



CONTEMPORARY ISSUES ON ASEAN LIBERALIZATION OF LEGAL SERVICE FROM INDONESIA PERSPECTIVE

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ABSTRACT

Kuala Lumpur meeting in 1997 has established and concepted three pillars in ASEAN known as ASEAN Economic Community (AEC), ASEAN Security Community (ASC), and ASEAN Socio-Cultural Community (ASCC). AEC has been established based on ASEAN Economic Blueprint 2015, to reach the target of ASEAN Vision 2020 targets, ASEAN member states made several cooperation agreements such as Preferential Trade Agreement (PTA), ASEAN Free Trade Area (AFTA), ASEAN Framework Agreement on Services (AFAS), ASEAN Investment Area (AIA 1998), and etc. Related to AEC nowadays, massive investment occurred in the ASEAN region, economic growth reached 5% in this region. There's various kinds of bussiness development of the services sector, mainly in legal service, in facing globalization and liberalization of business movement after Free Trade Agreement comes into force in ASEAN. The differences of the governmental system, geographical condition, and the divergence of jurisdiction also reflecting in the ASEAN Countries to regulate each national law regulation. This paper explain the comparison existing ten ASEAN countries national legislation, government decree relating to the liberalization of national legal services in each country. This research was expecting to help Indonesian government re-evaluate the Authorities and regulation related in modern business sector development, in result from the demand of capable attorneys by endorsing foreign lawyers to get practices in Indonesia to transfer knowledge to local attorneys.

Keywords: ASEAN; Legal Services; Liberalization; Attorney; Indonesia.

I. INTRODUCTION

Massive development in recent years in the ASEAN region has brought massive investment¹ into this region. This fact-based investment is overgrowing, especially in Indonesia, Vietnam, Malaysia, Thailand, and Singapore. Indonesia has enjoyed economics growing more than 5,3% *per annum*.² Indonesia has the most significant ASEAN over 250 million population, it could be an excellent opportunity for Indonesia to grow its economics. This challenge should be answered through a mature preparation for facing this future challenge on this day. Many investments will enter the ASEAN region included legal services sectors. However, we had trouble implementing that matter in Indonesia in recall that Law Number 18, 2003 are prohibited any foreign legal service open their office or branch in Indonesia, except as only expertise from international background could be permitted by the Advocate organization.³

In the era of globalization and liberalization means everything must be seamless for business and investment matters.⁴ On the other hand, liberalization has reached many aspects, and one of those is legal services or foreign law firms. With its ASEAN Economic Community (AEC), ASEAN is hard to

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¹ Cuyvers, L., Chen, L., & Lombaerde, P. De. (2019). 50 years of regional integration in ASEAN. *Asia Pacific Business Review*, 25(5), 609–618

² Bank, W. (2019). *GDP growth (annual %) - Indonesia*. The World Bank

³ See Indonesian Law No. 18, 2003 Advovate Regulation Art. 23

⁴ Chiang, M. H. (2019). China–ASEAN economic relations after establishment of free trade area*. *Pacific Review*, 32(3), 267–290

understand how this system works among ASEAN members.⁵ Understandably, ASEAN member has a differential in many sectors such as Political, Economics, Government, and Law.⁶ In 2014 Hsieh published a research paper on how or what is the most challenging issue if ASEAN entirely comes into liberalization, mainly its legal services. In some countries, legal services has possible run by foreigner attorney but in *sensu stricto* way in answering of plenty number of foreign investment come to ASEAN.⁷

For example, in Malaysia (in particular area) foreign lawyer/attorney are eligible to practice beside with Malaysian partner in specific interest such as Islamic Finance Law. In Singapore have similar situation with Malaysia that foreigner attorney has been permitted to practice in Singapore in limited area in respective of trade liberalization from FTA effects.⁸ Furthermore, Indonesia has different approach contextualizing liberalization of services⁹ every foreigner attorney can practice in Indonesia yet with very narrow perspective such as advisor for local layer “transform of knowledge.” And the rest of ASEAN countries has almost impossible for foreigner lawyer take an advantage¹⁰

Furthermore, those matters could be raising a long-lasting polemic or anxiety beyond those matters because there a gap between the Indonesian legal framework and foreign legal firms, which is for several years going. Many foreign legal firms looked up. They are attractive over ASEAN. The foreign legal firm will bring new challenges for local legal firms to a new era of competition to become more dynamics.¹¹ Foreign legal firms all this time become a pledge for foreign investors¹², which they are brought within because they are more reliable and understand more about the company’s culture; instead, the companies should hire a new one; it could take more time to get fit.¹³

Regarding this is contemporary issue has to emerge in recent days, author at this article will emphasize relating to liberalization terms among local legal firms, and also to proposed harmonization legal service standard at ASEAN region which every legal practitioner could implement their legal knowledge over ASEAN territories in general and their home country in particular. In the understanding of successful liberalization in Singapore as an advanced economic country in ASEAN and China¹⁴, which was done with their development of legal service until they become the second-largest economy in the World. This article will also be elaborated between fact and domestic legal instruments if someday perhaps liberalization of legal service will be implemented in Indonesia.

⁵ Pelkmans, J. 2019. Understanding the ASEAN economic community: pragmatism versus conceptualism. *Asia Pacific Business Review*, 25(5), 619–636

⁶ Hsieh, P. L. 2014. AseannS Liberalization of Legal Services: The Singapore Case. *SSRN Electronic Journal*.

⁷ Ayangbah, S., & Sun, L. (2017). Comparative study of foreign investment laws: The case of China and Ghana. *Cogent Social Sciences* 3(1)

⁸ Yahya, F. Bin. 2016. The Influence of China and India on Smaller Nations in Southeast Asia: A Study of Singapore. *Round Table* 105(6), 723–736

⁹ Findlay, C., & Pangestu, M. 2016. The Services Sector as a Driver of Change: Indonesia’s Experience in the ASEAN Context. *Bulletin of Indonesian Economic Studies* 52(1), 27–53

¹⁰ Weeramantry, R. International investment law and practice in the kingdom of Cambodia: An evolving “rule taker”? In *Journal of World Investment and Trade*. 2019 (Vol. 18, Issues 5–6)

¹¹ Bourke, J., Roper, S., & Love, J. H. (2020). Innovation in legal services: The practices that influence ideation and codification activities. *Journal of Business Research*, 109 (November 2019) p. 132–147

¹² Lukács, E., & Völgyi, K. 2018. Mega-FTAs in the Asia-Pacific region: A Japanese perspective. *European Journal of East Asian Studies*, 17(1), 158–175

¹³ Degelsegger-Márquez, A., & Remøe, S. O. 2019. ASEAN’s science, technology and innovation policy: tension and integration between intergovernmentalism and sub-regional cooperation. *Asia Pacific Business Review*, 25(5), 637–655

¹⁴ Tampubolon, J. Indonesian export performance and competitiveness in the Asean-China FTA. *WSEAS Transactions on Business and Economics*, 2019, 16, 120–129

II. RESEARCH METHODS

This article uses a normative juridical studies approach, which refers to legal norms in the legislation among ASEAN member countries. This paper analyses legal principles of liberalization of legal service from its ten member countries and compares them between various countries and Indonesia in the practice area.

This paper used descriptive analytics to reveal law and regulation among ASEAN Countries related to object research studies to obtain a real, systematic, and accurate description of the fact as future globalization challenges.

III. DISCUSSION AND RESULTS

1. Development of Liberalization of Legal Services in South East Asian Countries (SEA's)

The ground concept of liberalization is from the crisis-era in the end of 1997 when all ASEAN member states meeting at Kuala Lumpur. Through this meeting, they are a concept the ASEAN way into three pillars as we know today, namely ASEAN Economic Community (AEC), ASEAN Security Community (ASC), and ASEAN Socio-Cultural Community (ASCC).¹⁵ ¹⁶ Moreover, the ASEAN economics integrity plan for ASEAN Vision 2020 has been made through the Bali Concord declaration at 2003, and there were five main pillars to reach ASEAN Vision, which is: the free flow of goods, free flow of professionals service¹⁷, investments among ASEAN Nations, skilled labor, and free of capital flow.¹⁸ To reach those targets, ASEAN member states made several cooperation agreements, namely¹⁹: Preferential Trade Agreement 1977 (PTA 1977), ASEAN free trade area 1992 (AFTA 1992), ASEAN Framework Agreement on Services 1995 (AFAS 1995), ASEAN Investment Area (AIA 1998).²⁰

Among ten of ASEAN member states have the unique situation from differences of the governmental system such as there is monarchy system, democracy system, an authoritarian system, also ASEAN member states have diverse in geographical condition there is a landlocked and archipelagic island; likewise, the divergence of jurisdiction also reflecting in the ASEAN combination of common law, civil law, and sharia law²¹ By 2015 ASEAN Economic Community been established based on ASEAN Economic Blueprint,²² had projected to become a single market zone of ASEAN (ASEAN Secretariat, 2008). Trade-in services, negotiations under the package of commitments between 1997 to 2010²³²⁴ As part of the service liberalization, 'seven mutual recognition arrangements were

¹⁵Budiman, A. S. (2008). *Masyarakat Ekonomi ASEAN 2015 (ASEAN Economic Community 2015)*. Jakarta: P.T Elex Media Komputindo

¹⁶Lee, Jong Wha, & McKibbin, W. J. (2018). Service sector productivity and economic growth in Asia. *Economic Modelling*, 74(November 2017), 247–263

¹⁷See Pradhan, R. P., et. al. (2017). ASEAN economic growth, trade openness and banking-sector depth: The nexus. *Economia*, 18(3), 359–379

¹⁸Lee, Ji Won, & Oh, J. (2020). ASEAN or plus alpha? The effectiveness of regional economic cooperation. *Asia Pacific Management Review*, 25(1), 48–53

¹⁹See Sukmadilaga, C., Pratama, A., & Mulyani, S. (2015). Good Governance Implementation in Public Sector: Exploratory Analysis of Government Financial Statements Disclosures Across ASEAN Countries. *Procedia - Social and Behavioral Sciences*, 211(September), 513–518

²⁰Pradhan, R. P., Arvin, M. B., Hall, J. H., & Norman, N. R. (2017). ASEAN economic growth, trade openness and banking-sector depth: The nexus. *Economia*, 18(3), 359–379

²¹Hsieh, P. L. 2019. Transnational Legal Services in Asia: Legal Implications of the AEC and the CPTPP. *ASEAN Law in the New Regional Economic Order*, 47(2015), 168–185

²²*Ibid*

²³Rüland, J. 2019. Good global citizen? ASEAN's image building in the United Nations. *Asia Pacific Business Review*, 25(5), 751–771

²⁴Chen, L., & Lombaerde, P. De. (2019). ASEAN between globalization and regionalization. *Asia Pacific Business Review*, 25(5), 729–750

concluded and covered professionals services including engineering, architectural and accountancy services²⁵ At the ASEAN framework, liberalization of professional's services had agreed to increase cooperation in this area through ASEAN Framework Agreement on Service (AFAS).²⁶

AFAS has very tremendously entertaining if we are looking closer by its characteristics; AFAS was trying to reached and escalated liberalization on professional service by its scope broader than GATS regulation.²⁷ Further, in practical AFAS, it had a different method from the liberalization of goods by eliminating any crimp through four characteristics of mode of supply (MOS)²⁸: a. Cross-Border Supply (CBS), b. Consumption Aboard (CA) c. Commercial Presence (CP) d. Movement of Individual Service Provider (MAISP)²⁹

Furthermore, through AFAS, ASEAN member states encourage eliminating restrictions to trade in services and work sectors, including legal services within; ASEAN legal market shall be liberalized to capitalize on the rise of ASEAN economies.³⁰ However, there was an obstacle to making it happened into reality such as at 2010, several ASEAN member countries have signed eight package deal commitment under AFAS incorporated legal services,³¹ and several ASEAN member countries made more specific commitment within, which is Cambodia, Indonesia, Malaysia, Thailand, and Vietnam. Concerning to external regional based FTA, ASEAN member states will providing legal service as part of commitment between ASEAN and Korea FTA, ASEAN-New Zealand-Australia FTA, and ASEAN-China FTA^{32 33}. Furthermore, from those commitments between ASEAN strategic partners resulting in intra ASEAN legal services is the ASEAN Agreement to ensuring the natural persons' movement, which facilitates the cross-border movement of skilled laborers, including lawyers.³⁴

Furthermore, several ASEAN countries, such as Cambodia, Malaysia, Thailand, and Vietnam, have entered legal services commitment in their WTO package [WTO, 2010]. On the AEC blueprint, which promotes the free flow of services that should be removed by 2015, in the same year, ASEAN legal firm is also expected to allow for ASEAN equity participation of no less than 70% and MRA on legal services may be developed.

The FTA had misrepresented several ASEAN member states such as; Brunei Darussalam, Lao PDR, Myanmar, the Philippines, and Singapore. Has did not commit to liberalize the legal service under the ASEAN FTA regime.³⁵ Without a broad authority to govern and to control the legal industry, Lao

²⁵ Hsieh, P. L. 2014. *Loc. cit*

²⁶ Sookhakich, P. 2019. Limits and Challenging Factors of the Dispute Settlement Mechanism in the Light of China- ASEAN Free Trade Agreement Perspective. *SSRN Electronic Journal*, 3(1), 34–41

²⁷ See Satriana, D. 2016. PENGATURAN PERDAGANGAN JASA DALAM HUKUM EKONOMI INTERNASIONAL. *Surya Kencana Dua: Dinamika Masalah Hukum Dan Keadilan*, 3(1), 332–351

²⁸ Alleyne, A., Zhang, Z., & Mu, Y. (2020). Sustaining International Trade with China: Does ACFTA Improve ASEAN Export Efficiency? *Sustainability*, 12(15), 6159

²⁹ Verbiscus, L. 2013. Economic Globalization and the Need for Legal Innovation. *Michigan State International Law Review*, 21(3), 779

³⁰ Chew Seng Kok, & Yeap Suan Hong. 2013. *Liberalization of Legal Services - Embracing a World of Opportunities in the Asean Region*. 141–151

³¹ Wang, H. (2019). Building toward the RCEP? Reflections on the ASEAN-China FTA. *ASEAN Law in the New Regional Economic Order*, 46–63

³² See Foo, N., et. al. 2019. The impact of China's one belt one road initiative on international trade in the ASEAN region. *North American Journal of Economics and Finance*

³³ See Bhowmik, R., & Nhung, R. (2014). ASEAN-China Free Trade Agreement: It's Peace-Promotion Effects over South China Sea Dispute and Econometric Analysis of Welfare Effects on Not-Yet-Ready ASEAN members: Cambodia, Laos, Myanmar and Vietnam. *International Journal of Business and Management Study*, 1–5

³⁴ Taguchi, H. (2015). Trade creation and diversion effects of ASEAN-plus-one free trade agreements. *Economics Bulletin*, 35(3), 1856–1866

³⁵ Yusoff, M. B., & Sabit, A. H. (2015). The Effects of Exchange Rate Volatility on ASEAN-China Bilateral Exports. *Journal of Economics, Business and Management*, 3(5), 479–482

PDR and Myanmar have retained moderate regulation of foreign lawyers and their law firms. Furthermore, Indonesia had the most restrictive regarding the foreign legal firm or legal 'practitioners' regulation. For example, at Law No. 18, 2003, Article 23 mentioned regarding foreign lawyers could get practice in Indonesia under particular circumstances as Expertise or become a regular employee in local legal firms, and foreign legal practitioners have prohibited involved at the Indonesian court under this regulation. It was apparent for Indonesia's position in this matter, the Indonesia government still warrant foreign legal practitioners to get practice in Indonesia, but it was extremely limited under "special purposes only."

1.1 Malaysian Case on Liberalization of Legal Service

As one of the major economic countries in ASEAN, Malaysia has answered the liberalization of legal services challenges. As part of the removal of tariff consequences from AEC on goods and services. Mostly Malaysian had noticed the impact of the benefits of liberalization in many sectors, such as open skies policy had increased a massive number of airline services which indicating the increasing visitors influx from aboard to Malaysia. It also includes an increasing number of the legal services industry. The regulation was passed by the Malaysian parliament³⁶, and subsequently, gazette entry into force in 2014. This amendment was licensing international attorneys and international law office branches to operating in Malaysia, which is now be permitted to practice in West Malaysia.³⁷

Qualified Foreign Law Firm (QFLF) is a model that Malaysia implemented. Through QFLF, foreign lawyers or foreign law office to cooperate with Malaysian owned law office, or as a QFLF that means international law office are allowed to provide legal services in some permitted areas, and QFLF are specifically required to provide particular experience and proven expertise in Islamic finance. However, QFLF is a limited number; just only up to five QFLF will be granted; this matter is to support the Malaysian government the Malaysian International Islamic Finance Center (MIFC). Moreover, QFLF permission only valid for three years, and it can renewable every three years.

Furthermore, in terms of practicing QFLF in Malaysia, there were several restrictions to ensure that any foreign legal firms focus on permitted areas. The limitation falls into several focuses such as Criminal law, Constitutional and Administrative Law, Succession Law, and Trust Law, which the services customers are a person, corporation, retailer, etc. Yet the foreigner lawyers have only can perform in the "backstage" area while Malaysian partners hold a significant role in the Malaysian court.³⁸

1.2 The Philippines Possibilities on Liberalization of Legal Services

The Philippines had different position to react on the liberalization of legal service, foreign lawyers or legal firms possibly can not get practice in the Philippines. Through 1987 Constitution of the Republic of the Philippines at Article XII Sec 14 mentioned, "The State shall promote the sustained development of a reservoir of national talents consisting of Filipino scientists, entrepreneurs, professionals, managers, high-level technical human resources and skilled workers and craftsmen in all fields. The State shall encourage appropriate technology transfer and regulate its transfer for the public

³⁶See Laws of Malaysia Legal Profession Amendment Act 2012

³⁷Andrew Khoo, Liberalisation of Legal Services, Circular No 123/2014, https://www.malaysianbar.org.my/cms/upload_files/document/Circular%20No%20123-2014.pdf

³⁸*Ibid*

benefit. The practice of all legal professions in the Philippines shall be limited to Filipino citizens only, save in cases prescribed by law. In this regard, legal services must be included in that provision.

The liberalization legal services concept is theoretically impossible, because the Philippines does not make any commitments for the legal provisions under the GATS nor submitted any proposals for negotiation specifically relating to cross border legal services based on Prof Roque: there, the High Court classified the legal professions as an exercise of a public function and held that "the sovereignty of the people stands behind all public functions, and it is a matter of high and wise policy not to entrust that function to foreigners."³⁹

1.3 Singapore on Liberalization of Legal Services

Singapore is the most advanced economics growth among ASEAN states. Moreover, Singapore has liberalized its services over decades. For the Legal services has growing in Singapore around 1970, there were many foreign legal firms established their office in Singapore and numerous foreign lawyers had practiced in such legal firms in Singapore, as long as they do not practice Singapore law they are not within the regulatory of the legal profession Act, and also there was no prohibition for them to practice from or in Singapore.⁴⁰

After the legal profession Act amendment in 2000, all foreigner legal firms and lawyers who get practice in Singapore must register. The Attorney generals were established legal professions international service secretariat as part of a regulatory body for all foreigner legal firms and lawyers in Singapore.⁴¹

Since 2007 there were numerous foreign lawyers increased by 42% with 1200 foreign lawyers working in over 100 foreign law firms; also, the value of the legal services industry has increased significantly by 25% from 2008 to 2012 in total amount more than S\$1.9 billion.⁴² This matter is coming from because numerous multinational enterprises were choosing Singapore as their operation centre for regional business, and also, top foreign law firms are prefer choosing Singapore to be their headquarters for ASEAN law practices.

Further, because Singapore had numerous foreign law firms and foreign lawyers who practice in Singapore, the government of Singapore introduces two new legal vehicles that can be adopted by foreign law firms in order to engage in the practice of Singapore law. 1. Joint Law Venture (JLV) and 2. Formal Law Alliance (FLA). 1. JLV is a joint undertaking that can be structured either as a partnership or as an incorporated entity; the central focus for JLV is serving the legal needs of the banking and financial sectors of the economy. 2. FLA is a cooperative structure that can be established between foreign law practice and a Singapore law practice. Furthermore, after reforms in 2008, the committee was enacted Qualified Foreign Law Practices (QFLP), which is foreign law practices are allowed to practice Singapore law, but only through Singapore lawyers who are its partners or associates. In this regard, QFLF and QFLP had a similarity.

³⁹ Aldaba, R. M., & Aldaba, F. T. Services Liberalization in the Philippines: A Capacity Needs Assessment for AEC 2015. *Philippine Journal of Development Number Philippine Journal of Development*, 2012 p. 71

⁴⁰ Wah Teck, Jeffrey Chan.. *asean law association*. Retrieved from <https://www.aseanlawassociation.org/10GAdocs/Singapore3.pdf> (2009, October 14-18)

⁴¹ *Ibid*

⁴² Hsieh, P. L.. AseannS Liberalization of Legal Services: The Singapore Case. *SSRN Electronic Journal*. 2014

1.4 Thailand on Liberalization of Legal Services

Thailand is one of the most advanced economics growth among ASEAN states after Singapore and Malaysia. The services sector plays an important role in the Thai economy in terms of its direct contribution to gross domestic product (GDP) and employment.⁴³ For the Legal services in Thailand, There is no restriction on any Thai national, with or without a law degree, providing legal advice. The Lawyers' Council of Thailand is established under the Lawyers Act B.E. 2528 (1985), which is the key legislation relating to lawyers.⁴⁴ In the past, Thailand allowed foreigners to practice as lawyers of the Court around the time of the Lawyers Act B.E. 2477 (A.D. 1934), with the requirement that all hearings be conducted in the Thai language.⁴¹ However, since the enactment of the Lawyers Act B.E. 2508 (A.D. 1965)⁴⁵, local legal practice is now strictly reserved for Thai nationals only there were no foreign legal firms established their office in Thailand except for Foreign Business Law (FBL). Foreign lawyers didn't applied to have practice in legal firms in Thailand, as long as they do not practice Thailand law they are not within the regulatory of the legal profession Act, in other hand Foreigners who work in the legal business in Thailand are actually non-licensed workers, who are able to work under the scope of "Business Consultants" or "Investment Advisors" only. Additionally, foreigners are allowed to act as arbitrators, if the applicable law of the case is not Thai law or if the enforcement and the award of a decision will not occur within Thailand.⁴⁶

1.5 Vietnam on Liberalization of Legal Service

Vietnam has participated in various bilateral and multilateral agreements with services liberalization such as Bilateral Trade Agreement (BTA), AFAS, trade services with agreements in ASEAN-China FTA, ASEAN-Korea FTA, ASEAN-Japan FTA, and ASEAN-New Zealand FTA. Under the AFAS package, Vietnam has committed to liberalizing all twelve service sectors, with a total of 117 services subsectors out of 155. In AFAS 9, Vietnam has committed to liberalizing six more subsectors compared to AFAS 8, and twenty more subsectors to AFAS 7.⁴⁷

Liberalization of legal service in Vietnam has begun since early 1990; in this era, foreign legal firms can establish their representative office in Vietnam but cannot get practice in Vietnam. Moreover, the 1998 Vietnam government release a new decree No. 92/1998/ND-CP, which allowed foreign legal firms and lawyers to get practice in Vietnam. Under this decree, the scope of foreign lawyers is only permitted to provide consultation regarding international law and foreign law and cannot practice Vietnam law. At 2001 BTA (Bilateral Trade Agreement) come into force agreement between Vietnam and the United States mentioned about trade in services in Chapter III annex G regarding the practice of foreign legal firms and lawyers as describe as follows: companies of the U.S. may supply services I the form of branches, company with 100% U.S. invested capital, and Vietnam-US joint ventures. Practicing lawyers of the U.S. are will not give permitted to participate in legal proceedings in the capacity of

⁴³Saowaruj Rattanakhomfu et. al, Thailand Country Study ASEAN Economic Community Blueprint Mid-term Review Project, ERIA Discussion Paper Series, Thailand Development Research Institute, 2015, p. 2

⁴⁴Law Council of Australia, Fact Sheet Practices of foreign law Thailand http://lca.lawcouncil.asn.au/lawcouncil/images/LCAPDF/Country_Fact_Sheets/Asia/PFL%20Thailand_map.pdf

⁴⁵Nandana Indananda & Manaswee Wongsuryrat, An Overview of the Legal Profession in Thailand, 2019, https://www.tilleke.com/wp-content/uploads/2019/07/NEW2__CH01-An-Overview-of-the-Legal-Profession-in-Thailand_20190515_0.pdf P. 20-21

⁴⁶David Lyman and Alongkorn Tongmee, Lawyer's Obligations: Confidentiality of Client Information in Thailand, New York State Bar Association International Section Seasonal Meeting in Singapore Plenary Panel D: Ethics Panel 1, 3-4, 6 (Tilleke & Gibbins ed. 2009)

⁴⁷Kikuchi, T., et. al. The effects of Mega-Regional Trade Agreements on Vietnam. *Journal of Asian Economics*, 2018, 55, 4–19

defenders or representatives of their clients before the courts of Vietnam legal system. The terms of operation of a branch of law firms of the U.S. is five years from the date when licensed is granted and can be extended every five years. Branches of U.S. legal firms, legal firms with 100% U.S. capital, joint venture legal firms between Vietnam and U.S. Legal firms are permitted to make the consultation on Vietnamese law if the consulting lawyers have graduated from a Vietnamese law college and satisfy requirements applied to like Vietnamese law practitioners.

1.6 Lao PDR and Myanmar

The rest of ASEAN countries such as Myanmar and Lao PDR, the Liberalization of legal services is quite impossible to be implemented today. Both states do not have any legal data as fundamental basis data to know the possibilities of legal service liberalization. Unfortunately, both states illegible to do so; for example, in Myanmar, there do not have a national bar association in that country. Moreover, Lao PDR is quite fragile, and there are 200 lawyers have registered in the Lao Bar Association; this thing has realized us the Liberalization of legal service in ASEAN is does not have a similar standard.⁴⁸

1.7 Cambodia

After gained independence from France in 1953, the economic situation in Cambodia almost impossible to be entrusted Foreign Direct Investment (FDI) invest in Cambodia. This situation is slumped Cambodia economic after political chaotic was led by Khmer Rouge (KR) and causing Cambodia economics growing slowly and uncertainty. Under KR ruler, Cambodia becomes one of the poorest countries in the world since the KR government effect was so devastating which causing major public infrastructure destroyed and educated Cambodians mostly were executed, and half others fled the country.

In 2008-2009 global economic recession Cambodian economic is slump their primary export commodities such as textile products and, following by the tourism industry are fell in the lowest level, causing the Cambodian economic to the trouble and make Cambodia poverty increasing significantly. After the global economic recession Cambodian economic start to growing step by step, and the government of Cambodia realize that one of the most crucial sectors can help Cambodian economic is through FDI, and to attract FDI to invest in Cambodia also, to fill the gap of deficit professional skills in Cambodia. Cambodia releases economic policy to support its economics rate, and liberalization of legal service is one of the liberalization points, numerous foreign law firm has operated in Cambodia and making Cambodia is one of the most liberalized countries in the service sector in ASEAN.

According to Cambodian national legislation on Law on the Bar 1995 it is possible to foreign lawyer practicing in within Cambodian territories and it can be seen at Article 5 Foreign lawyers whose name have been registered by the Bar of a foreign country or who have been recognized and authorized by the governments of their origin to practice the legal profession have the right to practice the profession with a Cambodian lawyer and accompany/assisti Khmer lawyers before the courts or other institutions of the Kingdom of Cambodia. Foreign lawyers may not represent (a stand-in for) clients (Law on the Bar, National Assembly Kingdom of Cambodia, 1995).

Later on in Article 6 Cambodian Law on the Bar is talking about the requirement must be satisfied by any foreign lawyer who practice in Cambodia. Foreign legal firms are permitted to practice their profession within Cambodian territory with the Khmer bar council's authorization. The permission is

⁴⁸ Cuyvers, L. The 'ASEAN Way' and ASEAN's development gap with Cambodia, Laos, Myanmar and Vietnam: a critical view. *Asia Pacific Business Review*, 2019 25(5), 683–704

solely dependent on foreign legal firms' qualification if the country of origin from the foreign legal firms is permitting Cambodian lawyers are allowed to practice overseas.

This authorization may be canceled if malpractice appears during the legal profession's practice in the Cambodian territory. A Bar Council may enact a decision not to authorize the legal profession's practice or cease its permit should be noticing through communication to the Supreme Court's General Prosecutor within fifteen days the concerned person. An appeal may be erected against this Decision within two months from the date this information is received (Law on the Bar, National Assembly Kingdom of Cambodia, 1995).

Those foreign lawyers who have been authorized to practice this profession may not perform any activity to attract clients or do any commercial advertising" Law on the Bar, National Assembly Kingdom of Cambodia, 1995). Based on the regulation enacted by Cambodian authorities, a foreign lawyer in Cambodia has faced several restrictions it is quite different from Malaysia and Singapore when both countries are still allowed a foreign lawyer to have a client within a particular circumstances area. The core of this regulation, to keep maintaining Cambodian sovereignty, which the court system of one country always be relating to the sovereignty, and also to enhancing and improving Cambodian lawyer capabilities to take new challenges coming from foreign investors, and foreign lawyer act as their mentor.

2. Challenge for Liberlaization of Legal Services in ASEAN

The most bigger problem facing implementing liberalization of legal services in South East Asian Countries is a diversity of legal systems in every country; as mentioned above, several states use common law such as Brunei Darussalam, Malaysia, and Singapore. Because they were previously a colony of Great Britain, and the British introduced the English legal system into Brunei Darussalam, Malaysia, and Singapore. Moreover, through the ministry of justice, Singapore was mentioned that Singapore legal professions are based on and follow the legal work practices in the United Kingdom.

Furthermore, the Philippines had a blending of the legal system, and they called the "Hybrid Legal System" it consists of a mixture of common law and civil law in one country as a single legal system. Public law in the Philippines is substantially patterned after common law doctrines, while its private law follows Spain's civil law tradition or the civil code of Spain.⁴⁹ For the rest of ASEAN member states such as Cambodia, Indonesia, Myanmar, Vietnam, was previously part of the French and Dutch colony before world war II. They are using civil law or generally known romano germanic legal system, and this legal system is emphasized written law, in private and public law.

Besides differences legal system, there was a difference in language that may become a barrier. For several countries that implemented English as their official language/working language, maybe it has no problem. Still, for Indonesia, Vietnam, which does not use English as a working language, it will become a problem. Furthermore, for several countries that still face community prosperity, liberalization of legal services is possible to disregard the indigents who were seeking justice in their country.

⁴⁹ Carlota, S. T. The Three Most Important Features Of The Philippine Legal System That Others Should Understand. *IALS Conference Learning from Each Other: Enriching the Law School Curriculum in an Interrelated World*. 2012

3. Where Indonesian Position on Liberalization of Legal Service

After several comparisons from several ASEAN member states regarding liberalization of legal services, at least we know further that Malaysia and Singapore had to welcome foreign legal firms and foreign lawyers to practice in Malaysia and Singapore, through QFLF in Malaysia and QFLP in Singapore, both requirements are closely similar, QFLF are not absolutely required foreign legal firms cooperated with Malaysian lawyer, and QFLP are required cooperation with Singaporean legal firms if they want to practice Singaporean law. However, in another case the Philippines never agree to let foreign legal firms or lawyers practiced in the Philippines, all professional services belong to the Filipino citizen only. Moreover, where Indonesia's position to respond to this challenge in ASEAN and Indonesian particularly.

Setting up from the effect of FTA⁵⁰, AEC, and AFAS, as mentioned above. Indonesia has faced a new challenge in the development of the liberalization of legal services among ASEAN member states. As a fact, Indonesia was involved deeply in a considerable number of investments in recent days. By the percentage of national data on the development of the national legal firm, in this case, has grown up so rapidly, especially in Jakarta as the capital city of Indonesia. The liberalization of legal services in this circumstance cannot be avoided in the future.

Refer to ASEAN-China Free Trade Agreement 2002 (ACFTA 2002) Indonesia government seeks to re-negotiating as a direct impact of liberalization on the service sector, in which the Indonesian government has not ready yet to deal with it.⁵¹ There are many possibilities to Indonesia facing, and it cannot be declined as a real fact. On another hand, Indonesia, as mentioned above, has restrictive regulation regarding liberalization of it is legal services and no doubt about it. Foreign lawyer in this matter is quite impossible to get practice in Indonesia, and these regards are strongly tied with sovereignty issues.

The development of foreign legal firms' permission is mostly coming from the new order regime. In 1974 Indonesia had to make the Investment Law Act (*Undang-Undang Penanaman Modal*). Foreign lawyer for the first time has been regulated through Minister of Law Act No. J.S.15/24/7 regarding limitation of foreign law experts in legal services "foreign lawyer is limited to practice International law, or their home country law. Moreover, also, a foreign lawyer cannot become a partner in Indonesian legal firms, they should be a regular employee of Indonesian legal firms, and the foreign lawyers just only permitted become a single employee whether in Indonesia or aboard". Further, foreign lawyers also cannot practice Indonesian law and cannot represent their legal firms in or outside the court. Moreover, foreign lawyers shall give transfer of knowledge to local lawyers, and at least per minimum, they should be *pro bono* practice as a part of serving to the Indonesian government.⁵²

In 1985 Indonesia Government, through the Ministry of Justice, released document No. M. 01. HT.04.02, which adding several regulations from predecessors regulation. In this regard, they added for limitation for foreigner lawyer just valid for five years, because this limitation, many foreign lawyers worked for non-legal firms institution such as foreign investment consultant in which has doing veiled law consultant.

⁵⁰ Lee, H., & Itakura, K. The welfare and sectoral adjustment effects of mega-regional trade agreements on ASEAN countries. *Journal of Asian Economics*, 2018, 55, 20–32

⁵¹ *Jika Jasa Advokat Juga Diliberalisas*. Retrieved from Hukum Online: <https://www.hukumonline.com/berita/baca/lt4b82eddacc144/jika-jasa-advokat-juga-diliberalisasi> 23 February 2010

⁵² Makmur, K. L. (2017, October 13). *MKK dan Sentuhan Pertama Advokat Asing di Indonesia*. Retrieved from Hukum Online: <https://www.hukumonline.com/berita/baca/lt59df52598f57a/mkk-dan-sentuhan-pertama-advokat-asing-di-indonesia>

After the reformation era, Indonesian make several compliances regarding solicitors regulation through enactment No. 18. 2003 and at 2004 ministry of Justice has published injunction No. M. 11 HT. 04. 02. In regards, all foreigner lawyers who practice in Indonesia shall get a recommendation letter from advocacy organization, minimum and maximum number of requirements for a foreign lawyer in every legal firm, and every foreign lawyer obeys the Indonesian advocate code of conduct. This mater is showing us that the Indonesian position is permitted foreign lawyers to get practice in Indonesia, albeit with many restrictions following. Foreign lawyers cannot practice Indonesian law in any circumstances, such as criminal law, private law, family law, administrative law, but they are allowed to practice international law, business, and investment law.

Furthermore, there was an issue regarding foreign lawyer for FIFO (Fly in Fly Out), which this circumstance foreign lawyer will use tourist visa to meet their client in Indonesia and going out after there was given a consultation to their client, it might be as one of violating immigration law because using tourist visa and this indicated "law smuggling". This matter will be a massive problem with how we can supervise foreign legal firms and lawyers properly.

From Indonesian perspective foreign legal firms cannot be avoided in any manner, soon or later liberalization of legal service will coming to every ASEAN member states, but before those, it happens ASEAN shall be fixed their problem with many aspects of barrier such as legal system, language, and law smuggling.

IV. CONCLUSIONS

Liberalization of legal services is part of direct impact for ASEAN, many agreements such as AEC, AFAS, GATS, has emphasized that liberalization does not only pointed in the liberalization of goods. Moreover in the other hand, ASEAN has become one of the significant economic power in the world. Many investors are interested in getting investment in part of ASEAN member states, most commonly Indonesia, Malaysia, Vietnam, Thailand, and Singapore.

Liberalization of legal services could help local lawyers to develop their skills in investment and business. Expected to national regulation enhance they are can be practice aboard among other ASEAN member states, and in other hand liberalization of legal service in Indonesia could attracting FDI to be investing in Indonesia. However, there were some issues shall be answer, the liberalization of legal service also could threaten the poor for looking at justice through pro bono practice as Indonesia did in its regulation. However, mostly, the country has missed that point as the core of legal services. The development of liberalization of legal service shall be pointed to develop the society also, and we are hoping there was a balance between liberalization and enhancement of social prosperity in the future.

REFERENCES

Books

- Bank, W. (2019). *GDP growth (annual %) - Indonesia*. The World Bank
- Budiman, A. S. *Masyarakat Ekonomi ASEAN 2015 (ASEAN Economic Community 2015)*, 2008, Jakarta: P.T Elex Media Komputindo
- Lamp, N. *How Should We think about the Winners and Losers from Globalization?*, August 2019
- Satriana, D., *PENGATURAN PERDAGANGAN JASA DALAM HUKUM EKONOMI INTERNASIONAL. Surya Kencana Dua: Dinamika Masalah Hukum Dan Keadilan*, 2016

Journals

- Acharya, S. (2015). Dispute Settlement Mechanism Under WTO: Opportunities and Challenges. *SSRN Electronic Journal*
- Aldaba, R. M., & Aldaba, F. T. (2012). Services Liberalization in the Philippines: A Capacity Needs Assessment for AEC 2015. *Philippine Journal of Development Number Philippine Journal of Development*
- Alleyne, A., Zhang, Z., & Mu, Y. (2020). Sustaining International Trade with China: Does ACFTA Improve ASEAN Export Efficiency? *Sustainability*, 12(15)
- Ayangbah, S., & Sun, L. (2017). Comparative study of foreign investment laws: The case of China and Ghana. *Cogent Social Sciences*, 3(1)
- Bhattacharyya, R., & Mandal, A. (2016). India-ASEAN Free Trade Agreement: An ex post evaluation. *Journal of Policy Modeling*
- Bhowmik, R., & Nhung, R. (2014). ASEAN-China Free Trade Agreement: It's Peace-Promotion Effects over South China Sea Dispute and Econometric Analysis of Welfare Effects on Not-Yet-Ready ASEAN members: Cambodia, Laos, Myanmar and Vietnam. *International Journal of Business and Management Study*
- Bourke, J., Roper, S., & Love, J. H. (2020). Innovation in legal services: The practices that influence ideation and codification activities. *Journal of Business Research*, 109(November 2019)
- Chen, L., & Lombaerde, P. De. ASEAN between globalization and regionalization. *Asia Pacific Business Review*, 2019
- Chew Seng Kok, & Yeap Suan Hong. *Liberalization of Legal Services - Embracing a World of Opportunities in the Asean Region*, 2013
- Chiang, M. H., China-ASEAN economic relations after establishment of free trade area*. *Pacific Review*, 2019
- Cuyvers, L. The 'ASEAN Way' and ASEAN's development gap with Cambodia, Laos, Myanmar and Vietnam: a critical view. *Asia Pacific Business Review*, 2019
- Cuyvers, L., Chen, L., & Lombaerde, P. De. 50 years of regional integration in ASEAN. *Asia Pacific Business Review*, 2019
- Degelsegger-Márquez, A., & Remøe, S. O. ASEAN's science, technology and innovation policy: tension and integration between intergovernmentalism and sub-regional cooperation. *Asia Pacific Business Review*, 2019
- Findlay, C., & Pangestu, M., The Services Sector as a Driver of Change: Indonesia's Experience in the ASEAN Context. *Bulletin of Indonesian Economic Studies*, 2016
- Foo, N., Lean, H. H., & Salim, R. The impact of China's one belt one road initiative on international trade in the ASEAN region. *North American Journal of Economics and Finance*, 2019
- Hsieh, P. L., AseannS Liberalization of Legal Services: The Singapore Case. *SSRN Electronic Journal*. 2014
- Hsieh, P. L., Transnational Legal Services in Asia: Legal Implications of the AEC and the CPTPP. *ASEAN Law in the New Regional Economic Order*, 47(2015), 2019
- Islam, M. R., & McGillivray, M., Wealth inequality, governance and economic growth. *Economic Modelling*, 2020
- Jurje, F., & Lavenex, S. Mobility norms in free trade agreements: Migration governance in Asia between regional integration and free trade. *European Journal of East Asian Studies*, 2018

- Kikuchi, T., Yanagida, K., & Vo, H. The effects of Mega-Regional Trade Agreements on Vietnam. *Journal of Asian Economics*, 2018
- Kim, H., Globalization and regulatory change: The interplay of laws and technologies in E-commerce in Southeast Asia. *Computer Law and Security Review*, 2019
- Lee, H., & Itakura, K. The welfare and sectoral adjustment effects of mega-regional trade agreements on ASEAN countries. *Journal of Asian Economics*, 2018
- Lee, Ji Won, & Oh, J. ASEAN or plus alpha? The effectiveness of regional economic cooperation. *Asia Pacific Management Review*, 2020
- Lee, Jong Wha, & McKibbin, W. J. (2018). Service sector productivity and economic growth in Asia. *Economic Modelling*, 2018
- Lukács, E., & Völgyi, K. Mega-FTAs in the Asia-Pacific region: A Japanese perspective. *European Journal of East Asian Studies*, 2018
- Mensah, J. O., & Premaratne, G., Integration of ASEAN banking sector stocks. *Journal of Asian Economics*, 2018
- Nottage, L., & Thanitcul, S., Special issue: International investment arbitration in Southeast Asia. *Journal of World Investment and Trade*, 2019
- Pelkmans, J., Understanding the ASEAN economic community: pragmatism versus conceptualism. *Asia Pacific Business Review*, 2019
- Pradhan, R. P., Arvin, M. B., Hall, J. H., & Norman, N. R. ASEAN economic growth, trade openness and banking-sector depth: *The nexus. Economic*, 2017
- Rüland, J. (2019). Good global citizen? ASEAN's image building in the United Nations. *Asia Pacific Business Review*, 2019
- Sale, J. Harmonisation of labour laws: an arduous journey for ASEAN. *Labour & Industry: A Journal of the Social and Economic Relations of Work*, 2020
- Sookhakich, P., Limits and Challenging Factors of the Dispute Settlement Mechanism in the Light of China- ASEAN Free Trade Agreement Perspective. *SSRN Electronic Journal*, 2019
- Sukmadilaga, C., Pratama, A., & Mulyani, S., Good Governance Implementation in Public Sector: Exploratory Analysis of Government Financial Statements Disclosures Across ASEAN Countries. *Procedia - Social and Behavioral Sciences*, 2015
- Taguchi, H., Trade creation and diversion effects of ASEAN-plus-one free trade agreements. *Economics Bulletin*, 2015
- Tampubolon, J., Indonesian export performance and competitiveness in the Asean-China FTA. *WSEAS Transactions on Business and Economics*, 2019
- Udom Krarit, Dej. (<https://www.aseanlawassociation.org/12GAdocs/workshop1-thailand.pdf>)
- Tongzon, J., & Cheong, I. The ASEAN–Korea Trade In Services (AKTIS) Agreement: Its Impact on Indonesia and Other ASEAN Countries. *Bulletin of Indonesian Economic Studies*, 2016
- Verbiscus, L., Economic Globalization and the Need for Legal Innovation. *Michigan State International Law Review*, 2013
- Wang, H. Building toward the RCEP? Reflections on the ASEAN-China FTA. *ASEAN Law in the New Regional Economic Order*, 2019
- Wildani, F., Yuliati, L., & Luthfi, A., Analisis Integrasi Ekonomi Indonesia-China Terhadap Perekonomian Indonesia (Sebelum Dan Sesudah Acfta). *JOURNAL of RESEARCH in ECONOMICS and MANAGEMENT*, 2017
- Yahya, F. Bin., The Influence of China and India on Smaller Nations in Southeast Asia: A Study of Singapore. *Round Table*, 2016

- Yusoff, M. B., & Sabit, A. H., The Effects of Exchange Rate Volatility on ASEAN-China Bilateral Exports. *Journal of Economics, Business and Management*, 2015
- Zhang, L., Cui, L., Li, S., & Lu, J. (2018). Who rides the tide of regionalization: Examining the effect of the China-ASEAN Free Trade Area on the exports of Chinese firms. *International Business Review*, 2018
- Weeramantry, R., International investment law and practice in the kingdom of Cambodia: An evolving “rule taker”? In *Journal of World Investment and Trade*, 2019

Regulations

- ASEAN-China Free Trade Agreement 2002
- Constitution of the Republic of the Philippines (1987)
- Indonesia Ministry of Law and Justice Decree (KEPMENKUMHAM) No. M. 11 HT. 04. 02. Year 2004 Concerning on Requirements And Procedures For Employing Foreign Advocates And The Obligation To Provide Free Legal Services To The World Of Education And Legal Research
- Law of Republic Indonesia Number 18 year 2003 on Advocates Regulation
- Malaysia Amendments Act 2012
- National Assembly Kingdom of Cambodia Law on the Bar (1995)
- Singapore Legal Profession Act Amendment (2000).
- Vietnam Government Decree No. 92/1998/ND-CP, 1998

Others

- Carlota, S. T. The Three Most Important Features Of The Philippine Legal System That Others Should Understand. *IALS Conference Learning from Each Other: Enriching the Law School Curriculum in an Interrelated World*. 2012, <http://www.ialsnet.org/meetings/enriching/carlota.pdf>
- Makmur, K. L. *MKK dan Sentuhan Pertama Advokat Asing di Indonesia*. from Hukum Online: <https://www.hukumonline.com/berita/baca/lt59df52598f57a/mkk-dan-sentuhan-pertama-advokat-asing-di-indonesia>. (October 13, 2017)
- Hukum Online, *Jika Jasa Advokat Juga Diliberalisas*. Retrieved from Hukum Online: <https://www.hukumonline.com/berita/baca/lt4b82eddacc144/jika-jasa-advokat-juga-diliberalisasi>, February 23 2010
- Wah Teck, Jeffrey Chan., *aseanlawassociation*. Retrieved from <https://www.aseanlawassociation.org/10GAdocs/Singapore3.pdf>, October 14-18 2009