

Harmonizing Regional Competition Laws and Policies: A Way Forward for ASEAN Economic Growth

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Abstract

The prominent subject of discussion within the context of the ASEAN Economic Community is the harmonization of competition law in the region (AEC). In order to remove and reduce potential barriers to economic activity, ASEAN has adopted free trade through economic integration among its member nations. This study aims to examine why it is crucial to harmonize ASEAN competition law and to determine what the ASEAN business competition law harmonization model looks like. This paper used normative method with utilizing a statutory and a comparative approach which are presented descriptively. The results demonstrated that legal system conflicts can be addressed and legal disparities can be lessened by initiatives at harmonization. To do this, ASEAN must at the very least harmonize three key aspects of ASEAN Member States' competition laws: the substance of the law, law enforcement, and competition commission. In this context, collaboration amongst competition enforcement agencies can be used to implement the ASEAN model of harmonising competition legislation. Cooperation can take the form of notification, information sharing, enforcement cooperation between commissions, consultation, and conciliation.

Keywords: ASEAN, Competition law, Economic community, Free trade, Harmonization.

1. Introduction

In the context of business competition law in ASEAN, the harmonization of business competition law is a very crucial aspect of discussion within the framework of the ASEAN Economic Community (AEC). This is because AEC is a form of economic integration in ASEAN with a free trade system among ASEAN Member Countries. Harmonization of business competition law is a measure needed to ensure that the single market function works effectively. Legal harmonization is described as an effort made through a process to make the national laws of member countries have the same principles and arrangements for anti-competitive behavior issues in the ASEAN region.¹

Until now, there are 9 (nine) countries out of 10 ASEAN Member Countries (Brunei, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam) that have introduced and implemented business competition laws in their respective countries.

¹ Robert Ian Mcewin and Peerapat Chokesuwattanaskul, 'What Is an "Effective" ASEAN Competition Law? A Methodological Note', *The Singapore Economic Review*, 67.05 (2022), 1565-1606 <<https://doi.org/10.1142/S0217590821430013>>.

Meanwhile, Cambodia is a new country that will enforce business competition law and currently the law is in the ratification stage.²

Harmonization of competition law in ASEAN is an important activity to be carried out in ensuring the implementation of a fair competition climate in the ASEAN region. This is done with the aim of inhibiting international cartel behavior, vertical restraints and cross-border mergers. However, the challenge currently faced is that ASEAN does not have a special institution like the European Union, namely the Supranational Institution that can oversee the implementation of business competition activities in the ASEAN region.³

Currently, what exists is the ASEAN Expert Group on Competition (AEGC). AEGC as an official structural institution under ASEAN which aims to provide official guidance, technical assistance, and advocacy regarding business competition law and policy in ASEAN Member Countries, not as a Supranational Institution that can supervise and enforce business competition law in the ASEAN region. During its journey, AEGC has produced several products on competition policy in facilitating ASEAN Member Countries which are developing their competition policies. However, the current achievements of AEGC are only limited to providing facilities and as a reference in preparing regulations and enforcement regarding business competition law and other practice guidelines.⁴

Apart from that, ASEAN Member Countries have differences in a number of dimensions, such as differences in legal, political, economic and socio-cultural systems which have implications for different arrangements regarding business competition law in each country. The Business Competition Laws in each country differ from various aspects, including the purpose of the law, the content/provisions, the legal approach (per se illegal and the rule of reason), and up to the application of the provisions on sanctions. The gap in the provisions of business competition law among ASEAN Member Countries can have a negative effect on the mobility of the competitive climate in the ASEAN region.⁵

In this regard, it is argued that harmonization of competition law can be achieved in two forms, namely enforcement cooperation among member countries and integration of member countries into one unit. The harmonization model of business competition law in ASEAN can be carried out through cooperation in competition enforcement. Enforcement cooperation is a necessity that can be applied to ASEAN, because there is no need to create a new institution (Supranational Institute) or change legal provisions in a substantive manner. This collaboration involves the competition commission in various business competition law practice and enforcement activities. In the context of competition law, enforcement

² Bryane Michael, 'Competition Law in the Asia-Pacific Region Makes Small and Medium Enterprises Poorer without Innovation Law', *Journal of the Asia Pacific Economy*, 26.3 (2021), 506-26 <<https://doi.org/10.1080/13547860.2020.1771821>>.

³ Jayant Menon and Anna Cassandra Melendez, 'Realizing an ASEAN Economic Community: Progress and Remaining Challenge', *The Singapore Economic Review*, 62.03 (2017), 681-702 <<https://doi.org/10.1142/S0217590818400052>>.

⁴ Pornchai Wisuttisak and Mia Mahmudur Rahim, 'ASEAN Energy Sector under Public-Private Partnership: Challenge for Market Governance', *International Journal of Economic Policy in Emerging Economies*, 11.4 (2018), 312 <<https://doi.org/10.1504/IJEPEE.2018.094523>>.

⁵ Angayar Kanni Ramaiah, 'Revisiting MSME Cartel Under Competition Act 2010 in Malaysia: The Thin Line Between Collusion and Cooperation', in *Charting a Sustainable Future of ASEAN in Business and Social Sciences* (Singapore: Springer Singapore, 2020), pp. 349-66 <https://doi.org/10.1007/978-981-15-3859-9_30>.

cooperation has been used as an alternative in harmonization of national business competition law.⁶

For example, in the early 1950s, there was a conflict that arose between the Governments of Canada and the United States which excluded the United States manufacturing market from the Canadian market. Given that the two countries have different antitrust regimes and different law enforcement. Departing from this problem, the US and Canadian governments entered into a negotiation to coordinate enforcement activities aimed at avoiding similar conflicts. For the first time, the two countries entered into a *modus vivendi* cooperation agreement, which became known as the Fulton-Rogers Understanding. Fulton-Rogers' name was taken from a Canadian Minister of Justice and US Attorney General at that time. Under the Fulton-Rogers agreement, the two countries agreed to establish a pathway for joint enforcement of bilateral agreements on anti-competitive behavior issues through notification and consultation. After that, in the 1995s, the Organization for Economic Co-operation and Development (OECD) made a recommendation to encourage member countries to cooperate with each other in enforcing antitrust issues through enforcement cooperation between business competition.⁷

According to Udin Silalahi, the ASEAN's fair and equitable business practices are ensured by the competition law. To help its member nations become more cognizant of ethical and just economic practices, ASEAN has established regional guidelines on competition policy. This policy is not an enforceable norm; it is just intended to be used as a guide. As a result, each ASEAN member country continues to regulate the business rivalry in the home market involving the companies of ASEAN members.⁸ Additionally, according to Alexandr Svetlicinii, the creation of the ASEAN Economic Community (AEC) will turn this group of states into a region with "a single market and production base, a highly competitive economic region, a region of equitable economic development, and a region fully integrated into the global economy" (AEC Blueprint). It assesses the state of implementation of a regional competition law and policy that would level the playing field for companies operating in the AEC. The effectiveness of the existing "ASEAN approach" of coordinating the application of national competition rules throughout the ASEAN jurisdictions is discussed.⁹ A sophisticated type of anti-competitive behavior is also developing as the digital economy grows. According to Nimisha Tailor, there are concerns that online platforms are growing in power and engaging in destructive behavior, such as gathering and using customer data – without consent – to obstruct present and potential rivals. These issues are also a threat to Southeast Asia. This

⁶ Siswanto Ari and Hutajulu Marihot J., 'Indonesian Competition Law Reform in Anticipating the Single Market under the ASEAN Economic Community (AEC)', in *Advancing Rule of Law in a Global Context*, ed. by Heru Susetyo, Patricia Rinwigati Waagstein, and Akhmad Budi Cahyono (CRC Press, 2020) <<https://doi.org/10.1201/9780429449031>>.

⁷ Antonio Capobianco and Aranka Nagy, 'Developments in International Enforcement Co-Operation in the Competition Field', *Journal of European Competition Law & Practice*, 7.8 (2016), 566–83 <<https://doi.org/10.1093/jeclap/lpw076>>.

⁸ Udin Silalahi, 'The Harmonization of Competition Laws towards the ASEAN Economic Integration', in *ASEAN International Law* (Singapore: Springer Nature Singapore, 2022), pp. 175–92 <https://doi.org/10.1007/978-981-16-3195-5_11>.

⁹ Alexandr Svetlicinii, 'Building Regional Competition Policy in ASEAN: Lessons from the European Competition Network', *Asia Europe Journal*, 15.3 (2017), 341–57 <<https://doi.org/10.1007/s10308-017-0479-0>>.

report demonstrates through case studies why, if neglected, such concerns pose a threat to competition in the "new" ASEAN economy.¹⁰

Although many studies conducted on the issue of ASEAN regional competition law, however, the study that discusses the issue of harmonization of ASEAN competition laws and policies which compared with the practice of European Union has not clarified yet. Thus, as the novel aspect of this article, this study seeks to examine why harmonizing ASEAN business competition law is important and to ascertain what the ASEAN business competition law harmonization model entails. It also describes the Importance of competition law harmonization within the ASEAN Economic Community (AEC) Framework. Furthermore, the efforts to harmonize business competition law in ASEAN through the establishment of the ASEAN regional guidelines also elaborated. And it investigates the differences in business competition law harmonization policy between the European Union and ASEAN.

2. Method

This study used normative research methods. The author explains or describes an event that occurred to the object of research. Then it is explained, analyzed, and presented descriptively, so that it becomes a systematic explanation. In the context of this research, the author tries to describe the importance of harmonization of competition law and policy in ASEAN within the AEC framework through enforcement cooperation in bilateral agreements. In writing this article, several approaches were used, such as the Statute Approach and the Comparative Approach. The statute approach is carried out by examining all laws and regulations regarding business competition law policies in each ASEAN country and several business competition law products for ASEAN, such as the ASEAN Regional Guideline on Competition Policy, Guidelines on Developing Core Competencies in Competition Policy and Law for ASEAN and the Handbook on Competition Policy and Law in ASEAN as basic guidelines and references in establishing business competition law for ASEAN Member Countries. Meanwhile, a comparative approach is used to identify the Business Competition Laws regulated in each ASEAN Member State and business competition in the European Union. Furthermore, the research materials used in this study come from literature studies, such as primary legal materials, secondary legal materials, and tertiary legal materials. After all legal materials have been collected, data processing techniques are then carried out so that the research can be arranged systematically. The technique used is by identifying, analyzing, clarifying, and interpreting these legal materials, so that they can become an accountable research work.

3. Discussion and Analysis

3.1. The Importance of Competition Law Harmonization within the ASEAN Economic Community (AEC) Framework

Harmonization of business competition law is a measure needed to ensure that the single market function works effectively. In addition, the harmonization of business competition law in ASEAN is an important activity to be carried out in ensuring the implementation of a fair

¹⁰ Nimisha Tailor, 'Competition in the New ASEAN Economy', *Southeast Asian Economies*, 37.3 (2020), 313-26 <<https://doi.org/10.1355/AE37-3e>>.

competition climate in the ASEAN region.¹¹ In this regard, harmonization of law is described as an effort made through a process to make the national laws of member countries have the same principles and arrangements for anti-competitive behavior issues in the ASEAN region. Thus, the harmonization of this law is one of the important goals in carrying out legal relations between member countries.¹²

The harmonization of business competition law in ASEAN is crucial as currently ASEAN has implemented free trade through economic integration among ASEAN Member Countries which aims to eliminate and minimize obstacles that will arise in the economic activity sector such as free flow of goods, services (free flow of services), investment (free flow of investments), capital (free flow of capital), skilled labor (free flow of skilled labour), balance of economic development, poverty reduction, and socio-economic disparities.¹³

Economic integration in ASEAN (AEC) was fully implemented at the end of 2015, where one of the problems that might arise from the existence of a free market (single market) is the case of cross-border business competition. Because basically, AEC will cause business actors in the ASEAN region to be able to conduct business transactions anywhere and anytime without any obstacles.¹⁴ If the AEC's goals are not supported by strong business competition laws and policies, then cross-border anti-competition practices will occur which can destroy the domestic market in each ASEAN Member State.

According to Lee and Fukunaga, they argue that in a free trade system, it must be integrated with business competition policy in order to prevent unfair business competition.¹⁵ This is because problems will arise in economic integration if there is no regulation regarding competition law, as explained by Elliott who said that multinational companies (MNCs) as companies that compete in the world market, can engage in unfair business competition in the absence of clear rules and policies aimed at protecting competition in the domestic market.¹⁶

Furthermore, It is argued that there is a significant increase in FDI (Foreign Direct Investment) that occurs throughout the world if there are no rules governing business competition law. In addition, vertical restraints, international cartels and cross-border mergers will continue to increase in line with the occurrence of anti-competitive behavior by Multinational Companies (MNCs).¹⁷

¹¹ Siow Yue Chia, 'Modalities for ASEAN Economic Integration: Retrospect and Going Forward', *The Singapore Economic Review*, 62.03 (2017), 561-91 <<https://doi.org/10.1142/S0217590818400015>>.

¹² Haniff Ahamat, 'The Role of Competition Law in the Investment Policy in ASEAN', in *Handbook of International Investment Law and Policy* (Singapore: Springer Singapore, 2020), pp. 1-21 <https://doi.org/10.1007/978-981-13-5744-2_100-1>.

¹³ Devi Lucy Y Siadari and Koki Arai, 'International Enforcement of ASEAN Competition Law', *Journal of European Competition Law & Practice*, 9.5 (2018), 328-35 <<https://doi.org/10.1093/jeclap/lpy009>>.

¹⁴ Dirk Auer, Geoffrey A. Manne, and Sam Bowman, 'Should ASEAN ANtitrust Laws Emulate European Competition Policy?', *The Singapore Economic Review*, 67.05 (2022), 1637-97 <<https://doi.org/10.1142/S0217590821430025>>.

¹⁵ Cassey Lee and Yoshifumi Fukunaga, 'ASEAN Regional Cooperation on Competition Policy', *Journal of Asian Economics*, 35 (2014), 77-91 <<https://doi.org/10.1016/j.asieco.2014.09.005>>.

¹⁶ Elliott Kimberly Ann, 'Corruption as an International Policy Problem', in *Political Corruption*, ed. by Michael Johnston (Routledge, 2017), p. 18 <<https://doi.org/10.4324/9781315126647>>.

¹⁷ Anu Bradford and others, 'Competition Law Gone Global: Introducing the Comparative Competition Law and Enforcement Datasets', *Journal of Empirical Legal Studies*, 16.2 (2019), 411-43 <<https://doi.org/10.1111/jels.12215>>.

As an example, the KPPU (competition authority in Indonesia) stated that the threat of the AEC taking place is a cross-country cartel, due to the opening of free trade in the ASEAN region. According to the former chairman of KPPU, Syarkawi Rauf, one of the alleged cross-border cartels that occurred was like the business of transportation services for the Batam-Singapore crossing using ferries. The business actors for the Batam-Singapore ferry crossing are in the territory of Singapore, where they carry out a cartel by setting service rates for Indonesian and Singaporean consumers. Not only that, allegations of cartel practices against the sale of live chickens to Singapore were carried out by two large companies from Malaysia. The implementation of economic integration in the ASEAN region has the potential for anti-competitive behavior across national borders in ASEAN to increase.¹⁸

Furthermore, based on research results from Thomson Reuters in 2014 stated that the value of mergers and acquisitions in ASEAN grew rapidly by around 12% or US\$ 68.4 billion from the previous year. In fact, a survey conducted by A.T Kearney stated that mergers and acquisitions are a shortcut for companies in facing the ASEAN free market or the ASEAN Economic Community (AEC).¹⁹

To carry out harmonization, ASEAN at least needs to harmonize three different areas of business competition law in ASEAN Member Countries, including legal substance, law enforcement and business competition commission. It is important for ASEAN to harmonize the field of legal substance in the Business Competition Law in member countries, because differences in legal provisions can cause conflicts between countries and cross-border law enforcement in ASEAN is difficult to do. Furthermore, the problem of discrepancies in the provisions of business competition law among ASEAN Member Countries can have a negative effect on the mobility of the competitive climate in the ASEAN region. It is stated that the main problem in business competition law in ASEAN is the absence of harmonization of business competition law rules, one of which is regarding the abuse of a position of dominance.²⁰

For example, in Indonesia, positions of dominance are divided into two, namely monopoly and abuse of dominant position. Circumstances that can be prohibited from monopolies are controlling a production, a market, and the acquisition of goods and services. Circumstances that can be prohibited from abusing a dominant position are activities that can control more than 50% of the relevant market. Meanwhile, different arrangements made by Singapore, which only regulates one type of domination, namely the abuse of a dominant position. This condition includes companies that are dominant in foreign markets, but are not included in exploitative pricing.²¹

Likewise, the differences in rules regarding merger control in each ASEAN Member State. For example, supervision of merger controls in Indonesia with voluntary post-notification and pre-notification with provisions for an asset value threshold of Rp. 2.5 trillion

¹⁸ Hanif Nur Widhiyanti, 'The Urgency of Harmonizing Competition Laws in Moving Towards the ASEAN Free Trade Area', *Fiat Justisia: Jurnal Ilmu Hukum*, 14.1 (2020), 45-68 <<https://doi.org/10.25041/fiatjustisia.v14no1.1749>>.

¹⁹ Udin Silalahi, 'Competition Policy on Online Taxi in Indonesia', *Jurnal Hukum & Pembangunan*, 49.1 (2019), 97 <<https://doi.org/10.21143/jhp.vol49.no1.1912>>.

²⁰ Habib Hussain Khan, Rubi Binti Ahmad, and Chan Sok Gee, 'Bank Competition and Monetary Policy Transmission through the Bank Lending Channel: Evidence from ASEAN', *International Review of Economics & Finance*, 44 (2016), 19-39 <<https://doi.org/10.1016/j.iref.2016.03.003>>.

²¹ N. Vivekananda and Chong Yee Leong, 'Non-Discrimination between Foreign and Domestic Investment in ASEAN', *Journal of International Arbitration*, 32.Issue 4 (2015), 387-412 <<https://doi.org/10.54648/JOIA2015018>>.

or a sales value of up to Rp. 5 trillion and Rp. 20 trillion for the Bank. Meanwhile, in Singapore, the merger control arrangement is subject to voluntary self-assessment at pre and post notification conditions with a threshold of more than 40% or a market share of between 20-40%.²²

Furthermore, the different approaches used in enforcing business competition law can create gaps between society and the domestic legal system. This carries a high risk of extraterritorial conflict between national legal systems. The extraterritorial possibilities of applying national laws may increase, when a country's competition commission has broad powers to prosecute foreign anti-competition behavior. Meanwhile, the host country refused to comply with the rules.²³

In terms of the jurisdiction of business competition law enforcement in ASEAN Member Countries, there are two approaches used to investigate and prosecute business competition law violations used by each member country, namely the form-based approach and the effect doctrine approach. Differences in the principal approach used in each member country have a negative effect on competition law enforcement in achieving the goals of the ASEAN Economic Community.²⁴ Thus, based on the explanation above, it is important to harmonize the field of business competition law enforcement in member countries as an effort to harmonize business competition law in ASEAN.

Additionally, in the context of harmonization of competition law in ASEAN, member countries must have the power to investigate cross-border cases related to anti-business competition. Indonesia, through KPPU, as a country that has long enforced business competition laws in the domestic area, is currently updating the Business Competition Law to have the authority to investigate cross-border cases outside Indonesia's territory. Then, followed by Thailand, Singapore, Vietnam and Malaysia which are currently updating their Business Competition Laws. Meanwhile, on the other hand, member countries that have recently enacted business competition laws such as Brunei, Laos, the Philippines, Myanmar and even Cambodia do not yet have the power to investigate cross-border anti-competition cases.²⁵

In order to realize the harmonization of business competition law in ASEAN in achieving the goals of the MEA, ASEAN Member Countries need to align their business competition commissions to initiate cooperation in investigating or eradicating cross-border anti-competition cases in the ASEAN region. This cooperation is carried out to achieve the results of effective business competition law enforcement.

²² John Gillespie, 'Localizing Global Competition Law in Vietnam: A Bottom-Up Perspective', *International and Comparative Law Quarterly*, 64.4 (2015), 935-63 <<https://doi.org/10.1017/S0020589315000445>>.

²³ Muhammad Rifky Wicaksono and others, 'Implementing the Extraterritoriality Principle to Strengthen Competition Law Enforcement in Indonesia in the AEC Era: A Comparative Study', *Indonesia Law Review*, 9.1 (2019) <<https://doi.org/10.15742/ilrev.v1n9.498>>.

²⁴ Nurul Barizah, 'The Development of ASEAN's Intellectual Property Rights Law, from TRIPS Compliance to Harmonization', *Indonesia Law Review*, 7.1 (2017) <<https://doi.org/10.15742/ilrev.v7n1.247>>.

²⁵ Sungjoon Cho and Jürgen Kurtz, 'Legalizing the ASEAN Way: Adapting and Reimagining the ASEAN Investment Regime', *The American Journal of Comparative Law*, 66.2 (2018), 233-66 <<https://doi.org/10.1093/ajcl/avy026>>.

3.2. Efforts to Harmonize Business Competition Law in ASEAN Through the Establishment of the ASEAN Regional Guidelines

ASEAN has issued Regional Guidelines as a form of statement to apply and develop business competition law for ASEAN Member Countries in the face of economic integration in the current ASEAN region. The regional guidelines or known as the ASEAN Regional Guidelines on Competition Policy are a general guideline for the business competition framework for ASEAN Member Countries who wish to introduce, implement, and develop business competition policies in their countries. This guideline becomes a facility in regulating and formulating business competition policies and laws that aim to eliminate anti-competitive behavior in the domestic market. Regional Guidelines can assist the process of strengthening economic integration in the ASEAN region through its role as a guide and reference in developing business competition law in ASEAN Member Countries.²⁶

The preparation of these Regional Guidelines is based on international best practices as well as some experiences from ASEAN Member Countries. The ASEAN region uses a "soft law" approach to economic integration in its territory. In contrast, the "hard law" approach used in several regions of the country, such as the European Union, NAFTA and MERCOSUR towards economic integration in their regions. Hamanaka and Jusoh explained that this was due to several obstacles, such as the "ASEAN way" which is still the traditional way, the diversity of economic, political and law enforcement conditions in each ASEAN country, and the absence of a Supranational Institution to oversee business competition in the region. ASEAN and the absence of a cross-border dispute settlement mechanism. Because basically, ASEAN was formed based on agreements within the framework of MEA.²⁷

This guideline was formed by the ASEAN Expert Group on Competition (AEGC). AEGC as an official structural institution under ASEAN which aims to provide official guidance, technical assistance, and advocacy regarding business competition law and policy in ASEAN Member Countries, not as a Supranational Institution that oversees and enforces business competition law in the ASEAN region. This guideline is used as one of the standards for member countries to draft their Competition Laws, so that they have competition laws and policies in their territory. But unfortunately, differences in legal provisions between the Competition Laws still exist, even though these Regional Guidelines serve as guidelines and references for ASEAN Member Countries.

This guide still cannot bind and force ASEAN Member States to fully adopt what has been formulated in the Regional Guidelines. Bearing in mind that the conditions of ASEAN Member States differ in a number of dimensions, be it socio-political conditions as well as economic conditions and their legal system. This has implications for the Draft Business Competition Law in each member country.²⁸

Harmonization is an old issue in economic integration to avoid tariff-free barriers. To date, the European Union is the most successful economic integration which has harmonized

²⁶ Josef Drexler, 'The Transplantability of the EU's Competition Law Framework into the ASEAN Region', *SSRN Electronic Journal*, 2016 <<https://doi.org/10.2139/ssrn.2841161>>.

²⁷ Shintaro Hamanaka and Sufian Jusoh, 'Understanding the ASEAN Way of Regional Qualification Governance: The Case of Mutual Recognition Agreements in the Professional Service Sector', *Regulation & Governance*, 12.4 (2018), 486-504 <<https://doi.org/10.1111/rego.12210>>.

²⁸ Haniff Ahamat and Nasarudin Abdul Rahman, 'Delimiting the Social Boundaries of Competition Law in ASEAN: A Common Approach?', *IJUM Law Journal*, 22.2 (2014) <<https://doi.org/10.31436/iiumlj.v22i2.133>>.

business competition law which is integrated into the National Competition Law. In the context of harmonization, there are two models that can be achieved, namely: cooperation between member countries through an agreement and the integration of member countries into national law as carried out by the European Union.²⁹

Enforcement cooperation among member countries through an agreement is one way that might be done as a form of harmonizing the different Competition Laws among ASEAN Member Countries. It is explained that this was based on the "ASEAN way" which is still traditional, namely decisions are taken using the deliberation and consensus method.³⁰ In addition, there are various economic, political and law enforcement conditions in each ASEAN country, and there is no Supranational Institution to oversee business competition in the ASEAN region and there is no cross-border dispute settlement mechanism. Furthermore, to start cooperation in competition enforcement, member countries must consider several things, namely: the parties are required to cooperate in business competition law enforcement in terms of exchanging information, notifications, consultations and coordination in eradicating cross-border anti-competition cases in the ASEAN region.

3.3. Differences in Business Competition Law Harmonization Policy between the European Union and ASEAN

In the context of regulation of business competition law, Member States of the European Union have social, environmental, economic conditions, and a political-legal structure that is homogeneous and integrated into a single European Union. In fact, geographically, it is adjacent to a long coastline. Meanwhile, ASEAN Member Countries have differences in a number of dimensions, such as differences in legal, political, economic and socio-cultural systems which have implications for different arrangements regarding business competition law in each member country. In addition, through the ASEAN Charter, it emphasizes that ASEAN respects and upholds the sovereignty of member countries, independence, national identity, regional integration, and equal rights in all member countries. Due to the heterogeneous nature of ASEAN, it emphasizes that the approach used in harmonization of competition law is in a different context from that of the European Union which is homogeneous in nature.

These two entities, both the European Union and ASEAN, have different regional economic integration motivations. The background of the process of economic integration in the European Union is internal encouragement (member countries). Because at that time, there were extraordinary disasters, namely two world wars in less than two generations, so there was a desire to avoid existence at all cost, namely by making a political unitary existence. The blueprint at that time was an agreement of the United States of Europe which became a gradual effort through economic cooperation.

Conversely, economic integration carried out by ASEAN is in the context of responding to the challenges of world economic development (external). Establishing the ASEAN Free Trade Agreement (AFTA) is one of the answers to economic globalization and regionalization as well. In facing this challenge, ASEAN Member Countries decided to answer jointly, because with this joint possibility it will be easy to develop and survive and even in terms of taking

²⁹ Jurgita Malinauskaite, *Harmonisation of EU Competition Law Enforcement* (Cham: Springer International Publishing, 2020) <<https://doi.org/10.1007/978-3-030-30233-7>>.

³⁰ Andrew Betlehn, 'Harmonization of Laws on Electronic Contracts Based on International Instruments for the ASEAN Economic Community', *Global Legal Review*, 1.1 (2021), 1 <<https://doi.org/10.19166/glr.v1i1.2800>>.

advantage of world economic developments it will be far greater when compared to acting individually.³¹ Thus, ASEAN continues to strive to become an economic power.

On the other hand, ASEAN is not willing to "go all out" and lead to the formation of one economic unit. The cause is the difference in the level of economic development that occurs among member countries. For example, GDP per capita in Singapore is 30 times greater than that in Laos. In addition, based on the results of processed data conducted by the ASEAN Secretariat, annual GDP developments in 2017 stated that Indonesia's GDP reached 1,013.9 trillion (US dollars) with per capita income of 3,866.7 trillion (US dollars). When compared with the GDP of Laos which only reached 17.1 trillion (US dollars) with a per capita income of 2,530.8 trillion (US dollars). Differences in GDP and per capita income in each member country are one of the reasons for not being able to form an economic integration like the European Union.

Furthermore, there are differences in the legal approaches used by these two entities. Consideration of the harmonization of business competition law can be achieved through the establishment of supranational institutions (hard law model) or through the preparation of international cooperation agreements (soft law model). The hard law model concept relates to binding regulations both procedurally and substantively. Meanwhile, the concept of the soft law model refers to the voluntarism of member countries to harmonize laws and not change substantively legal provisions, usually in the form of an agreement on a cooperation agreement. This "hard law" approach is used by the European Union for economic integration in its territory. Meanwhile, the ASEAN Region can only use a "soft law" approach.³²

4. Conclusion

One of the issues that might arise from the existence of a free market is the case of cross-border business competition, such as vertical restraints, international cartels, and cross-border mergers. Through harmonization efforts, conflicts between legal systems can be overcome and also legal differences can be minimized. To do so, ASEAN at least needs to harmonize three different areas of competition law in ASEAN Member States, namely legal substance (prohibition of anti-competitive agreements, prohibition of abuse of dominant position, prohibition of anti-competitive mergers, exclusion of public interest), law enforcement (legal approach and application of witnesses), and competition commissions (establishing competition commissions in member countries and having the authority to handle cross-border anti-competition cases in ASEAN).

In this regard, the model of harmonization of competition law in ASEAN can be carried out through competition enforcement cooperation. This collaboration involves the competition commission in various business competition law practice and enforcement activities. Forms of cooperation that can be carried out include aspects of notification, information exchange, enforcement cooperation, consultation and conciliation. This enforcement cooperation is a necessity that can be applied to ASEAN (member countries), because there is no need to create a new institution (Supranational Institute) or change legal provisions substantively. In addition, this approach can also maintain the integrity of the

³¹ Koichi Ishikawa, 'The ASEAN Economic Community and ASEAN Economic Integration', *Journal of Contemporary East Asia Studies*, 10.1 (2021), 24–41 <<https://doi.org/10.1080/24761028.2021.1891702>>.

³² Vellah Kedogo Kigwiru, 'Supranational or Cooperative? Rethinking the African Continental Free Trade Area Agreement Competition Protocol Institutional Design', *Journal of Antitrust Enforcement*, 2023 <<https://doi.org/10.1093/jaenfo/jnad003>>.

socio-political and legal structure of a country. In the end, to realize the maximum harmonization of competition law in ASEAN, a special institution (ASEAN Competition Authority) is needed that can monitor and enforce business competition law in the ASEAN region against anti-competitive behavior across national borders. Nonetheless, the formation of this special institution is basically very difficult, bearing in mind that member countries have several differences in a number of dimensions, such as differences in legal, political, economic and socio-cultural systems.

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