

## **ASEAN REGIONAL ARBITRATION BOARD: AN ALTERNATIVE DISPUTE RESOLUTION IN THE ASEAN REGION WITHIN THE FRAMEWORK OF THE ASEAN ECONOMIC COMMUNITY**

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### **Abstract**

Transactions among ASEAN member countries are increasingly open with the release of the ASEAN Economic Community (MEA). Entrepreneurs in ASEAN countries are expected to make more transactions with their business partners in the Southeast Asian region. Increasing business relations in the ASEAN region will in part affect the increase in disputes among ASEAN entrepreneurs. This study aims to provide an idea regarding the establishment of the ASEAN Regional Arbitration Agency as an effort to overcome the issue of the execution of arbitration decisions by utilizing regional unification. This research is descriptive analytical using a normative juridical approach. The results of the study show that ASEAN should be a place for resolving international commercial disputes, especially on business transactions carried out in the ASEAN member countries, if ASEAN has a regional arbitration forum, the procedure for resolving business disputes in this region will be simpler, more effective and easier. Legal system barriers can also be overcome if there are procedures that are jointly recognized.

*Transaksi di antara negara-negara anggota ASEAN semakin terbuka dengan lahirnya Masyarakat Ekonomi ASEAN (MEA). Para pengusaha di Negara ASEAN diharapkan semakin banyak melakukan transaksi dengan mitra bisnisnya di region Asia Tenggara. Semakin meningkatnya hubungan bisnis di kawasan ASEAN sedikit banyak akan berdampak pula terhadap peningkatan sengketa di antara para pengusaha ASEAN. Penelitian ini bertujuan untuk memberikan gagasan mengenai pembentukan Badan Arbitrase Regional ASEAN*

*sebagai upaya mengatasi persoalan eksekusi putusan arbitrase dengan memanfaatkan penyatuan kawasan. Penelitian ini bersifat deskriptif analitis dengan menggunakan pendekatan yuridis normatif. Hasil penelitian menunjukkan bahwa ASEAN dapat menjadi tempat penyelesaian perselisihan komersial internasional terutama terhadap transaksi bisnis yang dilakukan di wilayah negara-negara anggota ASEAN, apabila ASEAN memiliki satu wadah arbitrase regional, prosedur penyelesaian sengketa bisnis di kawasan ini akan lebih sederhana, efektif, dan mudah. Hambatan sistem hukum juga bisa diatasi jika ada prosedur yang diakui bersama.*

**Keywords:** AEC, Arbitration, ASEAN, Business Transaction, Dispute Settlement

## **Introduction**

Trading, trading transactions, is a fundamental freedom (fundamental freedom); and therefore this activity should not be limited by differences in religion, ethnicity, creed, politics, legal system, and so on.<sup>1</sup> Nevertheless, the hectic production process that encourages the emergence of the exchange and distribution of goods and services which, under the boundaries of conventional space, is apparently not easy because it is directly confronted with the legal system of a State. The fact that there are differences in the legal systems of various countries in various international trade transactions has led to the emergence of demands for legal unification and harmonization. In other words, the increasing number of international agreements or contracts agreed on in international trade, causes the rules or laws in international trade to be born.

As a result, in October 1947, the General Agreement on Tariff and Trade (GATT) was born, which aimed to create a safe and clear international trade climate for the business community, and create sustainable trade liberalization. In connection with this goal, GATT functions as a negotiation forum, dispute resolution forum, and as an international trade regulation in the field of goods. Therefore, since its establishment, GATT has sponsored various negotiations known as

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<sup>1</sup> Huala Adolf, *Hukum Perdagangan Internasional* (Jakarta: PT. RajaGrafindo Persada, 2005), p. 3.

rounds. Of all these rounds, the Uruguay Round (1986-1994) was the largest round that led to the formation of the World Trade Organization (WTO). If GATT only deals with trade in goods, the WTO also includes services trading (GATS: General Agreement on Tariffs and Services) and intellectual property (TRIPs: Agreement on Trade Related Aspects of Intellectual Property Rights).<sup>2</sup>

Transactions between ASEAN member countries became more open with the birth of the ASEAN Economic Community (AEC). Entrepreneurs among ASEAN countries are expected to carry out more transactions with business partners in the Southeast Asian region. The increasing business relations in the ASEAN region will more or less affect the increase in disputes among ASEAN entrepreneurs. Since arbitration institutions have increasingly been included in trade contracts, it is deemed important to know a little more about arbitration law arrangements among ASEAN member countries. It is expected that by knowing the rules of arbitration law among the ASEAN member countries, then efforts will be made, if there are differences, harmonizing the legal field between the member countries.<sup>3</sup>

It is hoped that with the existence of this ASEAN community, ASEAN member countries will be more closely linked, able to care for each other and share among ASEAN member countries. In addition, it is hoped that cooperation among ASEAN member countries will also increase, especially cooperation in the economic field because what has just been implemented is the economic community or the ASEAN Economic Community (AEC).<sup>4</sup>

The establishment of the ASEAN Economic Community was formalized on 31 December 2015 in the Kuala Lumpur Declaration, it needs to be understood that the entry into force of the ASEAN Economic Community on 31 December 2015 is a process that has been, is, and will continue to take place. Therefore, the ASEAN Economic Community is not an event which afterwards then ends. Furthermore, MEA is an ideal of ASEAN to form an ASEAN community. Although to realize this must be through various processes faced. The aim of the

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<sup>2</sup> Huala Adolf, *Hukum Perdagangan...*, p. 99-100.

<sup>3</sup> Megafury Apriandhini, "Keberadaan ASEAN Way dalam Menghadapi Komunitas ASEAN 2015", *Prosiding Seminar Nasional Fakultas Ilmu Sosial dan Ilmu Politik*, Universitas Terbuka UTCC, August 26, 2015.

<sup>4</sup> Megafury Apriandhini, "Keberadaan ASEAN Way...".

leaders of ASEAN member countries to form the ASEAN Economic Community is to create a society that is forward-looking, lives in a peaceful, stable, prosperous, and caring environment. Because if you look at the long history of ASEAN that there is a cold war that makes ASEAN split into two camps, namely communists and non-communists, this regional organization of Southeast Asia region experienced fragility and shakiness so that it realized the need for a forum or community capable of prosperity and that gave a sense safe for the people.

The implementation of the ASEAN Economic Community on 31 December 2015 which in its formation had the aim of integrating the ASEAN regional economy as a single market and production base would certainly open up opportunities for disputes to emerge. The ASEAN Economic Community will open up the flow of goods, service flow, capital flow, investment flow, and the flow of skilled labor through the national boundaries of the ten Southeast Asian countries, this traffic is very likely to occur disputes especially with the legal system differences between Southeast Asian countries. The potential for disputes to arise in the implementation of the ASEAN Economic Community requires ASEAN officials to think of an effective dispute resolution mechanism for all ASEAN member countries. In the ASEAN Economic Community there are no special courts provided to resolve disputes such as those of the European Community. The dispute resolution mechanism within the ASEAN Economic Community still uses consensus agreement.

ASEAN applies a working mechanism known as the “ASEAN way” or “the ASEAN way”, in this ASEAN way decision making is based on consultation and consensus. Settlement of disputes with the ASEAN way is indeed good, namely to maintain harmonious relations between members, but can lead to unsatisfactory for the parties to the dispute because the dispute is not resolved thoroughly, dispute resolution with the ASEAN way also causes the lack of legal certainty. It is also less effective because it takes a long time to resolve a dispute. Therefore, dispute resolution purely based on law (rules-based disputes settlement) needs to be more strongly encouraged to be increasingly put forward in order to provide sanctions for violators of the agreement. Because if there is no adjudication institution or strict law enforcement in the ASEAN Economic Community it will have an impact on the

implementation of the ASEAN Economic Community that is not going well and effectively.

The role of commercial arbitration bodies in resolving business disputes in the field of national and international trade is becoming increasingly important nowadays. Many national and international contracts include arbitration clauses. For businesses, the way to resolve disputes through this body has its own advantages over the national judicial body. However, its implementation is not as easy as turning the palm of the hand, because winning at the Singapore arbitration institution for example, cannot be automatically executed in Indonesia. During this time, the execution of foreign arbitral awards is one of the problems faced by the parties to the dispute in Indonesia. Conversely, winning in Indonesian arbitration does not mean that Indonesian entrepreneurs can smoothly execute the assets of opponents residing in Myanmar. With the existing reality, causing business disputes in the ASEAN region are not resolved effectively because there is a vacancy from a dispute resolution forum in the ASEAN region. Therefore, the unification of the area is considered to be a good solution to resolve the issue of execution of the Arbitration award.

Referring to the ASEAN blue print 2025, where the regulatory environment has a large impact on company behavior and performance. The drive to make ASEAN competitive, dynamic, innovative and stronger requires that existing regulations are non-discriminatory, pro-competitive, effective, coherent and support entrepreneurship and regulatory regimes that govern responsive and accountable where good regulatory practices are embedded therein . Considering that regulations are considered important for the proper functioning of society and the economy, the challenge for ASEAN member countries is to ensure effective resolution of existing problems while minimizing compliance costs and preventing the emergence of undesired disturbances and inconsistencies arising from these regulations.<sup>5</sup>

From the description above, a problem can be drawn, how to effectively resolve disputes within the framework of the ASEAN Economic Community?

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<sup>5</sup> Kementerian Luar Negeri RI, *Asean 2025: Melangkah Maju Bersama* (Jakarta: Kemenlu Indonesia, 2017), p. 83.

## **Research Methods**

The research method used in this article uses the normative juridical approach, which is a legal research method that prioritizes how to examine library materials or what is called secondary data material in the form of positive law in this case which regulates Arbitration. The normative juridical approach method used in this study includes research on the principles of law, legal systematics, and law synchronization.<sup>6</sup> This research is analytical descriptive, which describes the facts of the data obtained based on reality in this case the Use of Arbitration in the Settlement of Business Transaction Disputes in the framework of the ASEAN Economic Community. These facts are then analyzed with applicable law and conclusions drawn. The research phase is carried out with a library research (library research), this study aims to review and examine legal materials, especially regarding Arbitration both nationally and internationally.

## **Ideas for Dispute Resolution in the ASEAN Region within the Framework of the ASEAN Economic Community**

The issue of dispute has always been known by humans, where there are more than one human with their own goals and interests. So that from human interaction cannot be avoided disputes occur. Disputes must be resolved, by peaceful means, by consensus, or by a third party. The purpose of having a third party in settling a dispute is to make sure that the parties to the dispute can agree to settle the dispute that occurs between the disputing parties. Other parties in the legal sense can consist of a person or several people, or a group of people, even a legal entity or non-legal entity.<sup>7</sup>

Dispute resolution known in Indonesia itself other than the court line is Alternative Dispute Resolution or known as Alternative Dispute Resolution (ADR). ADR is a consensus resolution of disputes by emphasizing consensus, family, peace and so on. In this paper the author will only focus on the discussion of Arbitration as an Alternative Dispute Resolution (ADR).

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<sup>6</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Penerbit Universitas Indonesia, 2008), p. 51.

<sup>7</sup> Sophar Maru Hutagalung, *Praktik Peradilan Perdata dan Alternatif Penyelesaian Sengketa* (Jakarta: Sinar Grafika, 2002), p. 4.

Arbitration institutions as dispute resolution institutions in the business sector have increasingly played an important role. Arbitration institutions are commonly seen as a judicial body of entrepreneurs or Merchant's Court. Even the leading Professor in the field of international trade law, Professor Alexander Goldstajn called arbitration as one of the basic principles in international trade law.<sup>8</sup> Andreas Respondent revealed that in international trade or business contracts, the parties are very familiar with the arbitration clause in their contract. He revealed:<sup>9</sup>

“There is hardly any international contract like for instance a Joint Venture Agreement, a Technology Transfer Agreement or a TurnKey Agreement in the construction sector that would not contain an arbitration clause for dispute resolution between the parties.”

Furthermore, the respondents also revealed that: “Approximately 80% of all international agreements contain arbitration clauses.” Likewise, according to Eman Suparman, arbitration is suspected as an alternative method that is mostly chosen by commercial actors in resolving commercial disputes. Even the use of arbitration outside the field of public law as one method of dispute resolution then becomes more popular compared to other types of methods.<sup>10</sup>

In Indonesia, the implementation of arbitration is given legality in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Consideration is made based on the laws and regulations applicable civil dispute settlement in addition to being submitted to the general court also proved the possibility of the dispute organizer, submitted through Arbitration and alternative dispute resolution.<sup>11</sup>

In Law Number 30 of 1999 concerning Arbitration contains rules including: Alternative dispute resolution; Terms of arbitration for the appointment of the arbitrator and the right to disobey; The applicable

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<sup>8</sup> Huala Adolf, *Hukum Perdagangan...*, p. 16.

<sup>9</sup> Accessed from <https://www.rf-arbitration.com/> on April 16, 2019 at 20.09.

<sup>10</sup> Bambang Sutiyoso, “Akibat Pemilihan Forum dalam Kontrak Yang Memuat Klausula Arbitrase”, *Mimbar Hukum*, vol. 24, no. 1 (2012), p. 160.

<sup>11</sup> Consideration of Law of the Republic of Indonesia Number 30 Year 1999 concerning Arbitration and Alternative Dispute Resolution Paragraph a.b.

Procedure before the arbitral tribunal; Implementation of arbitral award; Termination of arbitration duties and arbitration fees.

Prior to the enactment of the Law, which has been applicable as a basis for the examination of Arbitration in Indonesia are Article 615 to Article 651 of the Reglment of Civil Procedure (Reglment op de Rechvordering, Staatsblad 1847: 52) and Article 377 of the updated Indonesian Regulations (Het Herziene Indonesisch Regulations of the Staatsblad 1941: 44). And Article 705 of the Regulation of Events for Regions Outside Java and Madura (Rechtsretglement Buitengewesten, Staatblad 1927: 227). The purpose of the arrangement or the thing to be achieved to inform the parties to the dispute determines the mediator in resolving the problem. In addition, it is also to speed up the process through convoluted judicial examiners. This is also because the arbitration institution has advantages compared to the judiciary, these advantages include:

- a. Secured confidentiality between parties' disputes.
- b. Can be avoided delays caused by procedural and administrative matters.
- c. The parties may choose an arbitrator who, according to his belief, has sufficient knowledge of experience and background on the matter in dispute, is honest and fair.
- d. The parties can choose what law will be applied to resolve the problem and the process and place of arbitration.
- e. Arbitrator's decision is a decision that binds the parties and through procedures, (simple or direct procedure can be implemented).

In reality what is mentioned above is not all true, because in certain countries the judicial process can be faster than the arbitration process. The only advantage of arbitration against a court is its confidentiality because its decision is not made public. However, dispute resolution through arbitration is still more desirable than litigation, especially for international business contracts.

With the development of the business world and the development of traffic in the field of trade both nationally and internationally as well as the development of the law in general, the Regulations contained in the Civil Procedure Regulations (Reglement op de Rechvordering) used as an arbitration guideline are no longer appropriate so they need to be

adjusted because of trade arrangements international nature is a requirement for Condition Sine qua non while it is not regulated in the Civil Procedure Regulations (Reglement op de Rechvordering). Starting from this condition the fundamental changes to the RV both philosophically and substantively it's time to be implemented. In the Arbitration Law No. 30/1999, international arbitration, particularly aspects of its execution, is regulated. However, the Act does not mention at all what is meant by international arbitration. Is for example any foreign arbitration award (especially ASEAN countries) can be carried out in Indonesia, including if the decision is an arbitration award of another country.

International arbitration referred to in the Arbitration Law Number 30 Year 1999 is actually "foreign arbitration". This is in line with the provisions in the New York Convention (10 June 1958) which indeed questioned the execution of foreign arbitral awards, not just international arbitrations. Even in the history of arbitration law in Indonesia, also what is known is the execution of foreign arbitral awards. This can be seen for example with the Presidential Decree No. 34 of 1981 which validated the entry into force of the New York Convention.

Meanwhile, if we talk about international arbitration (in the narrow sense), that is, which does not include the national arbitration of other countries, then as referred to in the new UNCITRAL legal arbitration model, including international arbitration if it meets the following conditions:<sup>12</sup>

1. If at the time of signing the contract in dispute, the parties have a place of business in a different country, or
2. If the place of arbitration in accordance with the arbitration contract is outside the place of business of the parties, or
3. If the implementation of most of the obligations in the contract is outside the business of the parties, or the subject matter of the dispute is closely related to the place which is outside the business place of the parties, or
4. The parties have expressly agreed that the subject matter in the arbitration contract relates to more than one country.

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<sup>12</sup> Eman Suparman, *Arbitrase & Dilema Penegakan Keadilan* (Jakarta: Fikahati Aneska, 2012), p. 249.

In Indonesia, the process of settling cases outside the court of law through Arbitration can have an executive power after obtaining government permission to be executed/executed in court. According to Law Number 30 of 1999 concerning Arbitration in Article 1 number 1 it has been defined that Arbitration is a way to settle a civil dispute outside the general court based on the Arbitration Agreement which is made in writing by the parties to the dispute. According to the Black's Law Dictionary:

“Arbitration is an arrangement for taking an abiding by the judgement of selected persons in some disputed matter, instead of carrying it to establish tribunals of justice, and is intended to avoid the formalities, the delay, the expense and vexation of ordinary litigation”.

Meanwhile, according to Subekti, it is argued that the Arbitration is the settlement of a dispute (case) by one or several referees (arbitrators) who are jointly appointed by the parties to the case without being resolved through the Court.<sup>13</sup> Basically, arbitration can take the form of 2 (two) forms, namely: Arbitration clause stated in a written agreement made by the parties before a dispute arises (*Factum de compromitendo*); or a separate arbitration agreement made by the parties after a dispute arises (*Compromise Deed*).<sup>14</sup>

Before the Arbitration Law comes into force, the provisions concerning arbitration are regulated in article 615 to 651 Civil Procedure Regulations (RV). In addition, in the explanation of article 3 paragraph (1) of Law Number 14 of 1970 concerning the Principles of Judicial Power, it is stated that settlement of cases outside the Court on the basis of peace or through referees (arbitration) is still permissible.

The legal basis for arbitration as a means of resolving disputes can be found in article 33 of the UN Charter. This article states that the parties concerned in a dispute which if it continues continuously may endanger the maintenance of peace; must first seek a settlement by negotiation, investigation by mediation, conciliation, arbitration, legal settlement through regional bodies or arrangements, or by other peaceful means of their own choosing. From this article it appears that

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<sup>13</sup> Priyatna Abdurrasyid, “Pengusaha Indonesia Perlu Meningkatkan Minatnya Terhadap Arbitrase dan Alternatif Penyelesaian Sengketa: Suatu Tinjauan”, *Jurnal Hukum Bisnis*, vol. 21 (2002), p. 7.

<sup>14</sup> Priyatna Abdurrasyid, “Pengusaha Indonesia...”, p. 7.

arbitration as a way of resolving disputes both national and international has been recognized by the international community.

The role of commercial arbitration bodies in resolving business disputes in the field of national and international trade is becoming increasingly important nowadays. Many national and international contracts include arbitration clauses. For businesses, the way to resolve disputes through this body has its own advantages over the national judicial body.

Arbitration can be in the form of temporary (ad-hoc) arbitration or arbitration through a permanent body (institution). Ad-hoc Arbitration is carried out based on rules deliberately set up for arbitration purposes, for example Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution or UNCITRAL Arbitration Rules. In general, ad-hoc arbitration is determined based on an agreement stating the appointment of the arbitral tribunal and the implementation procedures agreed by the parties. The use of Ad-hoc arbitration needs to be mentioned in an arbitration clause.<sup>15</sup>

Institutional arbitration is a permanent institution that is managed by various arbitration bodies based on the rules they set themselves. At present there are various arbitration rules issued by arbitration bodies such as the Indonesian National Arbitration Board (BANI), or international ones such as the Singapore International Arbitration Center (SIAC). These bodies have their own rules and arbitration systems.<sup>16</sup>

BANI (Indonesian National Arbitration Board) provides the following arbitration clause standards:<sup>17</sup>

“All disputes arising from this agreement will be resolved and decided by the Indonesian National Arbitration Board (BANI) according to the BANI arbitration procedure rules, the decision of which binds both parties to the dispute, as a decision at the first and last level.”

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<sup>15</sup> Gatot Soemartono, *Arbitrase dan Mediasi di Indonesia* (Jakarta: PT Gramedia Pustaka Utama, 2006), p. 27.

<sup>16</sup> Gatot Soemartono, *Arbitrase dan Mediasi di Indonesia...*, p. 27.

<sup>17</sup> Indonesian Banking Restructuring Agency (IBRA), *Arbitrase, Pilihan Tanpa Kepastian*, <http://www.gontha.com/view.php?id=104>, accessed 19 April 2019.

The standard UNCITRAL (United Nations Commission of International Trade Law) arbitration clause is as follows:<sup>18</sup>

“Any dispute, dispute or claim that occurs or in connection with this agreement, or default, termination or validity of the agreement will be resolved through arbitration in accordance with UNCITRAL rules.”

The implementation of the Arbitration award can be explained in two ways:

1. National Arbitration Award

The implementation of the national arbitration award is regulated in Article 59-64 of Law Number 30 Year 1999. The parties must implement the award voluntarily. In order for the arbitration award to be enforced, the decision must be submitted and registered with the district court clerk, by registering and submitting an original copy or authentic copy of the national arbitration award by the arbitrator or his attorney to the district court clerk, within 30 (thirty) days after the arbitration award. The National Arbitration Award is independent, final and binding (such as a decision that has permanent legal force) so that the Chair of the District Court is not permitted to examine the reasons or considerations of the national arbitration award. The authority to examine the Chair of the District Court is limited to the formal examination of the national arbitration award handed down by the arbitrator or the arbitral tribunal. Based on Article 62 of Law Number 30 Year 1999 before giving an implementation order, the Chief Justice of the Court first checks whether the arbitration award meets Article 4 and article 5 (specifically for international arbitration). If it does not comply, the Chairperson of the District Court may refuse the application for arbitration and there is no remedy for any refusal.

2. International Arbitration Award

Initially the implementation of foreign arbitral awards in Indonesia were based on the provisions of the 1927 Geneva Conventions, and the Dutch government which was a

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<sup>18</sup> Indonesian Banking Restructuring Agency (IBRA), *Arbitrase, Pilihan...*, accessed 19 April 2019.

participant country of the convention stated that the Convention also applies to Indonesian territory. On June 10, 1958 in New York the UN Convention on the Recognition and Enforcement of Foreign Arbitral Award was signed. Indonesia has acceded to the New York Convention by Presidential Decree No. 34 of 1981 on August 5, 1981 and was registered with the United Nations Secretary on October 7, 1981. On March 1, 1990 the Supreme Court issued Supreme Court Regulation No. 1 of 1990 concerning Procedures for Implementing Foreign Arbitral Awards with the ratification of the 1958 New York Convention. With this PERMA, obstacles to the implementation of foreign arbitration awards in Indonesia should be overcome. But in practice difficulties are still encountered in the execution of foreign arbitral awards.

Unlike the arbitration body in Singapore, SIAC, SIAC is the main arbitration center for international arbitration disputes in Southeast Asia. This makes SIAC an experienced and more neutral place to arbitrate, when compared to BANI. In addition, the SIAC arbitration center is renowned for its world-class infrastructure, facilities and exceptional support services. However, SIAC faces more difficulties compared to Indonesian Arbitration. An International Award will only be recognized and can only be applied in Indonesia after obtaining an order of execution from the Chairperson of the Central Jakarta District Court. The latest case shows that foreign parties experienced considerable difficulties in enforcing foreign arbitration decisions in Indonesia, due to the reluctance of the Indonesian Court to issue an execution order.

The basic aim of ASEAN as reflected in the August 1967 Bangkok Declaration is to restore interregional relations and to structure them in the structure of a Southeast Asian system based on the principle of mutual respect and peaceful coexistence, whatever the socio-economic system of each member country. The main suggestions and objectives to be achieved by ASEAN are to advance economic and socio-cultural cooperation based on the new structure: to accelerate economic growth, social progress and cultural development in the region through joint efforts in the spirit of equality and partnership (equality and partnership)

to strengthen the foundation of a prosperous and peaceful community of southeast Asian nations.<sup>19</sup>

The ASEAN Community 2015 is a community including ASEAN member countries that aims to realize integration between countries in the ASEAN region. This synergy is expected to open harmonious opportunities in the three basic pillars that are realized by the ASEAN Security Community (ASC), the ASEAN Socio-Cultural Community (ASCC), and the ASEAN Economy Community or we are familiar with the ASEAN Economic Community (AEC). Initially the concept of the ASEAN Community was formulated in the Bali Concord II Declaration, October 2003. Achievements were made through the free flow of goods, services, investment, skilled labor, and freer flow of capital. Then the steps in order to strengthen the framework of the AEC decided to accelerate the formation of the AEC from 2020 to 2015. This is also in accordance with the political desires of the leaders of ASEAN and marked by the signing of the ASEAN Charter (ASEAN Charter) consisting of blueprints/blueprints and plans strategic achievements of the MEA in Singapore on November 20, 2007.<sup>20</sup> Where now a number of new elements are added to ensure ASEAN 2025 remains relevant to the times through the Kuala Lumpur Declaration on “ASEAN 2025: Moving Forward Together”.

The AEC Framework is the achievement of a single market and a unified production base, a competitive economic region, equitable economic growth and integrated with the global economy. The achievement of the AEC is also a strategy to achieve competitiveness in the face of international negotiations. The preparation of member countries starts from human resources as actors, business actors as productivity cogs that are able to compete, the government as a provider of supporting infrastructure, and legal protection. Legal protection is very important to avoid violations to the resolution of disputes that may occur. Bearing in mind that trade is very tangent with disputes that often occur between interacting parties. This is also a lesson from each ASEAN member country that often occurs disputes and conflicts between them.

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<sup>19</sup> R. Winantyo, Sjamsul Arifin, Rizal A. Djaafara, and Aida S. Budiman, *Masyarakat Ekonomi ASEAN (MEA), 2015: Memperkuat Sinergi ASEAN di Tengah Kompetisi Global*, (Jakarta: Elex Media Komputindo, 2008), p. 5.

<sup>20</sup> Megafury Apriandhini, “Keberadaan ASEAN Way...”, p. 433.

The implementation of the ASEAN Economic Community which in its formation has the objective to integrate the economy of the ASEAN region as a single market and production base will certainly open up opportunities for disputes to emerge. Referring to the blueprint of the ASEAN Economic Community 2025, the first pillar in which with the AEC will open the flow of goods, service flow, capital flow, investment flow, and skilled labor flow by crossing the national boundaries of the ten Southeast Asian countries, this traffic is very likely to occur especially with disputes over differences in the legal system between the Southeast Asian countries. The potential for disputes to arise in the implementation of the ASEAN Economic Community requires ASEAN officials to think of an effective dispute resolution mechanism for all ASEAN member countries. In the ASEAN Economic Community there are no special courts provided to resolve disputes such as those of the European Community.

This is also in line with ASEAN's second pillar which is competitive, innovative and dynamic which is a characteristic and element of the MEA 2025 blueprint in order to increase regional competitiveness and productivity by applying a level of play for all business actors through effective competition policies; develop knowledge creation and protection; deepening ASEAN's participation in the global value chain (GVC); and strengthening the regulatory framework related to overall regulatory practice and coherence at the regional level. In this case the author will focus on the last point, namely regarding effective, efficient, coherent and responsive regulation, and good regulatory practices which are one of the elements of the second pillar of the MEA 2025 blueprint.

The regulatory environment has a large impact on company behavior and performance. The drive to make ASEAN competitive, dynamic and innovative and increasingly strong requires existing regulations to be non-discriminatory, pro-competitive, effective, coherent and supportive of entrepreneurship, and regulatory regimes that govern responsive and accountable where good regulatory practices are embedded inside it. Considering that regulations are deemed important for the proper functioning of society and the economy, the challenge for ASEAN member countries is to ensure effective resolution of existing problems while minimizing compliance costs and

preventing the emergence of undesired disturbances and inconsistencies arising from these regulations.

Regional economic integration requires changes and improvements in policies and regulations in most ASEAN member countries, if not in full, taking into account the different levels of development. Of course, in many ways the MEA is a process of improving regulations that have been agreed for ASEAN member countries. In the perspective of global competition and social, economic and technological pressures and changes, ASEAN member countries need to ensure that the regulatory regime is relevant, strong, effective, coherent, transparent, accountable and forward-looking in terms of the pattern and structure of regulations, and the process of implementation. In addition, ASEAN also recognizes the need to involve various stakeholders to build a more dynamic MEA 2025, specifically to encourage a more responsive ASEAN by strengthening governance through better transparency in the public sector by involving the private sector.

In implementing the MEA 2025 blue print measures, ASEAN will also continue to reduce or eliminate border and regulatory barriers that hamper trade, so as to achieve a competitive, efficient and smooth movement of goods in the regional sphere. One of the MEA 2025's visions is to encourage the use of the ASEAN Protocol on Enhanced Dispute Settlement Mechanism (EDSM) and develop other approaches to accelerate the resolution of economic disputes. This has been initiated since 2005, when an Ad hoc team to resolve disputes in ASEAN has shown a gap that arbitration can be used in ASEAN, then reinforced by the emergence of the 2010 Protocol to the ASEAN Charter on Dispute Settlement Mechanism.

In the blue print, the ASEAN 2025 economic community must be highly integrated and cohesive, competitive, innovative and dynamic; by increasing sectoral connectivity and cooperation; and a society that is more resilient, inclusive, people-oriented and people-centered, integrated with the global economy. Therefore, efforts to achieve this are through the creation and application of practical knowledge, policies that support innovation, scientific approaches to green development and technology; promoting good governance, transparent and responsive regulations; effective dispute resolution; and understanding of increasing participation in global value chains. DI is expected to

become a worldwide ASEAN that encourages a more systematic and coherent approach to its external economic relations; as a facilitator and prime mover in the economic integration of the East Asian region; and ASEAN which is integrated with a strong role and voice in the global economic fora to address various international economic issues.

During this time, in the event of a dispute by the parties in the ASEAN Country it has been very common with the term ASEAN Way. The ASEAN Way is not a formulation of a real written legal regulation in the provisions agreed by ASEAN members. The ASEAN Way is in the form of principles, that is, principles or things which become the foundation of thought or opinion. The principle that it promotes is the principle of non-intervention, decision making based on consensus, minimalism, and informality in the institutionalization mechanism. These principles are implied in the 1967 Bangkok Declaration and the ASEAN Charter namely respecting independence, sovereignty, equality, territorial integrity, and national identity of all ASEAN Member States and not interfering in the internal affairs of other members, but rather promoting peaceful resolution of disputes. . This is in accordance with the opening of the ASEAN Charter that by respecting friendship and cooperation as well as the principles in the Treaty of Amity and Cooperation in the South East (TAC) with several additional principles, namely unity in diversity and consensus.<sup>21</sup>

However, the mechanism by peaceful means in addition to benefiting the parties to the dispute, also has a positive impact on security stability in the region. This is in line with the main objective of establishing ASEAN as a community to create a sense of togetherness, each member feels part of a family of countries in Southeast Asia with cultural, political and economic similarities.

However, in the case of international cooperation, it cannot only rely on the ASEAN Way approach. Given the current practice of economic relations cooperation has a tendency to use the legal framework as its foundation. The law is considered to be able to encourage an economic activity, so that cooperation is more substantial and has a real impact. The law has 4 objectives in the context of economic development, namely: The law provides arguments and

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<sup>21</sup> Subianta Mandala, "Penguatan Kerangka Hukum Asean untuk Mewujudkan Masyarakat Ekonomi Asean 2015", *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, vol. 3, no. 2 (2014), p. 183.

supports the rights, obligations and responsibilities of the parties in business; Business people will be able to carry out business transactions with a certain degree of certainty and reasonable prediction; and the law provides the means or means to obtain legal rights. Because the most important thing is to grow trust in business. Instead, an ineffective legal system will increase transaction costs. Clarity in making agreements that have legal force is very important, because not all disputes can be resolved by deliberation. Therefore in Article 22 paragraph (2) of the ASEAN Charter it states that ASEAN needs to establish and maintain a mechanism for resolving disputes for all disputes arising from ASEAN cooperation in all fields. However, if it is not regulated regarding the terms of the settlement, it must be settled according to the provisions in the ASEAN Protocol on the Enhanced Dispute Resolution Mechanism. Then it will form a Panel to examine disputes and look for facts to make decisions on how disputes should be resolved.

When looking at the benefits of arbitration as one of the dispute resolution (ADR) which is very well known and popular both nationally and internationally, the authors argue that it is very appropriate if the arbitration is used as an effort to resolve disputes, especially in business transactions in ASEAN. The experts also expressed their opinions regarding the superiority of arbitration. According to Subekti for the world of commerce or business, dispute resolution through arbitration or arbitration, has several advantages, namely that it can be done quickly, by experts, and in secret. While HMN Purwosutjipto stated the importance of arbitration, including:

1. Dispute resolution can be carried out quickly.
2. Referees consist of experts in the disputed field, who are expected to be able to make decisions that satisfy the parties.
3. The decision will be more in line with the feelings of fairness of the parties.
4. Arbitration award is kept confidential, so that the public does not know about the weaknesses of the company concerned. The confidential nature of the arbitration award is what the entrepreneur wants.

Besides the advantages of arbitration as mentioned above, arbitration also has weaknesses. In practice, the weakness of arbitration

is the difficulty of the execution of an arbitration award. Likewise, in the settlement of international disputes, especially in ASEAN, for example, winning in a Singapore arbitration institution cannot necessarily be executed in Indonesia, so far the execution of foreign arbitral awards is one of the problems faced by the parties to the dispute in Indonesia. Conversely, winning in Indonesian Arbitration does not mean that Indonesian entrepreneurs will easily be able to execute the assets of opponents residing in Thailand. In addition to national arbitrations such as BANI, it is time in ASEAN to establish an ASEAN Regional Arbitration Board to resolve disputes, especially in the AEC framework when referring to the above problems. It is hoped that establishing an ASEAN regional arbitration institution will be important, among others, to overcome the problem of the execution of the Arbitration award, as well as efforts to streamline dispute resolution within the MEA framework which will certainly increase along with the increase in business transactions in the MEA.

## **Conclusion**

The increasing business relations in the ASEAN region will more or less have an impact on increasing disputes among ASEAN entrepreneurs. Problems arise because in practice it is often found the cancellation of arbitration decisions due to differences in the legal system of the parties, although they have determined the choice of law to be applied but this requires interpretation and adjustments especially when the execution will be carried out so that the aim of the arbitration election is to obtain legal justice can be achieved for the parties. At this time it is time for ASEAN Member States to sit together, arrange a regulation and seek the establishment of the ASEAN Regional Arbitration Board which can be a container for international commercial dispute resolution, especially for business transactions conducted in the ASEAN region, if ASEAN has a regional arbitration forum, business dispute resolution procedures in this region it will be simpler, more effective and easier. Barriers to the legal system that often occur when executing arbitral awards can be overcome if there are procedures that are jointly recognized by all ASEAN member countries.

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