

CHALLENGES FOR INDONESIA IN CASE OF LIBERALIZATION OF TRADE IN SERVICES IN THE ASEAN ECONOMIC COMMUNITY

Magdariza*

* International Law Department of Law Faculty, Andalas University
Correspondence: magdariza08@yahoo.com

Abstract

Cooperation among ASEAN countries formed since 1967 through Bangkok Declaration. In development, ASEAN agreed to establish ASEAN Community in 2020. This relationship was upgraded within the ASEAN Summit in Singapore in 2007 which agreed on the ASEAN Charter to strengthen the position and legal status of ASEAN in realizing the cooperation among ASEAN countries, and as a guide in ASEAN Community formation, the Blueprint is prepared. One of the pillars of ASEAN Community is the establishment of ASEAN Economic Community, which talk about liberalization of trade in services. The implementation of the trade liberalization in ASEAN will increasing and provide convenience and also increased intra-ASEAN market access as well increasing transparency and speeding up the adjustment of regulations and standardization of domestic. Indonesia already ratified ASEAN Charter with Law No. 8 of 2008. Therefore, Indonesia is obliged to implement the provisions of ASEAN Charter. Treaty on liberalization of trade in services has been initiated in ASEAN Framework Agreement (AFAS) in 1995 and Indonesia also ratified by Presidential Decree No. 88 in 1995. Law No. 7/2014 on Trade, also regulates the trade in services as Indonesia's commitment within the ASEAN Economic Community. The liberalization of trade in services within ASEAN framework is a challenge for Indonesia to prepare human resources or skilled manpower with competence to compete with manpower from other ASEAN countries. This situation can also be used as an opportunity for Indonesia to prepare and compete with other ASEAN members but on the other hand they can be vast potential market for ASEAN countries.

Keywords: *Liberalization of Trade in Services, ASEAN Economic Community, ASEAN Charter and Challenges*

Submitted: 15 July 2016 | Revised: 03 November 2016 | Accepted: 24 May 2017

I. INTRODUCTION

At the 13th ASEAN Summit in Singapore on 19-22nd November 2007 it has been agreed two important documents in the framework of ASEAN cooperation, namely the ASEAN Charter and the establishment of the ASEAN Community where one of them pillars, namely the ASEAN Economic Community. The ASEAN Charter itself has been justly into effect on December 15, 2008 after going through the

ratification of the ASEAN member states that have ratified a charter that makes the regional bloc into a legitimate institution for the first time in the history of four decades since its founding. The ASEAN Charter in 2008 is the replacement for the Bangkok Declaration of 1967 which has long been an instrument for the establishment of an ASEAN. The ASEAN Charter that has had legal personality becomes a new historical milestone for ASEAN in view of its cooperative relations forward.

Especially for economic cooperation through the establishment of the ASEAN Economic Community (AEC) whose the implementation is accelerated from 2020 into 2015 and then it is expected that “ASEAN will become a single market and production base that is competitive” as well as integrated, to facilitate the flow of trade, services, investment, capital flow of the movement of business persons, and the movement of labor that were more free. Consequently, there will be the flow of trade in goods and services, cross-border workers, so that ASEAN is no longer just be a free trade area with the focus on trade liberalization. In this regard, the ASEAN Economic Community (AEC) aimed at creating a single market and production base that is made up of 520 million people with a combined GDP of more than USD 600 billion. Embodiments of the ASEAN Economic Community in the end will accommodate schemes wider trade in ASEAN, particularly what has been achieved by AFTA.

Through the process of economic integration, the ASEAN region has gradually become free up trade in goods and services as well as the flow of factors of production (capital and labor), as well as the harmonization of other related regulations. Strategies for achieving the ASEAN Economic Community AEC refers to Vientiane Action Programme (VAP) of 2004-2010 that is a strategy and work program to realize the ASEAN Vision. Based on the VAP, High Level Task Force-HLTF provides an evaluation and recommendation to make ASEAN as a single market and production base, as contained in the ASEAN Blue Print - AEC.

Commitment of ASEAN leaders to encourage the liberalization process of services sector in line with the increasingly importance of the role of the service sector in the economy of ASEAN states. This is reflected in the services sector’s contribution to the economy

of ASEAN states, which reached 25-67% of GDP, or an average of about 42%. In an effort to enhance economic cooperation through the liberalization of trade in services, the ASEAN states have agreed and endorsed the “ASEAN Framework Agreement on Services” or known as AFAS on December 15, 1995 in Bangkok, Thailand. The move was later reinforced by the agreement signed at the 11th ASEAN Summit in Kuala Lumpur on December 2005 to accelerate trade liberalization for the entire services sectors in 2015. The AFAS agreement is intended to enhance cooperation in services among ASEAN Member States as well as to remove substantially restrictions to trade in services.

Furthermore, in order to follow up on the deal, it has been formed Coordinating Committee on Services (CCS), which has the task of preparing the modalities for managing the services liberalization negotiations within the framework of AFAS which includes eight (8) sectors, namely Air and Sea Transport Services, Business Services, Construction Services, telecommunications Services, Tourism Services, Financial Services, Healthcare Services and Logistics Services. In this case, Indonesia also participate in the liberalization of the services sector through the Fiscal Policy Office, Ministry of Finance, which acts as a coordinator (Coordinator Team in Services) in all forums and sectors, including as manager of the non-bank financial services sector and professional services (accountants and appraisers).

Since the signing of AFAS to date, ASEAN member states have agreed on a package of six services liberalization commitments. The 13th ASEAN Summit in Singapore in November 2007, has agreed to the package attestation-6 as the continuation of services liberalization under AFAS. Principles, strategies and modalities for the liberalization of the services addressed in order to achieve the realization of the ASEAN free flow of trade in services in order to establish an integrated economic region “ASEAN Economic Community” by 2015. Integration of ASEAN trade in services will be implemented with reference to the Blueprint for the Establishment of the ASEAN Economic Community, which has also been ASEAN leaders agreed on the occasion of the ASEAN summit. Besides, it also has signed the ASEAN Multilateral Agreement on the Full Liberalization of Air Freight Services and the ASEAN Multilateral Agreement on Air Services at the meeting of the

14th ASEAN Transport Ministers' Meeting on November 2008.

Furthermore, ASEAN has set five (5) priority of the service sector the priority sector integration of goods and services to be liberalized before the establishment of the ASEAN Economic Community in 2015, namely: Health Services, Tourism Services, e-ASEAN, Logistics and Transportation Service. Target the removal of barriers to trade in services in the four priority areas of the services sector is the year 2010 for air transportation services, e-ASEAN, healthcare, and tourism and in 2013 for logistics services. The liberalization of the services sector is targeted entirely in 2015. Each of these priority sectors have been equipped with a policy map (roadmaps) which combines specific initiatives with broader initiatives across sectors such as trade facilitation measures.

For Indonesia, the policy for liberalization of trade in services is an opportunity and challenge to welcome the establishment of the ASEAN Economic Peoples, which will be launched in 2015. Indonesia itself has signed the ASEAN Charter in 2008 even participate in making ASEAN Economic Community Blueprint including AFAS signed an agreement and its protocol. Thus Indonesia "has bound by the terms of the agreement" including to encourage the establishment of a single market together in the ASEAN region. On the other hand, the agreement to liberalize trade in services regionally in the ASEAN region in 2015 would give effect to Indonesia, including the need to harmonize and synchronize toward various terms of trade in services in Indonesia which will be harmonized with the objectives to be achieved ASEAN the framework of the ASEAN Economic Community by 2015. Therefore, Indonesia should begin to clean up and prepare to face the competition of trade in services with the member states of ASEAN. Some of the provisions of trade in services in Indonesia that have already started to be prepared and on the inventory for harmonization and synchronization based on the "Blueprint" of ASEAN Economic Community that has been agreed upon by the ASEAN states in order to establish the ASEAN Single Market.

II. THE SERVICES TRADE LIBERALIZATION POLICY SYSTEM IN THE ASEAN AREA IN THE FRAMEWORK OF THE 2015 ASEAN ECONOMIC COMMUNITY

The services sector has a strategic role in the economy of the member states of ASEAN considering the average 40-50% of the GDP of ASEAN states contributed by the services sector and the percentage contribution to GDP from time to time continue to show an increasing trend. Based on the statistical data issued by the WTO and the ASEAN Secretariat, ASEAN services exports to the world market continued to increase from US \$ 54.8 billion (1998) to US \$ 96.7 billion (2004). In 2006 the estimated value of ASEAN exports to the world market amounted to US \$ 120.9 billion. The same trend is true for ASEAN service imports from the world market continues to show improvement from year to year. In 1998 the carrying value of ASEAN imports of services amounted to USD60.4 billion and increased to USD122.0 billion in 2004. The estimated value of imports of services ASEAN reached USD150.3 billion in 2006.

Therefore, ASEAN has made an agreement on trade in services, namely ASEAN Framework Agreement on Services (AFAS) to be born on awareness of the increasingly important role of the service sector in the economy of nations in Southeast Asia. A signatory to the agreement document on 15 December 1995 when the ASEAN Summit 5 held by ASEAN economic ministers in Bangkok, Thailand is a testament to the support and the joint efforts of ASEAN states to encourage the free flow of trade in services.

Agreement AFAS is trying to improve efficiency and competitive level of the ASEAN members as providers of services, in particular to eliminate restrictions on trade in services among ASEAN members, and liberalize trade in services by expanding the level and scope of liberalization beyond those already existing in the GATS (General Agreement of Trade in Services) with the aim of a free trade area in services.

In accordance with Article I, the purpose of the agreement is the AFAS:

- a. to enhance cooperation in services amongst Member States in

order to improve the efficiency and competitiveness, diversify production capacity and supply and distribution of services of their service suppliers within and outside ASEAN;

- b. to eliminate substantially restrictions to trade in services amongst Member States; and
- c. to liberalize trade in services by expanding the depth and scope of liberalization beyond those undertaken by Member States under the GATS with the aim to realizing a free trade area in services.

AFAS agreement gives guidelines for ASEAN states to progressively improve Market Access and National Treatment ensure equal for service providers in the ASEAN region. The entire contents of the agreement in the AFAS is consistent with international agreements for trade in services set out in GATS - WTO. The existence of AFAS encourage ASEAN states to make commitments beyond what was given in GATS.

In order to speed up the liberalization of trade in services in ASEAN, ASEAN Economic Ministers or AEM signed the Protocol to Amend the AFAS on 2 September 2003 in Phnom Penh, Cambodia. The main content of the protocol is that it allows the application of the formula “ASEAN minus X” in the implementation of commitments in services among member states. With this formula, the ASEAN states are ready to liberalize a certain service sectors may still do so without being obliged to provide these benefits to the states that have not participated. As a follow-up to the signing of the agreement and in the achievement of objectives AFAS, the negotiation circuit has been immediately implemented. Four rounds of negotiations have been conducted since January 1, 1996, and each round has produced commitment packages arranged in sector/subsector agreed and modes of supply.

Furthermore, based on the decision of AEM in the Informal Meeting held on June 28, 1999 in Auckland, New Zealand, the Ministry of Finance and the Minister of Transportation took over the leadership of ASEAN specifically in the liberalization of financial services and air transport services. Overall 6 (six) packages of commitments under AFAS has been agreed upon by the ASEAN states and signed by AEM. In addition, there are also two packages of additional commitments in financial services which was signed by the finance ministers of ASEAN

(Commitment Plan Financial Services Second and Third under AFAS) and two packages of additional commitments in the services of air communication signed by the transport ministers of ASEAN (Package commitment Air Transport Services under the Fourth and Fifth AFAS).

For the services sector, ASEAN should allow the financial services sector liberalization efforts of member states to ensure the development of the financial sector and financial stability and socio-economic. Then the member states will be guided by the following principles:

1. Liberalization (through the ASEAN minus X formula) in which the states that are ready can first implement liberalization and states that are not yet ready to join later; and.
2. The process of liberalization must be in accordance with national policy objectives and the level of economic development and the financial sector in each member state.

Related to the commitments in the liberalization of the services sector, AFAS have in common in terms of opening negotiations for each member offering the services sector which will contribute in the context of increased liberalization. AFAS rules regarding specific commitments (specific commitments) stipulated in article IV, paragraph 1, stating:

“Member States shall enter into negotiations on measures affecting trade in specific service sectors. Such negotiations shall be directed towards achieving commitments which are beyond those inscribed in each Member State’s schedule of specific commitments under the GATS and for which Member States shall accord preferential treatment to one another on an MFN basis.”

Since the signing of AFAS to date, ASEAN member states have agreed on a package of six services liberalization commitments. 13th ASEAN Summit in Singapore in November 2007, has agreed to the package attestation-6 as the continuation of services liberalization under AFAS. Principles, strategies and modalities for the liberalization of the services addressed in order to achieve the realization of the ASEAN free flow of trade in services in order to establish an integrated economic region ASEAN Economic Community by 2015. Integration of ASEAN trade in services will be implemented with reference to the Blueprint for the Establishment of the ASEAN Economic Community,

which has also been ASEAN leaders agreed on the occasion of the ASEAN summit. Besides that, also signed the ASEAN Multilateral Agreement on the Full Liberalization of Air Freight Services and the ASEAN Multilateral Agreement on Air Services at the meeting of the 14th ASEAN Transport Ministers' Meeting on November 2008.

ASEAN has set five (5) priority services sectors of the 12 priority integration sectors of goods and services to be liberalized before the establishment of the ASEAN Economic Community in 2015, namely: Health Services, Tourism Services, e-ASEAN, Logistics and Transportation Service. Target the removal of barriers to trade in services in the four priority areas of the services sector is the year 2010 for air transportation services, e-ASEAN, healthcare, and tourism and in 2013 for logistics services. The liberalization of the services sector is targeted entirely in 2015. Each of these priority sectors have been equipped with a policy map (roadmaps) which combines specific initiatives with broader initiatives across sectors such as trade facilitation measures.

Following up on the agreement, formed a committee called the Coordinating Committee on Services (CCS) which has a task to prepare modalities for managing services liberalization negotiations under AFAS and economic integration of ASEAN in services. AFAS discussed in the Services Coordination Committee (Coordinating Committee on Services/CCS) is intended to substantially remove barriers to trade in services among ASEAN states in order to improve the efficiency and competitiveness of ASEAN services providers. CCS is a major forum in the service sector outside the financial services and air transport, accommodate 155 services subsector classification GATS W/120. CCS forum includes talks at the level of CCS Leader decisive stages of liberalization in ASEAN member states in the form of packages of commitments under AFAS, Sectoral Working Group meetings and the preparation of the Mutual Recognition Agreement (MRA).

In addition, CCS coordinated the six working groups composed of business, construction, healthcare, maritime transport, tourism, and telecommunications and information technology. For other service sectors, since 1999 ASEAN has coordinated bargaining process separately under each ministry that handles the sector. For example, the transportation sector through the Air Transport Working Group

(ATWG), and financial services sector through the Working Committee on Financial Services Liberalization (WC-FSL) under AFAS.

ASEAN services liberalization negotiations conducted in a round of negotiations with a period of about three years. The first round conducted in 1996-1998, by adopting the Request and Offer Approach, starting with the exchange of information among ASEAN members on commitments that have been made in the GATS and services trade regime applicable in their respective states. The second round is conducted in 1999-2001 by adopting “subsector Common Approach”, ie an approach based on the commitments that have been approved by at least four ASEAN states, both in the GATS and AFAS. If a sub-services sector has committed more than four states, the services sub-sectors should be open in every member country to enact the principles of Most Favoured Nation (MFN).

The third round conducted in 2002-2004 with the approach of “sub-sector Modified Common Approach”. Basically, this approach is the same as the Common subsector approach but states committed reduced from four states into three states. At this time round ASEAN also started using formula ASEAN states minus X. The fourth round began in 2005 and has reached an agreement with a signed “Protocol to Implement the Fourth Package of Commitment on Financial Services Under the ASEAN Framework Agreement on Service” at The 12th ASEAN financial Ministers meeting (AFMM) in Danang, Vietnam on 4th April 2008.

III. THE EFFECT ON INDONESIA

The leaders of ASEAN has endorsed AFAS at the 5th summit of ASEAN dated December 15, 1995 in Bangkok, Thailand, and Indonesia has been ratified by Presidential Decree No. 88 of 1995, which AFAS among others contain an agreement to increase cooperation in services among member states of ASEAN in order to improve efficiency and competitiveness, diversify production capacity and the supply and distribution services, both among the service providers in ASEAN and outside ASEAN.

The latest provisions issued by the government through Law No. 7

of 2014 on Trade has also been set up not only trade in goods but also trade in services that can be traded (trade in services). The services sector is intentionally incorporated into the Law of Commerce for the ASEAN Economic Community or AEC 2015.

In this case, there are three articles governing the service sector in the latest Trade Law and became an important part in the implementation of AEC 2015, namely Article 4 (2), Article 20 and Article 21. The scope of the services sector arrangements, as stipulated in Article 2 paragraph (2) covers 12 sectors namely, business services, distribution services, communications services, education services, environmental services, financial services, construction and related engineering, health services social, leisure services, culture and sport, tourism services, transport services and other services.

In Article 20 of the Law of Commerce said services provider engaged in Trade in Services must be supported by competent technical personnel in accordance with the provisions of the legislation. Service providers that do not have a competent technical personnel subject to administrative sanctions in the form of a written warning, temporary suspension of business activities, or or revocation of business licenses. Furthermore, in Article 21 of the Law of Commerce, explained that the government can give recognition to the competence of technical personnel from other states based on mutual recognition agreements bilaterally or regionally. This article has a strategic significance for the Ministry of Trade because as far the Ministry of Trade have not yet a clear legal basis in terms of negotiating with other states. One that has not been firmly in the legal hook in the context of the authority of Ministry of Trade is in talks with other states. Through Article 21 The Government can provide technical recognition from the state according to regulations. Article 21, providing guidance to the government in terms of talks and negotiations with other states. Equally importantly, the services sector is a sector that can boost the competitiveness of exports. Going forward, the service sector will increasingly determine the competitiveness of Indonesia so it needs to be regulated in the Law on Trade.

Moreover, in this Act, also regulated service providers who are engaged in the service must be supported by competent technical

personnel, appropriate legislation related. This has been clearly mentioned in Article 20 of the Law of Commerce. Based on the data held by the Ministry of Trade, great service exports are components in the field of transport, services in the field of travel and services in other business areas.

Thus it appears that the government's attention to trade sector in services by regulating it through the Trade Act latest. This law is also in order to support the commitments that have been given by Indonesia in AFAS Agreement to prepare for the liberalization of trade in services within the ASEAN Economic Community in 2015 involving Indonesia as one of the ASEAN member states.

But even further, AFAS agreement is certainly a challenge and an opportunity for Indonesia in the sectors of trade in services. One of the largest challenges is to prepare the human resources workforce that is skilled and competent so that it can compete with other ASEAN. It is also in line with Article 20 of the Law of Commerce where the Service Provider engaged in Trade in Services must be supported by competent technical personnel. By the mindless, labor skills need to be given serious attention so that it can compete with other ASEAN member work force.

The next challenge is Indonesia needs to focus on one of the featured services sector as agreed in the agreement AFAS. As is well known there are 12 services sectors to be liberalized by the Treaty of AFAS and will be implemented in the ASEAN Economic Community by 2015. Indonesia should be observant to see and choose the superior services sector by considering the human resources and existing capacity given the services of the same type owned also by other ASEAN member states.

IV. CONCLUSION

ASEAN has made an agreement on trade in services, namely the Framework Agreement Services ASEAN (ASEAN Framework Agreement on Services/AFAS) in 1995 in which the Treaty AFAS provides guidelines for ASEAN states to improve market access

progressively and ensure National Treatment is similar for service providers in the ASEAN region. AFAS is aimed at encouraging services trade liberalization in the ASEAN region especially in the framework of the ASEAN Economic Community by 2015. And through the AFAS ASEAN has set five (5) priority services sectors of the 12 priority integration sectors of goods and services to be liberalized before the establishment of the ASEAN Economic Community by 2015, namely: Health Services, Tourism Services, e-ASEAN, Logistics and Transportation Service. While the mechanism of implementation of the system in order AFAS liberalization of trade in services in the ASEAN region to do more to pick through a series of negotiations under the Coordinating Committee on Services (CCS). AFAS agreement on liberalization of trade in services that have been agreed upon by the ASEAN states including Indonesia are further has been ratified by Indonesia through Presidential Decree No. 88 of 1995 in which the agreement was legally binding Indonesia. In this regard, the Indonesian government has issued several regulations including the Law No. 7 of 2014 concerning trade in. In this case, there are three articles governing the service sector in the latest Trade Law and became an important part in the implementation of the ASEAN Economic Community by 2015, Article 4 paragraph (2), Article 20 and Article 21. But even further, AFAS agreement is certainly challenges and opportunities for Indonesia in the sectors of trade in services. One of largest challenges is to prepare the human resources workforce that is skilled and competent so that it can compete with other ASEAN. While the opportunity for Indonesia include premises large population clearly an opportunity for human resources in Indonesia to sign and trade services to the territory of the other member states.

REFERENCE

BOOKS AND JOURNALS

- Adolf, Huala, *Hukum Ekonomi Internasional, Suatu Pengantar*. PT. RajaGrafindo Persada.Jakarta. 2005.
- Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*. Grafindo. Jakarta. 2010.
- Arikunto, S., *Prosedur Penelitian, Suatu Pendekatan Praktik*. Penerbit Bina Aksara. Jakarta. 1983.
- Arndt, H.W., "Trade in Services: With Special Reference to ASEAN". *ASEAN Economic Bulletin*. Vol. 6. No.1. July 1989.
- Bucklin, William, *Regional Economic Cooperation in Southeast Asia*. Ann Arbor University Microfilms International. 1975.
- Budiman, Aida S., *et al.*, *Masyarakat Ekonomi ASEAN 2015*. Jakarta PT. Elex Media Komputindo. 2008.
- Carl, Beverly M., *Trade and Developing World in the 21 th Century*. Transnational Publisher. New York. 2001.
- Davidson, Paul J., *ASEAN-The Evolving Legal Framework fo Economic Cooperation*. Singapore. Times Academic Press. 2002.
- Davidson, Paul J., *The Legal Framework for International Economic Relations*. Singapore. Institute of Southeast Asian Studies. 1997.
- Dirjen Kerja Sama ASEAN Kementerian Luar Negeri Republik Indonesia, *Integrasi Ekonomi ASEAN dibidang Jasa*, Jakarta, 2009,
- Green, David Jay, "The Role of ASEAN Economic Community as a Commitment to Policy Certainty". *ASEAN Economic Bulletin*. Vol. 25. No.2 ISEAS. Singapore.
- Hew, Denis and Hadi Soesastro, "Realizing ASEAN Economic Community by 2020: ISEAS and ASEAN-ISIS Approaches". *ASEAN Economic Bulletin*. Vol. 20. No. 3. December 2003.
- Hew, Denis and Hadi Soesastro, "Realizing ASEAN Economic Community by 2020: ISEAS and ASEAN-ISIS Approaches". *ASEAN Economic Bulletin*. Vol. 20. No. 3. December 2003.
- Hoekman, Bernard and Pierre Sauve, "Leberalizing Trade in Services". World Bank Discussion Papers No. 243. The World Bank. Washinton DC. 1994.
- Hufbauer, Gary and Sherry Stephenson, "Service Trade: Past Liberalization and Future Challenges", in William J Davey & John Jackson (eds.), *The Future of International Economic Law*. Oxford University Press. New York. 2008.
- Jaelani, Abdul Kadir, "Penyelesain Sengketa ASEAN berdasarkan Treaty of Aminity". <https://kadirjailani.wordpress.com>. Accessed 14 Juni 2014.
- Matto, A., *et al.*, *A handbook of International Trade of Services*. Oxford University Press. New York. 2008.
- Mauna, Boer, *Hukum Internasional, Pengertian, Peranan dan Fungsi Dalam Era Dinamika Global*. Bandung. PT. Alumni. 2003.
- Suherman, Ade Maman, *Organisasi Internasional dan Integrasi Ekonomi Regional dalam Perspektif Hukum dan Globalisasi*. Ghalia Indonesia. Jakarta. 2003.