COOPERATION OF INTERCOUNTRY JUSTICE ASEAN MEMBERS TO HARMONIZE THE LAW ENFORCEMENT OF THE MELAYU NATION

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ABSTRACT

In facing the entry into force of the AFTA in the ASEAN region there must be harmonization between the legal systems between each ASEAN member country. If not, difficulties will be faced by each country, when the claim of rights in the form of execution of a decision handed down in a country cannot be carried out in another sovereign country. The purpose of this article is to analyse the formation of cooperation in the field of justice between ASEAN countries as a harmonization of law enforcement among ASEAN countries. The conclusion of this article is to form a law enforcement harmonization formation, considering that the regulation and renewal of the rule of law through codification is very slow, so alternative efforts to fill legal rules are urgent to be done by nationalizing transnational legal norms. These efforts are sought through the process of ratification of transnational rules, so that they become part of national law. The act of ratification to ratify multilateral international agreements into national law and the making of bilateral agreements is expected to be able to become an instrument of harmonizing the law between countries with different legal systems.

Keywords: Cooperation, Justice, Legal Institutions and Harmonization**.**

INTRODUCTION

Trade in the current era has taken place in a cross-country and complex nature, of course, which is almost entirely accompanied by a written agreement or currently better known as a business or commercial agreement or contract. Although in trade activities accompanied by agreements there are still problems in its implementation, both because one of the parties denies up to jurisdiction and legal issues in resolving the agreement dispute. The existence of these problems is one of the things that are of great concern to the business world, which is related to jurisdiction or legal issues, even though international bodies have been formed as a media for resolving business disputes such as WIPO arbitration and other institutions. Dispute over a commercial agreement.

The problem of law enforcement is certainly also a consideration for the continuity of trade or business by economic actors, especially foreign investors who will open a business or invest their capital in a country. Certainty and law enforcement have an indirect impact on foreign investor interest and trade and economic growth of a country, these symptoms are motivated by the idea that by upholding and establishing legal certainty in a country, business people and investors assume that they will guarantee their rights and comfort and sustainability. Efforts and capital invested in a country (Koh, 2009).

The tendency to unite life is the nature of human instincts. Therefore, the formation of global institutions such as the WTO (World Trade Organization), APEC (Asia Pacific Economic Cooperation) as a forum for economic cooperation among nations across the region, as well as

the EEC (European Economic Council), so that their currencies are united, maybe some examples of the tendency of the union of life patterns in one similar interest.

In such circumstances, the norms governing the variety of activities are certainly not left to the normative rules of a particular country. This is due to the national law of a sovereign country, the limits of its enactment only within the country's territory. For this reason, arrangements for various common interests between sovereign nations will certainly be pursued in the form of mutual agreements between countries which are usually expressed in the form of *"international agreements"*. It is the instrument that is most likely to be used in dealing with various transnational issues faced together.

The validity of the rules of positive law of a country is indeed limited by the territorial boundary of the country concerned. Whereas the legal relations that take place between members of the peoples of the nation always occur and transcend the territorial boundaries of state law sovereignty. Therefore, national laws of countries must be continuously pursued in order to be able to answer the various transnational problems that exist. This effort is of course not intended to homogenize the entire internal legal system of sovereign states, but rather an effort to harmonize the rules of international civil law. Whereas the resolution of the problem for certain civil law matters will be carried out by the respective judicial bodies of each country.

In order to accommodate this reality, it is a condition sine qua non for Indonesia to consider efforts to make an international agreement in order to enrich the legal rules of civil court procedures. This situation certainly does not benefit from the side of economic cooperation. Therefore, the model of legal formation for an area in the form of a convention that has been attempted by countries in the European region might be good if it is considered to be used as a model in the preparation of the ASEAN convention. At least these efforts will support the objective of allied countries to realize legal harmonization between countries in the ASEAN region.

Legal Cooperation between Countries

Thus the importance of international agreements in regulating various problems of nations, so that international agreements do not only occur in the field of international public law but also take place in the field of international civil law (HPI). Efforts made by a number of countries since the end of the 19th century through the holding of several conferences in the field of HPI held in The Hague, among others, aimed at preparing the unification of HPI rules (Gautama, 1983).

Indeed, every independent and sovereign country has a different HPI system. To overcome the difficulties that occur when civil problems arise and involve two or more countries, countries usually try to establish international cooperation by preparing conventions aimed at creating unification in the legal field, especially civil law.

However, these efforts are not intended to homogenize the entire internal legal system of the participating countries of the conference, but rather an effort to harmonize the rules of the HPI. Furthermore, solving problems for certain civil law issues will be carried out by the judicial bodies of each participating country (Gautama, 1983).

The national laws of countries must continue to be pursued so that they are always able to answer various transnational problems. Efforts to actualize the rules of national law must be carried out simultaneously, both through a codification process and by way of nationalizing transnational norms in the form of ratification of a number of international agreements. So that

changes and developments in the world community of any kind will be able to be balanced by the existence of the rule of law.

The emptiness and underdevelopment of the civil procedural rules of the district courts in Indonesia, for example, have had widespread consequences, especially in the acquisition of a sense of justice by the disputing parties. The result is a phenomenon, especially involving multinational parties, in the form of a forum choice to resolve conflicts through forums other than the district court.

District courts tend to be avoided, because the process is considered too long, making it difficult to obtain certainty and justice. This fact has presented the model *"Alternative Dispute Resolution (ADR)"*. Following the need for this, the Indonesian Government then issued Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The step is of course intended as an effort to answer the demands of increasingly complex community dynamics.

Facing this reality, whether they like it or not, Indonesia must continue to make efforts to renew a number of existing formal legal norms. If not, in the future cases of commercial disputes that will emerge are increasingly complex compared to past disputes. Likewise, the parties involved are not only subject to local law but will involve parties of legal subjects and objects of law that are multinational in character.

The Civil Procedure Code for the district court has a very underdeveloped rule. Why not, het Herziene Indonesisch Reglement (HIR) as a set of formal legal norms prepared by Jhr. Mr. H.L. Wichers, in 1846 for a ceremony in front of Land Raad, must be maintained to be able to answer a number of increasingly complex problems in the 21st century.

It is strange that the efforts to replace the aging Herziene Indonesisch Reglement (HIR) with the new Law have not been successfully carried out by the Government of Indonesia and parliament. Even though the problem of transnational dispute resolution lies ahead.

Conducting bilateral agreements or ratifying various multilateral international agreements concerning civil procedural law for the judiciary is a very appropriate action to supplement the legal norms of the civil procedure of the colonial heritage. If not, it is feared that one day the HIR will no longer be able to handle the problems that occur.

On the basis of such a reality, then making an international agreement to enrich the civil procedure law of the district court, it is time to consider it. The problem, facing the entry into force of the ASEAN Economic Community (MEA), is that at least in the ASEAN region harmonization between legal systems must occur between each member country. If not, difficulties for difficulties will be faced by each country, when the claim of rights in the form of execution of a decision handed down in a country cannot be carried out in another sovereign country. This situation certainly does not benefit from the side of economic cooperation. Therefore, the model of the convention that has been attempted by countries in the European region is reasonable if it is used as a model in the framework of harmonizing laws between countries in the ASEAN region, such as the following example:

1. Convention relating to Civil Procedure, 1954;
2. Convention on Service Abroad of the Judicial and Extrajudicial Documents in Civil or Commercial Matters, 1965. This convention is basically the result of a revision of the first Chapter of the 1954 Convention, carried out at the 10th Hague Conference in 1964;[1]
3. The Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, 1971.[2]

Based on the objectives of its establishment, the above conventions, in addition to standardizing the rules of international civil law among participating countries, also in order to facilitate international traffic relations, especially in resolving cases of civil law and commercial law. This is considered important considering that in the international community there is no authority that has the authority to stipulate and enforce legal provisions, as in the national atmosphere.

Basically, efforts to adopt local legal norms to the legal norms of the peoples of the nation have been carried out in Indonesia during the New Order. Ratification of a number of international legal norms has become a national positive law.

The country's economic development and recovery efforts carried out by the New Order regime, among others, by inviting foreign capital. So it is not too wrong to say that since the New Order, the era of capitalism in Indonesia began formally. Marked by the promulgation of Law No. 1 of 1967 concerning Foreign Investment which officially became an instrument for the operation of foreign investment in Indonesia. Following the actions of the New Order regime inviting foreign investors to stimulate economic development efforts for the people of Indonesia, began one by one the process of nationalizing the rules of international law was carried out.

Following the promulgation of the Act Number 1 of 1967 concerning Foreign Capital Funding (PMA), the "*Convention on Settlement of Investment Disputes Between States and Nationals of Other States*" was ratified by the Government of Indonesia. (‘Convention concerning Settlement of Disputes between States and Foreign Citizens concerning Investment). This international agreement is classified as the earliest approved by the Government of Indonesia through an instrument of ratification in the form of Law Number 5 of 1968. Substantially, Law No. 5 of 1968 contained only 5 (five) articles. This means that materially, the substance of the norm that contains orders, prohibitions, and others originating from the international convention is fully adopted and then becomes part of Indonesia's positive law.

Meanwhile Law No. 5 of 1968, the functions and functions are merely a means to declare the attitude of the Government of Indonesia. In the context of the nationalization of international legal norms, the media declaration is of course very important in accepting all rights and obligations as well as the consequences of the overall legal norms contained in the international convention. The problem is that the relevant norms will later apply and bind all Indonesian people.

After surpassing a decade of age the Law on Foreign Investment became an instrument for the formation of the era of capitalism in Indonesia, entering the past eighties, the intensity of trade relations between foreign citizens and their Indonesian counterparts also took place simultaneously. The intensity of trade relations between them is certainly not always smooth without problems. The emergence of friction to larger disputes among business people who need a solution is often difficult to avoid. As a result, new demands emerged from them when state legal institutions called district courts were unable to answer the hopes of acceleration in resolving commercial disputes between them.

At that time the Indonesian Government was again forced to answer the demands of the private business community when disputes that arose between them were reluctant to be resolved through the district court. This condition also forced the authorities of this country again to adopt the provisions of multilateral international law: *"Convention on Recognition and Enforcement of the Foreign Arbitral Awards”.*[3] By using national instruments for ratification in the form of Presidential Decree No. 34 of 1981,[4] Finally, the above convention was ratified so that it became part of Indonesia's positive law.

However, the problem does not end there, because when the rule of law of the nationalization results must be tested with the emergence of cases of requests for execution of the London arbitration verdict, at that time the Indonesian Supreme Court did not seem ready to

accept such conditions. The proof is the dispute between Navigation Maritime Bulgare vs. PT Nizwar Jakarta, which was decided by an arbitration forum in London, with various reasons and considerations that the arbitration award cannot be implemented in Indonesia.

At that time the Supreme Court disagreed with the Central Jakarta District Court.[5] The Supreme Court held that the Presidential Decree No. 34 of 1981 concerning Ratification of the *"Convention on Recognition and Enforcement of the Foreign Arbitral Awards"* was deemed to still require implementing regulations. As a result, arbitral awards dropped abroad cannot be executed by the District Court in Indonesia (Gautama, 1983).

Long and protracted problems surrounding the recognition and execution of foreign arbitration decisions in Indonesia. The reasons include the attitude and founding of the Supreme Court itself which is always filled with doubts. Even after the Supreme Court Regulation (PERMA) Number 1 of 1990 concerning the Procedure for Implementing Foreign Arbitration Decisions was issued, there were almost no cases of requests for the execution of foreign arbitral awards in Indonesia that were granted. The Supreme Court (MA) always relies on the issue of *"public order*". Until none of the foreign arbitration decisions are deemed to have passed by the Supreme Court and are considered not in conflict with Indonesian public order.

Bilateral Cooperation in Legal Affairs becomes a Condition sine Qua non

As stated, facing the global situation in the present and future, structuring and renewing legal products should be carried out quickly and precisely. In addition to codifying legislation, the nationalization of various transnational rules through ratification of international conventions, also equally important is to carry out bilateral cooperation with certain countries for certain interests as well.

Optimizing collaborative efforts, especially in the field of law among countries, especially in the ASEAN member environment as a community of nations throughout the region, is certainly a very urgent effort to be made. This cooperation will in turn help realize legal harmonization between the ASEAN member countries themselves. The law harmonization can be described

> *"as an effort carried out through a process to make national law from ASEAN member countries have the same principles and arrangements regarding similar problems in each of their jurisdictions" (Kantaatmadja, 1993).*

Harmonization in the field of law is one of the important goals in carrying out legal relations. Moreover, the ASEAN region has agreed to establish trade zones in Southeast Asian countries. Cooperation in the field of law which leads to harmonization is important so that legal relations regulated by one country will be in line or not so different in its application with the provisions that apply in other countries (Saefullah, 1993).

But the realization of legal cooperation to achieve legal harmonization between ASEAN member countries is indeed not easy. Because every ASEAN member country must try to understand each other than the ten ASEAN member countries have fundamental differences in terms of their background, history, law, and culture.

Pluralism of the legal system of countries in the ASEAN region is one of the basic obstacles. As a result, the efforts and development achieved by the organization of the Southeast Asian nations are not as bright and fast as they were intended. The existence of the same principles is already a success, although the implementation of the arrangements still varies due to local conditions.

Various efforts as a follow up to a number of agreements continue to be made. This is mostly done also during the New Order regime which was still firmly in control of this country. Among them, the meeting of the ASEAN Ministers of Justice and Attorney General in Bali on 11-12 April 1986 is one example of understanding efforts that have produced the ASEAN Ministerial Understanding document on the Organizational Arrangement for Cooperation in the Legal Field. From the meeting at least three aspects of legal cooperation have been achieved among ASEAN countries. These three aspects are:

1. Exchange of legal material;
2. Cooperation in the field of justice;
3. Cooperation in the field of legal education and research.

Actually, the aspect of cooperation in the field of justice has also been initiated by Indonesia and the Kingdom of Thailand in the form of bilateral agreements. Bilateral cooperation was reached long before the ASEAN Ministerial Understanding the Organizational Arrangement for Cooperation in the Legal Field of 1986, which among others resulted in the three aspects of cooperation mentioned above. Even with this ideal, the Agreement on Judicial Cooperation between the Republic of Indonesia and the Kingdom of Thailand of 1978 has been declared as a model for the next agreement among other ASEAN member countries.

Agreement on Judicial Cooperation between the Republic of Indonesia and the Kingdom of Thailand of 1978 (Bilateral Agreement that was once carried out by the Republic of Indonesia)

Collaboration in the field of multilateral civil or judicial field law has not been carried out by the Government of Indonesia, or it has never been said at all. But without understating the meaning of collaboration, at the ASEAN regional level, it has long been initiated. It can be mentioned that one of the efforts to carry out a fairly monumental understanding carried out by the Republic of Indonesia was:

> *"Cooperation Agreement in the Field of Justice between the Republic of Indonesia and the Kingdom of Thailand in 1978"*

(Agreement on Cooperation between the Republic of Indonesia and the Kingdom of Thailand) 1978 The cooperation agreement was based on the ASEAN Concord of 1976 signed in Bali and is the basis for cooperation in the field of law between ASEAN countries (Gautama, 1980).

For the Republic of Indonesia, such bilateral cooperation agreements in the field of justice are efforts that were first pioneered in the countries of the ASEAN region even today. The agreement was signed on March 8, 1978, in Bangkok Thailand. Subsequently ratified by the two countries. Each country is represented by Mochtar Kusumaatmadja (Minister of Justice of the Republic of Indonesia) and Upadit Pachariyangkun (Minister of Foreign Affairs the Kingdom of Thailand).

Judging from the broad scope of material agreed upon, it is indeed not too broad. The new scope covers only certain things, namely concerning the giving and request for assistance in the delivery of court documents and evidence of civil cases by the Indonesian side to courts abroad and vice versa. So those since then courts in Indonesia have an obligation to serve all requests from courts in Thailand relating to the matter in question. Likewise, on the contrary, courts in Thailand have the same obligation in a reciprocal manner.

The purpose of the bilateral agreement is to facilitate the delivery of calls and official notification in civil cases that must be carried out if the party concerned is abroad. In addition, the agreement is expected to be a model for subsequent agreements among other ASEAN member countries. Because the achievement of harmonization of laws among ASEAN member countries in the hope of each of its members. Such cooperation will essentially facilitate the legal traffic and eliminate the obstacles that are often encountered in practice, especially in the field of justice.

The parties to the agreement, namely the Republic of Indonesia and the Kingdom of Thailand, are fully aware that the submission of official court documents must be avoided so as not through diplomatic channels. Therefore, each party designates a special body called the Central Authority.[6] It is the agency that determines the agency that will send and receive requests for submission of court documents and calls or letters of request to obtain evidence. The agency for the Republic of Indonesia is the Directorate General of Development of the General Judiciary Body of the Ministry of Justice and for the Kingdom of Thailand is the Office of Judicial Affairs of the Ministry of Justice. [7]The Indonesian and Thai parties also agreed to eliminate various formalities and legalization requirements for documents originating from abroad which would be used before domestic courts.[8] The problem is, that the legalization is often an obstacle for obtaining official documents from abroad. Specifically, regarding the requirements for legalizing the document, the Hague Hague International Civil Law Conference has also agreed on a Convention that abolishes the requirements for legalization. Then the legalization requirements are replaced with an "*Apostille*", which is a piece of information that is attached to the relevant document. As such, all obligations to make legalization are long-winded, costly, and time-consuming.

The cooperation agreement also stipulates that the application for submitting documents to obtain evidence is limited by the principle of public order that applies to each country. That is, the agreement will be carried out if the request for submission of documents to obtain the evidence does not conflict with public order, or harm the sovereignty or security of the country concerned (Gautama, 1984).

How far the implementation of this agreement has been effective for the parties, certainly needs careful research. However, Sudargo Gautama once stated that:

> *"... in the practice of realization there are still no concrete cases regarding the implementation of international agreements..."* (Gautama, 1984).

However, at least this bilateral agreement will be a model for the formation of a special Cooperation Convention between countries in the ASEAN region.

Despite the fact that bilateral cooperation is still not effective and effective, it does not mean that it is not useful. Furthermore, in order to accommodate Indonesia's interests as a member of the international community which is gathered in an area on the basis of one or several common interests, as in ASEAN then as one of the countries in the Asia Pacific region with APEC (Asia Pacific Economic Cooperation) then Indonesia needs to support efforts to harmonize the law and unify the rule of law through various international agreements such as the above. It is needed with the intention of at least in Civil Law there are fundamental equations that will facilitate the later regulation of everything concerning matters of civil and trade relations (Kusumaatmadja, 1993).

The emergence of trade disputes between ASEAN member countries and among APEC member countries must be anticipated early. Because it is very likely that a trade dispute will be decided by a court in one of the member states of the association above, then the decision is

requested to be executed in another country. This same reality demands regional cooperation in the field of justice, especially concerning the recognition and implementation of decisions by foreign judges.

CONCLUSION

First, globalization means the on-going process of the interdependence of the nations of one nation to another. One of the indicators is that the characteristics of the problems that appear increasingly complex. The complexity of the problems in the era of globalization has become a necessity for nation states to work for a solution. The solution is intended at least to avoid conflicts of interest. A wise step that should be taken, among others, through cooperation between countries in various aspects of life. Considering that the regulation and renewal of the rule of law through codification was felt to be very slow, the alternative efforts to fill legal principles were urgent to be carried out by nationalizing the norms of transnational law. These efforts are sought through the process of ratification of transnational rules so that they become part of national law.

Second, as already stated, the efforts to make a fairly monumental agreement that the Republic of Indonesia had carried out were:

> *"Cooperation Agreement in the Field of Justice between the Republic of Indonesia and the Kingdom of Thailand in 1978".*

Bilateral cooperation and multilateral cooperation in anticipating various transnational problems should be carried out programmatically, in order to harmonize legal institutions through agreements between countries. The act of ratification to ratify multilateral international agreements into national law and the making of bilateral agreements are expected to be able to become an instrument of harmonizing the law between countries with different legal systems.

ENDNOTE

1. Besides being followed by most civil law countries, the Service Abroad convention has also been ratified by the United States (24-8-1967) and the United Kingdom (17-11-1967). Therefore according to the conditions of 1 September 1985, there were approximately 20 countries that had been bound by this Convention, namely: Belgium (1970), Cyprus (1983), Czechoslovakia (1982), Denmark (1969), Finland (1969), Egypt (1968), France (1972), West Germany (1979), Greece (1983), Israel (1972), Italy (1981), Japan (1970), Luxemburg (1975), Netherlands (1975), Norway (1969), Portugal (1973), Spain (signing 1976), Sweden (1969), Switzerland (signing 1985) and Turkey (1972).
2. This convention according to Kokkini-Iatridou & Verheul (1987), *"... has entered into force between the Netherlands and some other countries have not become operative since there are as yet no bilateral standards in the sense of its article 21";* The intention is that in order to obtain recognition and implementation of the decisions of judges from the participating countries of The Hague Convention, bilateral agreements must be required among the participating countries, as stipulated in Article 21 of the Convention (in Netherlands Report to the Twelfth International Congress of Comparative Law).
3. Made in New York on June 10, 1958, and entered into force on June 7, 1959.
4. As an instrument to ratify the Convention on Recognition and Implementation of Foreign Arbitration Decisions signed in New York on June 10, 1958. The Presidential Decree was stipulated and promulgated on August 5, 1981.
5. Although the Central Jakarta District Court through its stipulation above has granted a request for the execution of a London arbitration verdict which sentenced PT Nizwar in Jakarta to pay a certain amount to Navigation Maritime Bulgare, but the Supreme Court has another opinion.
6. Article 3 RI-Thailand Bilateral Agreement, 1978.

7. Article 3 paragraph (2).
8. Article 6 paragraph (1) stipulates: "(1) *The Authority of the Party in which the documents originate shall forward the request to the Authority of the other Party without any requirement of legalization or other like a formality".*

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