

IS THE ASEAN ECONOMIC COMMUNITY BY 2015, WORTH HAVING?*

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Abstract

Living in the society both as individuals and social creatures, people are obligated to interact with each other through relationship. These may include in the relations between sovereign and subject. ASEAN Summit is an annual meeting held by ASEAN in relation to economic and cultural development of Southeast Asian Countries. ASEAN Economic Community or AEC, is the realisation of the end goal of economic integration, which is based on a convergence of interests of ASEAN Members. The aims of AEC themselves is to hasten the establishment of the AEC by 2015 and to transform ASEAN into a region with free movement of goods,

Abstrak

Dalam sebuah masyarakat, manusia hidup sebagai individu dan makhluk sosial yang mewajibkan mereka untuk berinteraksi dan berhubungan satu dengan yang lainnya. Salah satu dari hubungan ini adalah hubungan antara yang berkuasa dengan subyeknya. Konferensi Tingkat Tinggi ASEAN adalah sebuah pertemuan tahunan yang diselenggarakan oleh ASEAN berkaitan dengan perkembangan ekonomi dan kebudayaan negara-negara Asia Tenggara. ASEAN Economic Community atau AEC adalah realisasi dari tujuan akhir integrasi ekonomi, yang dilakukan atas dasar konvergensi kepentingan Anggota ASEAN. Tujuan dari AEC

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services, investment, skilled labour, and freer flow of capital. However, there are certain problems faced by the ASEAN members to establish the AEC, one of the factor is the different welfare between the ASEAN countries.

sendiri adalah untuk mempercepat terbentuknya AEC pada tahun 2015 dan untuk mentransformasi ASEAN menjadi kawasan yang mempunyai pergerakan bebas untuk barang-barang, jasa-jasa, investasi, tenaga kerja terampil dan juga arus modal yang lebih bebas. Namun, terdapat beberapa masalah yang dihadapi para anggota ASEAN dalam pendirian AEC, salah satu faktor tersebut adalah tingkat kesejahteraan yang berbeda antara negara-negara ASEAN.

Keywords: ASEAN, international economy, ASEAN Economic Community.

A. Introduction

The increasing number of States declaring sovereignty has given a significant consequence towards other states, specifically to the development of the state itself. Thus, to achieve a massive progress towards a development of the state, one of the solutions is through international cooperation. One kind of international cooperation is known as International Organizations.

According to article 2 paragraph 1(i) of Vienna Convention on the Law of Treaties 1969, "international organization" means an intergovernmental organization.

("Vienna Convention on Laws of Treaties," 1969) To be more specific, international organizations are entities which were established by an agreement between state members that have their own system and structural body, to achieve the mutual purpose for every member; whereas their existence is being recognised by law upon their state members. International organizations have played a crucial role in the sphere of international personality. The idea to establish an international organization was based on several principles; one of the principles is "geographic prox-

imity". The principle of geographic proximity is the principle by which categories are aggregated to form broader categories such as the groups of countries located within a single geographic location. ASEAN is one of international organization using the geographic principle.

As a regional organization, ASEAN has become one of the most sustained supra-national regional organizations of the postcolonial world. The main reason why the region of Southeast Asia conducted the ASEAN regional organization was to maintain a peaceful regional stability from threat. (*Encyclopedia of Public International Law*, 1983)

B. History of ASEAN

The Association of South East Asian Nations (hereinafter referred to as ASEAN) was created in 1967. (Shaw, 2008) To be exact, ASEAN was established on 8 August 1967 in Bangkok, Thailand, by their Founding Fathers which are Indonesia, Malaysia, Singapore, Thailand and Philippines. Afterwards, five other countries – Brunei, Cambodia, Vietnam, Myanmar, and Laos joined as members of ASEAN by signing Bangkok Declaration.

As provided in the ASEAN Declaration, the main purpose of ASEAN was to co-operate in certain fields such as Economic, Social, Cultural Development, Politic, and also maintain the integrity and regional peace along with the regional stability; which in accordance within the United Nations Charter. ("Charter of the United Nations," 1945)¹ In 1967 three agreements were signed: a Treaty of Amity and Cooperation, which reaffirmed the parties' commitment to peace and dealt with the peaceful settlement of disputes by adopting several principles which are mutual respect, non-interference, renunciation of the threat or use of force and effective cooperation among ASEAN nations. The Declaration of ASEAN Concord, called for in-

¹ United Nations Charter Art 1 para 1: "To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of peace"; Art.2 para 4 "All members shall settle their international disputes by peaceful means in such a manner that international peace and security are not endangered."

creased political and economic coordination and co-operation; and the Agreement of Establishment of the Permanent Secretariat to coordinate the national secretariats established under the 1967 ASEAN Declaration. (Shaw, 2008)

C. Ratification of New ASEAN Charter 2007

At the 9th ASEAN Summit in 2003, the ten ASEAN member countries set a vision, by recognising the Declaration of ASEAN Concord II as know as Bali Concord II, which seeks to achieve an ASEAN Community by 2020. Afterwards, there exists the ASEAN Charter which provides a set of rule/codification to the ASEAN legal frameworks. The ASEAN Charter came into force on 15 December 2008 after the ten ASEAN members have ratified it. Singapore is the first ASEAN member who ratified the ASEAN Charter on January 2008 and Thailand is the last ASEAN members who ratified the charter, on September 2008.

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 va-

lues; sets clear targets for ASEAN; and presents accountability and compliance. (ASEAN) This can be seen in the article 3 of the ASEAN Charter, ("ASEAN Charter," 2007) stating that "ASEAN, as an inter-governmental organisation, is hereby conferred legal personality." [Emphasis added] this means, that ASEAN is a subject of international law, which has their own right and responsibilities as international organisations.

In regards to ASEAN member states, it is being stipulates on Article 4 of the ASEAN Charter:

"The Member States of ASEAN are 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."

The Right and Responsibility of each Member States can be found in Article 5 of the ASEAN Charter, which are:

“1. Member States shall have equal rights and obligations under this Charter; 2. 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. 3. In the case of a serious breach of the Charter or non compliance, the matter shall be referred to Article 20.” [Emphasis Added]

Article 20 of the ASEAN Charter stipulates the consultation and consensus in ASEAN. Accordingly, article 20 paragraph 1 posses the basic principle of decision-making in ASEAN; stating that it shall be **based on consultation and consensus**. This is a quite a unique way of ASEAN to establish a decision, they usually call it by “**The ASEAN Way**”. (Davidson, 1997) The ASEAN way means that the Southeast Asians’ way of dealing with one another has been through manifestations of goodwill and the slow winning and giving of trust. And the way to arrive at agreements has been

through consultation and consensus – *mushawara* and *mufakat*² – rather than cross table negotiations involving bargaining and give-and-take that result in deals enforceable in a court of law. (Adolf, 2011) However in practise, apparently a decision was hard to bargain and difficult to reach the consensus for the ASEAN state members itself. Further, relates to dispute settlement among the ASEAN state members, the charter provides:

Article 22 of the ASEAN Charter contains general principles:

“Para 1. Member States shall endeavour to resolve peacefully all disputes in a timely manner through dialogue, consultation and negotiation. Para 2. ASEAN shall maintain and establish dispute settlement mechanisms in all fields of ASEAN cooperation.” This dispute settlement principle is in accordance with the United Nations Charter. According to Article 23, ASEAN member states could possibly settle their disputes through several forums; they are good offices, conciliation and mediation. It

² The Arabic language for consultation and consensus.

is being stipulated in article 23 of the ASEAN Charter that:

“Para 1. Member States which are parties to a dispute may at any time agree to resort to good offices, conciliation or mediation in order to resolve the dispute within an agreed time limit; Para 2. Parties to the dispute may request the Chairman of ASEAN or the Secretary-General of ASEAN, acting in an ex-officio capacity, to provide good offices, conciliation or mediation.”

However, the decision reached by this dispute settlement body was only recommendations and is not legally binding.

In respect of dispute settlement mechanisms in specific instruments can be seen through, Article 24 of the ASEAN Charter states that:

“Para 1. Disputes relating to specific ASEAN instruments shall be settled through the mechanisms and procedures provided for in such instruments. Para 2. Disputes which do not concern the interpretation or application of any

ASEAN instrument shall be resolved peacefully in accordance with the Treaty of Amity and Cooperation in Southeast Asia and its rules of procedure. Para 3. Where not otherwise specifically provided, disputes which concern the interpretation or application of ASEAN economic agreements shall be settled in accordance with the ASEAN Protocol on Enhanced Dispute Settlement Mechanism.”

Within the dispute settlement mechanisms, provides in the article 25 of the ASEAN Charter: “Where not otherwise specifically provided, appropriate dispute settlement mechanisms, including arbitration, shall be established for disputes which concern the interpretation or application of this Charter and other ASEAN instruments.” With Regards to the event of the existence of an unresolved dispute, article 26 of the ASEAN Charter comes into play which are contains : “When a dispute remains unresolved, after the application of the preceding provisions of this Chapter, this dispute shall be referred to the ASEAN Summit, for its decision.”

The Provisions of the articles mentioned above, indicate that the ASEAN Charter has been quite firm to provide legal certainty to accommodate the interests of member states. Thus, with legal certainty through the ASEAN Charter, which provides enormous support to establish an ASEAN Community in order to achieve the objectives as set out in Article 1 paragraph 1 of the ASEAN Charter “to maintain and enhance peace, security and stability and further strengthen peace-oriented values in the region”; paragraph 2 “(t)o enhance regional resilience by promoting greater political, security, economic and socio-cultural cooperation” [Emphasis Added]; paragraph 3 “(t)o preserve Southeast Asia as a Nuclear Weapon- Free Zone and free of all other weapons of mass destruction”; paragraph 4 “(t)o ensure that the peoples and Member States of ASEAN live in peace with the world at large in a just, democratic and harmonious environment”; paragraph 5 “(t)o 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 free flow of goods, services and investment; facilitated movement of business persons, professionals, talents and labor; and freer flow of capital” [Emphasis Added]; paragraph 6 “to alleviate poverty and narrow the development gap within ASEAN through mutual assistance and cooperation”; paragraph 7 “to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN”; paragraph 8 “to respond effectively, in accordance with the principle of comprehensive security, to all forms of threats, transnational crimes and transboundary challenges”; paragraph 9 “to promote sustainable development so as to ensure the protection of the region’s environment, the sustainability of its natural resources, the preservation of its cultural heritage and the high quality of life of its peoples”; paragraph 10 “to develop human resources through closer cooperation in education and life-long learning, and in science and

technology, for the empowerment of the peoples of ASEAN and for the strengthening of the ASEAN Community”; paragraph 11 “to enhance the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice”; paragraph 12 “to strengthen cooperation in building a safe, secure and drug-free environment for the peoples of ASEAN”; paragraph 13 “to promote a people-oriented ASEAN in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building”; paragraph 14 “to promote an ASEAN identity through the fostering of greater awareness of the diverse culture and heritage of the region”; and paragraph 15 “to maintain the centrality and proactive role of ASEAN as the primary driving force in its relations and cooperation with its external partners in a regional architecture that is open, transparent and inclusive.”

All of the aforesaid aims of ASEAN enshrined in the Charter are the expected to create a visionary people oriented regional

organization called ASEAN Community. The establishment of this ASEAN Community is seen as a crucial and inevitable need to enhance regional development. Therefore, in the 12th ASEAN Summit held in January 2007 within the spirit of new ASEAN, on the basis of the ASEAN Charter and spirit of new ASEAN (“one vision, one identity, one community”), all ASEAN countries affirmed their commitment to accelerating the establishment of ASEAN Community in 2015. (“Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015,” 2007)

This ASEAN Community comprises of three pillars, which are first, Political-security community; second, economic community and third, socio-cultural community. One of the three pillars of the ASEAN community that has a significant influence for member countries of ASEAN is the ASEAN Economic Community.

D. ASEAN Economic Community

ASEAN Economic Community (hereinafter referred to AEC), is one of the three pillars of ASEAN Integration concept that has been approved jointly by the Heads of

State from the 10 ASEAN member countries meeting in Bali in 2003 which was confirmed by the Declaration of ASEAN Concord II. The main concept of the AEC is to create ASEAN as a unified single market and production base where there is free flow of goods, services, factors of production, investment and capital as well as the elimination of tariffs for trade among ASEAN countries which are then expected to reduce poverty and economic inequality among the ASEAN countries through a number of mutually beneficial cooperation. The expected result in this cooperation is a dynamic and competitive environment in ASEAN with new mechanisms and measures to strengthen the implementation of its existing economic. (ASEAN, 2011b)

E. Impact of the Existence of ASEAN Economic Community by 2015

ASEAN Economic Community by 2015 would create a sum of consequences, one of most vital one is the elimination of tariffs and non-tariff barriers will be gradually be phased out. ASEAN investors will be free to invest in all sectors throughout the region. There will be

a free movement of professionals and skilled labour.

Simple, harmonized and standardized trade and customs requirements are expected to reduce transaction costs. Thus, to encourage the free flow of goods and the development of an integrated regional production network, ASEAN Member States adopted various strategy from several point of views, which firstly, the Trade Facilitation Work Program and the Trade Facilitation Indicators in 2008 and 2009, respectively. The Trade Facilitation Work Programme is a program for trade facilitation reforms to enhance trade within the ASEAN region by reducing transaction costs.

The ASEAN Trade Facilitation Indicators are quantifiable indicators to measure the impact of trade facilitation reforms on both the public and private sectors. In January 2010, Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore and Thailand (ASEAN-6) eliminated intra-ASEAN import duties on 99.65% of their tariff lines. Of these zero-tariff goods, 24.15% are from the Priority Integration Sectors (PIS) agro-based products,

automotive, e-ASEAN, electronics, fisheries, healthcare products, rubber-based products, textiles and apparels, and wood-based products — 14.92% are iron and steel products, 8.93% are machinery and mechanical appliances and 8.3 % are chemical related products. Similarly, Cambodia, Lao PDR, Myanmar and Viet Nam have reduced their import duties to 0-5% on 98.86% of their tariff lines. In addition to the goods noted above, other products originating in ASEAN, such as prepared foodstuffs, furniture, plastics, paper, cement, ceramics, glass and aluminium can enjoy duty-free entry into Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand.(ASEAN, 2011a)

To establish one single market in ASEAN region by 2015, it would require law enforcement under one perspective. Hence an integration of such an existing measure, which is related to the trade of goods, shall be taken into account. Therefore, within those inquiries, in August 2007, the ASEAN Economic Ministers made CEPT-AFTA or Common Effective Preferential Tariff for ASEAN Free Trade Agreement. In February

2009, all ASEAN countries agree to sign the ASEAN Trade in Goods Agreement (“ATIGA”). Besides the law enforcement, there is another strategic program in order to develop the facilitation for trade among the ASEAN country. The Strategic Program of Customs Development (“SPCD”) stipulates the release of any container for shipment within 30 minutes. With a view to modernizing customs operations, Information and Communication Technology (“ICT”) applications have been introduced to clear goods through customs in the ASEAN Member States in accordance with international standards. This has contributed to reducing both processing costs and the time required for release of shipments from customs control. ASEAN Customs Administrations are also working in partnership with industries and businesses to strengthen and improve the level of service and compliance.

ASEAN’s approach to preparing, revising or applying standards, technical regulations and associated conformance regulations has been based on international standards and practices. This includes alignment, as much pos-

sible, with obligations under the Agreement on Technical Barriers to Trade (TBT), except where legitimate reasons for deviations exist. (ASEAN, 2011a)

Further, the ASEAN Economic Community will continue to improve “public and private sector”. Public-private sector engagement within ASEAN is taking place at many levels. Many sectors within its bodies have been established to support ASEAN strategies and programmes in regional development and integration. There are currently about 100 sectoral bodies with mandate relating to the AEC alone. Resource constraints, a comprehensive agenda and the large number of meetings of AEC sectoral bodies mean that not all of the work of these sectoral bodies will have the full engagement of the private sector. As of 2011, about 35% of AEC sectoral bodies have engaged private-sector associations and representatives, either on a regular or ad hoc basis. The ongoing dialogue between ASEAN and private sector representatives has produced several important recommendations in support of more effective ASEAN economic integration. ASEAN Eco-

nomc Ministers have held annual meetings with the ASEAN Business Advisory Council (ASEAN-BAC) and with representatives of industry associations and business councils within ASEAN and with dialogue partner countries. (ASEAN, 2011a)

To pursue the main goal of AEC by 2015, it is also a significant problem that shall be face by ASEAN members, there are: a different economic level among the ASEAN countries, within the small countries as such CLMV (Cambodia, Laos, Myanmar, and Vietnam) countries compared to ASEAN develop countries, as such Indonesia, Singapore, Malaysia which more higher level in economic. Different political and social perspective, and further, the policy coherence to the ASEAN countries, quiet an issue. Particularly, to the production of tradable agriculture and forest products is an essential component for the realisation of an ASEAN single market. This calls for an appropriate set of macroeconomic policies for sectoral integration in the areas of quality education for farmers; adoption of suitable technologies for increasing food production and improving food security and safety; and com-

munication and marketing arrangements to increase farmers' access to information, capital and inputs for efficient production at reduced cost. Developing sustainable management practices to protect forests and respond to climate change will be critical in meeting increasing consumer demands for sustainably produced goods and positioning the ASEAN region to be competitive in emerging carbon markets. Climate change is a cross-sectoral issue and requires coordination at the local, national and regional levels to enhance collaboration among the economic, environment, development, energy, agriculture, fisheries, livestock and forestry sectors. Strategies for mitigating and adapting to climate change must incorporate the sustainable management of natural resources and ensure food security across the ASEAN region. Promoting capacity building and educational initiatives to increase public awareness about global warming will also play a critical role in pursuing an integrated regional response to the adverse impacts of climate change. (ASEAN, 2011a) In general there are different public and private

policies in every single ASEAN state, make it very difficult to create an integration of ASEAN Economic Community by 2015. In addition, skilled and educated workers in each country are different. Specifically, the ASEAN countries shall face the challenges upon the limitation of working capabilities, general knowledge particularly in terms of technological knowledge, and language skills would probably the biggest obstacle, since we already know that ASEAN countries has their own language and it would be foreign for other countries. To response towards the idea of single market, being mentioned in the ASEAN Charter, the consequence would be no boundary at all. This means that we have an equal opportunity to acquire jobs in all ASEAN countries. However, it will not be easier for such a country with less economic and limited education quality compare to other countries which has higher economic and well educated, to compete in the same fields. Last but not least, there still exist an internal problem in each countries, as such corruptions, bilateral agreement, etc.

Those specific issues and challenges towards fostering the ASEAN Economic Community by 2015 shall

be taken into consideration by each of the ASEAN member states and still require to be responded.

BIBLIOGRAPHY

A. Books

Adolf, H. (2011). *Hukum Ekonomi Internasional Suatu Pengantar Cetakan: CV Keni Media.*

ASEAN. (2011a). *ASEAN Economic Community Handbook for Business.* Jakarta: ASEAN Secretariat.

ASEAN. (2011b). *Roadmap for an ASEAN COMMUNITY 2009 - 2015.* Jakarta: ASEAN Secretariat.

ASEAN. *ASEAN Economic Community Handbook for Business.,* ASEAN Secretariat Jakarta, 2011.

Davidson, P. J. (1997). *The Legal Framework for International Economic Relations.* Singapore Institute of Southeast Asian Nations.

Encyclopedia of Public International Law. (1983).

Shaw, M. N. (2008). *International Law* (Vol. 6th Edition): Cambridge.

B. Conventions

ASEAN Charter (2007).

Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015 (2007).

Charter of the United Nations (1945).

Vienna Convention on Laws of Treaties, 1155 U.N.T.S. 331 Stat. (1969).

C. Others

ASEAN. ASEAN Charter, from <http://www.aseansec.org/21861.htm>