Padjadjaran Journal of International Law

ISSN: 2549-2152, EISSN: 2549-1296

Volume 3, Number 1, January 2019

**Combating Transnational Organized Crimes Within ASEAN Waters:
ASEAN Way Vs. Rule of Law**

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Abstract

The strategic geographical situation of ASEAN waters, making this area often misused as a transportation method by the perpetrators of transnational organized crimes (TOC). Most cases are people smuggling, human trafficking, illicit drugs and even slavery. Recently, it is found that those crimes are often committed in one vessel accompanying illegal fishing. ASEAN countries are state parties to the Palermo Convention on Trans Organized Crimes and its protocols. In addition, they also bound with regional legal instruments such as on human trafficking, counter terrorism and mutual legal assistance. Nonetheless, crimes do not stop. Cases are often settled by diplomatic measures instead of law enforcement by the spirit of ASEAN Way. This brings vagueness and confusion among law enforcement officers, should ASEAN Way neglect the rule of law? Hence, the objective of the research is to examine the situation and give recommendations on legal models in the prevention and law enforcement of TOC within ASEAN waters. The author compared the EU's legal system and mechanism in combating the crimes within regional perspective. Research found that political approach is somehow prevailing by the virtue of ASEAN Way. Furthermore, this ASEAN Way seems to justify the weakness of ASEAN Countries in law enforcement in preventing as well as combating TOC in ASEAN waters. Although the EU is not an apple to apply regional organisation compared with ASEAN, they have similar legal framework and mechanism to combat TOC. Hence, we can be optimistic that the rule of law in ASEAN should be prioritized and not contravene with ASEAN Way.

Keywords: ASEAN Way, law enforcement, regional cooperation, rule of law, trans-national organized crimes.

**Tantangan Pemberantasan Kejahatan Transnasional Terorganisir Di Perairan ASEAN:
ASEAN Way V. The Rule Of Law**

Abstrak

Lokasi geografis perairan negara-negara ASEAN yang strategis seringkali disalahgunakan oleh para pelaku kejahatan transnasional terorganisir sebagai media transportasi. Berbagai kejahatan yang terjadi di wilayah perairan ini diantaranya penyelundupan manusia, perdagangan manusia, penyelundupan narkoba, penyelundupan flora fauna langka yang dilindungi dan bahkan perbudakan. Dalam perkembangannya ditemukan fakta bahwa kejahatan-kejahatan tersebut tidak berdiri sendiri melainkan dilakukan bersamaan dengan penangkap ikan ilegal. Negara-negara ASEAN adalah pihak terhadap Konvensi Palermo tentang Kejahatan Terorganisir dan protokol-protokol yang menyertainya. Artinya, mereka terikat dengan kewajiban untuk mengimplementasikan instrumen tersebut diantaranya dalam tindakan pencegahan dan penegakan hukum. Selain itu, negara-negara ASEAN juga terikat dengan

PADJADJARAN JOURNAL OF INTERNATIONAL LAW Volume 3 Number 1 Year 2019 [ISSN 2549-2152] [e-ISSN 2549-1296]

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berbagai instrumen regional misalnya terkait perdagangan manusia, terorisme dan bantuan timbal balik. Namun kejahatan masih terus terjadi. Berbagai kasus diselesaikan secara diplomatis dilandasi semangat ASEAN Way daripada penegakan hukum. Hal ini menimbulkan ketidakjelasan dan kebingungan di antara para penegak hukum, apakah semangat ASEAN Way lebih diutamakan daripada penegakan hukum? Tujuan penelitian ini untuk mengidentifikasi situasi yang terjadi dan menganalisisnya guna memperoleh masukan berupa model terbaik dalam rangka pencegahan dan penegakan hukum terhadap kejahatan transnasional terorganisir. Penulis melakukan perbandingan dengan kerangka hukum dan mekanisme di EU untuk mengambil praktik terbaik. Hasil riset menyatakan bahwa pendekatan politis lebih diutamakan di ASEAN atas landasan ASEAN Way. Sehingga hal ini seolah menjadi pembenaran bagi lemahnya perlindungan dan penegakan hukum terhadap kejahatan transnasional terorganisir oleh negara-negara di ASEAN. Meskipun EU dapat dianggap bukan pembanding yang seimbang, namun EU memiliki kemiripan kerangka hukum dan mekanisme dengan ASEAN dalam pencegahan dan penanganan TOC. Oleh karenanya, penulis optimis bahwa pendekatan hukum perlu diprioritaskan dan hal ini tidak bertentangan dengan ASEAN Way.

Kata Kunci: ASEAN Way, kejahatan di laut, kejahatan transnasional terorganisir, kerjasama regional, penegakan hukum, rule of law.

A. INTRODUCTION

ASEAN waters are considered as one of the strategic waters in Pacific Ocean. States and also private enterprises use it for transporting goods for business. Nonetheless, such criminal enterprises take advantage of the situation to conduct crimes within the waters such as piracy, illegal fishing, smuggling of people, smuggling of illegal drugs; protected plants and animals; counterfeit goods and medicines.¹ Worse, it is found that other crimes are also committed against the crew of the vessels such as human trafficking and even slavery.² Malacca strait, located between Indonesia, Singapore, Malaysia and Thailand is a notorious strait for the piracy;³ yet this is the most strategic strait for international business. Other than that, Timor strait which is located between Indonesia and Australia is often used for

transporting illegal migrants either asylum seekers or refugees. The Philippines and Thailand waters are also prone to be misused, the most recent concern is that the waters are used by terrorists to conduct their actions.⁴

ASEAN countries aware of the risk as therefore on The 2nd Assean Annual Senior Officials Meeting On Transnational Crime they agree to discuss Work Programme to Implement The ASEAN Plan of Action to Combat Transnational Crime in 1997. From this meeting, it is agreed that there are 8 crimes which can be considered as transnational organized crimes⁵ such as illicit drug trafficking, trafficking in persons, sea piracy, arms smuggling, money laundering, terrorism, international economic crime and cyber crime.

As a consequence, ASEAN countries have taken several measures to prevent and combat trans organized crimes by

¹ UNODC, *Transnational Organized Crimes in South East Asia: Evolution, Growth and Impact 2017*, p. 1 https://www.unodc.org/documents/southeastasiaandpacific/Publications/2019/SEA_TOCTA_2017_web.pdf see also *Transnational Organized Crimes threat assessment*, <https://www.unodc.org/unodc/data-and-analysis/TOC-threat-assessments.html>

² Paul Dillon, *Over 500 New Human Trafficking Victims Identified in Indonesia since Benjina 'Slave Fisheries' Exposed*, IOM, 2015 <https://weblog.iom.int/over-500-new-human-trafficking-victims-identified-indonesia-benjina-slave-fisheries-exposed> see also Indonesia Investments, *Illegal-Fishery, Abuse and Slavery on Indonesia's Benjina Island?*, <https://www.indonesia-investments.com/news/todays-headlines/illegal-fishery-abuse-slavery-on-indonesia-s-benjina-island/item5487>

³ Eric Frecon, "Piracy and Armed Robbery at Sea in Southeast Asia: Initial Impressions from the Field" in Graham Gerard Ong-Webb, *Piracy, Maritime Security and Securing Malacca*, ISEAS, 2006, p.68. See also Raymond, Catherine. (2009). Piracy and Armed Robbery in the Malacca Strait: A Problem Solved. Naval War College Review. 62. 13.

⁴ Eduardo M Santos, *Piracy and Armed Robbery against Ships in the Philippines in Ibid*, p. 37

⁵ ASEAN, "Asean Plan of Action in Combating Transnational Crime (2016-2025)", http://asean.org/storage/2012/05/ASEAN-Plan-of-Action-in-Combating-TC_Adopted-by-11th-AMMTC-on-20Sept17.pdf

establishing various legal instruments or bodies in order to maintain regional security of ASEAN region. Such measures are including but not limited to ministerial meetings, joint cooperation, agreement and Memorandum of understanding. Furthermore, the establishment of ASEAN Regional Forum (ARF), Asia-Pacific Economic Cooperation (APEC), ASEAN Maritime Forum, Forum ASEAN National Police (Aseanapol), Regional Plan of Action Fisheries Development Center (SEAFDEC) are part of the willingness of ASEAN countries to protect their security. These bodies produced many initiatives including establishment of information and intelligent mechanisms including best practices.⁶ Cooperation started with interior ministerial meetings followed by *ASEAN Declaration on Trans Organized Crime* or AMMTC. This organization has mandate to coordinate with other regions such as organization of law ministries and Office of Prosecutors, Head of Police Department, Ministry of Finance, Immigration and Fiscal for investigation, inquiry and rehabilitation of transnational organized crimes criminals including international terrorism.⁷

Those measures may be considered to cover all aspects of international security including transportation and security within waters. However, cooperations mainly conducted through diplomatic approach in regular ministerial meetings that resulted in the statement of state parties. Statement cannot be considered as a legal source or legal ground that has legal impact. As a consequence, there is no force which is legally binding that can make a country willing to comply with the consensus. Furthermore, there is no sanction against any state who violates the consensus. As therefore, the existing cooperation is only a formal policy without strategic implementation in the perspective of law

enforcement. In fact, the root of the problem is that there is no legal basis and no law enforcement to prevent and combat those crimes. Although ASEAN has several related regional conventions such as *ASEAN Convention to Counter Terrorism*, *ASEAN Convention on Trafficking* and *ASEAN Treaty on Mutual Legal Assistance*, those instruments are not sufficient to prevent and combat crimes committed within ASEAN waters.

Members of ASEAN countries are parties to the Palermo Convention on Transnational Organized Crimes that requires cooperation in law enforcement mechanisms. Furthermore, ASEAN countries are also bound by Security Council Resolution No. 1373 and 2178 stating the similar obligation particularly in combating terrorism. In fact, cooperation has not developed yet, while ASEAN countries as maritime regions with 173.000 km of coastline should have to be more responsive and ready to respond to any threat including crimes within the ASEAN waters.

Accordingly, this research will focus on finding the best model to prevent and combat trans organized crimes, particularly within ASEAN waters. Furthermore, the analysis will also consider lessons learned and best practice of other regions such as Europe.

To begin with, the author examines factual circumstances on transnational organized crimes within ASEAN waters. Although in Palermo convention related crimes are limited to people smuggling and human trafficking, other crime such as illicit drugs and illegal fishing will also be discussed as it is found that those crimes are often found in ASEAN waters. Currently, there are 147 signatories states and 190 state parties including ASEAN members such as Indonesia, Cambodia, Laos, Malaysia, Myanmar, Philippines, Singapore,

⁶ Sukawarsini Djelantik, "Sekuritisasi dan Kerja Sama ASEAN dalam Meningkatkan Keamanan di Wilayah Peraliran", *Global and Strategi*, Th.10 No.2, p..189.

⁷ *Ibid*

Thailand, and Vietnam.⁸ Brunei Darussalam is the only ASEAN country who is not a state party to this convention.

B. ASEAN AND TRANSNATIONAL ORGANIZED CRIMES

According to Indonesian Daily Task Force 11,⁹ there are other crimes accompanying illegal fishing such as illegal oil transactions, immigration, costum, money laundering, tax crimes, corruption, labour, and people smuggling.¹⁰ The perpetrators see the situation as a chance to enhance their criminal enterprise. Hence it is found that in an illegal fishing boat that conduct illegal fishing there is also case of people smuggling who use the boat as transportation means, human trafficking either to transport or even the crew of the boat are human traffickking's victims, at the same place it is also found illicit drugs smuggled among their stuffs. Not only that, illegal selling and smuggling of protected animals and plantation are also conducted on the same boat.¹¹

1. People smuggling and human trafficking

Protocol Against The Smuggling of Migrant by Land, Sea, and Air, Supplementing the United Nations Convention Against Transnational Organized Crime 2000 defines people smuggling as „the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”¹² This mode of

crime is considered well-established within the South East Asian region.¹³ The network of smugglers available from each country (origin, transit, and destination). Not only in the capital, but they also even do their work in rural or event remote areas to find their prey. Accordingly, this protocol obliged state parties to criminalize people smuggling in their national legislations. Nonetheless, this protocol stated that smuggled people shall not be punished.

People who let themselves be smuggled have various motives behind this crime. Those who are coming from conflict areas dare to pay or smuggle themselves with the main objective of their security. They can be categorized as asylum seekers or refugees. However, there are groups of people who risk themselves being caught by the authorities for illegal entry to other countries for the sake of better economic income. In ASEAN, Malaysia and Thailand are two main destinations¹⁴ for those who seek for better economic life, usually who live between borders such as Indonesia – Malaysia, Cambodia, Laos – Thailand, Indonesia – Singapore. Malaysia experiences high levels of labour-related irregular migration, particularly from Indonesia and also from the Philippines, Myanmar and Bangladesh; and a significant portion of these flows appears to involve illicit means. Around half a million migrants mainly from Myanmar, but also from Cambodia and Lao PDR, are estimated to be smuggled to Thailand each year, generating annual

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https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtsg_no=xviii-12&chapter=18&lang=en, 18/09/2018

⁹ An ad hoc institution in Indonesia consists of Indonesian Ministry of Marine and Fisheries, navy seal, Bakamla (Coast Guard), Marine Police, and Office of Prosecutor, established by Presidential Decree No .115 Year 2015 concerning Eradication Illegal Fishing Task Force.

¹⁰ Direktorat Jenderal Kerja Sama ASEAN Kementerian Luar Negeri RI, *Majalah Masyarakat ASEAN Edisi 12*:

Membangun Kiprah Maritim Indonesia di Kawasan, Edisi 14, Desember 2016, p.4-6

¹¹ See UNODC report on transnational organized crimes in South East Asia, 2017.

¹² Article 3 (a) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

¹³ UNODC, *Transnational Organized Crimes in South East Asia: Evolution, Growth and Impact*, UNODC Research, 2019

¹⁴ *Ibid*

illicit revenues of between US\$ 132 and US\$ 196 million.¹⁵

Human trafficking is another typical crime using water as the route to transport people. The most important element is that the victim do not voluntarily follow the order of the perpetrators. This because human trafficking is intended to exploit the victims, and the conduct from recruiting for being exploited are never with the knowledge nor consent of the victim.¹⁶ The entry into another country may be legal, but it is also found that these people are also smuggled. Nonetheless, this distinction is not always easy to identify in the field because both crimes involve movement of people where common people cannot see the difference.¹⁷

Not only within ASEAN countries, data indicates that a growing number of Southeast Asian nationals are staying illegally in, and are being deported from, Japan and the Republic of Korea, which could increase the demand for the services of smugglers.¹⁸ The smuggling of migrants from Southeast Asia is also dispersed across parts of Australia, Europe, North America, the Middle East, and other regions. These flows are distinct from smuggling within Asia in that they mainly involve large transnational smuggling networks, some of which have been linked to established diaspora communities in destination countries.¹⁹ Smuggling to these places and regions is usually carried out by a

combination of air and overland travel, and sometimes involves both smuggling and trafficking, particularly for nationals of Viet Nam.²⁰

Indonesia in particular, a country with thousands of islands and vast seas has become the most preferable transit country for people smuggling. People, coming from South Asia, Central Asia or the Middle East try to escape from their homeland to find a better life because of the difficult situation such as war or having different ideology or belief with the ruler.²¹ They wish to reach Australia, especially Christmas Island by transporting fishery's boats from Indonesia. Other countries such as the Philippines, Thailand and Malaysia are other options of the smugglers as the transit area.²² By interviews with marine police, immigration officers, and local authority in littoral areas in West Java-Indonesia, one of the main problems to combat this crime is there is no clear regulation particularly in regard to standard operational procedure as legal ground to take any legal measure whenever they found the alleged crimes as well as perpetrators. Although general action can be taken based on the existing laws, the limited number of officers on duty within the area is also another challenge to enforce the law. Lack of knowledge regarding the crimes within the community also contribute to the ongoing crimes. The innocent fishermen and local people who own renting houses are often being used to

¹⁵ *Ibid*

¹⁶ See article 3 (a) Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children. "Trafficking in Persons shall mean the recruitment, transportation, transfer, harboring 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 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."

¹⁷ Rebeca Talib, Organized Crime and People Smuggling/Trafficking to Australia, *A Papers A Trends and Issues in Crimes and Criminal Justice No. 208*, p. 1.

¹⁸ *ibid*

¹⁹ *ibid*

²⁰ UNODC, *Migrants Smuggling in Asia and the Pacific: Current Trends and Challenges Vol.II*, July 2018 https://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/2018-2019/SOM_in_Asia_and_the_Pacific_II_July_2018.pdf

²¹ interview with Isa Soemawidjaja, UNHCR officer Jakarta office and Debby Kristin, Social Worker at World Church Service Jakarta office.

²² UNODC, *Issue Paper: Smuggling of Migrants by Sea*, United Nations, 2011.

assist and facilitate the crimes such as crossing the smuggled people by their fishing boats and providing lodges during transit before continuing the journey. Migrant smuggling networks in Southeast Asia are adept and flexible enough to avoid law enforcement and meet the constant demand for their services. Corruption among government officials and private employers, a lack of accountability, and inadequate criminal justice responses, continue to facilitate migration-related crimes across the region and enable criminal groups to generate substantial illicit revenues.²³ Hence, the perpetrators take this situation as the opportunity to conduct the crimes and enjoy impunity.

Responding the factual circumstances on field as mentioned above, protocol on people smuggling as well as human trafficking affirming the importance of international cooperation particularly among coastal states to put more attention and measures on security in cross border sea area. States are requested to take any effort in preventing the crime by document surveillance, training and technical cooperation and other possible measures.

2. Illegal fishing

By its level, Illegal fishing is categorized as international crime since the perpetrator is an alien who conducted crime in other territory, furthermore it also involves an organized group consisting several nationalities including multinational corporations. Indonesia lost 20 trillion per year for this illegal and undocumented fishing.²⁴ Indonesia, a country that has the widest sea among ASEAN countries facing illegal fishing

issues as one of the most crucial matters. It is undeniable that illegal fishing is conducted among ASEAN countries itself. The Directorate of ASEAN cooperation of the Ministry of Foreign Affairs Indonesia noted that in 2016 there were 141 cases of illegal fishing consisting of 118 foreign vessels and 23 local vessels.²⁵ Most cases conflict are between Indonesia, Thailand, Vietnam and Malaysia. In June 2016, more than twenty Vietnameses deported due to illegal fishing within West Borneo waters. Other cases, such Indonesian fishing vessels illegally conducted the fishing within Philippines waters. In the area of Natuna island (the territory of Indonesia), where most of ASEAN countries meet (Indonesia, Malaysia, Thailand, Vietnam, Cambodia, Singapore and even China) are also prone to illegal fishing. This is one of the most sensitive areas in ASEAN. In 2016, Indonesia Police caught 3 foreign fishing vessels in Natuna islands, Riau with 29 Thailand and Vietnam citizens as the seafarer.²⁶ However, few cases of illegal fishing have been found in the boundary waters between two coastal states such as Brunei Darussalam and Sabah, Malaysia.

The main cause of illegal fishing within the region on one side due to decreasing production of fisheries and increasing number of fisheries industries on the other hand. The company needs to reach maximum revenue, as therefore they push their fishermen to gain as many as possible any fisheries catch neglecting the law including border issues.²⁷ Recent cases in this area are quite complicated since the claim by China within the South China Sea where illegal fishing is often caught by the

²³ UNODC report on transnational organized crimes, 2017

²⁴ Masyarakat ASEAN Edisi 14, Kementerian Luar Negeri, Jakarta, 2016, hlm. 6

²⁵ Directorate of ASEAN Cooperation – Ministry of Foreign Affairs Republic of Indonesia, *Majalah Masyarakat ASEAN Edisi 12: Membangun Kiprah Maritim Indonesia di Kawasan*, Edisi 14, Desember

2016, p.4-6

²⁶ ibid

²⁷ Fish and People, Vo. 8 No.1, 2010, p.11, <http://repository.seafdec.org/bitstream/handle/20.500.12066/807/sp8-1%20illegal%20fishing.pdf?sequence=1&isAllowed=y>

authority of Indonesia, Vietnam and the Philippines. Instead using fishery vessels from the big company, those companies prefer to hire traditional fishermen to camouflage their action.²⁸

3. Illicit drugs

In ASEAN, most cases of illicit drugs are found in Malaysia, Thailand and Indonesia.²⁹ Although Indonesia impose death penalty and even the Philippines launched a controversial policy in war against drugs, the perpetrators of drugs criminal mostly are ASEAN citizen.

The situation of "golden triangle" where borders of Thailand, Myanmar, Laos and China meet, make it the centre of drug trafficking. Located in the Golden Triangle, Cambodia is used as a transit place before drug syndicates transport the illegal substances to third markets.³⁰ There was also a steep increase of 35.1 percent in the total seizure of drugs in 2017 in this country. In 2017, the National Narcotics Board and Indonesian National Police uncovered more than 51,000 drug cases with the total seizure of 151.5 tons of cannabis and 3.8 tons of crystalline methamphetamine (or *shabu*). Similar cases were also reported by Myanmar and Thailand where drug traffickers used a number of techniques in concealing drugs to be distributed or transported to other areas.³¹ The narcotics and precursor are smuggled among legal cargo transporting by vessel. This method is chosen because of the low expenses and low supervision

by the officers.

4. Terrorism and piracy

Another serious issue in ASEAN waters is terrorism and piracy. Malacca straits as the border of Indonesia, Singapore and Malaysia is categorized as one of the most dangerous water that often being used for piracy and terrorism.³² Other than that, Filipina and South Thailand sea are prone to terrorisms where extremist group such as Ab Sayyaf who often taking hostages of other nationals within this territory.³³

In the border of Indonesia – Vietnam, the pirates often launched an attack with guns. They target commercial vessels, cargo and even fishing vessels. First they take cargo and other equipment from the ship to be sold, then the crew are killed or being held hostage to be substituted with ransom.³⁴

C. ASEAN CHARACTERISTIC: ASEAN WAY AND HOW ASEAN RULES

Association of SouthEast Asian (ASEAN) was established as a group of nations within south east asia region with the main objective to strengthen regional security and cooperation in the spirit of equality and partnership with main focus on economic development.³⁵ This is not excluding the objective to promote regional peace and stability in respect to justice and rule of law. By history, ASEAN was founded by five

²⁸ Carl-Christian Schmidt, "Economic Drivers of Illegal, Unreported and Regulated (IUU) Fishing", *The International Journal of Marine and Coastal Law*, Vol. 20 No.3-4, Koninklijke Brill NV, 2005, p. 481.

²⁹ ASEAN Studies Centre, *Creating a Drug-Free ASEAN: How Far Have We Come?*, may 21,2019, <http://asc.fisipol.ugm.ac.id/2019/05/21/creating-a-drug-free-asean-how-far-have-we-come/>

³⁰ *Ibid*

³¹ *ibid*

³² Graham-Ong Webb, *Piracy, Maritime Terrorism and Securing the Malacca Straits*, ISEAS, 2006,

³³ Eduardo Ma R Santos, *Piracy and Robbery against Ships in the Philippines*, in Graham-Ong Webb, *Piracy*,

Maritime Terrorism and Securing the Malacca Straits, ISEAS, 2006. See also Stefan Ekloff Amirell, "Political Piracy and Maritime Terrorism: A Comparison between the Straits of Malacca and the Philippines", Jayant Abiyankar, "Piracy, Armed Robbery and Terorrrism at sea: A Global and Regional Outlook" in Graham-Ong Webb, *Piracy, Maritime Terrorism and Securing the Malacca Straits*, ISEAS, 2006.

³⁴ Catherina Zara Raymond, *Piracy in Southeast Asia New Trends, Issues and Responses*, Institute of Defense and Strategic Studies Singapore, October 2005, <https://www.rsis.edu.sg/wp-content/uploads/rsis-pubs/WP89.pdf>

³⁵ Bangkok Declaration 1967

foreign ministers of Indonesia, Singapore, Malaysia, Thailand and the Philippines with the primary objective fostering trust amongst member states against Communist threat and keep Southeast Asia free of big power rivalries.³⁶ Coordination then develop into many aspects, but mostly in economic sector. Noting that ASEAN ruled by the ministers, more corporations are also mostly at ministerial level. This organization was not meant as a rules-based organization, until all head of states gathered and agreed Bali Concord I producing Treaty of Amity and Cooperation (TAC) with emphasize on economic cooperation. In 2003, Bali Concord II agreed to build ASEAN Community developing cooperation in political, security, economy and social culture. In 2007 ASEAN Charter was produced which was considered as the crucial point of beginning of ASEAN towards rules-based organization. In 2009, the ASEAN Political-Security Community (APSC) Blueprint was adopted emphasizing ASEAN as a 'rules-based community of shared values and norms' with aim to maintain peace in the region where law and order is also the main issue.³⁷

As a regional organisation, ASEAN is often compared to European Union, a well established regional organisation, particularly in regards to legal issues. The EU regulates the relationship between the Union and its members and the cooperative arrangements among its members largely through agreements with the force of law. While ASEAN has been cooperating through informal understandings that impose no legally

binding obligations. ASEAN rather work on the basis of ad hoc understandings and informal procedures rather than within the legal and binding framework.³⁸

Undeniably, this situation is caused by the history and cultural background of ASEAN countries. When it was established, the founding fathers of ASEAN still nursed historic animosities toward and suspicions of one another.³⁹ Hence, the establishment of ASEAN as a regional organisation can be considered as a high achievement in world history, where all members agree to cooperate. As a matter of culture, south east asian countries are facing a situation in rather slow and winning process where the agreement is achieved through consultation and consensus (*musyawarah mufakat*) instead of debating with take and give and bargaining methods in achieving the objectives of the parties.⁴⁰ Other than that, a very high level of appreciation to state sovereignty has become the strongest principle in cooperation among ASEAN countries, as it acknowledges the principle of non-interference. Hence, it is understandable the reasons for ASEAN in avoiding legally binding agreements.

As a result, it is quite difficult to find legal sources that have binding authority to its parties even though the issue is regarding crimes which obviously according to legality principle must be regulated by law. ASEAN countries respond to issues by the spirit of good faith that manifested in diplomatic measures such as ministerial meetings or high officers. This is not excluding responding to transnational organized crimes within ASEAN territories. Nonetheless, in line with the aim in rule of

³⁶ Jean-Claude Piris and Walter Woon, *Towards a Rules-Based Community: An ASEAN Legal Service*, Cambridge University Press, 2015, p.10

³⁷ ASEAN Economic Community Blueprint para 10, B4.1 and B.4.2

³⁸ Rodolfo C. Severino, Secretary-General of the Association of Southeast Asian Nations, *The ASEAN Way and The Rule of Law*, at the International Law Conference on ASEAN Legal Systems and Regional Integration sponsored by the Asia-Europe Institute and the Faculty of Law, University of Malaya Kuala Lumpur,

3 September 2001, https://asean.org/?static_post=the-asean-way-and-the-rule-of-law retrieved at 19 October 2019, 11.37.

³⁹ "It required remarkable statesmanship and a veritable act of faith on the part of ASEAN's founders to see beyond those animosities and suspicions — deeply embedded legacies of history — and articulate and commit themselves to a shared vision and common aspirations. ASEAN's start was, inevitably, tentative.", *Ibid.*

⁴⁰ *Ibid*

law yet confusing in the implementation due to its ASEAN Way, ASEAN has several regional legal instruments related to transnational organized crimes as elaborates below.

1. Regional legal instruments in ASEAN

In fact, ASEAN did not conclude a legally binding treaty until the first ASEAN Summit in Bali in 1976 – the Treaty of Amity and Cooperation in Southeast Asia – almost nine years after ASEAN's founding. It took another ten years for ASEAN to produce another agreement that carried some measure of legal obligation. This is *Treaty of Amity and Cooperation in South East Asia* which can be considered as an instrument that strengthens the purpose of the organisation in developing cooperation and emphasizing the non intervention principle as the manifestation of respecting sovereignty of its members.⁴¹

Afterwards many written agreements have been created by ASEAN that legally bind ASEAN countries. Yet, most of the agreements are in scope of economic cooperation. Nonetheless, it is expected that this developing rules-based economy will trigger other areas of cooperation within ASEAN countries, not to mention in regards to criminal matters. In its development to the present day, there are 14 agreements in scope of public matters but not in economic framework in particular.⁴²

a. ASEAN Convention Against Trafficking in Persons, especially Women and Children

In ASEAN, countries agree to establish a legal framework to end impunity against trafficker and securing justice for victims by ASEAN Convention Against

Trafficking in Persons, especially Women and Children on 21 November 2015 although it just came into force on 8 march 2017. This convention reaffirming previous instrument which was only Declaration with the same title in 2004, 2011 and other soft law instruments such as ASEAN Practitioners Guidelines 2007 (the Criminal Justice Responses to End Impunity for Traffickers and Securing Justice for Victims), ASEAN Leaders Joint Statement in Enhancing Cooperation against Trafficking in Persons in South East Asia 2011, and ASEAN Human Rights Declaration 2012.

This convention is considered as a great development in the protection of human rights as well as implementation of Palermo Convention in giving more protection to prevent, stop and punish the crime of human trafficking in the evening within ASEAN countries.

b. ASEAN Cooperation Plan to Tackle Illicit Drug Production and Trafficking

At the 31st ASEAN Ministerial meeting in 1998, ASEAN Foreign Ministers signed the Joint Declaration for a Drug-Free ASEAN as the commitment to eradicate the production, processing, trafficking and use of illicit drugs in Southeast Asia by the year 2020. In addition, ASEAN member countries have also been cooperating with other non-member countries to implement the ASEAN Cooperation Plan to Tackle Illicit Drug Production and Trafficking in the Golden Triangle

⁴¹ Art 10 : Each High Contracting Party shall not in any manner or form participate in any activity which shall constitute a threat to the political and economic

stability, sovereignty, or territorial integrity of another High Contracting Party.

⁴² See Association of Southeast Asian Nations, *ASEAN Legal Instruments*, <http://agreement.asean.org/>

2017-2019.⁴³ However, none of the legal binding instruments has been made.

c. ASEAN treaty on illegal fishing and security in water area

As discussed previously, due to the high level of transnational organized crimes committed within ASEAN waters as crimes accompanying illegal fishing, the government of each ASEAN countries in cooperation with ASEAN Directorate of Political and Security as the focal point of ASEAN Regional Forum agree to functioning this forum to combat IUU fishing within the region.⁴⁴ In 2014, all ASEAN countries and several coastal states gathered to arrange a Work Plan on Maritime Security 2015-2017. They affirm to strengthen the prevention and enforcement in combating IUU Fishing and other accompanying transnational organized crimes.⁴⁵ As an output, those meetings creating ARF Statement on Cooperation to Prevent, Deter and Eliminate IUU Fishing⁴⁶ to be legalized by the ARF foreign ministers at the 23rd ARF Ministerial Meeting in Vientiane, Laos, July 2016. The initiation of this instrument was proposed by Indonesia where the crimes often committed within the area.

Although it is considered as a step forward in combating crimes in ASEAN waters, yet the significant issue in determining important matters on the process of legal making of this instrument make it difficult to be executed by states.

d. ASEAN Convention on Counter Terrorism 2007

Another development in ASEAN to counter transnational organized crimes is ASEAN Convention on Counter Terrorism established in 2007. The idea to counter terrorism was launched in 1997 in the Declaration on Transnational Crime where ASEAN countries agree to include terrorism as one of the transnational organized crimes. Afterwards, as a response to 9/11 on the Declaration on Joint Action to Counter Terrorism, ASEAN agreed to strengthen regional cooperation, such as through sharing of best practices and information/intelligence, efforts to augment regional counter-terrorism capacity, as well as examining how to integrate international anti-terrorism conventions within ASEAN mechanisms on combating international terrorism. This was followed in 2002 by the ASEAN Work Programme to Combat Transnational Crime (adopted 17 May 2002) which provides operational guidelines for regional cooperation. The importance of furthering the goals and actions identified in the 2001 Declaration of Joint Action was reiterated in 2002 following the terrorist attacks in Bali, Indonesia and the Philippines, which claimed the lives of 216 civilians and injured a further 419 people.⁴⁷ At last, ASEAN Convention on Counter Terrorism was adopted in January 2007.

⁴³ ASEAN, *ASEAN Drug Monitoring report 2017*, 2018, <https://asean.org/storage/2016/10/Doc-3-ADM-Report-2017-as-of-16-Aug18-FINAL.pdf>

⁴⁴ Masyarakat ASEAN Edisi 14, Kementerian Luar Negeri, Jakarta, 2016, hlm. 7

⁴⁵ Masyarakat ASEAN Edisi 14, Kementerian Luar Negeri, Jakarta, 2016, hlm. 8

⁴⁶ ASEAN Regional Forum, "Statement on Cooperation to Prevent, Deter and Eliminate IUU Fishing",

<http://aseanregionalforum.asean.org/files/library/ARF%20Chairman's%20Statements%20and%20Reports/Twentynfourth%20ASEAN%20Regional%20Forum,%202017%20-%202018/Doc18%20-%20A6.2%20-%20Statement%20on%20IUUF.pdf> , diakses pada 10 November 2017

⁴⁷ *ibid*

However, the value of ASEAN Way and characteristics of ASEAN is still obviously found in this convention. Instead of supporting regional cooperation in international criminal justice enforcement, this convention put emphasis on the national legal framework in combating the crime. The problem is some countries apply a militaristic approach while some others apply a criminal justice approach. Hence, the adherence of ASEAN countries particularly to the right of fair trial as recognized by international human rights law can be vague. In addition, the too general provisions are criticised and considered as the result of political negotiations among ASEAN countries.

e. ASEAN Treaty on Mutual Legal Assistance in Criminal Matters 2004

Mutual legal assistance (MLA) is a form of cooperation in combating crimes, particularly transnational organized crimes. This method involves two or more countries where states offer or receive assistance in collecting evidence needed in the investigation or prosecution process, including tracing; freezing and seizing the proceeds of crime.⁴⁸ MLA is an effort to combat any trans boundary crimes since the crimes affected more than one state. Accordingly, this method is proposed for the international community with a model as given by the *United Nations Model Treaty*.

In ASEAN, this recommendation designed in 2004 and signed by all ASEAN members in 2006 called *ASEAN Mutual Legal Assistance Treaty* (AMLAT) applies in regional level of ASEAN. As other convention related to MLA, AMLAT obliged all state parties to assigned a central authority to follow up all MLA's requests. Nonetheless, due to the administrative written process that takes days, there are particular circumstances that AMLAT can proceed through oral procedure through INTERPOL or ASEANAPOL.

D. EUROPE AND WAR ON TRANSNATIONAL ORGANIZED CRIMES

Europe can be considered as the best region in legal awareness to manage cooperation among its members. Not only in economic cooperation, Europe also put serious concern in transnational organized crimes. In this part, the author will discuss regulation, policy as well as practice of European organisation in combating transnational organized crimes.

In combating Transnational Organised Crime (TOC) The European Union (EU) perceives itself as a model for regional integration, which seeks to diffuse by actively promoting the development of genuine (intra-) regional economic and political cooperation, the building of issue-related regimes, and the creation of joint institutions for consultation and decision-making in its neighbourhood and beyond as well as between the world regions and the EU.⁴⁹ While talking about transnational organized crime, both in the EU and elsewhere there is a strong consensus amongst states that combating organised

⁴⁸ Peter Langseth, *United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators*, UNODC, Vienna, p. 120.

⁴⁹ Tanja A. Börzel and Thomas Risse, "The Rise of (Inter-) Regionalism: The EU as a Model of Regional Integration", Paper presented at the Annual Convention of the American Political Science

Association, Toronto, Canada, September 2-6, 2009, Researchgate, https://www.researchgate.net/publication/228146986_The_Rise_of_Inter-Regionalism_The_EU_as_a_Model_of_Regional_Integration

crime requires common action.⁵⁰ The EU highly respects international synergies in tackling TOC, besides working at the regional level, the EU also works together with international organizations to mention, the United Nations (UN), the Council of Europe, the G-8, and the Organisation for Economic Cooperation and Development (OECD).⁵¹ The EU policies have evolved in the context of manifold international efforts to tackle this threat.⁵² The EU has both co-drafted and drawn on international laws and standards.

The matters on Transnational Organised Crimes (TOC) has been dealt by the EU through its regional instruments since the 1990s. Through times, as the *modus operandi* of the TOC evolved, the policy and the EU's official discourse has also evolved. In recent years, the use of the term 'organised crime', once predominant, has declined in favor of 'serious crime'.⁵³ This change marks a shift of focus from the structure of criminal groups to the harm they inflict on individuals and societies. Recently, European policing forums concentrate their efforts of coordination, informally and formally around the tropes of drug trafficking, organised crime, terrorism and illegal migration.⁵⁴ In 2017, the EU create the five clear priority areas to ensure a more strategic use of funding and streamline its action, those are counter terrorism, organised crime (in particular money laundering and corruption crime, trafficking in human beings, firearms trafficking, drugs trafficking and

environmental crime), cybercrime, operational cooperation, and information exchange.⁵⁵ In this article, the author only discusses similar issues as the previous discussion to examine the lesson learned from European continent.

1. Drugs Trafficking within Europe

Approximately 22 member states of the EU have coastlines on seas or oceans, and 85% of the EU's international borders are coastlines with the length estimation of 70-89,000 kms.⁵⁶ On the discussion of drugs trafficking through European water, South-Eastern Europe serves as a corridor for several drug trafficking routes to West and Central Europe. Flows come from multiple directions. Externally, cocaine is transported from South America to the European Union across the Atlantic Ocean by air or maritime routes to the major container ports of Belgium, Germany, France, Italy, the Netherlands and the United Kingdom.⁵⁷ Almost all heroin comes from Afghanistan. Internally, South Eastern Europe produces relatively large amounts of cannabis, notably in Albania. Of all the drug flows, only heroin flows can be considered strategically significant to consumption markets in Western and Central Europe.⁵⁸ The routes by which drugs reach Europe change constantly on the basis of transnational connections and safety precautions. Traffickers use all means of transport

⁵⁰ Piotr Bąkowski, "The EU Response to Organized Crime", Library Briefing, *Library of the European Parliament*, accessed from [http://www.europarl.europa.eu/RegData/bibliotheque/e/briefing/2013/130625/LDM_BRI\(2013\)130625_REV_1_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/e/briefing/2013/130625/LDM_BRI(2013)130625_REV_1_EN.pdf) on 10 November 2018, page. 1

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ James Sheptycki, *et al.*, "International Organized Crime in the European Union", *Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs*, European Parliament: Brussels, 2011, p. 19.

⁵⁵ Annex to the Commission Implementing Decision Concerning the adoption of the work programme for

2017 and the financing for Union actions within the framework of the Internal Security Fund – the instrument for financial support for police cooperation, preventing and combating crime, and crisis management No. C (2017) 6343 final Annex I, page 4-6.

⁵⁶ Angela Carpenter, "Security and EU Sea Ports: Threats and Issues Facing Maritime Gateways to Europe", accessed from <https://danskehavne.dk/wp-content/uploads/2015/12/Carpenter-ISPS.pdf> on 10 November 2018.

⁵⁷ *Ibid.*

⁵⁸ United Nations Office on Drugs and Crime, "The Illicit Drug Trade Through South-Eastern Europe", Vienna: United Nations Office on Drugs and Crime, 2014, page. 35.

available, even though the largest amounts of drugs are transferred by ships. The ports of Lisbon, Malaga, and Marseille, as well as Italy's Tyrrhenian and Sicilian ports are particularly involved.⁵⁹

In combating the crimes of drug trafficking, the EU had established numbers of principal EU legislation linked to drug supply reduction from risk assessment of drugs and precursor to legal proceeding.⁶⁰ In order to support the established legal materials, The EU had established the EU drugs strategy (2013-2020) and action plan (2013-2016) based on international law to provide a framework for addressing illicit drugs in the EU, complementing Member States' national strategies and supporting joint actions. This action includes the dynamic nature of illicit drug markets, changes in trafficking routes and the role of cross-border organised crime and new technologies in the trafficking of illicit drugs and new psychoactive substances (NPS). It also notes the importance of preventing the diversion of drug precursors and cutting agents from licit industries that can be used in the production of illicit drugs.⁶¹ This Drugs Strategy is based first and

foremost on the fundamental principles of EU law and in every regard, upholds the founding values of the Union: respect for human dignity, liberty, democracy, equality, solidarity, the rule of law and human rights. It aims to protect and improve the well-being of society and of the individual, to protect public health, to offer a high level of security for the general public and to take a balanced, integrated and evidence-based approach to the drugs phenomenon.⁶²

Tackling groups involved in the illicit drug trade is an important element in the EU policy cycle for organised and serious international crime (the policy cycle), through which EU Member States coordinate common priorities and operational action. The policy cycle consists of four main steps: (1) policy development, (2) priority setting, (3) implementation and monitoring, and (4) evaluation of the current policy cycle and definition of the next one.⁶³ In working on this strategy, the EU involves several institutions and working groups that have different roles with respect to policymaking and implementation. Here is the illustration of the work of the institutions.⁶⁴

⁵⁹ Vincenzo Delicato, "Maritime Security and the Fight Against Drug Trafficking in the Mediterranean and Atlantic Approaches, *Mediterranean Paper Series 2010*, Washington DC: German Marshall Fund of the United States, 2010, p. 2.

⁶⁰ European Monitoring Centre for Drugs and Drug Addiction, "EU Drug Markets Report: In-depth

Analysis", The Hague: Europol, 2016, Annex Table A.1, page. 185.

⁶¹ *Ibid.*, page. 155.

⁶² Article 2 of EU Drugs Policy Preface 2013-2020 No. (2012/C 402/01).

⁶³ European Monitoring Centre for Drugs and Drug Addiction, *Op.Cit.*, page. 156.

⁶⁴ *Ibid.*, page. 157.

FIGURE 8.2
Main EU structures addressing drug supply reduction issues

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However, much of the implementation of the EU drug policy is undertaken by specialised EU agencies, particularly EMCDDA that provides member states with factual and reliable data and information concerning drugs and drug addiction,⁶⁶ Europol that acts as the EU's law enforcement agency, through exchange and analysis of criminal intelligence,⁶⁷ Eurojust (EU judicial cooperation) which facilitates and coordinates cooperation in cross-border serious crime cases, helping Member States to collaborate and synchronise their investigations and prosecutions,⁶⁸ Frontex (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, the agency that was established

to improve integrated management of the external borders of the EU,⁶⁹ and CEPOL an institution that is involved in building police cooperation across the EU.

2. Human Trafficking and People Smuggling within Europe

Human smuggling and trafficking are two of the fastest growing transnational criminal activities, and are thought to be the most lucrative forms of organized crime after the drug trade.⁷⁰ While most victims are located in Asia, Western Europe has become a major destination point. Smugglers and traffickers make substantial profits from thousands of people who seek to enter Europe illicitly.⁷¹ Since the migration crisis in 2015, the migrant smuggling

⁶⁵ European External Action Service (EEAS), Standing Committee on Operational Cooperation on Internal Security (COSI), Horizontal Working Party on Drugs (HDG), European Multidisciplinary Platform against Criminal Threats (EMPACT), The European Police College (CEPOL).

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*, 158

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*, 159.

⁷⁰ United Nations Office on Drugs and Crimes, "2017 World Drug Report", accessed from http://www.unodc.org/pdf/research/wdr07/WDR_2007.pdf on 10 November 2018.

⁷¹ Louise Shelley, *Human Smuggling and Trafficking into Europe: A Comparative Perspective*, Migration Policy Institute, 2014, p. 1.

business has established itself as a large, lucrative and sophisticated criminal market.⁷² On the Central Mediterranean route, Libya continues to be the main departure point towards Europe, with an overall number of 118,962 irregular migrants detected in 2018.⁷³ The departure points of the irregular migrants that have Europe as their destinations are Central Mediterranean through Libya and Tunisia, Western Mediterranean from Morocco, Algeria and Ivory Coast, Western Balkans, United Kingdom and France Border. Modes of conduct through travels with leisure vessels, mostly sailing yachts, continue to be used to smuggle migrants directly from Turkey to Italy. On average, 50-60 irregular migrants, commonly Syrians, can be smuggled per boat and the cost is substantially higher between EUR 2500 up to EUR 6000.⁷⁴

Human Trafficking is a priority for Europol and law enforcement agencies in EU Member States.⁷⁵ Indeed, it is one of the European Multidisciplinary Platform Against Criminal Threats (EMPACT) priorities under the 2018-2021 EU Policy Cycle.⁷⁶ This policy started in 2010 calls for effective cooperation among law enforcement agencies; other EU agencies; EU institutions and relevant third parties⁷⁷ including the private sector where relevant.⁷⁸ The EU Policy Cycle consists of 4 (four) steps:

- 1) Step 1: The serious and organised crime threat assessment (SOCTA)
The output of this step is a set of recommendations based on an in-depth analysis of the major crime threats

facing the EU based on trends and patterns in current crime data including a scanned environment for other factors that can be expected and the ability of law enforcement to stop them.⁷⁹

- 2) Step 2: Multi-annual strategic plans (MASPs)

This step is developed by Europol on the basis of the priorities defined in step 1 to define the strategic goals for combating each threat.⁸⁰

- 3) Step 3: European Multidisciplinary Platform Against Criminal Threats (EMPACT)

EMPACT set out operational action plans (OAPs) to combat crime in the areas that have been assigned as an EMPACT priority. An OAP is designated for each objective, and Member States and EU organisations work in a coordinated fashion to implement each OAP.⁸¹

- 4) Step 4: Evaluation

Reports of the OAP are reviewed by the Standing Committee on Operational Cooperation on Internal Security (COSI) where it may recommend adjustments within one and another area.

Other than cooperation among its member states as the key role, EU also called member states to tackle the criminal phenomenon together with third countries and neighbouring regions. Series of legislative and policy tools have also been established to achieve this, adopting the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplemented the Palermo Convention.⁸² Those instruments⁸³ stressed the importance

⁷² Europol, "Two Years of EMSC Activity Report Jan 2017-Jan 2018," *European Union Agency for Law Enforcement Cooperation 2018*, European Migrant Smuggling Centre, 2018, page. 7.

⁷³ *Ibid.*, page. 8.

⁷⁴ Europol, *Op.Cit.*, page. 12.

⁷⁵ Europol, "Trafficking in Human Beings" accessed from <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/trafficking-in-human-beings> on 10 November 2018.

⁷⁶ *Ibid.*

⁷⁷ Europol, "Euro Policy Cycle – EMPACT", accessed from <https://www.europol.europa.eu/crime-areas-and-trends/eu-policy-cycle-empact> on 10 November 2018,.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² Europol, "Situation Report: Trafficking in Human Beings in the EU", *Europol Public Information*, No. 765175, The Hague, 2016. Page. 34.

⁸³ *Ibid.*

of cooperating with third partners which are the origin, transit and destination countries. In 2004 the EU established the European Border Agency (Frontex) to improve integrated management of EU external borders.⁸⁴

3. Illegal, Unreported and Unregulated Fishing within Europe

As the European Union is the largest importer of fishery products, it is essential to ensure traceability of all fishery products traded with the EU.⁸⁵ This made by a series of regulations such EU IUU Policy are IUU Regulation No. 1005/2008, Implementing Regulation (No. 1010/2009) and subsequent updates, EU IUU vessels list, Implementation as regards Third Countries.⁸⁶ A core aim of the European Union's Regulation to combat IUU fishing is to prevent, deter and eliminate trade in fisheries products deriving from IUU fishing to the EU.⁸⁷ The regulation establishes a system of a 'catch certificates' (CC) scheme to assist member state authorities in detecting and blocking illegally sourced products at their borders, which is complemented by a procedure to identify third countries as non-cooperating in the fight against IUU fishing (the „carding“ process.)

However even though the EU had established the IUU regulation, disparities in the implementation of the IUU still exist and several member states (Denmark and Spain) are called upon the more uniform implementation of the regulation in the EU on the biennial reports for 2014/2015.⁸⁸ The European

Commission on the SeaWeb Seafood Summit 2016 perceives that there should be no amendment to the IUU regulation and as the external work to combat IUU fishing, EU should continue bilateral cooperation and promote multilateral actions. Internally, the EU must modernise the catch certification system, improve traceability, fight document fraud, and harmonised risk analysis/import controls.

Even though law enforcement in the EU has made progress in the intelligence coordination and joint investigations of crimes that are already considered to be priorities,⁸⁹ there are still many challenges to be faced by the EU to combat organised crimes. Not to mention range of actors at national and EU levels, different laws in different countries and regions, different threats, the ever changing nature of the crimes, as this would lead to the lack of maritime surveillance and only partial coverage in open seas⁹⁰ which makes it even harder to combat the organised crime.

E. LESSON LEARNT FROM THE EU AND POSSIBILITY TO ASEAN

Although the EU can be considered as a good example of regional mechanism in combating TOC, it cannot absolutely adopt to ASEAN. As described in the first part of this article, ASEAN has special characteristics in its cooperation. With the facts of historical background with main focus on economic cooperation and strong philosophy of non-intervention principle, establishing legal framework cooperation in

⁸⁴ *Ibid.*

⁸⁵ Stelios Mitolidis, "The European Union action towards the international fight against IUU fishing" Sea Web Seafood Summit, Malta, 1-3 February 2016, accessed from <https://www.seafoodsummit.org/wp-content/uploads/2016/03/Future%20of%20Anti-IUU-Mitolidis.pdf> on 10 November 2017.

⁸⁶ *Ibid.*

⁸⁷ The Environmental Justice Foundation *et al*, "The EU IUU Regulation: Analysis: Implementation of EU

seafood import controls" accessed from http://www.iuuwatch.eu/wp-content/uploads/2017/03/IUU_Import-controls_report_ENG.pdf on 10 November 2017, page. 4.

⁸⁸ *Ibid.*, page. 24.

⁸⁹ Europol, "The Future of Organized Crime Challenges and Recommended Actions", European Police Chiefs Convention, 2011., page. 1.

⁹⁰ Angela Carpenter, *Loc.Cit.*

combating TOC within ASEAN is very challenging.

Based on the discussion previously, the high contrast between ASEAN and EU are clearly observed particularly regarding legal framework in combating transnational organized crimes. Even Though both regions surely passed the negotiation and political measures before reaching agreement to establish a legal framework, the response is different. ASEAN countries prefers diplomatic and political approach instead of law mechanism. The reasons are clearly stated by the ASEAN Secretary General that the history and characteristics of ASEAN countries make it difficult to strictly establish a legal framework in order to reach regional cooperation as a rules-based organization. Consequently, legal framework within ASEAN region always emphasize general issues and national law mechanism as priority. Furthermore, the principle of non-interference where it prohibits lawfull forms of interference that would not constitute intervention according to international law such as criticising another government's actions in dealing with their domestic political affairs or providing assistance for political campaigns in other states, makes ASEAN states keep their claws inside. Hence, the cooperation is again conducted through diplomatic means instead of law enforcement.

However, it does not mean that law cannot have its place within ASEAN countries. Several legal instruments that have been produced and bound ASEAN countries as well regular meeting both in ministerial level and summit particularly in regards to the issue of transnational organized crimes are the light of law enforcement to combat TOC. Accordingly, with the good faith of ASEAN countries, those existing legal instruments can be developed to be more specific to ensure its effective implementation at the national level. It is not impossible that ASEAN can have a list of regulations as the EU has in combating drugs, people smuggling and human trafficking. Moreover, the mutual

legal assistance in criminal matters is a common interest of all ASEAN countries. Not to mention extradition treaties among its members.

Other than that, several regional cooperation task forces in combating human trafficking; people smuggling, illicit drugs and IUUF also taking important part in maintaining regional security within ASEAN waters. Although probably the work of those task forces is not exactly the same steps as taken by the EU in EU Policy Cycle, by the experiences of the author in working with the government in designing national policy and drafting implementing legislations derived from international and regional instruments as well as policy, including from discussion with several related institutions, the basic principles are just the same. In other words, EU Policy Cycle is not a new thing for ASEAN. The difference is might in the enforcement. Different approaches from different institutions is one of the major factors hindering the effectiveness of the policy and regulations. For example, the ministries usually put political consideration as priority instead of straight forward law enforcement as referred by the law enforcement agency (interpol, national military force, national police, etc. Yet, it does not mean that law is neglected. This factual circumstances is not only experienced by the ASEAN, but also by other countries including the EU.

Although the EU also has many challenges to combat transnational organized crimes, it has a list of regulations in detail produced by its members. The same conditions are also shown by the ASEAN countries, where each country has national legislations before regional instruments are established. These argue that ASEAN countries already have common interest and deed in combating those trans boundaries crimes. Not to mention national legislations in each member state that are in line within those regional instruments. This shall be considered as positive ambience instead of pessimistic.

In the EU, the adherence of countries expressing good faith in the same spirit to achieve global justice as agreed in the conventions. Main spirit and mandates of those instruments is to cooperate with each EU member state, third countries and also private sectors. This also has been worked by the ASEAN by several cooperations among its members and third countries. Yet the cooperation with private sectors need to be considered.

Nonetheless, the action and policy by the ruler put an important role in making rule based organisation. This is what is needed by the ASEAN countries, the willingness of the leader (of ASEAN countries) to genuinely cooperate within the legal framework to combat transnational organized crimes within ASEAN region. Without it, combating transnational organized crime within the rule of law framework will still be a very high dream in ASEAN. In other words, in the current global world the seriousness of ASEAN leaders is the key to combat transnational organized crimes particularly within ASEAN waters.

F. CONCLUSION

Although ASEAN does not have list of regulations as many as EU and the ASEAN Way often considered to hinder the establishment and enforcement of rule based organisation, there are evidences such as list of regional instruments, national legislations as well as task forces that can be taken into consideration as positive spirit in combating transnational crimes within ASEAN waters. Challenges shall not stop the optimism in strengthening the legal framework in ASEAN, yet the key to make it happen is in the leader of ASEAN countries.

REFERENCES

Books

- Abiyankar, Jayant, "Piracy, Armed Robbery and Terrorism at sea: A Global and Regional Outlook" in Graham-Ong Webb, *Piracy, Maritime Terrorism and Securing the Malacca Straits*, ISEAS, 2006.
- Amirell, Stefan Ekloff, "Political Piracy and Maritime Terrorism: A Comparison between the Straits of Malacca and the Philippines" in Graham Gerard Ong-Webb, *Piracy, Maritime Security and Securing Malacca*, ISEAS, 2006
- Frecon, Eric, "Piracy and Armed Robbery at Sea in Southeast Asia: Initial Impressions from the Field" in Graham Gerard Ong-Webb, *Piracy, Maritime Security and Securing Malacca*, ISEAS, 2006
- Langseth, Peter., *United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators*, UNODC, Vienna, 2004.
- Liss, Carolin., *Assessing Contemporary Maritime Piracy in Southeast Asia: Trends, Hotspots and Responses*, Peace Research Institute Frankfurt, 2014.
- Nasu, H., et.al., *The Legal Authority of ASEAN as a Security Institution*, Cambridge University Press, 2019.
- Ong-Webb, Graham (ed), *Piracy, Maritime Terrorism and Securing the Malacca Straits*, ISEAS, 2006.
- Piris, Jean-Claude and Walter Woon, *Towards a Rules-Based Community: An ASEAN Legal Service*, Cambridge University Press, 2015.
- Santos, Eduardo M., "Piracy and Armed Robbery against Ships in the Philippines" in Graham Gerard Ong-Webb, *Piracy, Maritime Security and Securing Malacca*, ISEAS, 2006
- Shelley, Louise, *Human Smuggling and Trafficking into Europe: A Comparative Perspective*, Migration Policy Institute, 2014.
- Sheptycki, James, et al., "International Organized Crime in the European Union", *Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs*, European Parliament: Brussels, 2011.
- Talib Rebeca, *Organized Crime and People Smuggling/Trafficking to Australia*, A

Papers A Trends and Issues in Crimes and Criminal Justice No. 208.

Other Documents

Annex to the Commission Implementing Decision Concerning the adoption of the work programme for 2017 and the financing for Union actions within the framework of the Internal Security Fund – the instrument for financial support for police cooperation, preventing and combating crime, and crisis management No. C (2017) 6343 final Annex I.

ASEAN PLAN OF ACTION IN COMBATING TRANSNATIONAL CRIME (2016-2025), <http://asean.org/storage/2012/05/ASEAN-Plan-of-Action-in-Combating-TC-Adopted-by-11th-AMMTC-on-20Sept17.pdf>

ASEAN Regional Forum, “Statement on Cooperation to Prevent, Deter and Eliminate IUU Fishing”, <http://aseanregionalforum.asean.org/files/library/ARF%20Chairman's%20Statements%20and%20Reports/Twentyfourth%20ASEAN%20Regional%20Forum,%202017%20-%202018/Doc18%20-%20A6.2%20-%20Statement%20on%20IUUF.pdf> , accessed on 10 November 2018

ASEAN Studies Centre, *creating a Drug-Free ASEAN: How Far Have We Come?* May 21, 2019, <http://asc.fisipol.ugm.ac.id/2019/05/21/creating-a-drug-free-asean-how-far-have-we-come/>

ASEAN, *ASEAN Drug Monitoring report 2017*, 2018, <https://asean.org/storage/2016/10/Doc-3-ADM-Report-2017-as-of-16-Aug18-FINAL.pdf>

Association of Southeast Asian Nations, *ASEAN Legal Instruments*, <http://agreement.asean.org/>

Bąkowski, Piotr, “The EU Response to Organized Crime”, Library Briefing, *Library of the European Parliament*, accessed from <http://www.europarl.europa.eu/RegDa>

[ta/bibliotheque/briefing/2013/130625/LDM_BRI\(2013\)130625_REV1_EN.pdf](ta/bibliotheque/briefing/2013/130625/LDM_BRI(2013)130625_REV1_EN.pdf) on 10 November 2018.

Börzel, Tanja A. and Risse, Thomas, “The Rise of (Inter-) Regionalism: The EU as a Model of Regional Integration”, accessed from https://www.researchgate.net/publication/228146986_The_Rise_of_Inter-Regionalism_The_EU_as_a_Model_of_Regional_Integration on November 11, 2018.

Carpenter, Angela, “Security and EU Sea Ports: Threats and Issues Facing Maritime Gateways to Europe”, accessed from <https://danskehavne.dk/wp-content/uploads/2015/12/Carpenter-ISPS.pdf> on 10 November 2018.

Delicato, Vincenzo, “Maritime Security and the Fight Against Drug Trafficking in the Mediterranean and Atlantic Approaches, *Mediterranean Paper Series 2010*, Washington DC: German Marshall Fund of the United States, 2010.

Dillon, Paul, *Over 500 New Human Trafficking Victims Identified in Indonesia since Benjina ‘Slave Fisheries’ Exposed*, IOM, 2015 <https://weblog.iom.int/over-500-new-human-trafficking-victims-identified-indonesia-benjina-‘slave-fisheries’-exposed>

Directorat of ASEAN Cooperation – Ministry of Foreign Affairs Republic of Indonesia, *Majalah Masyarakat ASEAN Edisi 12: Membangun Kiprah Maritim Indonesia di Kawasan*, Edisi 14, Desember 2016.

Direktorat Jenderal Kerja Sama ASEAN Kementerian Luar Negeri RI, *Majalah Masyarakat ASEAN Edisi 12: Membangun Kiprah Maritim Indonesia di Kawasan*, Edisi 14, Desember 2016.

Djelantik, Sukawarsini, “Sekuritisasi dan Kerja Sama ASEAN dalam Meningkatkan Keamanan di Wilayah Perairan”, *Global and Strategi, Th.10 No.2*, hlm.189.

European Monitoring Centre for Drugs and Drug Addiction, “EU Drug Markets

- Report: In-depth Analysis”, The Hague: Europol, 2016, Annex Table A.1.
- European Parliament, “Combatting Migrant Smuggling into the EU”, accessed from http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/581391/EPRS_BR1%282016%29581391_EN.pdf on 10 November 2018.
- Europol, “Euro Policy Cycle – EMPACT”, accessed from <https://www.europol.europa.eu/crime-areas-and-trends/eu-policy-cycle-empact> on 10 November 2018.
- Europol, “Situation Report: Trafficking in Human Beings in the EU”, *Europol Public Information*, No. 765175, The Hague, 2016. .
- Europol, “The Future of Organized Crime Challenges and Recommended Actions”, European Police Chiefs Convention, 2011.
- Europol, “Trafficking in Human Beings” accessed from <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/trafficking-in-human-beings>
- Europol, “Two Years of EMSC Activity Report Jan 2017-Jan 2018,” *European Union Agency for Law Enforcement Cooperation 2018*, European Migrant Smuggling Centre, 2018.
- Fish and People, Vo. 8 No.1 , 2010, p.11, <http://repository.seafdec.org/bitstream/handle/20.500.12066/807/sp8-1%20illegal%20fishing.pdf?sequence=1&isAllowed=y>
- https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-12&chapter=18&lang=en,
- International Organization for Migration (IOM), *Laporan Mengenai Perdagangan Orang, Pekerja Paksa, dan Kejahatan Perikanan dalam Industri Perikanan di Indonesia*, Jakarta.
- Masyarakat ASEAN Edisi 14, Kementerian Luar Negeri, Jakarta, 2016.
- Migration and Home Affairs, “EU’s Response to Drugs” accessed from https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/drug-control/eu-response-to-drugs_en
- Mitolidis, Stelios, “The European Union action towards the international fight against IUU fishing” Sea Web Seafood Summit, Malta, 1-3 February 2016, accessed from <https://www.seafoodsummit.org/wp-content/uploads/2016/03/Future%20of%20Anti-IUU-Mitolidis.pdf>
- Raymond, Catherina Zara, “Piracy and Armed Robbery in the Malacca Straits, *Naval War College Review*, Vol. 62 No. 3, 2009.
- Severino, Rodolfo C., Secretary-General of the Association of Southeast Asian Nations, *The ASEAN Way and The Rule of Law*, at the International Law Conference on ASEAN Legal Systems and Regional Integration sponsored by the Asia-Europe Institute and the Faculty of Law, University of Malaya Kuala Lumpur, 3 September 2001, https://asean.org/?static_post=the-asean-way-and-the-rule-of-law retrieved at 19 October 2019, 11.37.
- The Environmental Justice Foundation *et al*, “The EU IUU Regulation: Analysis: Implementation of EU seafood import controls” accessed from http://www.iuuwatch.eu/wp-content/uploads/2017/03/IUU_Import-controls_report_ENG.pdf on 10 November 2018, page. 4.
- United Nations Office on Drugs and Crime, “The Illicit Drug Trade Through South-Eastern Europe”, Vienna: United Nations Office on Drugs and Crime, 2014.
- United Nations Office on Drugs and Crimes, “2017 World Drug Report”, accessed from http://www.unodc.org/pdf/research/wdr07/WDR_2007.pdf on 10 November 2018.
- United Nations Office on Drugs and Crimes, Foreword United Nations Convention Against Transnational Organized Crimes and Protocols Thereto, 2000.

UNODC Report on Transnational Organized
Crimes in South East Asia, 2017.

UNODC Report on Transnational Organized
Crimes, 2017

UNODC, *E4J University Model-Series:
Counter Terrorism, Modul 5 : Counter
Terrorism Approach, the Asian Region* ,
July 2018,
<https://www.unodc.org/e4j/en/terrorism/module-5/key-issues/asian-region.html>

Legal Documents

United Nations Convention Against
Transnational Organized Crime 2000.

Protocol against the Illicit Manufacturing of
and Trafficking in Firearms, their parts
and Components and Ammunition,
supplementing the United Nations
Convention Against Transnational
Organized Crime 2001.

Protocol Against the Smuggling of Migrant
by Land, Sea, and Air, Supplementing
the United Nations Convention Against
Transnational Organized Crime 2000.

Protocol to Prevent Suppress and Punish
Trafficking in Persons, Especially
Women and Children 2000.

EU Drugs Policy Preface 2013-2020 No.
(2012/C 402/01).