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FATONI UNIVERSITY, PATTANI, THAILAND
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**THE EFFECTIVENES OF DISPUTE SETTLEMENT ON THE RESULT OF
PRESIDENTIAL ELECTION 2014 IN THE CONSTITUTIONAL COURT: CASE
STUDY IN INDONESIAN CONSTITUTIONAL COURT**

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Abstract:

This study aims to evaluate the effectiveness of dispute settlement on the of Presidential Election in the Constitutional Court. The research is a normative and empirical legal research. Normative legal research is conducted through library research. Empirical research uses interview with Respondent such as the staff of the Constitutional Court and also the lawyer who involved in the dispute of Presidential Election in 2014. The result shows that the Constitutional Court can settle the Presidential Election dispute effectively based on the law and regulation. However, in the term of substantive justice, the quality of dispute settlement on the result of Presidential Election is probably still being questioned. This is because the time that was given to settle the dispute on the Presidential Election is very short and it did not give enough opportunity to the parties to provide evidence. The research recommends that first, the time provided by the Law No. 42 of 2008 on Presidential Election and Constitutional Court Regulation No. 4 of 2014 on the guidelines of hearing on the dispute of the results of presidential election needs to be amended. Second, General Election Commission should be better in running his functions, obligations, and in showing the profesionalism. Hence, the decision from the Commission will be acceptable by the citizen including the presidential candidate. Besides, the profesionalism will make presidential election run fairly and honestly.

Keywords: Presidential Election, Constitutional Court, effevtiveness of dispute settlement, Indonesia.

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FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

1. Introduction

The Constitutional Court has rejected the petition of Prabowo Subianto-Hatta Rajasa in the disputes on the result of Presidential Election 2014.⁹³⁶ The reason of rejection was because the Court considered that the petitioners failed in providing a story evidence in supporting their claim in the petition. The failure of petitioners in providing evidence was also influenced by limitation of period of disputes settlement in the Constitutional Court, that is only 14 days. In addition, the Court also limited the number of witnesses proposed by the petitioners. Therefore, it seems that it has put the petitioners in difficult position in defending their right in the process of Presidential Election.

Indonesia held Presidential Election on July 9, 2014. The Election was the third direct Presidential Election in Indonesia. The Election would elect new President and Vice-President because Susilo Bambang Yudhoyono could not be nominated again after his two periods of presidency. In fact, the way of a petition to the Constitutional Court challenged the limitation of period of the presidency. As a result, the Constitutional Court rejected the petition.

The Election was finally won by Joko Widodo-Jusuf Kalla by 53, 15 %, while Prabowo Subianto-Hatta Rajasa only 46, 85 %.⁹³⁷ The elected President and Vice President Joko Widodo-Jusuf Kalla were inaugurated on the October 20th, 2014.

The presidential candidates Prabowo Subianto-Hatta Rajasa submitted a petition dispute on the results of the Presidential Election 2014 to the Constitutional Court on Friday, July 25 in the afternoon. According to them the process of Presidential Election 2014 was undemocratic and contradicted with the 1945 Constitution. As the executor, General Election Commission was unfair, some rules were violated by the Commission. Furthermore, Prabowo said that the recommendation from Election Supervisory Body regarding to the alleged fraud was ignored by the Commission. He also found a number of crimes in the Election involving General Election Commission and another party with a certain goal. And then Prabowo concluded that there are structured, systematic, and massive violations in the Presidential Election 2014.

⁹³⁶ See the Constitutional Court Decision No. 1/PHPU.PRES-XII/2014

⁹³⁷ See the Decision of the General Election Commission No. 535/KPPS/KPU of 2014.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

Chairman of the Constitutional Court Hamdan Zoelva said that constitutional judges will decide a dispute in the matter of the results of elections (PHPU) fairly. He believed, a verdict of Constitutional Court did not create violence in society. According to Hamdan, Indonesian citizen is considered having high awareness in democracy.⁹³⁸

Hamdan Zoelva further believed that the elite of countries would be able to maintain the attitude in the aftermath of the Constitutional Court verdict regarding the results of the Presidential Election dispute. “Moreover, I believe they have more awareness in facing the nation problems.” Hamdan added, that in the process of hearing until a verdict, the Constitutional Court ensures none of the party will interfere the Constitutional Court.

2. Effectiveness

Effectiveness is a success in achieving targets or beneficiaries that have been set in every activity or program. The level of effectiveness can be measured by comparing between the predetermined plans with the real results that have been realized. However, if the result of the work and efforts made improper thus causing the target not achieved as expected, then it is said to be ineffective. This is in accordance with the opinion of H. Emerson quoted by Soewarno Handyaningrat S. which stating that effectiveness is a measure in the sense of achieving predetermined objectives.⁹³⁹

The effectiveness shows a success on achieving or not achieve the target set. If the results of the activities are closer to the target, meaning the higher effectiveness and if the results of the activities can be achieved until the time limit has been determined, then the program or activity can be said to be effective.

⁹³⁸ Berita Kompas: Ini Tahapan yang Harus Dilalui jika Permohonan Prabowo-Hatta Diterima MK, written by Dani Prabowo, available on <http://nasional.kompas.com/read/2014/07/25/16554491/Ini.Tahapan.yang.Harus.Dilalui.jika.Permohonan.Prabowo-Hatta.Diterima.MK> access on August 3, 2014. At 20.07 p.m.

⁹³⁹ Handyaningrat, Soewarno, 1994. *Pengantar Studi Ilmu Administrasi dan Manajemen*. Jakarta: Haji Masagung, page. 16.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

Furthermore, according to Kurniawan, in his book entitled *Transforming of Public Services*, defines effectiveness as follows:

"The effectiveness is an ability to implement duties, functions (operations or missions program activities) rather than an organization or the like and there are not any pressures or tensions between its implementation".⁹⁴⁰

Based on some opinions on the effectiveness above, it can be concluded that a program or activity can be said to be effective if a predetermined plan has reached the target or have obtained results as planned.

3. Indonesian Constitutional Court and the Authorities

The Constitutional Court is even called as the protector of the Constitution. This statement seems more reasonable when the Amendment of the 1945 Constitution incorporated some article on human rights into the 1945 Constitution. In different sense, the explanation of the Constitutional Court Act states that:

"... One of the important changes of the substance of the 1945 Constitution of Indonesia is the existence of the Constitutional Court as an institution of the state that handle particular cases in the field of constitutional law, in order to guard the Constitution to be implemented with responsibility in accordance with the will of the people and goals of democracy. The existence of the Constitutional Court at the same time to guarantee the implementation of a stable government also as the correction of previous practice of government as the result of multi-interpretation of the Constitution."

In more clear statement Jimly Asshiddiqie elaborates as follows:

"In the context of Constitution, the Constitutional Court is construed as the guardian of the Constitution that serves to uphold Constitutional Justice in the community life. The Constitutional Court has duty to encourage and ensure that the Constitution is respected

⁹⁴⁰ Kurniawan, Agung, 2005, *Transformasi Pelayanan Publik*. Yogyakarta: Pembaruan, page. 109.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

*and implemented by all components of the state consistently and responsibly. In the discourse of the weakness of the existing constitutional system, the Constitutional Court has a role as an interpreter of spirit of the Constitution in order to be a live and flower the practice, the state, and society.*⁹⁴¹

Article 24C paragraph (1) and (2) explains the authority of the Constitutional Court as follows:

1. The Constitutional Court has the authority to adjudicate at the first and final instance, the judgment of which is final, to review laws against the Constitution, to judge on authority disputes of state institutions whose authorities are granted by the Constitution, to judge on the dissolution of a political parties, and to judge on disputes regarding the results of general election.
2. The Constitutional Court shall render a judgement on the petition of the People's Representative Council regarding an alleged violations by the President and/or Vice President according to the Constitution.

The authority of the Constitutional Court specifically addressed in Article 10 of the Constitutional Court Act as follows:

- a. To review the laws against the Constitution of the State of Republic of Indonesia of the Years 1945;
- b. To judge on authority disputes of state institutions whose authorities are granted by the Constitution of the State of Republic of Indonesia of the Years 1945;
- c. To judge on the dissolution of a political party;
- d. To judge on a dispute regarding the result of general election; and
- e. The Constitutional Court shall render a judgement on the opinion of DPR alleging that the President and/or Vice-President have/has committed a violation of law in the form of treason against the state, corruption, bribery, other felonies, or disgraceful act, and/or no

⁹⁴¹ Blue Print, 2004 *Membangun Mahkamah Konstitusi, sebagai Institusi Peradilan Konstitusi yang Modern dan Terpercaya*, Sekretariat Jendral MKRI, page. Iv.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

longer meets the qualification as President and/or Vice-President as referred to in the Constitution of the State of the Republic of Indonesia of the Year 1945.

4. The Effectiveness of Disputes Settlement on the Result of Presidential Election 2014 in Constitutional Court

Article 201 paragraph (3) Law No. 42 of 2008 on Presidential Election explains that the Constitutional Court decides the disputes based on the objections referred to in paragraph (1) and (2) at least 14 days from the petition accepted in the Constitutional Court.

The reading of the Constitutional Court verdict on the dispute of Presidential Election 2014 filed by the candidate No. 1 Prabowo Subianto-Hatta Rajassa is in the schedule determined by the Constitutional Court on Thursday September 21, 2014. It means that the Constitutional Court conducted his duties based on the law regulated in the Constitutional Court Act No. 4 of 2014, that they only have 14 days of working to settle the dispute of Presidential Election.

Although only 14 days to complete, Hamdan Zoelva, Chairman of the Constitutional Court can confidently settle a lawsuit related to the presidential election. “Hamdan argues that this is not like the legislative elections. So, indeed we have only got 14 days time which is not so long. But, based on the experience, the Constitutional Court may finish the disputes, said the former politician of the Crescent Star Party.”⁹⁴²

The Proceedings of Presidential Election dispute began on August 6, 2014 to hear the oral testimony of the applicant, Prabowo Subianto-Hatta Rajasa. The lawyer of Prabowo-Hatta alleged that there were structured, systematic, and massive violation of regulation on the process of Presidential Election 2014.

In addition, the Clerk of the Constitutional Court, Hani Adhani also added that 14 days which is owned by the Constitutional Court to settle the disputes on Presidential Election 2014 is considered sufficient because the trial applied to settle the Presidential Election disputes fast, simple, and low cost or called speedy trial.

⁹⁴² Berita Detik: Penyelesaian Sengketa Pemilu 2014 Lebih baik dari 2009, written by **hat/fdn**, available on <http://news.detik.com/berita/2630686/ketua-mk-penyelesaian-sengketa-pemilu-2014-lebih-baik-dari-2009> access on August 7, 2015. At 19.15 p.m.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

Based on the previous discussion, the dispute settlement on the Result of Presidential Election 2014 is considered as an effective settlement due to some reasons:

1. Effectiveness is a success in achieving targets or beneficiaries that have been set in every activity or program. The level of effectiveness can be measured by comparing the predetermined plans with the real results that have been realized and in this case The Constitutional Court can resolve all proceedings until decision-making appropriating as planned, therefore, it can be called as effective process of disputes settlement.
2. Applicant, Respondent, and Related Parties can accept the decision that has been made by the Constitutional Court with the official statement from the Applicant, Prabowo Subianto:

“Good evening, friend. Tonight I want to express my gratitude and highest appreciation to all friends who have joined on this Facebook page, trust, support, and prayers' that have been given to me and my partner's brother Muhammad Hatta Rajasa.

Although it can't show substantive justice, the decision of the Constitutional Court must be respected. Tonight I would like to convey to all friends, the trust that has been given to our friends we will never waste it.

*In parliament and at every opportunity, I with Brother Hatta Rajasa and around the Red and White Coalition partners are commitment to continue the strive to realize Indonesia which we aspire”.*⁹⁴³

3. Coalition of Prabowo-Hatta accepted the verdict. “We accept the decision of the Constitutional Court as the final verdict on the election,” Tantowi Yahya said, a spokesman for a coalition of the Red-White, at the Grand Hyatt Hotel, Jakarta.

⁹⁴³ Berita Republika: Ini Pernyataan Resmi Prabowo Sikapi Putusan MK, available on <http://www.republika.co.id/berita/nasional/politik/14/08/22/naoipg-ini-pernyataan-resmi-prabowo-sikapi-putusan-mk> access on September 12, at 09. 20 a.m.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

5. Problem of Disputes Settlement on the Result of Presidential Election 2014 in the Constitutional Court

The result of Presidential Election 2014 brought about controversies that caused the decision of General Election Commission unacceptable entirely by the community, especially the candidate president and vice-president Prabowo Subianto-Hatta Rajasa. According to Prabowo-Hatta, there are many serious violations during the Presidential Election 2014. Hence, Prabowo-Hatta argue that they registered petition to the Constitutional Court regarding the violation happening in the process of Presidential Election 2014.

Candidate President Prabowo Subianto-Hatta Rajasa and the team pointed out same legal action that will be taken⁹⁴⁴, they are as follows:

1. File a lawsuit over the election result with the Constitutional Court
2. Report alleged ethical violations by the General Elections Commission to the Election Organizers Ethics Council (DKPP).
3. File a report with the Election Supervisory Committee (Panwaslu).
4. Report electoral violations to the police.
5. Making a report to the Ombudsman.
6. File a report with the State Administrative Court (PTUN) asking for the KPU on the election result to be annulled.
7. Political maneuver within the People's Representative Council by establishing a Presidential Election Special Committee to evaluate the performance of the KPU. The maneuvering was done by parties within Prabowo-Hatta's coalition.
8. A class action.

Prabowo Subianto took an appeal against the election result to the Constitutional Court of Indonesia, alleging structured, systematic and massive violations and that up to 24,1 million votes were questioned. The first hearing was on 6 August. On 21 August the court delivered a unanimous 9-0 verdict in favour of rejecting all aspects of the appeal. A spokesperson for Subianto stated that his team did not consider the ruling fair, but they would accept the court's

⁹⁴⁴ See the Petition of Prabowo Subianto-Hatta Rajasa No. 1/PHPU-PRES/XII/2014

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

judgement. On the same day, the Election Organizers Ethics Council (DKPP) ruled that there had been some ethical violations. Of the nine local election commissioners dismissed for taking bribes, four of them took money from Prabowo's Gerindra Party⁹⁴⁵

Dispute settlement on the result of Presidential Election 2014 in the Constitutional Court has brought about doubt regarding the effectiveness of the process of Presidential Election dispute in the Constitutional Court. This is because the Constitutional Court Act No. 4 of 2014 that regulate the procedure of dispute settlement on the Presidential Election dispute determine 14 days to resolve the problem.

The Presidential Election 2014 in Indonesia was the practice of democracy in the whole area of the archipelago from Sabang to Merauke that consist of 34 provinces. Considering the huge territory of the country, 14 days are imposible to reveal and prove the violations that occur in almost province in Indonesia although the Constitutional Court apply speedy trial in resolving the disputes of Presidential Election 2014.

According to Heru Widodo as a lawyer from presidential candidate Prabowo-Hatta, to examine a witness need 5-10 minutes, even there are some witnesseswho can reach 15-20 minutes. In facing this fact, the Constitutional Court limits the number of witnesses that can be proposed in the trial and than the Constitutional Court may decide the case appropriating with the time that has been set in the regulation.

This limitation makes the applicant difficult to explore and reconstruct the violations that occured. The violation is structured, systematic, and massive, while the elements of massive occured in almost of Indonesian territory. So that with this available witnesses, it is not enough for the applicant to prove all argument on massive violations occurring in the whole provinces in Inonesia.

Actually, in other cases that has no limited time, the Constitutional Court always incur witnesses or experts untill the problem becomes clear. Constitutional Court has to accomodate about that, because every urge that is not delivered has to be listened.⁹⁴⁶

⁹⁴⁵ Berita Wikipedia: Pemilihan Umum Presiden Indonesia 2014, available on https://en.wikipedia.org/wiki/Indonesian_presidential_election_2014 access on September 12, 2015, at 09.30 a.m.

⁹⁴⁶ Rita Triana Budiarti, 2013, *Kontroversi Mahfud MD di Balik Putusan Mahkamah Konstitusi Jilid 2*, Jakarta: Konstitusi Press, Page 41.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

Based on the formil law, the Constitutional Court has been refering to the Law of Presidential Election in settling the dispute of Presidential Election 2014. But, if we consider to the substantive justice, the time that is given by the law to settle the dispute of Presidential Election is not in favor to the applicant because the time does not accomodate the applicant to tell the argumens.

In the system of the election justice, the right of citizen and right of the candidate are guaranteed from injustice in the election. Injustice can be from the executor of election or the other candidate. If the injustice cannot be proven because a formil reason, so the regulation has to be amanded.

6. Conclusion

Based on the discussion in the previous chapter, it can be concluded that the Constitutional Court can settle the Presidential Election 2014 disputes effectively based on the law and regulation. The parties which were involved in the disputes also accepted the decision of the Constitutional Court.

However, the effectiveness of disputes settlement in the Presidential Election 2014 might be still in term of procedural democracy. On the other hand, in terms of substantive justice, the quality of disputes settlement on the result of Presidential Election 2014 probably is still being questioned. This is because the time that was given by the law to settle the disputes of Presidential Election 2014 is too short, and it is did not accomodate the parties to provide the arguments. In the system of election justice, the right of citizen and right of the candidate are guaranted from injustice in the election. Therefore, if injustice brought about a formil reason, then the regulation has to be amended, and in this case is Article 39 of the Constitutional Court Act No. 4 of 2014.

FATONI UNIVERSITY, PATTANI, THAILAND

18 – 19 APRIL 2016

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FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

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FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

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FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

**THE RESPONSIBILITY OF THE STATE ON TRANSBOUNDARY HAZE
POLLUTION AFTER THE RATIFICATION OF AATHP:
CASE OF INDONESIA**

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Abstract:

Land and forest fires in Indonesia has resulted the economic and ecological losses caused by opening the land (land clearing) with burning land. Land and forest fires in Sumatra and Kalimantan are now not only a national issue, but also became an international issue because it arise the transboundary haze pollution. Beside the loss in Indonesia itself, the smoke also disrupts neighboring countries, such as Malaysia, Brunei and Singapore. Every year Malaysia and Singapore as countries affected by transboundary haze pollution filed a strong protest to the Indonesian government. Based on the principle of international law of state responsibility, Indonesia should be responsible for the transboundary haze pollution. Because of it has disrupted the environment of other countries. In 2014, Indonesia became the last country to ratify ASEAN Agreement on Transboundary Haze Pollution (AATHP). The type of this research is a normative legal research. By using a qualitative descriptive method, the research aims to describe the responsibility of Indonesian government on transboundary haze pollution after the ratification of AATHP. The result shows that Indonesia cannot be required to pay compensation fully because it was a shared responsibility to prevent the transboundary haze pollution and Indonesia also can avoid lawsuits of international law because of transboundary haze pollution. The Indonesian government have to undertake preventive action, which prevents forest fires that often occur as a result of land clearing. The government also has to educate the farmers on how to open land effectively.

Keywords: International Law of State Responsibility, Ratification, AATHP, ASEAN, Indonesia.

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FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

1. Background

Smog problems re-emerged in recent times, land and forest fires in Sumatra and Kalimantan are now not only a national issue, but also an international issue, because this case cause transboundary haze pollution.¹ Transboundary haze pollution is considered one of the major problems in the ASEAN region. It is caused by land/forest fires which mostly derive from Indonesia land and forest fires. The worst forest fire was in 1997-1998 and since then they occur every year with various intensity.²

In 2002 the whole ASEAN members agreed to sign the ASEAN Agreement on Transboundary Haze Pollution (AATHP) in Kuala Lumpur, Malaysia. Although at that time Indonesia has not yet ratified. They draft the ASEAN Agreement on Transboundary Haze Pollution (AATHP) and entered into force officially on November 25, 2003 which aims to prevent and resolve the transboundary haze pollution from land and/or forest fires which should be implemented through national efforts, regional, and international intensive.³

Indonesia has ratified the ASEAN Agreement on Transboundary Haze Pollution (AATHP) on September 16, 2014. The ratification of the AATHP is the right step taken by Indonesia to demonstrate its seriousness in overcoming transboundary haze caused by land and forest fires. The ratification was done following a discussion by a plenary session of the House of Representatives attended by parliamentary members and leadership, as well as ministers of environment, foreign affairs, justice, and human rights.⁴

Transboundary haze pollution from forest fires is against the principles of international environmental law. One principle is "*Sic utere tuo ut alienum non laedes*" which determines that a State is prohibited from or permitted activities that may harm other

¹Yordan Gunawan, *Ekspor Asap dan Ratifikasi AATHP*, Kedaulatan Rakyat Newspaper, Wednesday, November 5, 2014, <http://krjogja.com/liputan-khusus/analisis/3484/ekspor-asap-dan-ratifikasi-aathp.kr> accessed on January 7, 2015 at 2am

² Laely Nurhidayah, 2012, *The Influence of International Law upon ASEAN Approaches in Addressing Transboundary Haze Pollution in the ASEAN Region*, NUS-Asian SIL Young Scholars Workshop, NUS Law School, p.2

³ Teddy Prasetiawan, *Implikasi Ratifikasi AATHP Terhadap Pengendalian Kebakaran Hutan dan Lahan di Indonesia*, Info Singkat, Pusat Pengkajian, Pengolahan Data dan Informasi (P3DI) Sekretariat Jenderal DPR RI, Jakarta, Vol. VI, 2014

⁴ Indonesia ratifies ASEAN agreement on transboundary haze pollution, <http://www.antaraneews.com/en/news/95683/indonesia-ratifies-asean-agreement-on-transboundary-haze-pollution>, accessed on February 14, 2015 at 4.30 am

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

countries, and the other principle is "*Good Neighborliness*" which basically says that the principle of the sovereignty of the territory of a State shall not be disturbed by other States.⁵

Another principle of international law for the protection of the environment is "*in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction*".⁶In principle 21 of the Stockholm Declaration in 1972 also stated, "*responsibility to ensure that activities within reviews their jurisdiction or control do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction*".⁷

These principles can be the basis for asking the liability of the state against other state that has committed acts that harm other countries. According to international law, state responsibility arises when the related state harms other countries. In this case, the forest fires in Indonesia have a negative impact on Malaysia and this happens almost every year without any serious follow-up from the Indonesian government.

2. The History of Transboundary Haze Pollution in Southeast Asia

Forest fire became a global attention as environmental and economic issues, especially after the disaster of *El-Nino*⁸ in 1997-1998 scorching 25 million hectares of forest land area all over the world. Fires are considered a potential threat to sustainable development because of direct effects to the ecosystem, contributing to carbon emissions, and its impact on biodiversity.⁹

⁵ Mohammad Naqib Ishan Jan, 2008, *Principles of Public International Law: A Modern Approach*, Malaysia, IIUM Press, p. 322

⁶ United Nations (UN), Rio Declaration on Environment and Development 1992, Principle 2

⁷ Stockholm Declaration 1972, Declaration of the United Nations Conference on the Human Environment, Principle 21

⁸ *El Nino* is a phenomenon of deviations sea conditions characterized by increased sea surface temperature (SST) in the Pacific Ocean around the equator (equatorial pacific) especially in the central and eastern part (around the coast of Peru). Because the ocean and the atmosphere are two interconnected systems, the deviation ocean conditions caused a deviation on the atmospheric conditions that ultimately result in climate change.

⁹ Luca Tacconi, 2003, *Kebakaran Hutan di Indonesia: Penyebab, Biaya dan Implikasi Kebijakan*, Bogor, Center for International Forestry Research, p.1

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

Since 1982, there have been five major fire outbreaks in Southeast Asia with small fires occurring almost annually. The major fire was in 1997-1998, destroying an estimated land and forest area of more than 9 million hectares (ha) in Indonesia alone.¹⁰ From October through November 1997, fires in Indonesia and the resulting haze made front-page news around the world as the haze spread as far as the Philippines to the north, Sri Lanka to the west, and northern Australia to the south.¹¹

In the middle of 1997, forest fires in Indonesia began to affect neighboring countries, spreading thick clouds of smoke and haze to Malaysia and Singapore.¹² Seasonal rains in early December brought a brief respite but soon after, the dry conditions and fires returned. By 1998, Brunei and to a lesser extent, Thailand, Vietnam and the Philippines have also felt the haze. By the year of 1997-1998 fire episode was finally over, some 8 million hectares of land was burned while countless millions of people suffered from the effects of air pollution.¹³

3. The Impact of Transboundary Air Pollution in Southeast Asia

Haze pollution means smoke resulting from land and/or forest fire which causes deleterious effects of such a nature as to endanger human health, harm living resources and ecosystems and material property and impair or interfere with amenities and other legitimate uses of the environment.¹⁴ In windless conditions haze tends to remain in one location, creating adverse health effects including reduced lung capacity in young people, cardiovascular problems, and reduced life expectancy. People living in areas affected by haze may deal with it for weeks or months at a time, breathing in smoke particulates until a storm system powerful enough to move or dissipate the dense, “hazy” air passes through the affected area.

Tropical peat land fires in Indonesia are generally caused by illegal human activities, including:¹⁵

¹⁰*Ibid.*

¹¹The Asian Forest Fires of 1997-1998,

http://rainforests.mongabay.com/08indo_fires.htm, accessed on June 20, 2015 at 10am

¹² David Glover and Timothy Jessup, 2006, *Indonesia's Fires and Haze, The Cost Catastrophe*, Singapore, Institute of Southeast Asian Studies and International Development Research Center, p. 1

¹³*Ibid.*,

¹⁴ Article 1, Point 6, ASEAN Agreement on Transboundary Haze Pollution

¹⁵ Mark E Harrison, Susan E Page, Suwido H Limin, The Global Impact of Indonesian Forest Fires, *Biologist*, London, The Institute of Biology, Volume 56 Number 3, August 2009

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

1. *Land Clearing*: the area of peat-swamp forest (PSF) being allocated for plantations and consequently being burned for land clearance is increasing annually and these fires are frequently out of control. Indonesia is the world's largest palm-oil producer.
2. *Use of fires as a weapon in land tenure/use disputes*: Uncertain land tenure and access rights with consequent conflicts can contribute to increase burning. Smallholders can become frustrated at being unable to have their claims heard in a fair and transparent judicial system and resort to the use of fire as a weapon to reclaim land for agriculture.
3. *Fire for resource extraction and other purposes*: this takes many guises (e.g. hunting, burning waste) but is generally of low importance.
4. *Accidental fire*: these are often caused by discarded cigarettes or unprotected cooking fires, following increasing human access into peat land areas along newly-constructed logging tracks and canals.

Besides, the land and forest fires in Indonesia also generally caused by peat land fires, peat land fire is the most contribute factor caused the haze pollution, since it contains the high level of carbon.

4. Indonesia Ratification of the ASEAN Agreement on Transboundary Haze Pollution

The ASEAN Agreement on Transboundary Haze Pollution (AATHP) is a regional treaty signed by 10 ASEAN countries (Brunei, Cambodia, Laos, Malaysia, Myanmar, Singapore, Thailand, Vietnam and Indonesia) that came into force in 2003. Indonesia only ratified the treaty on 16 September 2014.¹⁶The agreement requires parties to develop and implement prevention, monitoring and mitigation measures, respond to information requests made by affected states, and take legal or other measures to implement obligations under the agreement.

The objective of this agreement is to prevent and monitor the transboundary haze pollution as a result of land and/or forest fires which should be mitigated, through concerted national efforts and intensified regional and international co-operation. This should be

¹⁶Southeast Asia's Transboundary Haze: Health Risk Liabilities, <http://earthsecurity.org/earth-security-index/south-east-asias-transboundary-haze-health-risk-liabilities/>, accessed on July 4, 2015 at 2.50pm

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

pursued in the overall context of sustainable development and in accordance with the provisions of this agreement.¹⁷

The Agreement is the first regional arrangement in the world that binds a group of affected states to tackle transboundary haze pollution resulting from land and forest fires. It has also been considered as a global role model for the handling of transboundary issues. The ASEAN Agreement on Transboundary Haze Pollution (AATHP) is a legally binding environmental agreement signed in 2002 by all ASEAN nations to reduce haze pollution in Southeast Asia.¹⁸

On September 16, 2014, Indonesia ratified the Association of Southeast Asian Nations (ASEAN) Agreement on Transboundary Haze Pollution (Haze Agreement), initially signed in 2002. It was the last of the ten signatory nations to ratify the pact; the other participants are Brunei Darussalam, Burma, Cambodia, Laos, Malaysia, the Philippines, Singapore, Thailand, and Vietnam.¹⁹ After ratifying the agreement, Indonesia will receive several benefits;²⁰

1. Playing an important role in making decisions and taking active part in directing ASEAN policies on combating land and/or forest fires;
2. Protecting the Indonesian community from the impact of land and/or forest fires detrimental to human health;
3. Protecting land and forests from land and/or forest fires; and
4. Contributing to the control of land and/or forest fires which lead to transboundary haze pollution.

5. Indonesian Government's Policy toward Transboundary Haze Pollution in Southeast Asia

The Indonesian government did ban using fire to clear land in 1995, but this ban has not been effectively enforced due to Indonesia's relative poverty and the fact that slash-and-burn agriculture is a traditional land-clearing technique believed to create more fertile land.²¹

¹⁷ Article 2, ASEAN Agreement on Transboundary Haze Pollution

¹⁸ ASEAN Agreement on Transboundary Haze Pollution, http://haze.asean.org/?wpfb_dl=32, accessed on June 25, 2015 at 2pm

¹⁹ ASEAN; Indonesia: Regional Haze Agreement Ratified, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_1205404126_text, accessed on July 3, 2015, at 4.29pm

²⁰ RI ratifies ASEAN agreement on transboundary haze pollution, <http://www.antaraneews.com/en/news/95689/ri-ratifies-asean-agreement-on-transboundary-haze-pollution>, accessed on July 4, 2015 at 8.40pm

²¹ *Ibid.*, p.36

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

The efforts that have been undertaken by the Ministry of Forestry in land and forest fire control, among others: spread the maps of forest fire in prone provincial level; urges the Governor in Kalimantan, Sumatra and Sulawesi in order to be ready to face land and forest fires in 2014 and attempts to anticipate the *El Nino*; and conducted simulations, technical guidance and patrol extinguishing forest fires in fire-prone provinces.²²

The government through cooperation between the ministries and authorized body has conducted several measures, among others: first, the extinguishing against the land and forest fires; second, the extinguishing in the air through water bombing and weather modification techniques; and Third, socialization and law enforcement.²³

Some steps have already been taken by Indonesia Government, in 2009, Law Number 32 of 2009 on Environmental Protection and Management was enacted in Indonesia imposing a maximum fine of Rp.10 billion (approximately US\$800,000)²⁴ and up to ten years in prison for individuals or corporations engaging in land burning activities. This has led to a number of successful prosecutions in the past two years. More recently, the Indonesian government has introduced the Indonesian Sustainable Palm Oil²⁵ scheme, which bans the use of fire in plantation development, and will be mandatory for all palm oil companies in Indonesia by end-2014.²⁶

In the case of law enforcement there has been increasing legal efforts taken to reduce the number of the offense of forest fires. In the report of KLH²⁷ in 2012 there were two cases that have been handled, namely PT Kalista Alam and PT Surya Panen Subur. While in 2013, there were 7 criminal case files that had been submitted to the General Attorney of Republic

²² Teddy Prasetiawan, *op. cit.*, p.10

²³ *Ibid.*,

²⁴ Article 98, Law Number 32 of 2009 on Environmental Protection and Management

²⁵ The Indonesian Sustainable Palm Oil (ISPO) Foundation is a national non-profit organization aiming to improve the sustainability and competitiveness of the Indonesian palm oil industry and contribute to the Indonesian government's objectives to reduce greenhouse gases emissions and draw attention to environmental, <http://www.sustainablepalmoil.org/>.

²⁶ Indonesia's Ratification of the ASEAN Agreement on Transboundary Haze Pollution, retrieved from, <http://www.herbertsmithfreehills.com/insights/legal-briefings/indonesias-ratification-of-the-asean-agreement>, accessed on July 5, 2015 at 5.11pm

²⁷ Kementrian Lingkungan Hidup (KLH) or The Ministry of Environment is the Indonesian government ministry in charge of environmental affairs. The Ministry of Environment headed by a Minister of the Environment.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

of Indonesia and one civil case file that is still in the process of drafting a lawsuit.²⁸ Since 2013 until now, the police have conducted 41 prosecutions against the offenders, especially to the palm oil plantation companies. From the 41 prosecutions, the 25 offenders have been named as the suspects and even already punished started from 8 months to 8 years.²⁹

In terms of technical implementation mandated by the ASEAN Agreement on Transboundary Haze Pollution (AATHP), Indonesian government has conducted several measures to prevent and control land and/or forest fires, among others:³⁰

1. To conduct the socialization of AATHP and capacity building massively and sustainable to the ministries/agencies, business community, society, NGOs, and local governments in areas prone to land and forest fires.
2. To commit good coordination inter-ministerial/agency, local government or with the society based on Indonesia Comprehensive Plan of Action on Transboundary Haze Pollution such as:
 - a. Mapping prone areas of land and forest fires;
 - b. Strengthening the data and information relating to hot-spot, the distribution of smoke, burnt area mapping, Fire Danger Rating System (FDRS), SOP development in the prevention and control of land and forest fires, and peat land management. Even LAPAN³¹ has provided training to Malaysia in the development FDRS through remote sensing system;
 - c. Strengthening and building the capacity of caring fires society which conducted through the socialization, early prevention activities and training
 - d. Disaster management of coordinated smoke in terms of emergency response, among others: through the fire fighting forces and weather modification operations.

²⁸ KLH Selidiki 29 Kasus Kebakaran Hutan di Riau, <http://news.okezone.com/read/2014/08/07/337/1021369/klh-selidiki-29-kasus-kebakaran-hutan-di-riau>, accessed on July 10, 2015 at 8.00pm

²⁹ Membakar Akar Kebakaran Hutan di Riau, http://www.kompasiana.com/yosa/membakar-akar-kebakaran-hutan-di-riau_54f81a0ea3331127658b4b1f, accessed on July 11, 2015 at 4.15am

³⁰ Kementerian Lingkungan Hidup - Republik Indonesia, retrieved from, <http://www.menlh.go.id/indonesia-meratifikasi-undang-undang-tentang-pengesahan-asean-agreement-on-transboundary-haze-pollution-persetujuan-asean-tentang-pencemaran-asap-lintas-batas/>, accessed on January 10, 2015 at 11.44am

³¹ Lembaga Penerbangan dan Antariksa Nasional (LAPAN) or National Institute of Aeronautics and Space is a Non-Government Institutions of the Republic of Indonesia who carry out government duties in the field research and development of aerospace and its utilization, <http://www.lapan.go.id/>

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

3. To commit the law enforcement (criminal and civil law) to the offenders (individual or corporations) of burning land and forest and transboundary haze pollution which is resulting environmental damages. Criminal law enforcement is conducted, integrated and coordinated by PPNS KLH³² and Police investigators together and through the mechanism of multi-doors.³³ Civil law enforcement conducted through a lawsuit of compensation against the offenders of the burning of land and forest to restore the quality of the environment.
4. To strengthen the institutional and legislation which supports the policy of land clearing without burning (zero burning policy) and the prevention of the land or forest fires and transboundary haze pollution.

6. The Responsibility Before Ratification of AATHP

For a long time, transboundary haze pollution has been a concern of international law. The first and famous case of transboundary haze pollution is the Trail Smelter Arbitration. Until recently, transboundary haze pollution was high on the environmental agenda in many regions of the world including Europe, the United States and South East Asia. In addition, the threat of transboundary haze pollution is now on a global scale with such ozone depletion and climate change which requiring cooperation to tackle this problem.³⁴

According to Draft Articles on Responsibility of States for Internationally Wrongful Acts, “*every internationally wrongful act of a State entails the international responsibility of that State*”.³⁵ An internationally wrongful act exists when conduct consisting of an action or omission is attributable to the State under international law; and that conduct constitutes a breach of an international obligation of the State.³⁶

³²PPNS KLH is the Civil Investigators of Environmental Ministry of the Republic of Indonesia.

³³Multi-doors mechanism is a case management guidelines launched by the Police, the Ministry of Environment and the General Attorney to deal with cases related to natural resources and forestry, especially the problem of forests and peat lands.

³⁴Laely Nurhidayah, *op.cit*, p.5

³⁵Article 1 of Draft articles on Responsibility of States for Internationally Wrongful Acts

³⁶Alan Khee-Jin TAN, 2015, *The ‘Haze’ Crisis in Southeast Asia: Assessing Singapore’s Transboundary Haze Pollution Act 2014*, Singapore, NUS Law Working Paper 2015/002, p.6

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

When a state causes an injury to another state, the responsible state is liable to make full reparation to the injured state. Under Article 31 Draft Article on Responsibility of State for Internationally Wrongful Act, reparation may take the form of restitution, compensation, and satisfaction.³⁷

1. Restitution: restitution involves the restoration of a situation that existed before the wrongful act was committed, provided that this is possible does not impose a greater burden on the responsible state than compensation.³⁸ A state responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:³⁹
 - a. is not materially impossible;
 - b. does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation
2. Compensation: the state responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.⁴⁰
3. Satisfaction: the state responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.⁴¹ Satisfaction may consist of in an acknowledgment of the breach, an expression of regret, a formal apology.⁴² Satisfaction will be necessary where restitution or compensation is inadequate.⁴³

³⁷Ademola Abass, 2012, *International Law: Text, Cases, and Materials*, New York, United States, Oxford University Press, p.295

³⁸*Ibid*, p.295

³⁹Article 35, Draft Article on Responsibility of State for Internationally Wrongful Act

⁴⁰Article 36, Draft Article on Responsibility of State for Internationally Wrongful Act

⁴¹Article 37, Draft Article on Responsibility of State for Internationally Wrongful Act

⁴²Muhammad Naqib Ihsan Jan, *op.cit*, p.234

⁴³Ademola Abass, *op.cit*, p.296

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

Based on the state responsibility theory of International Law Commission's Draft Article on Responsibility of State for Internationally Wrongful Act, the Indonesian government should be responsible for the transboundary haze pollution.

The first responsibility that must be carried by the Indonesian government based on the concept of the state responsibility in international law is restitution. Indonesia should perform the restoration of situation to the affected countries of transboundary haze pollution until the original condition of a state before affected by haze pollution either material loss or immaterial losses as a form of state responsibility at the highest level. Indonesia also have to pay compensation to the affected countries by replacing the losses caused by haze pollution and convince the neighboring countries that the pollution caused by the haze will not be repeated again. Then, in conditions where the replacement of economically, either restitution or compensation do not allow, acknowledgment of the breach, an expression of regrets, and a formal apology become a form of responsibility that must be done by the state that led to the haze pollution.

Many environmentalists hold that the principle for transboundary pollution, as declared in Principle 21 of the Stockholm Declaration, is now a norm of customary international law.⁴⁴ To cause damage to other countries is considered as a breach of international law. States are supposed to avoid negative externalities and to compensate for the damage the cause to other states. States are supposed to terminate the activity that led to the occurrence of externalities.⁴⁵

Principle 21 from the 1972 Stockholm Conference has become one of the most important principles used in international environmental law.⁴⁶ It states that:

“States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities

⁴⁴ Simon S.C. Tay, 1998, *South East Asian Forest Fires: Haze Over ASEAN and International Environmental Law*, Hoboken, United Kingdom, Blackwell Publishers Ltd, p.202

⁴⁵Henriette Litta, 2012, *Regimes in Southeast Asia: an Analysis of Environmental Cooperation*, Germany, Springer Science Business Media. p.97

⁴⁶ Ademola Abass, *op.cit*, p.622

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

*within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.*⁴⁷

Besides, in international law, states are not allowed to conduct or permit activities within their territories, or in common spaces, without regard for the rights of other states or for the protection of the environment⁴⁸. This point is referred to as the principle of “good neighborliness”⁴⁹ or “*sic utere tuo ut alienum non laedes*” in Article 74 of the UN Charter.

The Principle refers to social, economic and commercial matters, but has been extended to environmental matters by rules promoting international cooperation. It applies particularly to activities carried out in one state that might have adverse effects on the environment of another state or in areas beyond national jurisdiction.⁵⁰

The commitment to environmental cooperation is reflected in many international agreements and supported by state practice. According to international lawyer Allen Tan, state responsibility and liability for Indonesia under international law for the 1997-98 fires can clearly be made out because Indonesia failed to “exercise its due diligence obligation to prevent and punish the activities of its private citizens who were deliberately setting fire.”⁵¹

7. The Responsibility After Ratification of AATHP

To reduce the impacts of transboundary haze pollution, the ASEAN countries realize that they need to strengthen national policies and strategies to prevent and mitigate the land and forest fires that cause the transboundary haze pollution. The ASEAN Agreement on Transboundary Haze Pollution is an international agreement that made between the countries in the written form.

⁴⁷ Principle 21 of Stockholm Declaration 1972, Declaration of the United Nations Conference on the Human Environment

⁴⁸ Mirjam van Harmelen, Matthijs S. van Leeuwen and Tanja de Vette, 2005, *International Law of Sustainable Development: Legal Aspects of Environmental Security on the Indonesian Island of Kalimantan*, The Hague, Netherlands, Institute for Environmental Security, p.35

⁴⁹ Article 74 of the United Nations (UN) Charter, <http://www.un.org/en/documents/charter/chapter11.shtml>

⁵⁰ Regina S. Axelrod and Stacy D. Van Deever's, 2014, *The Global Environment: Institutions, Law, and Policy*, Fourth Edition, California, CQ Press an Imprint of SAGE Publications, p.66

⁵¹ Henriette Litta, *op.cit.*, p.97

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

According to Article 2 of the Vienna Convention the Law of Treaties (1969):

*“Treaty means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”*⁵²

The definition of international agreement also stated in the Article 1 of Law on Diplomatic Relationship (1999):

*“Treaty means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”*⁵³

Therefore, it can be concluded that the international agreement is all agreements made by the state as a subject of international law, which is governed by international law, binds the state (parties) and have legal consequences.⁵⁴

In international law, international agreement that have been made, will create binding obligations for the state (the parties), and the forces binding of international agreements stated in the Article 26 Vienna Convention on the Law of Treaties 1960: *“Every treaty in force is binding upon the parties to it and must be performed by them in good faith”*⁵⁵ or it called as the principle of *pacta sun servanda*.⁵⁶

As the sovereign country, Indonesia has been actively involved in diplomatic relationships and established the international agreements with other countries both bilaterally and multilaterally. In implementing the International agreements, Indonesia follows the principle of primacy of national law which means that the national law has a higher status than international law.

⁵²Article 2, 1969 Vienna Convention on the Law of Treaties

⁵³ Article 1, Law on Diplomatic Relationship 1999

⁵⁴Boer Mauna, 2013, *Hukum Internasional: Pengertian, Peranan dan Fungsi dalam Era Dinamika Global*, Bandung, P.T. Alumni, p.85

⁵⁵ Article 26, 1969 Vienna Convention on the Law of Treaties

⁵⁶*Pacta Sunt Servanda* is a Latin term which means agreements must be kept. It is the principle in international law which says that international treaties should be upheld by all the signatories. The rule of *pacta sunt servanda* is based upon the principle of good faith. The basis of good faith indicates that a party to the treaty cannot invoke provisions of its domestic law as a justification for a failure to perform. The only limit to *pacta sunt servanda* is the peremptory norms of general international law known as “*jus cogens*” which means compelling law.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

Based on the agreement of the countries that have ratified AATHP, there is a main objective contained in Article 4 (point 1) of AATHP, namely:

“Co-operate in developing and implementing measures to prevent and monitor transboundary haze pollution as a result of land and/or forest fires which should be mitigated, and to control sources of fires, including by the identification of fires, development of monitoring, assessment and early warning systems, exchange of information and technology, and the provision of mutual assistance.”⁵⁷

Article 27 of ASEAN Agreement of Transboundary Haze Pollution also states:

“Any dispute between Parties as to the interpretation or application of, or compliance with, this agreement or any protocol thereto, shall be settled amicably by consultation or negotiation.”

It means that, even if there is a willful breach of the clauses in the agreement it will not lead to any national or international liability and that it can be resolved only through friendly cooperation.⁵⁸ After ratification the ASEAN Agreement on Transboundary Haze Pollution, Indonesia as the pollutant country cannot be required to pay compensation fully because it was a shared responsibility of the ASEAN countries. Shared responsibility means Indonesia should be responsible along with another ASEAN Countries in addressing transboundary haze pollution.

By ratifying the AATHP Indonesia can avoid the lawsuits of international law of transboundary haze pollution problem. Although based on the international law of state responsibility Indonesia can be required by other countries to compensate the affected countries by haze pollution from burnt land in Indonesia. Because of that, after ratification of the ASEAN Agreement on Transboundary Haze Pollution, Indonesia cannot be blamed because it was the responsibility of the ASEAN countries, despite the emergence of the haze pollution originating from Indonesia. Beside, in AATHP, the addressing haze pollution will not make the Indonesia legal system change as a result of the ratification of the agreement.

⁵⁷ Article 4, ASEAN Agreement on Transboundary Haze Pollution

⁵⁸ Ayyappan Palanissamy, Haze Free Air in Singapore and Malaysia-The Spirit of the Law in Southeast Asia, *International Journal of Education and Research*, Montreal, Contemporary Research Center, Vol.1 No. 8 August 2013. p.4

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

8. Conclusion

Based on the description in the previous chapter, the research can be concluded as follows: Before ratification the ASEAN Agreement on Transboundary Haze Pollution, the first responsibility of Indonesian government to the haze pollution based on the International law of state responsibility is restitution that Indonesia should perform the restoration of the situation to the affected countries to the original condition before they were affected. Then, Indonesia has to pay compensation to the affected countries by replacing the loss caused by haze. The last is Indonesia should undertake the satisfaction such as expression of regret and offer an apology and it will be necessary where the restitution and compensation is inadequate.

After ratification the ASEAN Agreement on Transboundary Haze Pollution, Indonesia as the pollutant country of haze pollution in Southeast Asia cannot be required to pay compensation fully because it was a shared responsibility of the ASEAN countries. Indonesia also can avoid lawsuits of international law because of transboundary haze pollution.

9. Suggestion

The Indonesian Government have to undertake preventive action, which prevents forest fires that often occur as a result of land clearing, so that the haze pollution which caused by land and forest fire will not happen again. The government also has to educate the farmers on how to open land effectively without burning it and if forest fires cannot be overcome and avoided, Indonesia has to ask for help to another countries such as Singapore and Malaysia as stated in AATHP.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

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18 – 19 APRIL 2016

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18 – 19 APRIL 2016

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FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

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FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

**THE PROTECTION OF SMALL AND MEDIUM ENTERPRISES IN
YOGYAKARTA TOWARDS ASEAN ECONOMIC COMMUNITY BASED ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

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Abstract:

The ASEAN Economic Community (AEC) is one of the pillars of the ASEAN Community were set out in the Bali Concord II. AEC shall be the goal of regional economic integration by 2015. AEC envisages the following key characteristics: (a) a single market and production base, (b) a highly competitive economic region, (c) a region of equitable economic development, and (d) a region fully integrated into the global economy. Yogyakarta is a city in Indonesia where many citizens are involved in the business, actually in small and medium-sized enterprises (SMEs). Based on the data obtained from the Department of Trade, Industry and Cooperatives Yogyakarta, in 2015 there were 230.047 SMEs industries. With the increasingly fierce competition as a result of the single market of the AEC will very likely have an impact on the survival of these SMEs, since many imported-products will flood the domestic market. Indonesia has ratified International Covenant on Economic, Social and Cultural Rights (ICESCR). On October 28, 2005, the Indonesian government ratified the ICESCR into ICESCR Ratification Act 2005. This study aims to analyze the protection of small and medium enterprises in Yogyakarta towards ASEAN Economic Community based on economic, social and cultural rights. The study is normative legal research which is conducted through library research. The results shows the government has a binding obligation to take various measures and policies to implement the obligation such as “to respect”, “to protect” and “to fulfill” human rights toward SMEs in Yogyakarta, especially in Economic, Social and Cultural Rights.

Keywords: AEC 2015, SMEs, Yogyakarta, Economic, Social and Cultural Rights

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FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

1. Background

The implementation of ASEAN Economic Community (AEC) was implemented in the end of 2015. The AEC is one of the pillars of the ASEAN Community were set out in the Bali Concord II. ASEAN hopes to establish a single market and production in the end of 2015.¹ The ASEAN Economic Community shall be the goal of regional economic integration by 2015. AEC envisages the following key characteristics: (a) a single market and production base, (b) a highly competitive economic region, (c) a region of equitable economic development, and (d) a region fully integrated into the global economy.²

The first AEC characteristic seeks to create a single market and production base through free flow of goods, services, investment, skilled labor and freer flow of capital. The second characteristic helps to create a business-friendly and innovation-supporting regional environment through the adoption of common frameworks, standards and mutual co-operation across many areas, such as in agriculture and financial services, and in competition policy, intellectual property rights, and consumer protection. It also supports improvements in transport connectivity and other infrastructure networks. The third characteristic seeks to achieve equitable economic development through creative initiatives that encourage small and medium enterprises to participate in regional and global value chains and focused efforts to build the capacity of newer ASEAN Member States to ensure their effective integration into the economic community. The fourth characteristic envisages ASEAN's full integration into the global economy pursued through a coherent approach towards external economic relations, and with enhanced participation in global supply networks.³

Indonesia's readiness to facing the ASEAN Economic Community 2015 can be seen from the comparison aspect of economic growth, the national export growth and Gross Domestic Product (GDP). The readiness of Indonesia can be viewed from the aspect of economic growth. Based on the economic growth report that was launched by the International Monetary Fund (IMF) in 2012, it appears that in the last 10 years of economic

¹ Ana Syukriah, 2013, "Peningkatan Eksistensi UMKM Melalui *Comparative Advantage* dalam Rangka Menghadapi MEA 2015 di Temanggung", *Economics Development Analysis Journal*, Vol.2 No.2 2013, p. 111.

² ASEAN, ASEAN Economic Community, <http://www.asean.org/communities/asean-economic-community> Jakarta, accessed on Wednesday, October 28, 2015, at 12.30 a.m.

³ ASEAN, AEC, <http://www.asean.org/storage/2012/05/56.-December-2015-Fact-Sheet-on-ASEAN-Economic-Community-AEC.pdf> Jakarta, downloaded on Monday, February 8, 2016, at 1.30 p.m.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

growth in Indonesia is very stable in the range of 5.5 percent, \pm 1 per cent with an average growth of 6.11 percent, from 2007 to 2012.⁴

Yogyakarta is a city in Indonesia where many citizens are involved in the business, actually in small and medium enterprises (SMEs). From the data obtained from the Industry and Commerce Bureau of Yogyakarta, in 2015 there were 230.047 SMEs industries.⁵ With the increasingly fierce competition as a result of the single market of the ASEAN Economic Community will very likely have an impact on the survival of these SMEs, cause will many imported products that will flood the domestic market.

Small and medium enterprises (SMEs) play a vital role in the development and economic growth. Actually, since small and medium enterprises is the main provider of goods and services it's has a low-income.⁶ So the protection of Economic, Social, and Cultural (ESC) rights of small medium-sized enterprises is very needed towards free market in ASEAN Economic Community in Yogyakarta.

The Economic, Social, and Cultural rights are vague, inherently of a positive nature which required positive measures for their implementation, and resource dependent⁷ becomes the departure point in discussing the justifiability of these rights in this article. Although international law recognizes ESC rights as genuine rights, a lively and contentious debate over the ideological and technical nature of these rights is still ongoing.⁸ The debate about the justifiability of ESC rights has become an issue since the development of human rights.

This study will assess the protection of small and medium enterprises in Yogyakarta towards ASEAN Economic Community 2015 in light with economic, social and cultural Rights. This study will focus on the role of Yogyakarta government to protect ESC rights of small and medium enterprises in Yogyakarta.

⁴ AbduRofiq, Atep, 2014, "Menakar Pengaruh Masyarakat Ekonomi ASEAN 2015 Terhadap Pembangunan Indonesia", *Jurnal Filsafat dan Budaya Hukum*, Jakarta, Vol. 1 No.1 2014. p. 251.

⁵ See, small and medium enterprises data from Industry and Commerce Bureau of Yogyakarta on 2015.

⁶ Tambunan, Tulus, 2012, "*Pasar Bebas ASEAN: Peluang, Tantangan dan Ancaman Bagi UMKM Indonesia*", Jakarta: Kementerian Koperasi dan UMKM. p.32.

⁷ Malcolm Langford, "The Justiciability of Social Rights: from Practice to Theory", in: Malcolm Langford (ed), *Social Rights Jurisprudence, Emerging Trends in International and Comparative Law*, Cambridge: Cambridge University Press, 2009, pp. 3-45.

⁸ Jackbeth K. Mapulanga Hulston, "Examining the Justiciability of Economic, Social and Cultural Rights", *The International Journal of Human Rights*, Vol 6, No. 4, 2002, pp. 29-48.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

2. Research Method

A. The Type of Research

The type of this research is a normative legal research with the international law and Indonesian law approach through the regulations and conventions that regulate it, especially that related with the issue of economic, social and cultural rights. This research would use statute approach,⁹ because it would tell some regulations such as Universal Declaration of Human Rights and other conventions relating to the issue of refugees which applicable to the protection of small and medium enterprises based on economic, social and cultural rights, for instance International Covenant on Economic, Social and Cultural Rights and its Protocol. This research would also use case approach,¹⁰ because this research aims to study the norms or regulations in practice pertaining to the Yogyakarta's protection towards small and medium enterprises.

B. Technique of Collecting Data

The methods of collecting data in this research will be done through library research by literature learning. This method will collect data from reading, analyze, and try to make conclusion from related documents namely convention, laws books, legal journals, and others which related to the main problem as the object of this research.

C. Technique of Data Analysis

The data will be analyzed systematically through juridical thinking. Systematically means the research will be analyzed based on international law and Indonesian law, especially relating to the issue of economic, social and cultural rights. Juridical thinking means it would be connected with the principle of law, conventions, and others related regulations.

⁹ Ibrahim, Johnny, 2006, *Teori dan Metodologi Penelitian Hukum Normatif*, Malang: Bayu Media, p.302.

¹⁰ Ibid p. 321.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

3. Discussion and Result

A. Small and Medium Enterprises in Yogyakarta Towards AEC 2015

SMEs are defined by a variety of different ways depending on the state and other aspects. Therefore, it is necessary to review specific to these definitions in order to obtain an appropriate understanding of SMEs, which adheres to a quantitative measure in accordance with economic progress. In Indonesia,¹¹ there are many different definitions of SMEs based on the interests of the institution to give a definition.

- 1) The Central Statistics Agency (BPS): SMEs is a company or industry with the total workers between 5-19 people.
- 2) Bank of Indonesia (BI): SMEs is a company or industry with characterized by: (a) the capital less than IDR 20 million; (b) for one round from his business only needs IDR 5 million; (c) has some maximum assets of IDR 600 million, excluding land and buildings; and (d) annual turnover of \leq IDR 1 billion.
- 3) Ministry of Cooperatives and Small and Medium Enterprises (Law No. 9 of 1995): SMEs are the economic activities of small-scale of the people and traditional, with a net income IDR 50 million - IDR. 200 million (excluding land and buildings) and annual turnover of \leq IDR 1 billion. SMEs Act 2008, with a net income between IDR 50 million - IDR 500 million and annual net sales of IDR 300 million - IDR 2.5 billion.
- 4) Ministry of Industry and Commerce: a) the Company had assets up to IDR 600 million, excluding land and buildings (Department of Industry before combined), b) the Company has a working capital less than IDR 25 million (Department of Commerce before it merged).

In general, small businesses have characteristics, such as: a self-management, provided the capital itself, a local marketing area, small company assets, and a limited number of employees employed. SMEs is the implementation of the principle of solidarity, democratic economy, independence, balance, progress, sustainability and efficiency of justice, as well as national economic unity. The people's economy is also often called informal sector, because of backwardness and the production volume is very small and not

¹¹ Musa, Hubeis, 2009, "*Prospek Usaha Kecil Dalam Wadah Inkubator Bisnis*". Bogor, Ghalia, p.23.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

equipped with a formal business license¹². The importance of growth and development of SMEs sector regional scale must be considered, especially in the framework of ASEAN economic integration.¹³

SMEs are also an integral part of economic development and growth of the ASEAN Member countries because of the number of SMEs exceeds the number of large companies in both the company and the quantity of the labor force employed. SMEs directly impact the advancement AFEED Program. This is evident from the number of SMEs that stand covers more than 96% of all companies and 50% -85% of domestic work is absorbed by SMEs.¹⁴

SMEs is one of the economic development aspects in Yogyakarta, because so many people involve in SMEs. It can be established by all people which only need a small capital. Moreover, the freedom was the main reason they set up SMEs, many of the founders of SMEs claimed that they were forced to set up SMEs because they already do not like working as a laborer in a factory which has so many rules that should be obeyed at the factory. This is evidenced by the growing number of SMEs from year to year.¹⁵

The author obtains the data of SMEs in Yogyakarta from the related institutions such as the Cooperation and Small Medium Enterprises Bureau of Yogyakarta and Industry and Commerce Bureau of Yogyakarta which are shows the number of SMEs in Yogyakarta with some Indicators, as described below.

Table
Number of SMEs

No.	Sector	2013	2014	2015
I	SMEs			
	By Type of Enterprises			
	Various Enterprises	44,45	47,8	49,9

¹² Mubyarto, 2002, "Siklus Tujuh Tahunan Ekonomi Indonesia (1931-1966-2001-2036)", *Jurnal Ekonomi dan Bisnis Indonesia*, Yogyakarta, Fsakultas Ekonomika dan Bisnis UGM, Vol. 16 No. 3. 2002, p.13.

¹³ Tiurmaida, Masnur, 2014, "Aspek Hukum Peraturan dan Kebijakan Pemerintah Indonesia Menghadapi Liberalisasi Ekonomi Regional Masyarakat Ekonomi ASEAN 2015", *Jurnal Rechtsvinding*, Jakarta, Kementerian Hukum dan HAM RI, Vol. 3. No. 2. 2014, p.166.

¹⁴ Lemhannas RI, 2013, "Peningkatan Peran Indonesia dalam ASEAN Framework on Equitable Economic Development (Eed) Dalam Rangka Ketahanan Nasional", *Jurnal Kajian Lemhannas RI* Edisi 16 2013, p. 61.

¹⁵ Ana Syukriah, Op, Cit, p. 117.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

		2	08	26
	Trading	58,60 1	63,0 26	65,8 23
	Agriculture Industry	55,76 7	59,9 77	62,5 41
	Non-Agriculture Industry	46,39 0	49,8 92	51,7 57
	Total	205,2 10	220, 703	230, 047
II	By Scale Enterprises			
	Micro Enterprises	111,9 12	101, 600	104, 171
	Small Enterprises	51,45 9	67,5 09	71,2 89
	Medium Enterprises	31,12 1	51,5 94	54,5 87
	Large Enterprises	10,71 8	-	
	Data Correction	205,2 10	220, 703	230, 047
III	New Enterprises			
	Target			

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

		24,79 8	90,0 00	90,1 80
	Realization	16,42 1	65,3 33	65,5 93
IV	Detail per Region/City			
	Yogyakarta City	4,643	18,4 20	18,4 70
	Sleman	2,608	10,3 65	10,4 30
	Bantul	4,479	17,8 68	17,9 33
	Kulon Progo	1,578	6,26 8	6,30 8
	Gunung Kidul	3,113	12,4 12	12,4 52
	Total	16,42 1	65,3 33	65,5 93

Sources: Industry and Commerce Bureau of Yogyakarta

Based on data above, SMEs have a huge opportunity to develop their business. However, the development of SMEs in Yogyakarta is still hampered a number of issues. they are still having a barrier to the development of SMEs in terms of two factors: internal factors and external factors of SMEs, where the handling of each of these factors must work together to obtain the maximum results, namely: (1) the internal factor, SMEs is weak in terms of capital, management capabilities, production, marketing and human resources; (2) External

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

factors: the issues arising from competition. For example, the lack of government supports to protect SMEs in term of legislation to facing the AEC 2015.

In other hand, the number of SMEs in Yogyakarta is growth smoothly, we may see from the development each year. The development of SMEs is uncontested; there is also the government action to develop and protect SMEs in Yogyakarta and SMEs gives the highest contribution in Yogyakarta economic development rather than others.

Based on elaboration above shows that the SMEs in Yogyakarta is growth gradually year to year and it would be needed protection from the government. However, they cannot survive to facing the single market and production base, and a region fully integrated into the global economy in AEC 2015 without any protection and action from the government.

B. Economic, Social and Cultural Rights and ICESCR

Everyone is entitled to ESC rights. The ICESCR states that these rights are guaranteed to all without discrimination of any kind such as ‘race’, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. This list is not exhaustive and discrimination is also forbidden on other grounds, including disability, sexual orientation or gender identity, marital or family status, or socio-economic status.

The concept of ESC rights, the state set as the parties have an obligation to the protection of small and medium-sized enterprises. This happens because it is a consequence of ICESCR ratification in the form of our positive law, i.e. ICESCR Ratification Act 2005. Those consequences, according to Eko Prasetyo,¹⁶ briefly mention that the absence of reasons for the whole country to inevitably have to carry out all things which are mentioned in the ICESCR. All these things will be linked to the issue of implementation of the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (Limburg Principles) will be applied in the fulfillment of ESC rights.

Obligations undertaken by states and consequently by the international community, under international human rights instruments shall be implemented in good faith.¹⁷ This standard applies to all parts of the contemporary human rights system. However, many

¹⁶ Result from the Interview with Eko Prasetyo as a head of Centre for Human Rights Studies of UII.

¹⁷ See, in so far as treaty obligations are concerned, this is expressly provided for by Article 26 of the Vienna Convention on the Law of Treaties of 1969: “Every treaty in force is binding upon the parties to the treaty and must be performed by them in good faith”.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

obstacles must be overcome in fulfilling this standard, including that of the relative neglect of economic, social and cultural rights, another problem has been the slow process in clarifying the content of these rights and their corresponding obligations. Greater and more detailed precision has been obtained during later years. However, by way of the “general comments” interpreting the relevant international instruments by the UN Committee on Economic, Social and Cultural Rights.¹⁸

State responsibility in this context is a statement of "commitment" and "goodwill", which does not recognize "half-committed" or "commitment patchy" but "full commitment" to guarantee the non-discrimination principle, including ensuring the equality of men and women to enjoy all ESC rights which is guaranteed in Article 3 of the Covenant. The Covenant gives a significant impact, particularly to the developing country such as Indonesia. The State must guarantee the fulfillment of economic, social and cultural rights of its citizens.

The ratification has consequences to the implementation of human rights, because Indonesia has bound themselves legally among other. The government has an obligation to adopt a treaty that has been ratified into the legislation, well-designed and that has been enacted as Act, the other is that the government has an obligation to bind to take various measures and policies to implement the obligation to respect, to protect and to fulfill human rights. This obligation also followed by other government obligations, namely to create a report relating to the adjustment of law, measures, policies and actions.¹⁹

The formulations in ICESCR, “...undertakes to take step,.. to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present covenant...,” The formula gives an indication that the economic, social and cultural rights is positive rights. As a positive right, then right to economic, social and cultural cannot be prosecuted in court (non-justiciable).²⁰

ICESCR which command the state parties to protect their citizen from the violation of ESC rights, where the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights more specific regulate about the obligation to fulfill requires States to take appropriate

¹⁸ Asbjorn Eide, Catarina Krause, and Allan Rosas (ed.), 2001, *Economic, Social and Cultural Rights*, Netherlands, Martinus Nijhoff Publishers, p. 9.

¹⁹ Adi, Yosep, 2012, “*Hak EKOSOB dan Kewajiban Negara*, Penguatan Pemahaman Hak Asasi Manusia untuk Hakim Seluruh Indonesia”, Lombok: Komisi Nasional Hak Asasi Manusia. p. 5.

²⁰ A. Masyur Effendi. 2005, *Perkembangan Dimensi Hak Asasi Manusia (HAM) Proses Dinamika Penyusunan Hukum Hak Asasi Manusia (Hakham)*, Bogor, Ghalia Indonesia, p. 130

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights.²¹

In line with Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Prof. Dr. Nik Ahmad Kamal Nik Mahmud argues that “*every country who ratify the Covenant should be consistent to implement the Covenant and have to reforming their law which is related to the Covenant. Thus, Indonesia might implement the values of ICESCR into society*”.²²

Based on elaboration above, the government should implement the ICESCR with their consequences such as *to respect, to protect* and *to fulfill* the economic, social and cultural rights. However, Indonesia already bind himself with the covenant as international law which mean Indonesia should run the obligation on it, such as: make or reforming a related legislations and make a progress reports to United Nations.

The protection has to be done in order to implement the obligation *to fulfill* the Economic and social rights of Indonesians. As the member of United Nations (UN); Indonesia is asked by UN Charter to implement such code of conduct in implementing human rights (Article 55 UN Charter), since the center of the purpose of UN is human rights. Therefore, the decisions of Indonesia policy, shall always take in to account the human rights aspect. Moreover, Article 103 of UN charter states: “In the event of a conflict between the obligations of the Members of the United Nation under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail”.

²¹ See, Article 6 of Masstricht Guidelines on Violations of Economic, Social and Cultural Rights stated “Like civil and political rights, economic, social and cultural rights impose three different types of obligations on States: the obligations to respect, protect and fulfill. Failure to perform any one of these three obligations constitutes a violation of such rights. The obligation to respect requires States to refrain from interfering with the enjoyment of economic, social and cultural rights. Thus, the right to housing is violated if the State engages in arbitrary forced evictions. The obligation to protect requires States to prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation of the right to work or the right to just and favourable conditions of work. The obligation to fulfill requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights. Thus, the failure of States to provide essential primary health care to those in need may amount to a violation.”

²² Result from the Interview with Prof. Dr. Nik Ahmad Kamal Nik Mahmud as Professor of Law, International Islamic University Malaysia.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

Therefore, Indonesia government in general and Yogyakarta government in particular have no reason to do not implement ICESCR as their obligations. Hence, these elaborations above give an obvious clue to the states about which obligations that states have to prioritize if they are facing double obligations that contradict each other.²³

From above explanation, shows that the distinguish role of ICESCR with their instruments are very important and needed to fulfill the ESC rights in each country, especially in Indonesia because Indonesia already ratify the Covenant and legally binding with international law. Moreover, Yogyakarta should fulfill their obligations on ESC rights consistently to protect small and medium-sized enterprises towards AEC 2015.

C. The Protection of Yogyakarta Provincial Government to the SMEs towards ESC Rights

Yogyakarta government protection to SMEs towards AEC 2015 is very necessary to shield the economic, social and cultural rights of SMEs. However, Indonesia already ratified ICESCR into Indonesian legal system that has consequences to implement it well. Yogyakarta is the one of cities in Indonesia where they should protect SMEs based on ICESCR.

The government's role is expected as complementary to encouraging the efforts that have been made to improve the competitiveness of SMEs. With a conducive-business climate which is created by the government, it will be easier for SMEs to improve competitiveness, both the competitiveness of companies and the competitiveness of the products produced. Other stakeholders should improve the system of alliances that have been created by SMEs, due to the support of stakeholders in the form of education / training/counseling, promotion and facilitation proven to encourage efforts to improve the competitiveness of SMEs significantly

According to Firsan Edy as the Head of Productivity and Marketing Division at Department of Cooperation and Small Medium Enterprises of Yogyakarta believe that *"The government has conducted several activities to minimize the factors that hinder the development of SMEs by providing soft loans, providing training services to the owners of*

²³ Darrow Mac, 2003 *Between Light and Shadow: The World bank, The International Monetary Fund and International Human Rights Law*, Hart Publishing, p. 127.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

SMEs to be able to expand its business by working with relevant parties, infrastructure development such as road construction, simplify licensing. The government's role would be particularly important for the readiness of SMEs to compete other businesses in utilizing the AEC in 2015".²⁴ Several attempts have been made to empower local governments to SMEs are:

- 1) Improve access to finance;
- 2) Improving the quality of human resources; and
- 3) Facilitating SMEs access related to the information and promotions.

Like previous argumentation, the Head of Integrated Business Service Center (*Pusat Layanan Usaha Terpadu*) at Cooperation and Small Medium Enterprises Bureau of Yogyakarta, Darso argues that *"To preparing the readiness of SMEs towards AEC 2015, Yogyakarta has set up the SMEs Center which is located in the Cooperatives and SMEs Bureau of Yogyakarta. Government hopes with the SMEs center would be a place to promote the product or services from SMEs as well as the products marketing of SMEs from various community groups. Thus, SMEs products would be produced and sold in the market will improve the welfare of society"*.²⁵

According to Eko Riyadi as the Head of Centre for Human Rights Studies of Universitas Islam Indonesia argues that *"Yogyakarta Government should have two kinds of way to protect SMEs towards AEC 2015, those are legal protection and administrative protection"*. The legal protection means the government should protect the ESC rights of SMEs through legislation. Aside, administrative protection is the government should fulfill the ESC rights through give the social insurance such as incentive, program, etc.

In other hand, According Dewo Isnu, Head of Law Bureau of Regional Secretary of Yogyakarta argues that *"Nowadays, Yogyakarta government do not have Regional Regulation or equal regulations to protect the ESC rights of SMEs in Yogyakarta because the government think that the Government Regulation is already clear to be implemented in Yogyakarta"*. However, the role of government to protect ESC rights is very needed.

²⁴ Result from the Interview with Firsan Edy as the Head of Productivity and Marketing Division at Department of Cooperation and Small Medium Enterprises of Yogyakarta

²⁵ Result from the Interview with Darso as the Head of Integrated Business Service Center at Cooperation and Small Medium Enterprises Bureau of Yogyakarta

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

Moreover, the covenants and the guidelines have given a rigid explanation about how to guard and implement the economic, social and cultural rights, Yogyakarta still does not promulgate the legislations to protect small and medium enterprises towards AEC 2015, especially on economic, social and cultural rights.

Based on the discussion above, Yogyakarta has strong efforts to protect the economic, social and cultural rights of SMEs in term of administrative matters such as: incentives, program for SMEs as well as coaching and partnership, etc. Nevertheless, the protection on economic, social and cultural rights of SMEs in term of legislation is still vulnerable. However, ICESCR has an outstanding role to protect SMEs in Yogyakarta and Yogyakarta government should fulfill the ESC rights of SMEs through all aspect equal and consistently.

4. Remarks

A. Conclusion

From the above-cited explanation, the author may conclude that the International Covenant on Economic, Social and Cultural Rights has an outstanding role to shield the small and medium-sized enterprises in Yogyakarta toward ASEAN Economic Community 2015 since ICESCR as a tools to bind government with their obligations to protect SMEs principally in Economic, Social and Cultural rights. Moreover, International Covenant on Economic, Social and Cultural Rights more specific than other covenants which are compose about Economic, Social and Cultural rights. However, ICESCR was ratified into ICESCR Ratification Act 2005. It would be more vigorous to put into effect in Yogyakarta and it as government's guidance to protect small and medium-sized enterprises, especially on ESC rights.

In contrast, the Yogyakarta government's protection on ESC rights within small and medium-sized enterprises toward AEC 2015 is vulnerable in term of legislation because they do not have Regional Regulation neither about small and medium-sized enterprises nor the protection of SMEs. The legislation is momentous to protect small and medium-sized enterprises which raising some consequences on the budgeting, programing and schema to protect SMEs. Nonetheless, the SMEs has been protected by government through administrative fields in term of government policies, such as partnership strengthening, made decision to helping SMEs in term of credit and capital, and make a connection between SMEs and exporter, etc.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

In addition, notwithstanding ICESCR is very meritorious to shade the Economic, Social and Cultural rights of SMEs in Yogyakarta towards AEC 2015. Furthermore, Indonesia notably Yogyakarta should be implementing ICESCR properly to protect the SMEs towards AEC 2015. However, international law is only soft law but the Covenant should be respected by every country which had ratified it and they shall implement covenants appropriately indeed. Otherwise, if Indonesia through Yogyakarta government does not respect and implement the Covenant felicitous even unto ignore ICESCR, it would be “shameful” and “unsavory labeled” by other countries in the international meeting as well as in United Nations meeting.

B. Suggestion

Based on the discussion and conclusion above the author would give recommendations to overcome the problem, the author has two recommendations which are consists of one for Yogyakarta government and another one for ASEAN, those are:

Firstly, Yogyakarta should make Regional Regulation which regulate about small and medium enterprises in term of economic, social and cultural rights protection. However, Regional Regulation is stronger than other regulation in province level.

Secondly, the author suggest that ASEAN should establish institution to settle the violations of economic, social and cultural rights towards ASEAN Economic Community 2015 in particular and violation of Economic, Social and Cultural rights at ASEAN in general. Whatever the form is, it may court as well as European Human Rights Court or arbitration.

FATONI UNIVERSITY, PATTANI, THAILAND
18 – 19 APRIL 2016

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18 – 19 APRIL 2016

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