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ASEAN ECONOMIC COMMUNITY AND ITS IMPLICATIONS ON TRADE LAWS AND GROWTH IN INDONESIA

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Abstract- The enactment of the ASEAN Economic Community (AEC) in 2015 no doubt becomes an opportunity as well as a major challenge for Indonesia, especially in increasing economic growth. However, such expectation seems to be difficult to be achieved as the socio-economic and political conditions in each ASEAN country are different. For this reason, this study aims at discussing three aspects. The first is to discuss the international trade laws that are relevant to be given attention toward the establishment of AEC. The second highlights policies that relate to the international trade. The third is to address the implication of AEC to economic growth in Indonesia. Note that, throughout this study, the data and information used to discuss the above aspects are based on literatures and other secondary sources including international trade laws and regulations, and international trade textbooks and journals relevant to the study. The study found that the problems associated with legal issues in the international trade in principle is not much different from the legal issues faced by the parties in domestic business transactions. This is regulated in the international trade law as a guideline in international trade. In international trade practice, however, International Chamber of Commerce (INCOTERM) has determined INCOTERM 1990 as the guidance towards "sale-contract" abroad. This suggests that an international trading activity cannot be separated from all actions of government, either directly or indirectly. It was argued that the AEC will have positive as well as negative impacts on the economy. These positive impacts include the community will more easily meet the needs of goods and services that are not available domestically at cheaper prices, whilst the negative impacts include an intense competition between Indonesian local products and overseas products. Thus , much remain to be done by the government and the people of Indonesia in optimizing the benefit of AEC.

Index terms- ASEAN Economic Community, International Trade, International Law, economic growth.

I. INTRODUCTION

ASEAN (Association of Southeast Asian Nations) was firstly formed based on Bangkok declaration on 8 August 1967 by five countries in Southeast Asia. These five countries were Indonesia, Malaysia, Philippines, Singapore, and Thailand. In relation to international trade, the establishment of ASEAN aimed at least for two main objectives. The first is to increase economic growth, economic progress, social progress, and cultural development through joint efforts for the prosperous and peaceful Southeast Asian communities. The second is to improve more effective ways to achieve greater utilization in agriculture, industry, international trade, and improve the social welfare of the ASEAN communities (Muhammad Sood, 2012: 91).

In strengthening the economic cooperation of the ASEAN members, it was agreed to establish the first economic instrument, namely, Preferential Trading Agreement (PTA) that was signed on 24 February 1977 in Manila-Philippines. This PTA is an agreement in ASEAN to reduce the tariff of number of products with the aim to enhance the growth of intra-ASEAN trade.

Unlike the ASEAN Economic Community (AEC), the AEC originally formed in the Summit forum held in Kuala Lumpur in 1997. In this summit, the ASEAN leaders decided to make the ASEAN transformation by becoming a prosperous, stable and highly competitive region in just and fair economic development that could reduce the gap and the poverty incidence in ASEAN countries (ASEAN 2020). This summit was further continued in Bali in October 2003. In the Bali summit, the ASEAN leaders committed to have regional economic integration in Southeast Asia by 2020.

There were two declarations by the ASEAN leaders on November 22, 2015. These two declarations were the Kuala Lumpur 2015 Declaration on the enactment of the ASEAN Economic Community (AEC) on 31 December 2015 comprising the ASEAN Political Security Community, ASEAN Economic Community and ASEAN Socio-Cultural Society and The Kuala Lumpur Declaration on ASEAN 2025, Forging Ahead Together. In this later declaration, the heads of ASEAN member states agreed to have vision of the ASEAN Community by 2025, the blueprint of the Political Security Society 2015, the ASEAN Community 2025 and the Socio-Cultural Society 2025.

The ASEAN Economic Community (AEC) is a form of regional economic integration planned to be achieved by 2015. The main objective of the AEC in 2015 was to make ASEAN as a single market and production base where there will be free flow of goods, services, investments and skilled labor and capital flows. Leaders of the ASEAN countries have agreed to realize AEC 2015 with 4 main pillars, namely, a single market and international production base, to become competitive economic region, equitable economic development region, and to become regions integrated to the global economy.

To anticipate the progress in the economic field and the continued advance of trade traffic at the international level under AEC, it is necessary to observe the rules of international law governing international trade issues, called "International Trade Laws". International Trade Law is a code of international law governing the exchange of goods, services, or capital between residents of a country with another country, or that occurs between two or more citizens.

The reason why the international trade law important to be established is simply because there will be an intensive transactions within ASEAN countries that further will need dispute settlements. For this reason there have been dispute resolution institutions to solve international trade disputes through mediation, conciliation or arbitration. One of these international institutions is the United Nations Commission on International Trade Law (UNCITRAL). This institution was established on December 17, 1966 through UN General Assembly Resolution No. 2205 (XXI), with the aim of enabling the United Nations to play a more active role in reducing or eliminating the legal constraints of international trade flows.

In line with this, Indonesia, consequently, must adapt and at the same time run a strategy to make the most of it. It is hoped that its membership in the WTO and the AEC can bring domestic economic growth by doing things as efficiently and effectively as possible. As Posner (1994) specifically stated that the international trade law is important to improve the social welfare and maximizing the state resources allocation

in conducting international trade eficiently. If the winner's profit exceeds the loser's and the winner can compensate losses for the losers so that the losers remain better (Mercuro and Medumo, 1999, pp. 58- 59).

Further, Posner (1994) defined efficiency as a condition in which resources are allocated so that the value is maximized. In economic analysis, efficiency in this case is focused on the ethical criteria in the framework of social decision making regarding the regulation of social welfare. This suggests that efficiency is related to increasing one's wealth without causing harm to others. In economics such laws is known as the idea of wealth maximization or "Kaldor-Hicks" conditions in which changes to the rule of law may increase efficiency if the winning party's profits outweigh losses of the losers and the winner can compensate losses for the losers so that the losers remain better. In this context, Posner sees one aspect of justice that includes not just distributive and corrective justice. Posner suppresses "Pareto improvement" in which the objectives of the rule of law can provide valuable input to justice and social welfare (Mercuro and Medumo, 1999 , Pp. 58- 59).

This paper aims at discussing three aspects. The first is to discuss the international trade laws that are relevant to be given attention toward the establishment of AEC. The second highlights policies that relate to the international trade. The third is to address the implication of AEC to economic growth in Indonesia. Note that, throughout this study, the data and information used to discuss the above aspects are based on literatures and other secondary sources including international trade laws and regulations, and international trade textbooks and journals relevant to the study. However, before detail discussion on the implication of AEC on the economic growth in Indonesia, the following section 2 discusses briefly definition and the nature of the international trade laws. Section 3 then deals with the economic policy instruments of international trade. Section 4 deals with the implication of AEC to international laws and economic growth in Indonesia. Finally, concluding remarks are drawn in section 5.

II. DEFINITION AND THE NATURE OF INTERNATIONAL TRADE LAWS

As mentioned at the outset that Posner's efficiency theory emphasized the importance of increasing one's wealth without causing harm to the other. The efficiency in this case is focused on the ethical criteria in the framework of social decision making concerning the regulation of the welfare of the community. This is known as the idea of wealth maximization.

However, in terms of the international trade law, the UN secretary defined it as the entire civil rules governing trade relations and encompassing various countries. In other words, the international trade laws is the body of rules governing commercial relationship of a private law nature involving different countries (see also, Sudargo Gautama , 1997: 24).

The above definition indicates that the term of international trade or trade between nations reflects to international trade activities that were formed in General Agreement on Tariff and Trade (GATT). This GATT is further organized in an international trade organization that is now better known as the World Trade Organization (WTO). However, there are many other definition on the international trade definition as follows.

Schmitthoff in Adolf (2014), for instance, defined the international trade law as the body of rules governing commercial relationship of a private law nature involving different nations. This definition suggests two things. The first is that international trade law is a set of rules governing commercial relationships of a civil

nature. The second is that the law consists of rules that regulates transactions between different countries. Islam in Adolf (2014) however defines broadly international trade law as a wide ranging, transnational, commercial exchange of goods and services between individual business persons, trading bodies and states.

Further, Sanson cited in Adolf (2014) divides international trade law into two main parts, namely, public international trade law and private international trade law. Whilst Booysen in Adolf (2014) suggests that the elements of the definition of international trade law consist of three elements. These three elements are international trade law can be regarded as a special branch of international law, international trade law as the rules of international law applicable to trade in goods, services and protection of intellectual property rights, and international trade law as the international regulations.

In terms of the detail of the sources of law, there six of law sources in forming international trade law. These are international Agreement consisting of multilateral, regional and bilateral agreements, international customary law, principles of general law, decisions of the Court and Doctrines, Contracts and National Law. The basic principles of international trade law consist of the basic principles of contracted freedom, the basic principles of *Pakta Sunt Servanda,* the basic principles of dispute settlement by Arbitration and the basic principles of communication freedom (navigation).

One of the most important legal sources in international trade is the General Agreement on Tariffs and Trade (GATT), which regulates inter-state trade and trade policies among employers, such as the arrangement of counterfeit goods or customs. GATT was formed in October 1947 with 4 (four) important objectives to be achieved GATT, namely, to improve the living standards of mankind, to increase employment opportunities, to increase the utilization of the world's natural wealth and to increase production and exchange of goods.

Since the establishment, GATT has sponsored various main / principal negotiations which are usually called round. The purpose of this round or negotiation is to accelerate the liberalization of international trade. At the end of the Uruguay round of 1994, there was an agreement reached to establish the World Trade Organization (WTO), which brought significant changes to GATT. These changes are that the WTO takes over the GATT and makes it one of the attachments of the WTO rules. Secondly, GATT principles become the regulatory framework for new areas of the WTO agreement, in particular the Agreement on Services (GATS), the Capital Investment agreements (TRIMs), as well as the agreements on trade Related to Intellectual Property Rights (TRIPS).

The legal principles of international trade set out in GATT-WTO, according to Muhammad Sood (2012: 41-48) include the non-discrimination principle consisting of the most favored nation (MFN) principle and the principle of national treatment (NT), the principle of Reciprocity, the prohibition of quantitative restriction Principle, the fairness principle and the binding tariff principle.

In case if there are cases associated with international trade, there are institutions handling the cases. These institutions are called as the International Arbitration Agencies. Some International Arbitration Board, among others, are the UNCITRAL Arbitration Rules, The London Court of Arbitration, the ICC Court of Arbitration, the Japanese JETRO Model Arbitration. In Indonesia, the Arbitration Board which takes part in the settlement of disputes in the field of international trade is the Indonesian National Arbitration Board (BANI). See Soedjono Dirdjosiswooro (2006: 105-108).

III. THE ECONOMIC POLICY INSTRUMENTS OF INTERNATIONAL TRADE

As mentioned at the outset, economic progress, including international trade, has recently improved enormously. However, before detailing the policy instruments of international trade, it is necessary to discuss the meaning of international agreement. The international agreements or often called treaties, conventions, pacts, declarations, charters, charters, etc are written agreements binding on more than two parties (the states) and these countries should be subject to the rule of international law. This international law may be defined as the whole of the rules and legal principles governing relations or issues that cross the boundaries of a non-civilian state. The similarity between International Law and International Civil Law is that both regulate the relations or problems that cross the boundaries of the state territory, whereas the difference lies in the nature of the laws governing and the subjects of law performing legal acts (Indien Winarti, 2017: 5).

The problems associated with legal issues in the trade International in principle is not much different from the legal issues faced by the parties in domestic business transactions. This is regulated in the international trade law as a guideline in international trade. In international trade practice, however, International Chamber of Commerce (INCOTERM) has determined INCOTERM 1990 as the guidance towards "sale-contract" abroad. This suggests that an international trading activity cannot be separated from all actions of government, either directly or indirectly. International trade policy has far-reaching implications not only in volume and composition of imports and exports, but also in investment patterns and development direction, competitive conditions, cost conditions, business attitudes, consumption patterns and so on. Therefore, international trade policy is very important in economic policy decisions of a country and this policy is only one part of macro-economic policies that should be combined and encouraging economic development of a country (Www.kemendag.go.id).

According to the Bank of Indonesia (2008), there are at least seven policy instruments in the area of international trade commonly used in various countries. These policy instruments are as follows. The first is the import tariff. This is a tax instrument imposed by the government on imported goods. Tariff adoption has been applied by many countries for centuries since the mercantilist era and has become one of the most common, simple and easy methods to collect government revenues. Until World War (PD) I tariff is deemed to protect against international trade and be subjected without discrimination. Protection or protectionism can be felt from any increase in tariffs imposed because tariffs raise the cost of imported products from abroad so that domestic companies that compete with imported products become protected. There are two types of import tariffs, namely the specific rates and the ad valorem rates. Although it is unlikely, the government can basically charge both types of rates for the same goods simultaneously. This is known as the imposition of two-part tariff.

The second is import quota. This is an instrument limiting the quantity of goods that can be imported within a certain time. Import restrictions (quotas) aim to limit imported goods, prevent essential goods in the hands of other countries, ensure the availability of domestic goods in sufficient proportion, and to control production and price controls to achieve price stability in the country. Gandolfo (1998) adds that the government usually issues import licenses / licenses related to the application of import quotas to directly regulate international trade.

The third is voluntary exports restraints (VER). This is a limiting instrument imposed by the government of the exporting country on the quantity of goods exported within a certain period of time. VER emerges as a reaction after importer countries, generally with large and strategic markets, seek to protect themselves from imports from certain export countries.

The fourth is export duties. This is a tax instrument imposed on exported goods. As with import tariffs, the export tax may be either a special tax or an ad valorem tax. In general, export taxes are imposed to protect consumers or producers of domestic users. For example, Indonesia imposes an export tax on cocoa exports to protect domestic producers.

The fifth is subsidy. This is a government policy to help cover part of production costs per unit of production, so that domestic producers can sell their goods cheaper and can compete with imported goods. Nowadays the imposition of export subsidies is done by developed countries for agricultural products, although this violates one of the WTO rules.

The sixth instrument is voluntary import expansion (VIE). This is an instrument of international trade policy arising from an agreement between two trading partner countries to increase the quantity of certain imports originating from one of these countries. This agreement is much motivated by the desire to better balance the flow of bilateral trade between the two countries. Finally, it is dumping. This is an international trade policy aims to hold price discrimination, that is, producers sell goods abroad cheaper than at home. The strength of domestic monopoly is cleaner than abroad and there is a strong enough obstacles as a requirement that must be met in dumping policy (www.kemendag.go.id/2014/01/06/kajian).

According to the law No. 7/1994, Indonesia has ratified the Agreement of World Trade Organization (WTO). This agreement was established in Marrakesh, Morocco in 1994, as a result of the Uruguay Round negotiation series which began in force in 1986, which contains approvals on textiles and apparel, provisions in the field of investment related to trade, pre-shipment inspection, provision of goods import licensing procedures, security measures. In the international agreement, it was also approved the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) which is part of the WTO Agreement. As a member of the WTO, most countries including Indonesia are required to take steps to harmonize the National Intellectual Property Policy in accordance with the substance, norms and regulatory standards of the TRIPS Agreement. Thus, Indonesia has been the country that binds with the above WTO agreement.

IV. THE IMPLICATION OF AEC ON INTERNATIONAL LAW AND GROWTH

Towards the formation of AEC 2015, the government of Indonesia has issued Presidential Instruction (Inpres) No. 11/2011 on the implementation commitment of the AEC Blue Print. In this Blue Print the priority sectors were integrated by the government. Note that, there are 12 priority sectors that are integrated by the Government in the AEC blue print. These sectors consist of 7 sectors of goods, including agro industry, automotive, electronics, fisheries, rubber-based industries, wood-based industries and textiles, and the rest comes from five services sectors, namely air transportation, health, tourism, logistics and information technology. These sectors under the AEC will be implemented in the form of the flow of goods, services, investment and labor.

The establishment of AEC, however, will also raise disputes between countries, countries with individuals, or countries with international organizations. When that happens, international law plays a crucial role in the settlement. The role of international law in dispute settlement is to provide ways in which the parties to the dispute settle disputes under international law.

The Permanent International Court of Justice in the Mavrommatis Palestine Consessious (Preliminary Objections) (1924) defines the dispute as disagreement on a point of law or fact, a conflict of legal views or interest between two persons. The International Court of Justice reveals its advisory opinion in the case of the Interpretation of Peace Treaties (1950, ICJ Rep.65) that to state whether or not an international dispute should be determined objectively (Indien Winarti, 2017: 71).

Arbitration is a widely dispersed way of dispute resolution. Today the role of arbitration institutions is increasingly important in resolving international commercial disputes. Greenberg in Adolf (2016) argues that "arbitration is the most popular dispute resolution mechanism in resolving international trade disputes. One of the International Arbitration Bodies, namely, the UNCITRAL Arbitration Rules. The main task of this body, in accordance with UN General Assembly Resolution 21202 (XX) of 20 December 1965, is to promote harmonization and unification progressively of the international trade law (Sudargo Gautama, 1997: 6).

In line with the world's progress and the implementation of the trade globalization program, it is necessary to create a harmonization and legal unification that supports world trade in order to run smoothly. To that end, the UN established a commission that has tasks to form and develop international trade law. This institution as has been mentioned previously as UNCITRAL. The UNCITRAL sees legal differences between countries as a major obstacle to solving existing problems. The UNCITRAL also creates international legal norms applicable to all countries. This rule is known as UNCITRAL ARBITRATION RULES (U.A.R) accepted on 28 April 1976 and this rule is recommended by the United Nations to be generally accepted in international trade.

The detail authority of UNCITRAL is as follows:
a. Coordinate with any organizations conducting activities in the field of international commercial law and seek cooperation among them;
b. Conduct promotion in order to create international Conventions more widely and may also be accepted as Model Laws and Uniform Laws that have been made by various international organizations;
c. Conduct preparations and promotions in order to be admitted to new International Conventions, Model Laws and Uniform Laws and to promote for codification and acceptance more extensively than international trade terms (international trade terms) Provisions, customs and practices in international trade in this field;
d. Conduct promotions to ensure uniform unity of international Conventions and Uniform Laws in the field of international commercial law;
e. Collect information on national legislation and modern developments in the field of law as well as jurisprudence on the field of international commercial law;
f. Organize and maintain close cooperation with UNCTAD (United Nations Conference on Trade and Development);
g. Maintaining links with other UN agencies and the specialized agencies of the United Nations relating to international trade law;
h. Take other actions that may be deemed useful in order to fulfill these duties.

In terms of the impacts of AEC on economic growth, there have not only been the positive, but it also negative ones. The positive impact of the AEC on the economy will be as follows. First, the community will more easily meet the needs of goods and services that are not available domestically at cheaper prices. Second, the Indonesian products can compete in the international market, thus allowing Indonesian entrepreneurs to create products that Quality that can be accepted by the world market. This will increase exports abroad, and will gain foreign exchange which is one source of state revenue. With the increase of state appropriation, the development can be done well.

Third is that the entrepreneurs will be more creative because of the tight competition. The micro, small and medium enterprises increasingly will improve the quality of domestic products and provide SNI label for the domestic products, so that the products in the country will be the host in their own country. Fourth, the workforce will increasingly improve the level of professionalism and skill ability or improve the quality of his skills. Fifth, there will be easy to access foreign capital investment, so that there will be rapid economic growth through technological development, job creation, development of human resources and easier access to world markets. Sixth, the AEC will also open the employment opportunity. For Indonesian workers, access to foreign countries in ASEAN member countries in order to find employment is increasingly easier in accordance with their skills, vice versa. Finally, the AEC can stabilize the country's economy in a better condition as the AEC is able to create free market. This condition will further encourage market expansion on the Indonesian goods and services. It also stimulates foreign investors to invest without any limitations of space in ASEAN member countries.

Apart from the above positive effects, there will also negative effects. These negative include as follows. First, there is intense competition between Indonesian local products and overseas products. Second, Strict competition between Indonesian local products and overseas products with more advanced and modern manufacturing processes and much higher quality will sell and dominate market share, which will undermine local producers if not accompanied by improved product quality. Third, foreign workers will be easier to enter Indonesia resulting in intense competition in the field of employment. This will be problems if the Indonesian workforce does not improve the quality of its expertise. Fourth, Indonesia's natural resources are very rich and extensive, so outsiders will be more free to exploit if not properly guarded. Fifth, due to the abundance of overseas products circulating in Indonesia at cheaper prices and the greater number of people who favor products imported from abroad, this will have an impact on the production of domestic goods that are less competitive, thus causing harm to the industry in country. Sixth, the unemployment rate will increase due to the increasing competitiveness of labor among countries. Seventh, changes attitude and lifestyle of the younger generation towards non-Indonesian products. Finally, it can increase foreign debt if our country's exports are smaller than imports. Thus, the AEC is not problems free for Indonesian social economy.

V. CONCLUDING REMARKS

The ASEAN Economic Community (MEA) is one form of an international economy that has a pattern to integrate the economies of countries in the ASEAN region by way of establishing a free trade system or Free Trade between ASEAN member countries. This certainly has a very big influence on the Indonesian economy. The influence of this AEC is partly s able to provide encouragement or accelerate to economic growth in the field of industries in Indonesia. The AEC will also able to develop the economic business activities so as to

accelerate the economic growth in the country. The formation of AEC will also increase demand and supply of a product in the ASEAN countries.

However, the detail of the effects of AEC on the Indonesian economy so far has not been studied. The fact is that currently the AEC has made a range of state-made products widely marketed to international markets through exports, including, train production of PT Industri Kereta Api (INKA) which is exported to Bangladesh, Singapore and Australia. Also, a heavy equipment and rail components by PT Barata (Persero) exported to Canada, Mexico, USA. Strategic Sealift Vessel (SSV) warships by PT PAL Indonesia (Persero) exported to Philippines, and PT Dirgantara Indonesia (Persero) in the form of NC212i propeller aircraft and as a supplier of components to the world's aircraft manufacturers, Airbus and Boeing and others.

The main task of UNCITRAL is to reduce the legal differences among member states that may be a hindrance to international trade. UNCITRAL holds annual meetings in New York or at the United Nations office in Wina alternately. Thus, much remain to be done by the government and the people to optimize the establishment of AEC for increasing the social welfare.

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