is the support from its constituent populations; and this support is made possible by cultivation of a sense of belonging towards the European Union.

Emerging from the remnants of European colonialism, Southeast Asia struggled to cultivate a sense of nationalism. In many cases these notions of nationhood are

artificially constructed by construing cultural differences along the borders.

Now, at the crossroads of legal integration and the various forms listed in the ASEAN Community, Southeast Asia has to break down the walls and barriers between its nations, to stop seeing neighbors as the "Other".

Gradual implementation

If post-WWII European citizens already foresaw how the ECSC would evolve into the modern EU, probably many of them would have rejected the idea altogether.

Changes in ASEAN do not, and could not take place overnight. This is a lengthy process that must be taken step by step.

FUTURE DIRECTIONS

There are other issues worth discussing but were not addressed due to constraints of this paper, such as the possibility of an ASEAN Court and improvement of the human rights mechanism.

As of now and in the conceptions outlined in this paper, the ASEAN still remains as a rather weak organization without much of its own agency.

Can ASEAN recreate a European Parliament and a Schengen Area? Whether that will happen, and when it might happen depends on how future ASEAN leaders tackle this issue. What we can be certain of

for now is that it would be a long way to go before we reach that crossroads.

CONCLUSION

Regional integration has never been an easy task, as shown in the lack of momentum regarding several ASEAN issues. Certainly, the European model is a product of the efforts of distinguished predecessors and has merits in their own right. However, the circumstances faced by Europe at that time, and the circumstances face by Southeast Asia today, are definitely different. It is these differences which pose a unique challenge in ASEAN's quest for legal integration. This paper proposes bold and innovative solutions in face of the ASEAN context.

From an ASEAN Parliament with part-time MAPs with ceremonial roles, to a full-fledged legislature with legislative powers and oversight, this paper has proposed plans on how the AIPA may evolve into the ASEAN Parliament.

The idea of an ASEAN Zone, akin to the current model of the Schengen Area, is in the rational interest of the ASEAN member states. The ASEAN Zone should begin with a focus on tourism, before expanding to residence and labour.

Under both cases, the gradual implementation of legal integration is key. This goes in line with the need for building an ASEAN Identity.

For the above reasons, ASEAN cannot and should not attempt to reenact the path which Europe took. Rather, ASEAN is to create its own ASEAN Way, as it always has.

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DELIBERATION, SOUTHEAST ASIAN LOCAL WISDOM IN RESOLVING DISPUTES

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ABSTRACT

Cultural disputes, and others, often occur between neighboring countries in Southeast Asia and can be the seeds of disharmony, of course, this is not desirable. Southeast Asia as a cultural scope that is interrelated in history, has local wisdom in resolving disputes, resolving this dispute is known as deliberation. Deliberation is an identity that must be prioritized as a wise cultural approach for the ASEAN community. The purpose of this study is to explore the local wisdom of Southeast Asian people in resolving disputes in their communities and implementing them as a solution for the ASEAN community. Recognizing each other as cultural origins often occur between Malaysian and Indonesian communities. As a nation of the same family, this is commonplace, but the most important thing is how to solve it. Interviewing the people of both countries is the first thing to do in looking at this problem, how they understand and see culture in their culture. Questionnaires are distributed as much as possible, each data obtained will be processed and classified according to nationality, education, age, and others. The findings will be a study to see the perspectives of the two countries in understanding history, culture, and cultural results in addressing the differences of opinion that occur. At least the description of the root of the problem is obtained, why this problem occurs, what are the main causes, how to understand it, how to react to it, and lead to the resolution of the dispute over ownership of culture itself.

Keywords: *Deliberation, Local Wisdom, Culture, Southeast Asia, Disputes, Settlement of Disputes.*

INTRODUCTION

The disharmony of relations between nations in Southeast Asian countries, especially Indonesia and Malaysia, is often cited as a sweet commodity sold by the mass media, ego and disturbance are a game of taste that is explored to arouse anger which leads to insults, innuendo, and even insults to everyone (nation) who are truly brothers. A sweet issue to be "fried" is

one that recognizes ownership of cultural results. The masterpiece of the noble values of the nation embodied in the form of works of art, cuisine, literature, and so forth. As a cognate nation and having a very close kinship, Indonesia and Malaysia are often hit by fluctuations in emotional nationalism triggered by cultural disputes.

Malaysia has become one of the countries often experiencing cultural conflicts with

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Indonesia. the rapid growth and development of the Malaysian state demand this country to establish its identity. Malaysia is known to have repeatedly made claims or the use of Indonesian culture for the benefit of its country. The reason is, that the culture that exists in Indonesia also developed in Malaysia long ago without considering the origin and origin of the culture (Yani Anshori, 2018)

June 21, 2012, Tempo media wrote "Malaysia Has Seven Times Claiming Indonesian Culture", ("Malaysia Sudah Tujuh Kali Mengklaim Budaya RI - Nasional Tempo.co," n.d.) in this article the tempo says that zapin, rendang, gamelan, and cendol dance are recorded in Malaysian cultural deeds, this has sparked debate in various media, both mass media and social media, this debate has spread throughout the community, both government and ordinary people, both those who understand culture, and those who are driven by a sense of nationalism, or emotion. The mass media in Malaysia is that they see the root of the conflict because the Indonesian government has not succeeded in reducing its mass media. Newspapers in Indonesia are accused of being the main igniter of the problem of conflict, so that the mass media, intellectuals and people of Malaysia ask that the mass media in Indonesia stop the news that will cause anti-Malaysian sentiment (Himpunan Sarjana Ilmu-Ilmu Sosial Indonesia. Cabang Jawa Barat., Universitas Pendidikan Indonesia. Fakultas Pendidikan Ilmu

Pengetahuan Sosial., & Universiti Malaysia Sabah. Sekolah Sains Sosial., 2008).

Indonesia and Malaysia as one of the ASEAN member countries have a very close story in kinship relations, on many occasions it is said that a multi-ethnic Indonesian society which at that time still consisted of independent kingdoms spread various regions in the archipelago, the spread of society this happened because of various factors, the factor of sending troops by the Moluccas to the Malacca region to fight conquering Portuguese colonialism which was entrenched in the Malay Peninsula, the Bugis people who were known as sailors who sailed the Ocean with their phased ships, to the culture of migrants in the Minangkabau community large in the spread of culture in various regions of the archipelago. It is undeniable that the people of Indonesia and Malaysia are two siblings who were born from the same cultural roots and developed from time to time with the development of a complex world.

From the history of the same cultural roots, the above raises the question of what actually underlies the occurrence of cultural disputes between nations in the Southeast Asia region, and based on the long history of the community; how the local wisdom of the Southeast Asian nation in resolving disputes in their communities.

At present, if you see a lot of regional dispute points between Indonesia and Malaysia, a formalistic and militaristic approach is very

likely to be able to sharpen the tension between the allied and bloodless nations. We can imagine, in the ocean alone, there are at least 18 points of border conflict between Indonesia and Malaysia, namely Sentut Island, Tokong Malang Baru, Damar, Mangkai, Pineapple Tokong, Tokong Belayar, Tokong Boro, Semin, Subi Kecil, Chief, Sebatik, Gosong Makasar, Maratua, Sambit, Berhala, Batu Mandi, Iyu Kecil, and Karimun. While on land, the point of the conflict stretched along the Sarawak and West Kalimantan-East Kalimantan borders(Pranowo, 2010).

Dispute resolution should not cause a new dispute, then there needs to be a solution to resolve the dispute wisely and wisely, as the purpose of the dispute resolution effort is to settle the problem with a verdict that can be accepted between parties, if this decision is obtained will not lead to following new problems afterward.

It seems difficult to solve the border problem if the approach is formalistic and militarist is rigid. The problem is very complex because each country uses a different approach. The meeting point will be difficult except through a familial cultural approach. If this approach is done, surely many things can be solved together because, in essence, each country wants to live side by side in a safe and peaceful manner. Investment to build a safe and peaceful and friendly life between Indonesia and Malaysia is very large, both from the aspects of

religion, social, culture and blood flow (kinship) (Pranowo, 2010).

This article aims to see the root of the problem of ongoing disputes between Indonesia and Malaysia over the cultural claims that occur many times, and how the people understand the culture and history of the community, and how to respond to cultural disputes that occur in order to resolve the dispute polite east.

METHODS

A research method is needed to obtain data, the method used in this work is the Library Research and Field Research, which is collecting data by reading literature that has something to do with this work and taking to the field. The population in this study is Indonesian society in Central Sumatra which is geographically and culturally close to Malaysia. Samples from the population are taken through certain methods that also have certain characteristics, clear and complete. Sampling in this study, namely using a random sampling technique (randomly selected samples). Given the limitations of a workforce, time and cost, researchers are unlikely to take large samples.

The author conducts research using 2 (two) methods in data collection techniques, namely: 1) Field Research (Field Research) a. Observation, in this case, the writer goes directly to the research location, the object of

research here is the region or group and not individuals who use the area (cluster) random sampling method by getting locations in Riau and West Sumatra.

Questionnaires or questionnaires are used to obtain information from respondents in the sense of reports about the person, or things he knows. This work uses probability sampling, the authors draw samples by giving equal opportunities in the population to be selected as sample elements. The application of probability sampling is the only procedure to allow drawing representative conclusions for the population studied. The author objectively takes samples to be observed without choosing according to his own volition.

Oral questionnaires conducted by the author to obtain information and sources directly to the Minangkabau people in West Sumatra, and the Malay Community in Riau about all matters relating to and related to this paper. As secondary data, in this case, collecting and analyzing from some literature in the form of scientific journals and other sources that have a correlation with this research.

Referring to the problems discussed in this work, the types of data needed are quantitative and qualitative data. Through quantitative methods, the authors collected research data by distributing questionnaires to the Minangkabau Community in West Sumatra and Malay communities in Riau. Through the quantitative method, the writer

held a special interview with the Indigenous People in West Sumatra.

RESULTS

The results of a brief study that has been conducted, found that age levels, levels of education, the intensity of interaction and intensity of travel affect the point of view and contribute to addressing the issue of ownership of the culture and providing an attitude and solution to provide solutions to problems.

Respondents aged less than 15 years did not really think about this issue, in fact, they responded calmly, and the impression was negligent and ignored the issue. Respondents aged 16 to 18 gave a more active opinion, a short answer to the issue was also simple, and the same thing was found for respondents aged 18 years and over, the average respondent responded wisely, stating that the culture in the claim was belonging to Indonesian origin, but they are also allied brothers, so it is normal for Malaysians to recognize it as part of their culture.

In educated people with primary to the high school level, the issue of mutual claims is a quite interesting issue to be debated in various media, of course, with all the limitations of existing knowledge, the perspective of addressing this issue is more than emotional, with very little underpinning. literacy, history and a culture

that is qualified, this is very instrumental in the comments that tend to be spicy attacking one and the other, even out of the context of the issue itself, spread throughout all aspects, hurt and hurt, and attack yourself, individuals.

The attitude shown by the East Coast of Sumatra society will be quite different from the attitude shown by other communities in the Indonesian region. Various sad words to read about this issue can be read openly without any obstacles. In this position it is difficult to tabulate a position or region that can provide valid information about the exact location of the commentary on this issue, so interviews need to be conducted to see and determine how the community behaves based on the location where they live. The people who live in, as well as being born and raised in the East Coast region of Sumatra are cooler in addressing this issue, many things that might underlie it. The East Sumatra Coastal Community, which is dominated by Malay culture, often interacts with neighboring countries, Malaysia and other ASEAN countries that are located around it, which are explored from generation to generation, this happens continuously, building a relationship wisdom that realizes that they are separated only because of the region what is referred to as the state, what about the others, almost all the people in this region do not mind, even tend to be unconcerned about the differences in their citizenship, the influence of inner closeness is more underlying this

relationship than the issue of citizenship. Of course, this cannot be attributed to a lack of nationalism or patriotism, that is its wisdom, culture has penetrated the egocentric flag boundaries of its territory, the spiritual relationship is more dominant than anything else.

"It is not difficult to find food with our tastes in Kuala Lumpur, many restaurants that provide Padang rice, even almost all provide rendang", that is an illustration of a piece of conversation that is often heard when someone who first goes to Kuala Lumpur asks his colleague about a restaurant that he can visit with Indonesian tastes. The dominance of menus such as rendang, Balado chicken, Balado eggs, and other menus rich in spices and coconut milk shows Minangkabau culture enriching local culture in terms of food tastes. When celebrating Eid al-Fitr, the dishes served on the dining table of the people in Indonesia and Malaysia tend to be the same, ketupat, opor Ayam, rendang, curry sauce, crackers, and others almost become compulsory dishes that spread above the banquet of each house, this characterizes the interaction has happened long before now that has left a residue in various aspects, cultural residues are authentic evidence that links it to a long history with various stories that have happened before. This is certainly very influential so that the spread of society through overseas will bring its culture along, and it will be handed down and passed on to the next generation, and it can be

ascertained that the next generation will continue to assume that this is their cultural value.

The response results obtained above, almost most of the respondents suggested resolving the problem by sitting together and discussing this by means of deliberation, kinship approach became the dominant response, but there were also those who encouraged this issue to be brought to the international community, some suggested that it be submitted to UNESCO at the United Nation, so that this problem becomes permanent and does not repeat itself in the future. From the opinion of respondents regarding the steps of family discussion between the two countries, the author asked about the reason respondents chose this step, respondents who were mature in thinking, both because of age, and educational factors stated that noise and emotion would not result in problem-solving, so what if disputes involving the government and the state occur, not only is the resolution of the dispute with deliberations taken between ASEAN countries, but with any country and in any aspect.

DISCUSSION

The spread of society in the archipelago and its integration and interaction dominates the penetration of culture, the people of Indonesia and Malaysia are a very close family, Muhammad Takari mentioned

that: Likewise, after the two countries achieved independence, cultural relations were always closely intertwined. Although both countries are politically separated by state borders, culturally cultural arts such as joget, ronggeng, zapin, gurindam, nazam, nasyid, qasidah, humming and the like are growing in both countries so to this day (Maksum & Bustami, 2014).

In history, before the formation of two countries named "Indonesia" (1945) and Malaysia (1957) now, the relations between the two countries were relatively very close. Both nations have the same historical, linguistic, religious and cultural heritage. The population in both countries comes from the same ethnic group and most of them have close family ties, especially between residents in Sumatra and the Malay Land (Himpunan Sarjana Ilmu-Ilmu Sosial Indonesia. Cabang Jawa Barat. et al., 2008), The background of cultural relations between Indonesia and Malaysia is closely related and cannot be separated from the allied concept. According to Liow, the form of equality between Indonesia and Malaysia is mainly in the aspect of culture that is very tight that makes the two countries referred to as cognates (Maksum & Bustami, 2014).

Indonesian and Malaysian relations can be likened to "Hate but Miss", it is quite difficult to explain, can only be said with a sense, from the bottom of the two deepest hearts recognizing that they have an inner bond that cannot be separated, there is a

social relation between the family and history , but this relationship is not always smooth. In addition to the events of mistreatment of Indonesian migrant workers in Malaysia, which are often the stumbling blocks of Indonesia-Malaysia relations, it is a matter of cultural claims made by Malaysia on Indonesian cultural heritage products in the form of art (Himpunan Sarjana Ilmu-Ilmu Sosial Indonesia. Cabang Jawa Barat. et al., 2008).

In the value of harmony, the influence of influence on local values is very thick, including the values of local wisdom. One of them is the culture of resolving disputes or problems with friendly communication, listening to problems openly and patiently, and this is known as deliberation. In this study examples of cultural penetration that instill local wisdom values are taken from Minangkabau and Malay cultures, the question is why Minangkabau and Malays are used as examples or starting points for discussing local wisdom in resolving disputes in the ASEAN region, and in this case the relationship between Indonesia and Malaysia, Minangkabau and Malay is one of the ethnic groups that inhabit the territory of Indonesia, the state administration of the Minangkabau region and Malays are currently dominant in the territory of Indonesia, which is in the Province of West Sumatra and Riau Province, a province geographically located on the heart and the west and east coasts of the island of Sumatra. The Minangkabau and Malay communities

are known as migratory communities which can be said to be almost everywhere, the existence of the Minangkabau and Malay communities can be ascertained its spread with the existence of the Padang Restaurant, and the trading profession which is its mainstay.

The spread and confusion of Minangkabau and Malay people brought with them their original cultural values, in some areas in the alliance region of Malaysia, Minangkabau and Malay languages affected everyday language, architecture, cloth art, even food became inseparable from the region, proving penetration culture gets space and is acceptable.

In resolving conflicts, the ASEAN community is a very wise society, if viewed from the history of ethnic groups spread throughout the archipelago in ASEAN, we can find that communication and deliberation have always been the mainstay.

The dominant Malay and Indonesian people of Malaysia, have long been in touch with the culture of deliberation in resolving disputes faced, even deliberation has not only been sparked due to disputes, in Malay culture every step and action that will be taken will usually be put to be discussed, at least in small family forum, even this deliberation step will still be chosen even if it does not adhere to the public interest, deliberation not only to decide a matter, but deliberation is also concerned with respect and respect for elders, family, and people.

A simple example, in the Minangkabau community, someone who will wander usually will convey their intent and purpose to the prince of his people, or his uncle, or his family. Previously he might have made a unanimous decision, in this case, going to leave whatever happened, this meant the decision had been taken. Then why does he keep sitting together to deliberate on his decision with his extended family?!, The answer is: this is an act of respect, he hopes to get prayers and blessings from his family, he also hopes to get advice to behave and step in the overseas country, the quote above is one function of community in Minangkabau community even though there is no dispute.

Other meetings are deliberations conducted to avoid problems that might occur in the future. Events that will be held will certainly affect the surrounding environment, hustle, bustle, and garbage that will scatter is a form of access that is certain to occur in an event, usually the Malay community will hold a meeting by inviting surrounding residents to discuss the event to be carried out, organizers will ask for permission and willingness of the surrounding population if the event will disturb their daily activities, this is another form of deliberation carried out even though there has been no dispute.

Resolving disputes in adat density is another means when a dispute occurs that is quite serious, only the big things will be

talked about by this Institute. The settlement of disputes carried out by the Minangkabau indigenous people is through a non-litigation route, namely a settlement conducted at the Kerapatan Adat Nagari. Procedures for resolving disputes are: carried out in a straight way up, straight down, starting from leader of the clan, tribe, then Kerapatan Adat Nagari (Azra, Ananingsih, & Triyono, 2017).

From the brief review above, it can be seen that the wisdom of eastern communities in Southeast Asia is very close to wisdom, tolerance, respect, deliberation, patience, polite communication, and other things that are very ethical.

This culture of deliberation is believed to have existed since the eastern nation of Southeast Asia developed, especially with the entry of Islam into the archipelago Dudung Abdullah mentioned in his writings: in the Islamic world was born the conception and application of deliberation. This can be seen in the Prophet's time as "Rais al-Din and Rais al-Bilad in the State of Medina" Deliberation as the principle of state and rule in the system of government" (Abdullah, 2014).

Islam brings new colors into the realm of social life in the archipelago, as is believed that Islam entered together with the arrival of traders from the Middle East. From the coast of Sumatra Islam developed far into the depths of Sumatra, Islamic teachings gradually influenced the customs values of

the people and their customs. In addition, the high interest of the Minangkabau people to study religion in Mecca and spread it by purifying their practices in the Minangkabau area has made religion an inseparable part of customs.

In its development, Islam also developed throughout the region, including the Malay Peninsula, and other overseas regions, at this point the kinship relationship and the influence of adat that had been enriched by Islamic values helped to piggyback and build a new civilization.

In colonial colonialism carried out by European nations, even long before the relationship between the kingdoms in the archipelago had been intertwined with trade relations and marital relations. So this relationship can be said to be a complex relationship, until now. Actually, in relations between Indonesia and Malaysia, cultural problems are far more intense in their interactions than economic problems. This happened because between Indonesia and Malaysia, historically had allied languages and blood. Therefore, the relationship between Indonesia and Malaysia is more than just economic and cultural relations, but also kinship (genealogical) (Pranowo, 2010).

The relationship that has been connected continuously between the people of Indonesia and Malaysia today can still be traced because the lineage is still close and not so far away. This can be traced from the

descendants and bloodlines of several sultans in Malaysia, which are not a few of them, originating from Sumatra, Java, and Sulawesi. Likewise the Ulama in Malaysia, including many who study or study at the famous Kyai or Ulama in Sumatra and Java (Pranowo, 2010).

The impact of these historical events, at present, there are many social and cultural similarities between citizens of Indonesia and Malaysia. Especially in regions that are geographically very close to Malaysia such as Sumatra, Kalimantan, and Java. In these areas, not only intense social-cultural relations but also blood kinship occurred (Pranowo, 2010).

When connected between the history of lineage relations, geographical proximity, the same basic cultural values, religious beliefs and religious values that emphasize brotherhood, it can be said that deliberation is the noble value of the Southeast Asian nation's culture to resolve disputes. As for Abdullah, he argues: deliberation is a negotiating activity by exchanging opinions from various parties regarding a problem to be considered and decided and taken the best for the benefit of the common good. (Abdullah, 2014)

And the wise opinion of Pranowo states that: In this context, the Indonesian people should be able to understand Malaysia's claims to the art of Ponorogo and batik craft. That claim is very likely a reflection of the feeling of cultural closeness between

Malaysia and Indonesia. Unfortunately, the claim because of the closeness of the culture received an uncomfortable reaction from the Indonesian people (Pranowo, 2010).

CONCLUSIONS

From the above conclusions, it can be concluded that there is no denying the anger of the Indonesian people when the Malaysians made claims of cultural ownership that were born, grew and developed in Indonesia, but it must also be remembered, the Malaysian people who have now developed are family members of the same family. It cannot be blamed directly on what if they claim Indonesian culture as its true culture, this is because the culture adopted at this time has been lowered down since its ancestors who also originated from the archipelago.

It can also be seen that the mass media plays a role in the sentiment that occurs in both communities in both countries, the most interesting thing to read or witness on a media is bad news. It is undeniable that bad news will get great attention from the public because the selling value of bad news will be higher for them and this can be seen from the news broadcast repeatedly on TV stations.

In addition to age, education, intensity of interaction and intensity of travel play a lot of role in people's attitudes in addressing a problem, also build knowledge and character of the community in digesting

existing problems, but there is a happy thing, namely the attitude of the community that suggests dispute resolution through the Deliberation media, media based on the foundation of the wisdom of the Southeast Asian community.

In resolving disputes, it is fitting that the value of local wisdom gets a special place, because local wisdom is actually a national identity, a value that is born, fostered and built by times and history has experienced many trips that enrich it into new values that develop and can be accepted throughout the Southeast Asian region.

Based on the conclusions above, it can be suggested, namely the need to establish harmonious communication between the two countries, visits and cultural displays and other things that will merge relationship need to be held to glue and show that the culture of sadness is an integrated part of a nation.

The news that is mutually cornering must at least be based on valid and not repeated information, it is true that it is the right of the mass media to proclaim it. But at least there is a balance of social societies to maintain the unity and regional unity of Southeast Asia, because the flames which are always doused with fuel will surely increase and endanger their surroundings if they are out of control and cannot be controlled, soothing and constructive news needs to be encouraged, of course, this news based on programs made by the two countries.

The development of national character in each country is an integral part, because as a neighboring nation it will certainly be more susceptible to contact, if the national character is not well developed, it will not only endanger relations between nations but can also lead to the integrity of the nation itself, one of which is through education, the level of public awareness to get education needs to be encouraged, but this is not only an awareness of the community, the state needs to go down to fulfill the nation's intellectual life as the constitution salvages it, if this is possible this nation will be better, not only better as an Indonesian society, but as a world community.

The Southeast Asian community is known as a friendly society, this is recognized by almost all the people of the world. But this is not just born, friendliness and wisdom are born from the values that are firmly embedded in every part of the community, this must be maintained, youth exchanges by bringing and introducing cultural values must be encouraged, because that is where the nation's successor will see similarities culture, where the similarity of culture will be a lesson for the creation of a peaceful, just and prosperous Southeast Asian society.

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ASEAN IDENTITY: A LEGAL REGIONAL COMMUNITY OR A NEIGHBORHOOD?

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ABSTRACT

There are important elements or conditions to be fulfilled to build a regional identity such as ASEAN. It is not only based on geography, or shared historical, political as well as culture features. ASEAN identity is also subject to political change, strategic as well as economic currents in the region. Without leaving the fact of the uniqueness of having so many disparities among member states, ASEAN is working hard in making the ASEAN community a success. Knowing the fact that ASEAN consist of 10 member states that is not geographically far away from one another, it is undeniable that the intention and movement towards building a community is still to date is a working in progress. This research aims to discuss the issue of ASEAN as a region having a legal identity that can make ASEAN as an actor in the International Fora. The article consists of three parts. Part 1 will give an introduction to what is regional identity and the importance of having an identity in the International fora. Moving on, Part 2 will look into deep of the current state of the regional identity in the ASEAN community. Then part 3 will dig on the challenges that ASEAN face to build an ASEAN identity taking into consideration the vast diversity among ASEAN member states. This article will then provide some recommendations and way forward for ASEAN in making ASEAN community a success integration and not just as a neighborhood.

Keywords: ASEAN; Integration; International actor; Legal Identity; Region.

INTRODUCTION

It is a widely known fact that ASEAN was founded in 1967 amidst the turbulence of the Cold War and the intense East-West rivalries. Going back in time, one could agree that ASEAN had successfully played the big powers onto one another. Thus, ASEAN's foundation and its success were used as strong arguments for realism. ASEAN were

seen as the product of a "balance-of-power" (Pham, 2011). ASEAN was initially put together by the governments of the region as a means to ensure that ASEAN member states would not be dragged into the conflict of the Cold War, and that ASEAN was never intended to become a supra-state entity that compromises the sovereignty of its member states in any way, and when ASEAN first

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conceived in 1967, there was no intention to create anything that resembled a common market with a common currency, or a common citizenship for the people in the region (Noor, 2017).

Vietnam War in 1975 as well as the Cold War in 1985 showed that Southeast Asia seemed to fall into a power vacuum inhabited by the intervening interest of member states. External threats are still dominating Southeast Asia and it is obviously seen especially when the region faced the financial crisis back in 1997 but ASEAN proved that they successfully dealt with outside world with a single voice (Pham, 2011). Southeast Asian countries nowadays are far more integrated than they have ever been in the modern history of the region, but ASEAN has a long way to go before it can really call itself a real community. All 10 ASEAN member states are glued together due to their geographical proximity, and perhaps a shared destiny. Nevertheless, to be called a community where members shared values and principles, ASEAN is definitely not as for now ASEAN is more like a neighborhood of nations, big and small, rich and poor, at different stages of economic and political development, ruled under vastly different political systems and ideologies (Bayuni, 2017).

We envision the entire Southeast Asia to be, by 2020, as ASEAN Community conscious of its ties of history, aware of its cultural

heritage and bound by a common regional identity. We see vibrant and open ASEAN societies consistent with their respective national identities, where all people enjoy equitable access and opportunities for total human development regardless of gender, race religion, language, or social and cultural background (ASEAN vision, 2020). This was way before we even have a community, where during that time it was envisioned to have a common regional identity, in other words an ASEAN identity. Currently, over the years of the vision being conceptualized, the ASEAN Community actually became official since the end of 2015 with the ASEAN Economic Community being the kick start of it, though one could hardly find the spirit or the sense of being part of an emerging community when travelling and meeting with ordinary people across the ASEAN region (Bayuni, 2017).

Therefore, this paper aim to discuss on the importance of having a legal identity that can make ASEAN as an actor in the International Fora and relevant as a community, not merely a neighbourhood, that will be in the first part of the paper. Next part will be on the current state and the challenges that ASEAN has to face in order to have an ASEAN identity as well as to act as an international actor. Part 3 will then deepen the discussion with referring to the ASEAN Community as a regional identity that will relates it towards becoming an actor in the international stage. The last and final part of the paper will then look at the

most workable ways possible for ASEAN to take into consideration and make ASEAN ready for an ASEAN identity in ensuring that ASEAN remains relevant internationally as a community and not merely a neighborhood.

ASEAN IDENTITY AND LEGAL PERSONALITY: A DEFINITION AND IMPORTANCE IN THE LEGAL FORA.

So what is ASEAN identity? What are the core elements to shape ASEAN identity? And how do the member states consider common identity? Do they consider themselves as citizens of ASEAN and belong to a common community? The ASEAN policy combines the expansive goals of government bodies in one hand, and expectations regarding the fulfillment of duties and responsibilities by citizens, on the other (Pham, 2011). When a corresponding sense of being and a shared destiny that means identity exist, international politics seems to be more stable and enduring, rather than ad hoc or opportunistic, as materialistic approaches would suggest (Wendt, 1994).

Identity, like the regional concept of Southeast Asia and ASEAN is an essentially contested concept owing to its fluidity, indeterminacy, and complexity, thus making it somehow problematic to define. It's essential contestedness can be explained by four problems. Firstly, the problem of definition, which came to the root of how to even define identity. Secondly, the problem of measurement of identity, though being

qualitative, it is not an easy task. Thirdly, the problem of causation and correlation on how to take identity as variable, dependent variable or others and for what grounds. Fourthly, the problem of identification and delineation on how to identify and describe identity in order to have a better grasp of its nature, nuances, and complexities. (Acharya & Layug, 2013).

However contested identity is, there has been attempts at addressing these problems. In addressing the first problem of definition of identity, it is one of those concepts whose meaning, was always fluid but in recent years has become stretched to avoid the charge of 'essentialism'. Identity is a ground or basis for social action, a collective phenomenon denoting some degree of sameness among members of a group category, a core aspect of individual or collective 'selfhood', a product of social or political action, or the product of multiple and competing discourse (Lebow, 2008). In terms of the second and third problem for the quantitative aspects, collective identity is defined as a social category that straddles between content and contestation, with the former describing collective identity based on constitutive norms, social purposes, relations comparisons with other social categories, and cognitive models, while the latter refers to the degree of agreement within a group over the content of the shared categories (Abdelal, 2006). As for the problem of identification and delineation is addressed by disambiguating identity in

terms of its typologies (i.e. levels, layers, types, forms) and dimensions (i.e. cultural, economic and political aspects). (Acharya & Layug, 2013).

How could one understand ASEAN identity then? Firstly, in terms of definition ASEAN identity maybe understood “as a collective identity defined as a process and framework through which its member states slowly began to adapt to a ‘regional existence’ with a view to reducing the likelihood of use of force in inter-state relations” (Acharya, 1998). Secondly, the content of ASEAN identity has to do with (1) constructive norms (or those legal-political and socio-cultural norms that have been developed and evolved since ASEAN founding in 1967 such as the principle of non-interference, pacific settlement of disputes, respect each other’s independence, and respect for each other’s territorial integrity) ; (2) social purposes (regional autonomy, regional resilience, and regional cooperation that have been written either implicitly or explicitly in ASEAN documents since its very founding; (3) relational comparisons (self-acquired identity of ASEAN not as a collective defense community but a security community) (Acharya, 2009). Thirdly, collective identity is an intervening variable wherein ASEAN identity constrains or limits, permits or enables, and shapes as well as influences policy orientations and choices. Fourthly, ASEAN identity is understood in both its typologies and dimensions which while they

overlap are mutually constitutive. In terms of levels, ASEAN identity is subdivided into local identities, (e.g. local peoples’ identification with their local counterparts in other Southeast Asian countries), national (each nation-state’s identity vis-à-vis other Southeast nation states) and regional (the collective identity with their common interest in regional cooperation, as key to regional peace, stability, and prosperity) (Acharya & Layug, 2013).

ASEAN could prove to be a cohesive regional grouping with a distinctive and effective approach to peace, stability and development. This “soft approach” to inter-state relations among member states was called the “ASEAN Way” which consisted of a set of institutions inclusive norms, principles, rules and decision making procedures that were “soft-institutions” which were based on convention and informal agreements rather than formal treaties (Pham, 2011). From the normative/theoretical angle, ASEAN identity could rest on three elements which are the ASEAN way (informal, non-legalistic, consensus-based, process-driven diplomacy), ideas (e.g. “One Southeast Asia,” ASEAN Community, [peace and prosperity]), and norms (both substantive and procedural, as well as legal political and socio-cultural) (Acharya & Layug, 2013).

Norms are undeniably the foremost element of a normative identity formulation. ASEAN subjects (states/NGOs/citizens)

should feel they have “common” norms rather than be arbitrarily wrapped up within a regional imagined community. The ASEAN way signifies an informal/ forum-style multilateral diplomacy. This enables members together not via a rigid organizational structure but through soft regionalism. A supranational body is out of question and it is more about a “normative” sense of an organizational scheme facilitating cooperation and collaboration among ASEAN member states. (Baba,2016).

The most important explanation for the obstacles encountered in the course of building a common identity would be the historical burdens. ASEAN member states are reluctant to give up their sovereignty and independence, the achievement of which entailed a long, tough battle. The ASEAN secretariat continues not to make any decisions for or on behalf of its member states (Pham,2011). In 2007, ASEAN established the ASEAN Charter which provided ASEAN a legal personality as an inter-governmental organization. This personality serve as the organizational identity, distinguished from the identities of its member states (ASEAN Secretariat, 2011).

According to Article 3 of the ASEAN Charter, ASEAN is considered “as an inter-governmental organization, is hereby conferred legal personality”. Does this mean that ASEAN before ASEAN Charter which came into force after four decades of

establishment had no international legal personality? And the personality only came into existence after the entry into force of the charter? The answer to that is no, the lack of provision does not make ASEAN lacked international legal personality, and the fact that they now have that provision does not mean that it possesses personality in a meaningful sense (Chacterman, 2008).

In every legal system, certain entities are regarded as possessing rights and duties enforceable at law. The recognition of those entities as “legal persons” is itself determined by law, a tautology that is reinforced in international law by the centrality of states not merely to the form, but also to the substance of its norms (Brownlie, 1998). The practice and consent of states remain axiomatic to the concept of international law, and through the protection of territorial integrity and sovereign immunity, states are its primary beneficiaries (United Nations Charter,). This is replicated in the institutions of international order: only states are recognized as members of the UN; only states may bring contentious claims before the International Court of Justice (Statute of the international Court of Justice,1945). This is distinct from the question of whether an entity's legal personality is recognized in the domestic law of a given state (Chacterman, 2008).

ASEAN enjoys such legal personality as those members have endowed it.(Schemers

& Blokker, 2003). But the question of whether states and other actors outside ASEAN must recognize it depends on the application of a more objective set of standards. Though there is no consensus in the literature and little authority from courts (primarily focused on the status of the EU and the OSCE), Ian Brownlie has developed a three-part test summarizing the majority views on international legal personality. To enjoy personality, he argues, an organization must possess the following three attributes:

1. A permanent association of states, with lawful objects, equipped with organs;
2. A distinction, in terms or legal powers and purposes, between the organization and its member states; and
3. The existence of legal powers exercisable on the international plane and not solely within the national systems of one or more states.

Applying Brownlie's test, does ASEAN have personality?

1. *The permanent association of states, with lawful objects, equipped with organs* → Even before adopting the Charter, ASEAN was certainly a permanent association of Southeast Asian States, with lawful objects, equipped with at least rudimentary organs, growing into a Secretariat over time.
2. *Distinction, in terms or legal powers and purposes, between the organization and its*

member states → Traditionally within ASEAN, the answer would have been no. ASEAN's foundational document, the Bangkok Declaration, essentially stated some shared goals and announced an annual meeting of foreign ministers. As Tommy Koh and others have argued, the purpose of the Charter is to make ASEAN a more rules-based organization: "The 'ASEAN Way' of relying on networking, consultation, mutual accommodation and consensus will not be done away with. It will be supplemented by a new culture of adherence to rules." (Koh, Woon & Sze-wei, 2007).

In so far as ASEAN continues to rely on consensus, where every member effectively has a veto, it begs the question of whether the collectivity genuinely has a separate personality from its members. It seems that, there has been little indication of a willingness to grant any form of independence to the organization *qua* organization, with active resistance to such a development in the area of human rights.

3. *The existence of legal powers exercisable on the international plane* → ASEAN was finally granted observer status at the UN in December 2006, but this means little. A more important test is whether the organization can create and accept legal obligations. The clearest example would be if the organization can enter into treaties in its own right. The 1979

Agreement Between the Government of Indonesia and ASEAN Relating to the Privileges and Immunities of the ASEAN Secretariat was signed by the Secretary-General of ASEAN, but related only to its status within Indonesia. When outside Indonesia, ASEAN officials travel as nationals of their respective member states. ASEAN has signed various Memorandum of Understanding (MOUs) such as the 2000 MOU with Australia on Haze, a 2002 MOU with China on Agricultural Cooperation, and a 2003 MOU with China on Information Communications Technology, but on matters regarded as important or that bind the member states, the various members have signed and ratified in their individual capacities. This appears likely to continue under the Charter. Though the Eminent Persons Group recommended that the Secretary-General be “delegated the authority to sign non-sensitive agreements on behalf of ASEAN Member States”, the Charter as adopted only provides that “ASEAN may conclude agreements with countries” and other entities, with the procedures for concluding such agreements to be prescribed by the ASEAN Coordinating Council in consultation with the Community Councils. (Chasterman, 2008).

More recently, the ASEAN Charter reiterated the calls for more coordinated external policies. The Charter promoted

“regional resilience” and called for “enhanced consultations on matters seriously affecting the common interest of ASEAN. Article 41(4) was even specific demanding that “ In the conduct of external relations of ASEAN, Member states shall, in the basis of unity and solidarity, coordinate and endeavor to develop common positions and pursue joint actions. Finally in 2012, the enactment of “Rules of Procedure for the Conclusion of International Agreements by ASEAN” sought to strengthen ASEAN as a negotiator with international organizations. (Nguitrugool & Ruland, 2015).

The UN Charter does not assert personality, but there is no doubt that the Organization possesses it. The ASEAN Charter asserts personality, but ASEAN would appear to have a very limited form of international legal personality already. This was evident in the media release that accompanied the signing of the Charter. Noting that the Charter conferred on ASEAN international legal personality distinct from the member states, the release went on to note that, “Details of what ASEAN can or cannot do with its legal personality will be discussed and stated in a supplementary protocol after the signing of the Charter.” (ASEAN secretariat, 2007).

CHALLENGES FOR AN ASEAN IDENTITY

In dealing with the issue of regional identity, it is to be understood that it should neither be an accomplished project nor a

permanent phenomenon. Southeast Asia has not completed the project of region building and has achieved the kind of regional identity that would survive the test of time. But, ASEAN is known as a region in the making and this is owed largely to a significant and self-conscious effort at regional identity building, especially since the formation of ASEAN in 1967. It is the relative success and limitations of this effort, rather than material forces and circumstances facing the region, such as shifting patterns of great power rivalry, that explain many significant aspects of the international relations of Southeast Asia. In simple words, regional identity is seen as an evolving phenomenon (Acharya, 2017).

ASEAN identity as a social construct is not without limitations. Key among these are intra-regional tensions and conflicts, globalizations with its effects on non-traditional issues, saliency of national identity, and political heterogeneity. The commonality of this confluence of factors that are inhibiting, diluting, emasculating, and effacing ASEAN identity- in one way or another- results from an admixture of “religious” adherence, cautious deference, adroit dilution and “closet” revulsion of the sacrosanct principle of ASEAN sovereignty with its corollary norms of non-intervention and non-interference. (Acharya & Layug, 2013)

Despite the efforts to increase regional integration, there are still many challenges

ahead. For instance, doubts have been raised as to whether ASEAN can build a (security) identity based on the “ASEAN way” without institutionalization and legally binding agreements (Sharpe, 2003). Although ASEAN has become a nascent security community that has made war unthinkable in the region, it has not on the other hand made intra-regional tensions disappear, and thus has not discounted the possibility of intra-regional conflicts brewing in the offing. (Acharya & Layug, 2013)

There remain a number of sources of inter-state and regional tensions in Southeast Asia, which can be grouped into three categories: The first was the spillover effects domestic conflicts, especially ethnic, political and ideological challenges to state structure and regime security...A second source of intra-ASEAN conflict related to disputes over territory...Third, relations between Southeast Asian countries are also tested by lingering animosities which have ethnic, cultural, religious and nationalist roots (Acharya, 2009).

Challenges to domestic stability can threaten regional unity and identity. Southeast Asia is hardly new to ethnic strife and religious extremism. Armed separatist movements continue in southern Thailand and Southern Philippines, where the majority of the local population is Muslim. The threat of Islamic extremism is present in Indonesia and Malaysia, with Myanmar

witnessing a surprising degree of Buddhist radicalism. (Acharya, 2017).

Differences in values and political systems within ASEAN also impede the creation of common identity. The discrepancies became even more pronounced after its enlargement, and again after the financial crisis, when it became obvious that “Asian values” were no guarantee of economic success (Jonsson, 2010). Territorial disputes both maritime and continental have always severed relations among Southeast Asian Countries, example of these include the lingering Malaysia-Philippine dispute over Sabah, Thai-Malaysia dispute over their common border, the Malaysia-Singapore dispute over the Pulau Batu Puteh/Pedra Blanca Island in the Singapore Strait /9 which was settled in 2008 in favor of Singapore but with lingering issues on maritime boundaries such as EEZ, fishing rights, etc.) (Acharya &Layug,2013)

The South China conflict involving several ASEAN members and China is impacting intra-ASEAN relations. This is compounded by the challenge to ASEAN’s unity and identity posed by the rise of China and the growing great power rivalry in the region. That and the US policy of ‘rebalancing’ aimed at countering Chinese influence with direct and indirect support from Japan, India, Singapore and Australia, has created the prospect of a new round of great power rivalry in a region that is no stranger to great power geopolitics (Acharya,2015). The rise

of China is not only a military economic challenge to the ASEAN identity, it is also an ideational one. (Acharya, 2017).

Globalization also limits ASEAN identity. This is evident in its effects on non-traditional issues such as financial crisis, pandemics, natural disasters and terrorism. (Acharya &Layug,2013). Apart from that, the different political systems and values of Southeast Asian countries pose limits to ASEAN identity. There are three reasons for this, namely, first, ASEAN prides itself as a nascent security community as its primordial identity that has not required its member states to become liberal democratic politics as a prerequisite for membership, second, this may also pose a requirement considering the political values that other Southeast countries are placing on human rights. This is evident in Chartering ASEAN, that is in not only giving it a “legal personality” to enable it to realize the three pillars of ASEAN Community, but more importantly, of protecting human rights (Alatas,2007). Thus, although ASEAN states have crafted themselves a Charter to promote and protect human rights and practice democracy, it remains to be seen whether they will really go beyond mere rhetoric in doing so. (Acharya &Layug,2013).

Third, in line with the construction of ASEAN Community, the charter as its legal framework, and the “democracy and human rights agenda” underpinning them, is the requirement for participatory regionalism

which is a kind of regionalism that provides enabling and facilitative conditions for “real” participation of all stakeholders in ensuring both a People’s ASEAN and a Government’s ASEAN (Katsumata & Tan 2007).

ASEAN COMMUNITY AS REGIONAL IDENTITY

Identities are to be built by ASEAN through the ASEAN Community in particular on all three pillars of the ASEAN community (Sultan & Zaenal, 2017). As ASEAN leaders recognize the “ASEAN way” alone is insufficient to drive the level of regional integration required in the new era, they sought to re-define the region through the creation of an ASEAN Community with the aim of building the existing loose “association of regional countries” into a much closer “ASEAN community of nations” (Moorthy & Benny, 2013). This became a concrete political agenda for ASEAN leaders when the ASEAN Concord II was adopted on 7 October 2003 with the aim to establish a robust ASEAN community by 2020. Since then, ASEAN leaders have repeatedly affirmed this agenda as the region’s highest priority (Oba, 2014).

In their attempt to build a strong ASEAN community, ASEAN political elites have recognized that the inculcation of a collective ASEAN identity is a critical component. It is perceived that only through the presence of a collective ASEAN identity would the region move beyond mere

institutional integration and imbue a genuine sense of regional belonging and common destiny that will bring to fruition the aspirations as spelt out in the ASEAN Charter. This led to the adoption of the motto, “*One Vision, One Identity, One Community*”, at the eleventh ASEAN Summit in December 2005, which signaled a realization by the ASEAN political leaders that a true ASEAN community must be a community of its people based on common ASEAN values and a collective ASEAN identity. Since then, efforts have been made by the ASEAN member states to cultivate a collective ASEAN identity by fostering a sentiment of “we feeling” which will inform regionalism efforts and facilitate greater cooperation between Southeast Asians in the political, security, economic and cultural arena (Murti, 2016).

Despite these efforts, ASEAN has thus far failed to develop a degree of “ASEAN consciousness” in both its bureaucrats and citizens that will nudge them to think of themselves as a member of the wider ASEAN body (Denoon and Colbert 1998-1999). There is no real sense of regional belonging or sentiments of “we-feeling” among the political elites and populace of Southeast Asia to the ASEAN Identity and the idea of ASEAN Community rarely motivate their actions (Narine 2002). Instead, self-interest and functional considerations continue to drive the policy decisions of the bureaucrats of ASEAN (Hund 2010).

The political elites of ASEAN also continue to look at their neighboring countries with much suspicion. The dispute between Cambodia and Thailand over the ownership of the Preah Vihear border territory which escalated into an armed conflict in 2008 serves as an illustrative example of the weakness of ASEAN solidarity, not to mention the strength of ASEAN unity (Weatherbee 2012). Citizens of ASEAN continue to remain largely uninterested and ignorant of the lives, culture and economy of their fellow counterparts in other member states (Heng 2015). Thus, ASEAN remains largely an *"imitation community"* that are *"rhetorical shells and provides form but no substance to genuine regional integration"* (Jones and Smith 2002).

As explained, the creation of an ASEAN community and a collective ASEAN identity still remains an unfulfilled wish. Despite the immense amount of scholarly work carried out on ASEAN, existing literature seems unable to provide a satisfactory answer to this predicament. Realist interpretations continue to dominate the study of ASEAN. Most literature focuses on the security and economic dimension of ASEAN, which despite its importance, is inadequate in the discussion of a formation of a genuine regional community anchored on a collective identity.

Scholars such as Emmerson (2005) and Chang (2016) have tended to look at ASEAN

as primarily a security community in which they posited that ASEAN is essentially made up of a group of sovereign states that have a commitment to abstain from the use of force against each other. Their works study ASEAN mainly from a functional perspective and measure the robustness of ASEAN based on the strength of its collectively held norms of non-use of force and non-intervention principles (Sharpe 2003).

However, a genuine community will require not just instrumental contracts but also social relationship. Scholars inquiring along this line of argument also based their work on the premise that world politics is essentially a competition for power and they are inclined to explain the fragility of regional cooperation and identity as a natural outcome of rational, self-interested state behavior. (Puchala ,1984).

Thus, they generally cast doubts for any sovereign states to be genuinely interested in the building of a shared community that is anchored on *"we-feelings"*. Any form of regional community to the realist would only exist in form but not in essence. However, these theses that have utilized the analytical frameworks of international relations theories often exaggerate the difficulty in building a regional community as a natural outcome of rational self-interest among states (Kim 2011; Yoshimatsu 2016).

They neglect the possible influence of ideational elements on state behavior which is critical to the formation of any collective

community. Consequently, an unsatisfactory rejection on the possibility of the formation of a genuine ASEAN community is often made. (Jie, 2018).

Obviously, ASEAN has promoted a sense of partnership amongst individuals in order to embed ASEAN Identity and move together towards the ASEAN Community. In order to implement these proposals, the ASEAN Socio-Cultural Community Plan has been inked, and broken down into project milestones for every member to achieve. However, ASEAN members have cherished their non-intervention and consensus principles, along with building up mutual respect. These core principles have been observed and rendered fairly peacefully decades, and still serve as a useful framework for ASEAN cooperation. Although ASEAN integration might have emerged out of economic motives to serve the 'national interests' of each member, their meanings of national interest are different, as are their roles and concepts of 'national interest' (Ngampramuan, 2016).

WAY FORWARD- READY FOR AN ASEAN IDENTITY?

Article 35 of the ASEAN Charter, signed in 2008, states that "ASEAN shall promote its common ASEAN identity and a sense of belonging among its peoples in order to achieve its shared destiny, goals and values." Furthermore, Article 1 states that among the purposes of ASEAN is "to promote an ASEAN

identity through the fostering of greater awareness of the diverse culture and heritage of the region." (ASEAN Charter, 2008).

However, not only is it difficult to "forge a common identity" in a region as diverse as Southeast Asia, but the very concept of the "ASEAN identity" is itself ambiguous. The term "ASEAN identity" is used several times but never clearly defined. In other words, it is the "we-feeling" that those citizens are part of an entity beyond their respective national boundaries. The governments of member countries have promoted the ASEAN identity by placing the ASEAN Community on top of their domestic agenda, and as "the cornerstone of their foreign policy." (Acharya & Layug, 2013).

However, the results of a 2011 study released by the ASEAN Secretariat discovered that "three out of four people (76 percent) 'lack a basic understanding' of what ASEAN is and what it is striving to do (Domingo, 2013). A recent ERIA survey on Singaporeans regarding the sense of ASEAN identity, participants across all sectors unanimously agreed that there was no concept of an ASEAN identity and as such, said they did not identify with the idea of citizenship of ASEAN and they agreed that ASEAN functioned more like an economic bloc rather than a regional organization with common goal and purposes. On top of that, respondents from the business sector also claimed that they had no affinity with the

concept of “ASEAN identity” due to the fact that each ASEAN member states was uniquely different and there was no known or established understanding of what being an ASEAN citizen meant. Moreover, the respondents from the same group also felt that the idea of citizenship of ASEAN was an abstract concept and if one were to understand the concept of citizenship, it brings with it a host of benefits, such as voting rights and legal protection, then, in that sense, ASEAN did not have thus making ASEAN citizenship did not exist (Lim, Kiruppalini, Lee, 2017).

Compared to the APSC and the AEC, the supposedly “lower politics” of ASEAN Socio-Cultural Community (ASCC) has received lesser attention from the policymaking circles as well as the media. While in actual fact, the ASCC is the heart of the ASEAN Community. It is where what would later be the ground for ASEAN Vision 2025 is stipulated. Indeed, “ASEAN identity is the basis of Southeast Asia’s regional interests.” (ASEAN, 2009).

Despite the progresses that have been made, however, it has to be admitted that we have not reached the point of a people-centered and people-oriented ASEAN. The majority of decisions are made without any meaningful involvement of civil society. Moreover, the “we feeling” of ASEAN is still missing. People from the remote areas of Indonesia, for instance, are still not aware of the existence of their fellow ASEAN citizens

in Lao PDR for example, not to say in contact with them. A common identity of ASEAN is still not there. The level of direct interaction at the societal level remains low. The task of establishing the ASEAN identity is indeed difficult. It does not only involve political commitment among leaders, “but also asks the people how they think of themselves as citizens, and whether they see themselves sharing one identity consisting of diverse cultures and heritage, tied together by history” (Minh, 2011).

Without a sustained commitment and any political embodiment of a clear and realistic direction of ASEAN regional integration which is truly based on and oriented to the people, this vision would remain just that, a vision, without meaningful realization. (Habibie center, 2016)

What can ASEAN do then to handle this? Firstly, ASEAN needs to foster equitable growth, which has a trickle-down effect to the society level. The people of ASEAN have to feel the tangible benefit that ASEAN can bring them (Fabrian, 2016). How can people in Lao PDR relate to their peers in Singapore, for example, if there is a huge development gap between them? This would entail more investment in infrastructure and more people-to-people contact – as envisaged in the Master Plan on ASEAN Connectivity (MPAC). The MPAC was adopted in 2010 and is intended to underpin the establishment of the ASEAN Community through the enhancement of not only physical

connectivity (such as railway links, road networks, and power supply), but also institutional coordination (such as harmonization of standards and reduction of non-tariff barriers to increase intra-ASEAN trade and investment). It also seeks to boost people-to-people contact (through the relaxation of visa requirements and the development of mutual recognition arrangements – MRAs – aimed to encourage greater collaborations and interactions) (ASEAN, 2011).

Secondly, there needs to be an ASEAN narrative – or “historical memory” – advanced through the education system of member countries. Promoting and prioritizing a common history – as has been done by the European Council, France, and Germany in the context of the EU – should be on the top of the agenda for ASEAN countries. This also mandates the need to adjust school curricula in the ASEAN countries and encourage more student exchanges. This is not to say that subjects on national identities should be de-emphasized or abolished (Fabrian, 2016).

Moreover, educating the general public about ASEAN, by giving the most basic distinction of the role of ASEAN Secretariat and the relationship between the secretariat and the country chairman of each year. On top of that, the need to evolve and institutionalize the ASEAN way to adapt with the changing times is seen as crucial too since the ASEAN way is always said to be one

of the reasons that will be a challenge for ASEAN to stand strong in its political feature against any parties. Besides that, ASEAN needs to change its way and adopt a bottom-up approach towards understanding the issues that ASEAN peoples face and take into consideration of voices of alternative actors and civil society (Lim, Kiruppalini, Lee, 2017).

CONCLUSION

ASEAN's quest for a regional identity has come a long way. The desire for regional autonomy and identity that its founders aspired to and worked on did provide a normative space to articulate the regionness of Southeast Asia, deepen regional cooperation, and build at least a nascent community. The post-Cold War evolution of ASEAN has led to an effort to deepen that sense of identity, especially with the advent of the principle of ASEAN centrality in the Asia-Pacific regional architecture. With this, ASEAN sought to play a managerial role in the wider region featuring the major powers of the day. They were drawn into the ASEAN-led social processes of interaction that have shaped their policy towards the region. But ASEAN's identity-building project is now being challenged by both internal and external challenges, including intra-ASEAN tensions, the rise of China and India, economic globalization, transnational threats, and the spectre of renewed great power. The Evolution and Limitations of

ASEAN Identity (US-China) rivalry. Unless nurtured through greater cohesion and purpose, ASEAN's normative influence would give in to a balance of power dynamics dominated by the great powers at the expense of the region's weaker states. A loss of identity, i.e. ignoring or marginalizing ASEAN as the cornerstone of a member states' foreign policy, could not only unravel ASEAN itself, but the relevance of ASEAN-led institutions built around it (Acharya, 2017)

ASEAN has grown nonetheless. Despite the fact that every single argument on how weak and far away it is for ASEAN to achieve a common ASEAN identity within its 10 member states, one could never argue with the fact that ASEAN had grew from the moment of establishment. True enough, if looking at the facts and figures, ASEAN identity could never be achieved in near time. Nevertheless, seeing ASEAN moving towards becoming a community itself is supposedly to be seen as a work in progress, out of the many "work in progress" ASEAN is currently facing. From the beginning, it was never an intention to create an ASEAN identity, but throughout time it is seen as something that is very crucial for ASEAN to have an identity. This is not only for the fact that people who lives in ASEAN should have a so-called unanimous citizenship for all the benefits that is may offer, but also for the important side of bringing ASEAN as a relevant actor in the international arena.

Therefore, ASEAN is currently moving towards achieving an ASEAN community making ASEAN identity a not-so far reaching target. Yes, to be in a good term with your neighboring countries is a good way to start a regional identity. A wide range of well-known diversity within ASEAN member states may be the top reason of why ASEAN is taking its own time to succeed a community. But, a community is not a target nor a destination because being a community means that particular group will stick together for a long time, therefore, the journey towards a community matters more compared to when does a community actually established and perfected. Nevertheless, ASEAN should really buckle up and start to consider the factors that are contributing as challenges towards becoming a community in order to ensure that ASEAN is relevant to the whole world at large and not just a neighborhood.

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IMPROVING LEGAL POLICY ON THE LABOUR MARKET IN VIETNAM: CHALLENGES WHEN JOINING AEC AND CPTPP

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ABSTRACT

The ASEAN Economic Community – AEC where Vietnam is a member was officially established on December 31st, 2015 and thus has opened a wide labour market where skilled worker can move freely within ASEAN countries. On December 30, 2018 the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) entered into force with very specific labour commitments of Vietnam. These integration efforts bring to Vietnam not only the opportunities but also challenges when the labour policy in Vietnam is still not adapt the international law standards. The purpose of this articles is to answer the question: what is the gap between Vietnam and International communities, especially the AEC and CPTPP's countries on the labour legal policy and how can Vietnam resolve this issue to better move to a globalize economic? Using mainly comparative analysis method, the authors will (1) present in overview the legal policy of Vietnam on the labour market, (2) analyse Vietnamese labour law in comparison to ASEAN countries' and CPTPP's commitments; thenceforth (3) assess the compatibility between Vietnam's legal system and its partnership communities'. From these assessments, this study aims to identify market-related legal challenges Vietnam is confronting as the result of her participation into AEC and CPTPP. This work will not only provide an overview on Vietnamese labour policy but also help international community understand the status of Vietnam and its effort on globalizing the economy. Our study also gives legislative solution for law-makers to regulate the labour law of Vietnam through amendment sessions in the near future.

Keywords: legal policy, labour market, Vietnam, law, AEC, CPTPP

INTRODUCTION

Recently, Vietnam is rising as a new, young and dynamic economic in the South East Asia region and therefore witnessing “a better and deeper globalization which bring great opportunities for the country development in all sectors” (Nguyen, 2017).

The second decade of the 21st century show off the efforts of Vietnam with its presence in the AEC (ASEAN Economic Community) as well as one of the countries joining in CPTPP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership).

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The ASEAN Economic Community, known by AEC is a regional economic bloc of 10 ASEAN member countries ¹³¹ , officially launched on December 31, 2015. Its establishment is to fulfill the ultimate goals of economic integration in “ASEAN Vision 2020” ¹³² , to “*create a unified market and production base via a free flow of goods, services, foreign direct investment, capital and a freer flow of skilled labor*”. A stable, prosperous and highly competitive ASEAN economic region is what they expected. Within AEC, goods, services and investment are expected to be freely circulated; economy grows evenly, poverty and socio-economic gap would be reduced in 2020.

Based on the Trans-Pacific Partnership Agreement (TPP) which was failed by the withdrawal of the United States, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) was born as a free trade agreement between Canada and 10 other countries in the Asia-Pacific region: Australia, Brunei, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. CPTPP entered into force on 30th December with six first countries who ratified: Canada, Australia, Japan, Mexico, New Zealand, and Singapore.

From 14th January 2019, CPTPP officially takes effects in Vietnam.

Both AEC and CPTPP bring to Vietnam huge opportunities to develop the economy, especially a large labour market for high quality employee. Also, Vietnam itself will become a promised land to foreign skilled worker. According to Dao Quang Vinh, Director of the MoLISA’s Institute of Labour Science and Social Affairs, along with EVFTA¹³³, CPTPP “*are expected to create a larger global free trade area and generate more jobs, especially in areas of Vietnam’s strength like garment-textile, leather and footwear, wooden furniture production, food processing and coffee, while improving wages*” (*Vietnam’s labour commitments to CPTPP, EVFTA discussed*, 2018) ¹³⁴ .The biggest challenge the country should face is about the labour force, which depends heavily on the national labour policy.

As AEC and CPTPP are quite new to Vietnam, researches on the situation of Vietnamese labour market are so limited. In the field of Human resources, some studies were realized to evaluate the labour market of Vietnam and its workforce, and the challenges in the new era of integration (e.g. Nguyen, 2017; Hien, N.T.D. and Thao, T.P,

¹³¹10 ASEAN countries include: Vietnam, Thailand, Singapore, Philippines, Myanmar, Brunei Darussalam, Lao PDR, Cambodia, Malaysia, and Indonesia.

¹³² See more at https://asean.org/?static_post=asean-vision-2020

¹³³ Free Trade Agreement between Europe and Vietnam (EVFTA)

¹³⁴ Vietnamplus (December 5, 2018), *Vietnam’s labour commitments to CPTPP, EVFTA discussed*. Retrieved from <https://en.vietnamplus.vn/vietnams-labour-commitments-to-cptpp-evfta-discussed/143012.vnp>

2017). However, when turn to legal policy, it's rarely to find out a comprehensive work at academic level specialize on this issue.

Using legal approach, this research will define the gap between Vietnam and International communities, especially the AEC and CPTPP's countries on the labour legal policy, and then suggest some legislative solution to Vietnam. The first part present Vietnamese labour policy in overview and a comparison to ASEAN countries which include (1) an overview on the labour force in Vietnam, and (2) a comparison to ASEAN countries and the limitation of the national labour policy. The second part focus on the requirements of CPTPP and challenges to Vietnam's labour legal policy: firstly, show off the content of CPTPP on the labour, this part then analyse the commitments of Vietnam when joining CPTPP and its challenges to the labour legal policy. The last one is the authors' proposition on how to improve the labour legal policy in order to better move to a globalize economic.

VIETNAMESE LABOUR POLICY IN OVERVIEW: A COMPARISON TO ASEAN COUNTRIES

An overview on the labour force in Vietnam

The Assessment of Labour Market Overview in the period 2001-2020 of

Vietnam shows that the labour market continues to be developed towards modernization and market orientation; the legal framework, institutions and labour market has been gradually improved; results on labour market were ameliorated such as the increase of supply quality, labour demand structure move positively, income, wages, labour productivity and competitiveness of the labour force increased considerably.

In the second quarter of the year 2018, the population aged 15 and over was 72.51 million, an increase of 0.93% compared to the same quarter in 2017, the rate of female increased 0.58%; urban areas increased by 3.91%. The scale of labour force aged 15 and over is 55.12 million people, an increase of 1.1% compared to the second quarter of 2017; the rate of female increased 0.37%; urban areas increased by 1.25%. The second quarter of 2018 witnessed the labor force participation rate of the population aged 15 and over is 76.55%, rised up from the same period the year before, but has decreased slightly compared to the first quarter of 2018¹³⁵.

In terms of technical and professional qualifications, the labour force aged 15 and over who has been trained with certificates in minimum 3 months in the second quarter of 2018 is 12.04 million, up nearly 267 thousand people compared to the same

¹³⁵ According to The Assessment of Labour Market Overview in the period 2001-2020 of Vietnam

quarter in 2017. In which, the strongest increase in the college group (11.37%), followed by the university and postgraduate group (2.2%) and the primary vocational group only increased slightly (0.02%); intermediate group went down (-1.47%). In the second quarter of 2018, the rate of trained and certified workers was 21.85%, slightly increased (0.2 percentage points) compared to the same period last year. Along with all levels, the rate of workers with university degrees or higher in the total labour force takes 9.58%; college is 3.49%; intermediate level is 5.29%; and vocational primary education is 3.49%¹³⁶.

In terms of employment, the national workforce aged 15 and over in 2017 was about 54.8 million people, an increase of 394.9 thousand people compared to 2016. The labour force in the working age of the country in 2017 was estimated at 48.2 million people, an increase of 511 thousand people compared to the previous year. Labour force in working age in urban areas accounts for 33.4% and 66.6% in rural areas. Workers aged 15 and over working in economic sectors in 2017 was about 53.7 million, an increase of 416.1 thousand people compared to 2016.

The contribution of Total Factor Productivity (TFP) to Vietnam's GDP growth remain at low level. Compared to other

countries, during the period 2001-2010, Vietnam only achieved 4.3%, while South Korea achieved 51.3%; Malaysia reached 36.2%; Thailand reached 36.1%, China reached 35.2%; and India reached 31.1% (Ministry of Labor Invalids and Social Affairs, 2018)¹³⁷.

A comparison to ASEAN countries and the limitation of the national labour policy

After the ASEAN economic community was established, it opened a great opportunity for Vietnamese workers. Mutual Recognition Arrangements (MRAs) are the main tools for moving workers within the AEC. These agreements help practitioners with appropriate skills or experience to be certified and work abroad. Up to now, there are agreements in 8 sectors: technical services (12/2005); nursing services (12/2006); architectural services, survey services (11/2007); medical practice, dental practice and accounting service (02/2009); tourist practice (11/2012). However, the number of jobs in these 8 sectors accounts for only a small part (approximately 1%) of the total employment provided by AEC on the labour market, so it can only have a short-term impact to a certain extent. Moderate and low-skilled labor migration is likely to continue and even increase (ADB & ILO 2014).

¹³⁶ Idem.

¹³⁷ Ministry of Labor Invalids and Social Affairs (September 18, 2018), Announcing the updated newsletter of Vietnam's labor market - Number 18,

2nd quarter of 2018. Retrieved from <http://www.molisa.gov.vn/vi/Pages/chitiettin.aspx?IDNews=28289>

According to the General Statistics Office, Vietnam's labour productivity has improved significantly over the years and Vietnam is a country with a high rate of labour productivity growth in the ASEAN, but Its current productivity is still very low compared to many countries in the region. At the same level in 2011, Vietnam's labour productivity in 2016 reached USD 9,894, only by 7.0% of Singaporean productivity; by 17.6% of Malaysia; 36.5% of Thailand; by 42.3% of Indonesia, and 56.7% of the Philippines. Notably, the gap in labour productivity between Vietnam and other countries continues to increase.

Recent reports showed that the labour policy in Vietnam still cannot adapt the International standard. The requirement on worker remain on low quality so that Vietnamese human resources take just 3.79/10 point, ranked 11/12 Asian countries to participate in the ranking of the WB in 2015. Labour productivity is only 1/15 compared to Singapore, 1/3 of Malaysia, 2/5 of Thailand and this gap is widening. The talent competitiveness index is also low, ranking 5th after Singapore, Malaysia, Thailand and Philippines, takes 82/109 surveyed countries (in which, labor skills index ranks 95/109) (Dung Hieu, 2018).

Moreover, ASEAN is a heterogeneous mass of political system based on differences institutions among ASEAN countries, thus created various legal system. The Labour

Code of these countries has different rules for workers coming from abroad such as on the social security of each country, on immigration rights in which some countries can give an opening policy, but some require very high demand - typically Singapore. However, the information system for workers in Vietnam hasn't really developed. With many differences in labour law of ASEAN countries, the difficulty of accessing and understanding the policies of the host countries therefore are big challenges for our skilled labour when move within ASEAN (Hien, N.T.D. and Thao, T.P., 2017).

Another problem is, Vietnam has a lack of appropriate policy to manage the movement of domestic and international employee. Actually, Vietnam control the number of foreign workers by labor licensing mechanism, which is regulated by Vietnam labour code, the law of company and foreign investment law. However, this process could only manage the input of the workforce. A research of Nguyen Thi Thu Huong and Nguyen Thi Bich Thuy in 2015 (Nguyen T. T., 2015) on Foreign workers in Vietnam showed that after receiving the work permit, many cases of violations has been happened: foreign employee didn't work at the company or the local place as they registered, the duration of work permit is longer than the actual working time, the job in fact is not according to work permits, etc. The uncontrollable flow of international employee within the country, who are recruited in priority by most of foreign

company, cause the inequality on the job opportunities to domestic workforce.

Besides, the education, career orientation and training system in Vietnam has not met the demand of the labor market, especially for workers who require high skills. A majority worker has no protection when joining in the marketplace. The labour market is fragmented with a big separation between urban and rural areas, between the economic development zone and the underdeveloped zone, between unskilled and skilled employee¹³⁸.

The weakness of Vietnamese workers is firstly the lack of soft skills such as teamwork, communication, foreign languages and secondly, their professional skills are still low. In order to succeed in a competitive environment, young workers must have a sense of capacity building, career skills development, soft skills such as team work, ability to adapt to high working intensity, ability to adapt to cultural differences.

REQUIREMENTS OF CPTPP AND CHALLENGES TO VIETNAM'S LABOUR LEGAL POLICY

CPTPP's requirements on labour policy

Considered as a high standard free trade agreement (FTA), CPTPP is not only referring to traditional sectors such as tariff reduction on goods, opening of service

market, intellectual property, technical barriers to trade, ... but also dealing with new and non-traditional issues such as labour, environment, procurement of the Government, State enterprises, etc. In addition, this Agreement sets forth high requirements and standards for transparency as well as providing a binding and coherent dispute settlement mechanism. Therefore, CPTPP also sets very high requirements for labor to ensure fairness and no discrimination against all member states.

One of the main issues of the final negotiation round of CPTPP before signing is on the labour rights. This new FTA characterized by emphasizing labour rights as well as protecting the sustainability of the environment, helping workers and businesses to enjoy economic benefits in a fair way. CPTPP requires all participating countries to ratify and maintain the rights stated in the International Labor Organization's (ILO) 1998 Declaration on the Fundamental Principles and Rights at Work, which should be showed off in their legal system, institutions and practices. All members countries of the ILO, including Vietnam, must respect these worldwide recognized rights.

Article 19.1 of the CPTPP Agreement give a definition on labour laws as *"statutes and regulations, or provisions of statutes and*

¹³⁸ Dan kinh te, An overview on the labour market in Vietnam. Retrieved from

<http://www.dankinhhte.vn/tong-quan-thi-truong-lao-dong-viet-nam/>

regulations, of a Party that are directly related to the following internationally recognized labour rights: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour, a prohibition on the worst forms of child labour and other labour protections for children and minors; (d) the elimination of discrimination in respect of employment and occupation; and (e) acceptable conditions of work with respect to minimum wages¹, hours of work, and occupational safety and health.”

This article and all the 19th Chapter of CPTPP on labour are based on the rights embodied in eight core conventions of the ILO. Chapter 19 also present a relation between the enforcement of the ILO 1998 Declaration with commercial conditions within a certain time frame, including applicable sanctions. Article 19.3 states that “each Party shall adopt and maintain in its statutes and regulations, and practices thereunder”, the fundamental rights as stated in the ILO 1998 Declaration such as (a) the freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour and, for the purposes of this Agreement, a prohibition on the worst forms of child labour; and (d) the elimination of discrimination in respect of employment and occupation. Also, under

article 19.3, each Party shall adopt and maintain statutes and regulations, and practices thereunder, governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

CPTPP will have a comprehensive impact on all sectors, economic activities, especially businesses, which directly affects the employment of workers. The Agreement has many non-commercial contents such as the rights of workers, civil society organizations, labor standards, freedom of association and trade union, ... It will require participating countries to enforce basic principles and rights at work according to the 1998 Declaration of ILO. Therefore, the member countries of CPTPP should have considerable amendments on the laws and policies on labour and union. These labour rights are reported to significantly improve gender equality, increasing women’s access to the labour market and narrowing the gender wage gap in certain instances, in particularly the context of labour in Vietnam (Thanh Mai, 2018).

The commitments of Vietnam when joining in CPTPP and the challenges

Member states are allowed to postpone certain obligations to keep balance in the new context with the high quality of the Agreement. From that, Vietnam also has its own commitments on labour according to exchanged letters between the Minister of

Industry and Trade with the Ministers of 10 CPTPP countries:

- 1) Vietnam is committed to fully fulfilling its obligations (the general commitment) in the Labor Chapter from the effective date of CPTPP for Vietnam;
- 2) For the scope of Vietnam (if any) related to the general commitments in the Labor Chapter, other countries will not apply measures to suspend trade preferences for Vietnam in 3 years since CPTPP takes effect;
- 3) For violations of Vietnam (if any) to the freedom of association and collective bargaining, other countries shall not apply measures to suspend trade preferences for Vietnam in 5 years since CPTPP takes effect;
- 4) During the period from when the CPTPP took effect five years until before the CPTPP took effect for 7 years, Vietnam's violations (if any) on the rights to freedom of association will continue to be reviewed within the framework of the Labor Council of CPTPP under Article 19.12.

Vietnam's labour commitments when participating in the Comprehensive and

Progressive Trans-Pacific Partnership Agreement will have a significant impact on the domestic labour market. If Vietnam prepares all conditions to implement its commitments, the new free trade agreement will contribute to boosting labor productivity, creating new jobs in the domestic market. However, Vietnam's labour laws are still inadequate, not in line with international law and the requirements of integration. In particular, there are the following issues:

Firstly, the CPTPP Agreement requires member states to comply with labour commitments following ILO standards.

However, Vietnam has not yet ratified the three basic conventions (Conventions 87¹³⁹, 98¹⁴⁰ and 105¹⁴¹) relating to freedom of association, the right to collective bargaining and the elimination of forced labour. The lack of these international legal frameworks leads to Vietnamese law makers numerous difficulties when amendment labour law.

Secondly, when joining CPTPP, labour and union laws should be change adapting to international conventions (freedom of association according to convention 87, collective bargaining rights according to convention 98), thus affect the labour environment and trade union organization

¹³⁹ Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87): The Convention concerning freedom of association and protection of the right to organize – also known as convention No. 87- was adopted by the International Labor Organization.

¹⁴⁰ The Right to Organize and Collective Bargaining Convention (1949) No 98 is an International Labour Organization Convention, one of eight ILO fundamental conventions.

¹⁴¹ Abolition of Forced Labour Convention, 1957 (No. 105): Convention concerning the Abolition of Forced Labour (Entry into force: 17 Jan 1959)

in Vietnam. However, according to Vietnamese law, Vietnam Trade Union is the only organization representing workers, implementing 3 functions: (1) representing and protecting workers; (2) participating in management and supervision; (3) educating, propagating workers and participating in the implementation of political tasks of the country, the sector and enterprises.

Vietnamese Trade Unions are not only functioning properly with their functions and duties, but also don't have the independence with the political system. Most grassroots trade unions only focus on cultural and artistic activities, sports, sightseeing, joy, floating movements, political activities under the direction of their superiors. While launching the market economy, complicated labour relations require trade unions to protect workers in legal issues, dispute resolution, negotiation and reconciliation, the role of grassroots trade unions thus have a lot of restrictions.

In addition, it is possible that organizations representing workers will be established and Vietnamese Trade Union must accept in the near future the competition with workers' representative organizations, an unprecedented issue in precedent and therefore have no legal framework related.

The issue of competition and attraction of trade union members is inevitable for Vietnam Trade Union and workers' representative organizations established in

enterprises. Vietnam Trade Union will face difficulties in establishing grassroots trade unions and developing union members, resources to ensure the operation will be shared and reduced, the working environment of trade unions is also greatly changed due to the complicated labour relations. Vietnam Trade Union currently has many advantages, but also shortcomings about the organizational structure such as activities coloured by administrative style, purely and floating events, slowly adaptation to the new situation. When an organization representing employees is established at the unit with different initial claims may attract workers to participate, even leave the old organization (Vietnam Trade Union). This cause the risk of losing members, it is difficult to develop new members of the Vietnam Trade Union in the near future.

Thirdly, the labour regulations in the Labor Code of Vietnam are not in line with the standards of international labor law.

Vietnamese labour legal framework has many regulations that are incompatible with international law and do not conform to the requirements of CPTPP.

One of the issues that need to be addressed is: employment and income of workers, especially the implementation of international labour standards on the freedom of association. The application of labour standards on overtime employees; regulations on weekly day off and holidays; working environment, labor safety and

hygiene; the right to participate in social insurance, adequate health insurance, the right of female workers to be supported in the workplace and when raising small children, the wages, ... are major issues that require specific regulations. More specifically, businesses need to strictly enforce these requirements to avoid countries applying sanctions. If not resolved, this problem may be a major barrier to Vietnam's exports.

For example, on the retirement age, Singaporean law defines a retirement age of 62 for both men and women; in Japan 65 years old for both sexes; Malaysia and Indonesia also set 55 years old for both sexes (US Social Security Agency, 2006), etc. Meanwhile, Vietnam's labor law makes a sexual inequality with the difference of 5 years (male 60 years old, female 55 years old).

The use of child labour is still widespread, the national survey on child labour shows that there are 1.75 million child workers in Vietnam. According to Human Development Report on Child labour of the United Nations Development Programme (UNDP), Child labour in Vietnam take 13.1% (2010-2016), ranked 116 on HDI ranking¹⁴². With the commitment in CPTPP and the requirements of integration, the use of child labour must be eliminated.

The minimum wage in Vietnam hasn't yet adapt to the living standard of workers, and not in accordance with the labor regime and the right to negotiate and autonomy of employees and employers.

Finally, the trend of labor movement among participating countries creates a great challenge in training, improving skills for workers, before that challenge, relevant sectors need to focus on advanced training and improving quality of human resources to better competitive (Thu Hoai, 2014). However, the education and training system is still not in line with the requirements of integration into the international labor market. The quality of Vietnamese human resource is still low, Vietnamese workers who have foreign language, skills and knowledge, as well as behavioral culture in an international environment are still weak. This is the biggest limitation on the quality of Vietnamese labour resources.

SUGGESTION ON IMPROVING THE LABOUR LEGAL POLICY OF VIETNAM

With a lot of limitations of the legal policy on Vietnam's labour market compared to the requirements of the AEC community and Vietnam's commitments to join CPTPP, it is required that Vietnamese laws have to be fixed and adjust many regulations to integrate into the international market.

¹⁴² Source: Human Development Report on Child labour of the United Nations Development Programme,

Retrieved from <http://www.hdr.undp.org/en/indicators/181306>.

First, Vietnam needs to ratify the three basic conventions (ILO conventions numbers 87, 98 and 105) concerning the freedom of association, the right to collective bargaining and the elimination of forced labour. To achieve that, Vietnam has to build and perfect the legal framework and labor relations system, to serve the needs of workers, businesses and society, towards political stability and common prosperity.

Second, the law on trade union should be modified. The Trade Union Law needs to be amended toward the best institutions protecting the interests of workers, enforce the functions and duties of an organization always for the benefit of workers. It is necessary to build a specific union charter, criteria for admission of trade union members, order and procedures for establishment and dissolution of grassroots trade unions, etc. It also needed to train a contingent of leaders with professional capacity and quality to lead trade unions performing its functions and duties, ...

We highly recommend the Singaporean model of trade union, the Singapore Trade Union - National Trades Union Congress (NTUC), which is the sole national trade union centre in Singapore¹⁴³. NTUC exist as an independent institution but not a part of the political system, creating and maintaining a three parties mechanism include: the government, business and

employee. The Singapore Trade Union maintains a close, symbiotic relationship with the Government and in fact has a mechanism for exchanging, appointing, dispatching and supplementing trade union officials to work at the government agencies, parliament, business. The government also encouraged NTUC to accept MPs working full-time with unions and appointing MPs as advisers to unions and bringing issues of workers and union into parliament (national Assembly). At the same time, there are also many officials who go through trade union activities to participate in state management and business management. Such additions to union's human resources create a difference in term of quality.

Third, it's necessary to adjust these major policies, includes:

- 1) Adjusting the retirement age to adapt to the population aging trend and the country's socio-economic development, ensuring the principle of fairness and non-discrimination. First of all, the age of retirement of women should be increase as the same as their male colleagues. Then, this age would be modified toward international standard in adapting the context of Vietnam, for example 60-62 years old for both sexes. This adjustment would be carried out according to a roadmap, gradually narrowing the gender gap in

¹⁴³ Trade unions, The Ministry of Manpower (Singapore),

<https://www.mom.gov.sg/employment-practices/trade-unions>, 18/02/2019.

prescribing the retirement age, ensuring the right to early retirement or later but not exceeding 5 years compared to the general retirement age applicable to special careers.

- 2) Expand the right to unilaterally terminate labour contracts for employees;
- 3) Ensuring minimum wage at a level that meets the minimum living standards of employees. The minimum wage policy needs to be revised to meet the minimum living standards of workers on the basis of changing the concept of minimum wage and criteria for determining minimum wage. At the same time, the wage policy has to be institutionalized progressively according to market mechanism, step by step expand, creating autonomy for employers and employees in paying wages. The labor law should clearly define the concept of wages, with the assurance that "the wages of workers are all the money the employees receive from the performance of the agreed work". In addition, the regulations would have to ensure that enterprises, including state-owned enterprises, are allowed to determine their own wage policies.
- 4) Expand the opportunities and rights of the disputing parties in selecting a dispute settlement mechanism;

- 5) Strengthening the capacity of labour inspectors.

Finally, training programs must be developed to meet the requirements of the international and regional labor market, helping employee to improve the foreign language capacity, skills and attitudes of to integrate into the labor market, meet the requirements market demand and in accordance with the role of the job position.

In summary, the Labor Code needs to be amended to reduce costs for businesses, while ensuring the rights of workers, it is important to improve the quality of employment. The revision aims to ensure the development of the labor market supply and demand and at the same time care for sustainable development for businesses and society; ensure the freedom to seek better jobs for workers and prevent and eliminate forced labor; Specific characteristics and impact assessments need to be studied for subjects specifically regulated in policies and the impact of 4.0 revolution in labor relations.

CONCLUSION

Vietnam labour market on the edge of integration should face with many issues: from the gap between the domestic legal policy and the Asean countries' to new commitments when joining in the new Partnership Agreement. The distance on legislative qualifications and management

qualifications, as well as the domestic workforce compare to others countries in the region cause a huge challenge when Vietnam want to move closer to international standard.

In order to take advantage of the employment opportunities that the AEC market brings to Vietnamese workers, as well as to fulfill Vietnam's commitments under the framework of the CPTPP agreement, it requires the Vietnamese labor law policy to have amendments and supplements in accordance with the labor laws of regional countries and international law. Vietnamese workers need to be trained with the necessary skills to be able to take advantage of the employment opportunities brought by AEC and the development of the integration period.

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STRENGTHENING LAW PROTECTION FOR FINTECH USER

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ABSTRACT

The globalization and the increase of internet users using smartphone affect the increasing number of Fintech users. Fintech has been one most talked and discussed in Indonesia. The growth of Fintech provider actually eases society's life by its sophisticated features, on the other hand, consumers gamble their protection since there are a lot of things that haven't been regulated to protect their interest when using Fintech. This paper aims to analyze what the government should do to strengthen the fintech user protection regulation and get to know further about fintech users idea and thought about fintech development in Indonesia.

Keywords: *fintech user protection, regulation.*

INTRODUCTION

The globalization effect towards developing country, like Indonesia, is an undeniable necessity. In order to stay on the path of civilization, people should be able to be so adaptive that they're not left behind. Moreover, in postmodern era development when globalization grows rapidly and vast due to more convenience of information access. As Charles Darwin stated in his book *The Origin of Species*, simply mentioned that not the strongest but those who are able to adapt eventually will survive¹⁴⁴ on earth. It is very important for Indonesian to adjust to globalization, especially in the economic

field. Interdependence relationship in economic field inter individuals or inter-states along with technology and economy development, drive the development of many start-ups in finance fields which are based on technology system which is well known as Financial Technology (Fintech).¹⁴⁵

Based on Fintech Indonesia Asosiasi and OJK (Otoritas Jasa Keuangan / Financial Service Authority) in 2017, business growth in Indonesia raised so fast with the transaction value 18,65 billion USDollar. Generallym there are 6 sectors of Fintech, they are Payment Fintech with the number of 42.22%, Agregattor 12.59%, Payment

¹⁴⁴Charles Darwin. *On The Origin Of Species By Means Of Natural Selection, Or, The Preservation Of Favoured Races In The Struggle For Life*. London: J. Murray. 1859.

¹⁴⁵Mery Christian Putri, dalam rubrik Opini Majalah Konstitusi Edisi Maret 2018, ISBN: 1829-7692.

17,78%, Crowdfunding 8,15%, Financial Planning 8,15%, and others 11,1%.¹⁴⁶ According to Kamar Dagang Indonesia(Kadin), investment in 2018 reaches the number 105,6 trillion USD dolar and Statistic data shows in 2018 Fintech in Indonesia is predicted to be 23,8 billion USDollar and raised from the number in 2001 37,15 billion USDollar or 494 trillion.

It began from Joseph Bower concepts about an innovation which succeeded to transform an existing system or market, by acknowledging practicability, convenient access, comfort, economical cost, known as Disruptive Innovation.¹⁴⁷ the phenomenon of Disruptive Innovation also occurred in the Financial Service Industry which has disrupted the landscape of Financial Service Industry globally. Starting from industry structure, intermediate technology, until marketing model to the consumer. The whole change drives the arising of a new phenomenon that is called Financial Technology (Fintech). At the same year, Bill Gates stated that “..banking is necessary, banks are not..”. It describes that in the future, the banking industry will move to a virtual banking without the presence of a physical bank building. It means it would affect a branchless bank system by the convenience of mobile banking.

The increasing of Fintech industry in Indonesia is supported by the increase of internet and smartphone users in Indonesia.¹⁴⁸ According to survey result of Indonesia Internet Users Statistic in 2016 which was done by Association of Internet Service Operator Indonesia , the number of internet users in 2016 are 132.7million people or around 51.5% from total population in Indonesia. Several start-ups that are familiar and have many users are e-money from Mandiri Bank, Flazz BCA, Tap Cash BNI, Brizzi BRI, Tcash, OVO, Gopay, Grab Pay, Sakuku, which also can be used as payment system in e-commerce transaction on online shopping account like Shopee, Lazada, Blibli, Tokopedia, JD.ID, etc.

PROBLEM STATEMENT

The government has enacted several regulations that accommodate the development and growth of Fintech in Indonesia. Some of those regulations were officially enacted by The Bank Of Indonesia and OJK as institutions that have authority to supervise and manage cash finance money and economic flow in Indonesia. The regulations have been adjusted with the existing Acts or related regulations, however, Fintech regulation has not

¹⁴⁶<https://kliklegal.com/legalitas-financial-technology-dalam-pembangunan-ekonomi-indonesia-ailrc/> diakses pada 27 Agustus 2018

¹⁴⁷ Harvard Business Review, 1995,

¹⁴⁸Asosiasi Penyelenggara Jasa Internet Indonesia, 2016. Indografis: Penetrasi dan Perilaku Pengguna Internet Indonesia. Jakarta: Indonesia

accommodated the aspect of protection for the consumer which refer to Fintech users

The existing Fintech regulation limitedly regulates the obligations and rights from Fintech service provider as “producer”. Even though grammatically it could possibly be interpreted that Fintech users protection is provided by the part of Fintech Service Provider obligation implementation, the unavailability of Fintech Users Rights Protection explicitly on those regulations cause the legal uncertainty for consumer / Fintech Users.

STUDY OF FINTECH

Knowledge and technology development which grow so fast in the digital era currently has affected social behavior in accessing various information and various electronic service. One of technology development which becomes the latest study in Indonesia is Financial Technology (Fintech) in finance institution.¹⁴⁹ In the historical approach, the main concept of Fintech development actually cannot be separated from the peer-to-peer application concept that was used by Napster in 1999 for music sharing.¹⁵⁰

Fintech has an important role in Indonesia economic growth, these followings are several explanations of Fintech role in economic development in Indonesia:

1. Increase national Finance Inclusion
→ Inclusive finance basically is a mean that is systematically arranged in order to erase any obstacles towards society access in using financial service with low cost.¹⁵¹
2. Increase equality in social welfare → Besides social justice in accessing any service in the economic field, Fintech is expected to be used to realize the state purpose that functions to provide welfare for the people.
3. Fintech minimize cash money circulation that implies minimize inflation → By fintech using, circulation of money will be more quickly because Fintech will be easier in distributing loan to society than banking, therefore there will be an increase in consumption which will sustain national economy.¹⁵²
4. 4. Fintech service users will be able to know directly transaction data

¹⁴⁹Imanuel Aditya Wulanata Chrismastianto, “Analisis SWOT Implementasi Teknologi Finansial Terhadap Kualitas Layanan Perbankan di Indonesia”, Jurnal Ekonomi dan Bisnis, Vol.20, Edisi 1, Fakultas Ilmu Pendidikan Universitas Pelita Harapan Tangerang, 2017, page.133

¹⁵⁰<http://business-law.binus.ac.id/2016/05/31/mengenal-lebih-dekat-financial-technology/>

¹⁵¹Lia Nazliana Nasution, SE, M.Si, Handriyani Dwilita, SE, M.Si, “ *Keuangan Inklusif Dan Pertumbuhan Ekonomi Sumut* “, Jurnal Ilmiah Research Sains VOL. 2. NO. 3 September 2016, page. 95.

¹⁵²Jamal Wiwoho, “ *Peran Lembaga Keuangan Bank Dan Lembaga Keuangan Bukan Bank Dalam Memberikan Distribusi Keadilan Bagi Masyarakat* “, MMH, Jilid 43 No. 1 Januari 2014, page.92

without third party → Different from the non-tech financial transaction which requires the third party in it, Fintech can manage its transaction independently. Fintech provides facility to user to manage an amount of payment and its schedule based on capacity and needs.

5. Fintech gives service choice option that will simplify users' needs → By using Fintech, it is provided so many kinds of choices that facilitate users in fulfilling their needs in daily life easily.

Despite the fact that Fintech has so many positive effects and benefit in social life, it could be predicted that there are several bad impacts that might happen. These are the following bad impacts :

1. Fintech users / Consumer Protection

a. User's/ Consumer's Finance Protection

There is a potential financial capability decrease which could be caused by abuse, fraud, or Force Majeure in Fintech transaction. In this case, there should be regulated specifically the liability and responsibility of Fntech provider so that Fintech users could feel safer in using fintech.

b. Consumer / Users data Protection

There has been an issue about privacy security of Fintech users is so prone to abuse whether intentionally or unintentionally (hacker/malware virus

attack). The abuse of users' data is obviously harmful. The question is, who will be responsible if there is a case when privacy data of Fintech users is abused by the third party that is not the Fintech Provider.

2. National Security / National Interest

a. Anti-money Laundering and prevention of Terrorism Fund

Convenience and fast service that is offered by Fintech cause a potential abuse for money laundering and terrorism fund activity.

b. Financial System Stability

It needs to build risk management that is proper enough to minimize the negative impacts towards financial system because it is undeniable that in some senses Fintech could threaten state financial stability.

From the economic perspective, Fintech development obviously supports three (3) Master Objections from Indonesia Financial Service Sector in 2015-2019 that was published by OJK, hereby: 1) Contributive; 2) Stabil; 3)Inclusive. In fact, the role of Fintech in Indonesia economic system are these followings: 1. Support the equal of welfare society level by supporting National funding distribution that hasn't been equal in 17.000 equals; 2. Support the optimization financial service sector role in maximizing the economic growth to create financial system stability as the base of sustainable

development. 3. Increase national funding inclusion. 4. Support the ability of Small Micro and Medium Enterprises export that is pretty low currently.

The existence of fintech service has refreshed most of society in Indonesia. According to the Bank of Indonesia, fintech is the collaboration between technology and financial features that change the business model and cut any obstacles in access system (barrier to entry). Fintech which appeared with finance product that is more modest and the use of technology in operational service could be the best solution for financial access barrier in Indonesia.

As a comparison, to distribute loan, conventional banking required a long process and high costs. Starting from select the candidate of debtors profile, checking the identity documents, guarantee checking, and sending people (debt collector) to remind the debtor to pay their debts. By using fintech, those long process that used to be done by a conventional bank could be done faster and cheaper with the assistance of technology. For example, by using a smartphone that has camera on it and internet access, debtor candidate only needs to take a selfie and upload the needed documents for identity verification, the phone number can be one of the information source to verify the real debtor identity.

Fintech existence that accentuated convenience and effectivity of loan distribution finally become an important solution in the middle of a society that finds difficulties in getting the loan or having a transaction in a conventional bank. The Plus value is also supported by the booming of the e-commerce phenomenon in Indonesia that bring up many new start-ups. Transaction value in Indonesia in 2016 reached 14,8 billion USDollar. This value is predicted to increase in 130 billion USDollar in 2020, referring to Republic Of Indonesia government target on E-commerce Roadmap.¹⁵³ These followings are kinds of Fintech Industry or provide :

1. Asset Management

Company operational activity that spends time and energy such as payroll system, human capital management, funding system, and etc becomes challenges for many start-ups to open the kind of business field. Jojonomic is one example of the start-up that works in the asset management field. This company provide Expense Management System platform to help the running of business more efficient and effective. By the present of these kinda startup, Indonesian could work paperless, because all funding records that previously done manually now worked in an approved application.

¹⁵³| Ketut Sukawati Lanang Putra Perbawa, S.H., M.Hum., " *Tindak Pidana Pencucian Uang dalam*

Sistem Perbankan Indonesia", Jurnal Advokasi Vol. 5 No.1 Maret 2015, page.48 – 49.

2. Crowd Funding

Crowdfunding is a startup that provide platform for fundraising to be distribute to those who need it, like the natural disaster victim, war victim, arts funding, etc. Kitabisa.com is one example of the startup that was created as a place to help other people inconvenient, secured, and efficient way.

3. E-money

e-money stands for electronic money, is a virtual money that is packaged in a digital world. This money generally could be used for shopping, bill payment, and many other activity in an application. One of the most used e-money in Indonesia is Gopay and Ovo Cash. Gopay can be accessed if you have Gojek Application on smartphone meanwhile Ovo is an independent application that can be linked to any kind of e-commerce application. Both can be used not only for online payment but also offline payment by scanning the barcode that is provided by the merchants.

4. Insurance

Insurance startup is kind of interesting because insurance used to be a conventional one which required premium payment if people want to get the benefit . Fintech that works in insurance field provide service in certain hospital, health service , or specific trusted doctor and medical advisor .

HiOscar.com is one example of startup that was built to help its customer in simple, intuitive, and proactive way navigating their health system.

5. Peer to Peer Lending Peer to peer (P2P)

P2P is start-up that provide loan platform online. Capital arrangement which is often considered as the most vital part of starting business brings up this kind of start-up for many businessmen. Therefore, people who want to develop or start their business can get easy loan from P2P provider. Uangteman.com, kredivo, and pay later traveloka are several examples of P2P fintech provider. These start-up aim to fulfill people's financial needs by filling online form and file the requirements in website only for 5-10 minutes.

6. Payment Getaway

The growth of e-commerce company trigger the more start-ups that bridge e-commerce company with users/customers, especially in payment system. Payment gateway make it possible for people to choose variety of payment methods in a digital payment gateway that are managed by several start-up. Furthermore, it would increase selling point of e-commerce company.

7. Remittance

Remittance is start-up that specifically provide interstates money transfer

service. The development of remittance start-up aims to help society who don't have access to banking account. It also helps students and local citizen who work overseas to transfer or get money to or from Indonesia.

8. Securities

Shares, forex, mutual funds are some of familiar investment that are done by lots of people. Nowadays, by the growing of fintech they can be done online. Bareksa.com that established on February 17 2013 was the first integrated start-up in Indonesia which provide platform to sell and buy mutual funds by online, shares, and information service.

PROTECTION FOR FINTECH'S USERS

As stipulated on Article 1 paragraph (3) 1945 Indonesia Constitution, Indonesia is a state of law. State of law is a state which stands on the law to guarantee justice for its citizen, thus justice becomes the ultimate requirement in the happiness and prosper of a citizen. As the base of justice, it should be taught morality and humanity so that citizen can be considered a nice citizen. Law and regulation reflect justice for habitual life amongst citizens. ¹⁵⁴

¹⁵⁴Moh. Kusnadidan Harmaily Ibrahim, Hukum Tata Negara Indonesia, Sinar Bakti, Jakarta, 1998, page.153.

¹⁵⁵Satjipto Raharjo, Ilmu Hukum, Cetakan Kedelapan, PT.Citra Aditya Bakti, Bandung,2014,page.53.

The presence of law in society is to integrate and coordinate any kind of interests in society. In a certain interest, protection towards certain interest only can be done by limiting protection other side's interest. Law role is to determine the rights and obligations of human, so that law has the highest authority to determine which one of human interest that should be regulated and protected.

Law protections should really see any stages which are born from any agreement or social contracts to regulate social conduct and behavior of all people amongst society or between an individual with the government that is considered representing their interest.¹⁵⁵

In its function to protect the public interest, the law has a purpose to create a more discipline social order, create law and order, and balance. ¹⁵⁶ Philips M Hadjon stated that law protection for people should be taken by the government in two ways. They are the repressive and preventive way of law protection. Preventive law protection aims to prevent a dispute that drives the government to be more careful in taking a decision based on discretion.

Repressive law protection aims to solve dispute which happens, including its

¹⁵⁶Sudikno Mertokusumo, Mengenal Hukum Suatu Pengantar, Universitas Atma Jaya Yogyakarta, Yogyakarta, 2010, page.99.

settlement in court.¹⁵⁷ Mochtar Kusumaatmaja thought that adequate law should not only see the law as a tool of the code of conduct that regulates human life rule in social life but also regulate institution that is obliged to implement that rule of law in real life.

In ICT perspective, the law, which is mainly a tool for implementing policy, does not exist in a vacuum. The legal framework for critical information infrastructure protection must be considered in the larger context of the business, social, and technical environment.¹⁵⁸

Fintech users should get law protection whether repressive or preventive. By giving preventive protection, it can prevent any dispute which may happen. Repressive protection aims to solve any dispute by the using of fintech and provide settlement dispute that can accommodate Fintech users' interest.

Fintech regulation in Indonesia can be considered not comprehensive yet. The followings are regulations that specifically regulate fintech development in Indonesia: 1. Bank of Indonesia Regulation Number 18/40/PBI/2016 about Implementation of Payment Transaction Process, 2. Bank of Indonesia Regulation No 19/12/PBI/2017 about Implementation of Financial

Technology; 3. Member of Governing Council Regulation Number 19/14/padg/2017 about Regulatory Sandbox of Financial Technology; 4. Member of Governing Council Regulation number 19/15/PADG/2017 about Registration, Delivering Information, Supervision of Financial Technology Provider.

Meanwhile, OJK has released OJK Regulation Number 77/POJK.07/2016 about Lend and Borrow Money Service based on Information Technology. For Fintech service that is provided by Financial Service Business Player which have been officially permitted and legalized by OJK (commonly called Fintech 2.0), they should pay attention and implement customer's protection as regulated on OJK Regulation Number 1/POJK.07/2013.

There are at least 4 aspects that should be protected by Fintech provider and legally regulated by the government, they are product/service information and transparency; complaint and customer dispute settlement; prevention on cheat and reliability of service system; protection on privacy data (cybersecurity). Although those 4 aspects have been regulated on Fintech regulation mentioned on previous explanation, it should be affirmed that the

¹⁵⁷Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, PT. Bina Ilmu, Surabaya, 1987, page.29.

¹⁵⁸ Critical Information Infrastructure Protection and the Law, Steward D Personick, National Academy of Engineering National Research Council, Washington DC, 2003)

regulation will be implemented well by both provider and user of Fintech.

OJK, as the authorized institution should adhere to these following steps to increase Fintech users' protection that grows vast lately:

1. Supervision and regulation that focuses on developed Fintech in Indonesia.
2. Increase coordination amongst stakeholders.
3. Dispute resolution mechanism preparation on Fintech start-up.
4. Increase Fintech legitimization.

SURVEY ON FINTECH USERS

The author got 75 respondents with xxx questions. The average community who use Fintech in their daily life range from 26-35 years old. The second larger community is range 36-45 with 31 numbers. Most Fintech users' salary range from 5 to 10 million rupiahs. 50 percent of respondents are the civil servant, 32,4% are the private company employee, and the rest of respondents vary from student, businessman, lecturer, lawyer, housewife. According to the diagram that was resulted from the survey 57,5% of all respondents are women.

Even though it has been very familiar since the last 2 years and affected human life behavior, 12,2 % of respondents claimed not to know about Fintech, 21,6% respondents hesitated that they know and understand

Fintech. The rest of the 66,2% know and understand what Fintech is.

There are several explanations that were given by respondents to answer "What do you know about Fintech?" question. Most of the respondents mentioned that Fintech is financial transaction which is based on technology, two respondents mention that fintech is an effort to transform business process in Financial industry supported by sophisticated technology, one respondent answer that Fintech is a situation when you don't need to hold money but can buy anything, according to the table there 10 respondents did not give answer to this question.

Payment, clearing, and settlement are used by the most number of users, with the percentage of 97,1%, there are only 3 respondents use Risk management and investment, and 3 respondents use Peer to peer lending. The most popular fintech system that is used by users is Gopay, Tcash takes the second rank and Ovo takes the third place. 48% of respondents think that using Fintech is very beneficial, meanwhile, 12% (9) respondents think Fintech is just so-so. There are 10.7% of respondents were abused by using Fintech. The abuse that Fintech users had according to the respondents' answer is the privacy violation, the unclear information about bonus and promo, signal or connection issue that cause payment failure, sudden balance reduction without prior notice, delayed service.

Regarding privacy security, 55.4% of respondents are not very sure about the secured data they share on Fintech account, 9.5% respondents wrote that their account is not secured, and the rest of them the amount of 32.4% are sure that their data and transaction are secured. 26.7 % of respondents were sure that there might be privacy violation on Fintech using, and 65.3% respondent never experienced the privacy violation done by Fintech. Hereby the advises given by respondents in order to increase Fintech service system in Indonesia: 1. Create and implement all fintech regulations especially which provide customers protection and if it were not complete yet, analyze and harmonize all existing regulations, 2. Increase cybersecurity in fintech system, 3. OJK should strengthen its power and authority to regulate and supervise the work of Fintech .

FINTECH IN OTHER COUNTRIES

1.Singapore

Monetary Authority of Singapore (MAS) and the National Research Foundation form The Fintech Office to review, adjust, and increase Fintech funding scheme in all government institution; identify any gap and propose strategy, policy and industry infrastructure scheme, development of talent and employee needs and business

competition, manage and develop Singapore branding as Fintech center.

MAS adopt the risk-based approach for Fintech innovation in the unregulated sector, this is a step to make sure that regulations that are enacted by the government wouldn't be limitation the developing of innovation and technology implementation for fintech. Thus, MAS apply the material and proportional test, should the potential risk grow, regulation should be adjusted. In November 2016, MAS released Fintech Regulatory Sandbox which forces Fintech company to be market tested and has bigger chance to be adopted in a wider range or other countries. Sandbox gives security to bear the failure consequences and keep the security aspect.

There are several licenses for Fintech company in Singapore.¹⁵⁹ First, Capital Market Services license under Securities and Future Act for Fintech that work under security field and manage fund more than 1 billion Singapore Dollar. Second, Moneylenders license under the Moneylenders Act for fintech which work in funding business. Third, Banking license under the Banking Act for the entity which accepts savings whether it's bilyet giro or deposit and payment system.

Fintech provider should understand and fulfill the criteria of Personal Data Protection

¹⁵⁹ The Gabriel, Fintech & Regulation in Singapore- What You Need to Know, Simplified Asia Law

Network. Learn. Asian law network.com. N. p.2017 Web

Act to protect user's privacy which is collected from the government institution, like a regulation that obliges every company to have personal data privacy policy that is accessible by public, approval on data usage, and build physical security and system to avoid data abuse.

Fintech in Singapore should understand and adhere to any terms and condition on Anti-Money Laundering and Counter Financial Terrorism Controls. Fintech provider is obliged to verify its user's profile by using a tool known as Know Your Customer / KYC Principal and then supervise and report any suspicious transaction.

2. China

On July 29 2015, The People's Bank of China, the China Banking Regulatory Commission, China Insurance Regulatory Commission, China Securities Regulatory Commission, Ministry of Industry and Information Technology with five government regulator released the Guiding Opinions on Promotion of Healthy Development of Internet Finance. (the Guiding Opinions). It is the first comprehensive regulation related to Fintech that was enacted by the Republic of China People government. The guiding Opinions enacted basic rules that must be fulfilled like online payment, internet-based insurance, online loan, crowdfunding, and online sales of the fund. To prevent any risks, P2P Lending Provider is requested to separate its capital from borrower funds. All funds

gathered should be placed in the custodian bank.

Besides regulation, cooperation between Fintech and Bank also become a trend in China. By this action, a customer would get more benefits because Bank Regulation is clear and firm. On the other hand, Fintech provider also gets benefit trust increase from the customer.

3. United State of America

The Controller of The Currency (OCC) that supervises national banking system, become the first federal regulator that initiated to start a new frame that aims to regulate vast development of fintech sector. There many USA Federal Regulations that regulate Fintech, includes banking law, customer protection, prohibition of unfair and cheat practice, and Anti-money laundering.

Fintech Company in the USA must pay attention to several terms and conditions. First, they must obey the federal Banking Act. Some Fintech provider that wants to run its business like bank usually gets difficulty in fulfilling this condition. Second, finance company must fulfill consumer-disclosure criteria, like The Community Reinvestment Act, the Equal Credit Opportunity Act, the Fair Credit Report Act, the Fair Debt Collection Practices Act, the Fair Housing Act, the Real Estate Procedures Act, the Truth in Lending Act. The Truth in Saving Act. Third, they must obey the regulation about the prohibition of unfair practice and

harmful practices. Fourth, they must fulfill special regulation about Anti-Money Laundering.

CONCLUSION

The conclusion of this paper are these followings:

1. Fintech in Indonesia grows and developed in line with the increase of internet and smartphone user. Based on the result of survey Indonesia Internet in 2016 User Statistic, it was found that from 132.7 million internet users in Indonesia, 63,1 million or 47.6% users have and use the mobile phone (smartphone). It affects consumer behavior by doing a transaction.

Currently, the average age of 20-40 years old society in Indonesia have had product and service transaction by online.

2. Like the other countries, Indonesia has enacted several regulations that supervise and manages fintech. OJK has published OJK Regulation Number 77/POJK.07/2016 about Lend and Borrow Money Service based on Information Technology (peer-to-peer lending). Regarding consumer protection, fintech providers are obliged to obey OJK Regulation number 1/POJK.07/2013 about Consumer Protection on Financial Service Sector.

3. OJK needs to immediately arrange and enact regulation for Fintech provider besides P2P Lending, especially those who

run in financial services like account aggregator and information and feeder site. It should be done to ensure consumer protection aspect.

4. There are four aspects of consumer protection risks that should be prevented: complete of information and product/service transparency, complaint handling, prevention of cheating and service system experts, protection on personal privacy data (cyber security). Those four aspects have been written on the existing Fntech regulation but not specially implemented.

SUGGESTION

In order to increase consumer/Fintech user protection in Indonesia, the government should increase the supervision of the existing regulations implementation, creating a better and a more comprehensive which has a higher level than institutional regulation. The author suggests that government and house of representatives must propose an Act that regulates the consumer protection on financial service based on information technology, strengthening cooperation amongst stakeholder and prepare any mechanism for dispute settlement in Fintech.

Besides strengthening the existing regulation and creating a new more comprehensive act, OJK needs to consider in proposing Cybersecurity forum that will

ease coordination amongst stakeholders and do cross information about risks mitigation.

The government should study deeper about the implementation of Online Dispute Resolution that is expected to help fintech dispute settlement in a more convenient and practical way.

Countries among ASEAN should agree to cooperate in creating a new body to supervise the work of Fintech and provide more protection for Fintech users.

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