

CHAPTER I

INTRODUCTION

A. BACKGROUND

ASEAN Economic Community or AEC in short is a form of economic cooperation between countries which are members of the ASEAN. AEC is an integrated regional economy for ASEAN that comes in a form of an agreement to create a single market and production base that comprises of but not limited to free flow of goods, free flow of services, free flow of investments, free flow of capital, and free flow of skilled labour. The definition of free flow in the agreement is a tax free environment between member countries of the ASEAN.

ASEAN Economic Community has been a project that was prepared some time ago by the members of the ASEAN with a goal to increase economic stability in the ASEAN region and to create a strong economic region between ASEAN nations. Following the implementations of the AEC late 2015, ASEAN members will experience free flow of goods, services, investments, capitals, and skilled labours from and to each other. In this matter, Indonesia as a member of the ASEAN nations, has to push their limits to prepare quality and take advantage of this agreement during this chance, and to increase capability to compete between other nations of ASEAN,

ASEAN Economic Community initiative rests on four pillars: integrate the region into a single market and production base; turn Southeast Asian into a highly competitive region; ensure equitable development across ASEAN and to fully integrate ASEAN into the global economy. The ASEAN Economic Community implementation will face many challenges as full implementation will take many years to conclude. Member nations still have a long way to go before meeting their objectives therefore the removing non-tariff barriers, especially in the services sectors, determining rules of origin, establishing an ASEAN "Single Window" for customs and easing foreign equity restrictions are among outstanding issues to be addressed.¹ Such progress will be strenuous to achieve without implementing some form of pooled sovereignty, and establishing a very different ASEAN Secretariat than the current one. ASEAN needs a secretariat with the ability, capacity, resources and expertise necessary to complement and enforce regulations. Individual member states will face many challenges of their own as implementations have begun. Commitments may differ from country to country and this may prove a lot tougher than it already is. Many countries have not even grasp the reality that they have not even prove themselves in completing their commitments as members of the World Trade Organisations.

¹ Vriens & Partners. "ASEAN Economic Community: Potential, Reality, and The Role for Business". <http://www.legalbusinessonline.com/sites/default/files//AEC%20Report%20-%20Potential,%20reality%20and%20the%20role%20for%20business.pdf>. Retrieved 15 April 2016

As the way things are, because of the diversity of the region, there is still a lack of an ASEAN identity. Without this identity, it is hard to make a strong progress. The fact that almost all of the AEC member states are developing countries; it is probably the most ambitious attempt at economic integration to date. Some other influential factors such as corruption, uneven infrastructure and related costs are also among the obstacles currently in the way of increased trade within ASEAN.²

In spite of the challenges AEC members are facing, the fact is leaders of the ASEAN has already begun implementing this agreement as the advantages are too much to ignore. Implementing the agreement may prove much more profitable as AEC would also mean a stronger larger single market with a total population of 622 million human beings and a GDP of US\$2.6 Trillion and is expected to rise to US\$4.71 by 2020. This is happening as the fact is intra-regional trade of South-east Asia was made up of about 24% of ASEAN's total global trade for the last decade, ranging from 13.9% in Vietnam to 64.9% in Laos. It is foreseen that with the implementations of the AEC, intra-regional trade is likely to increase. It is undeniable that ASEAN is often seen as a strong competition and an alternative for Chinese and Indian markets for being the 3rd largest population following them.³

² Hwee Ang, Siah. "The Potential and Challenges of The ASEAN Economic Community". <http://www.stuff.co.nz/business/opinion-analysis/74827115/The-potential-and-challenges-of-the-ASEAN-Economic-Community>. Retrieved 15 April 2016

³ Inquirer.net. "ASEAN Enters 2016 as a Community".

With all of these potential and advantages, although with some challenges, there is an upcoming problem that has to be solved before proceeding even further. It is undeniable that competition in the region will be happening in a much larger scale than it already is. Currently, all ASEAN countries use a screening process and apply pre-entry requirements to all foreign investors. There are also some regulations to prevent foreign investors and firms from becoming a dominant force in the economy. These laws and regulations can be used to prevent foreign investors from merging with or acquiring local firms, since they are not permitted to own shares exceeding a specified limit. At the same time, these regulations do not control local firms or prevent them from merging with or acquiring other local or foreign firms. Indeed, local companies have been known to establish an oligopoly position in specific sectors. In the Indonesian market on 19 November 2007, Indonesia's Commission for the Supervision of Business Competition (KPPU) announced that it found a Singapore company Temasek Holdings was found guilty of engaging in monopolistic practices and anti-competitive behaviour in Indonesia's cellular market through two Indonesian telecommunication companies (Telkomsel and Indosat) through its affiliates' cross holdings which Temasek controls through its subsidiaries. The KPPU said that the

<http://business.inquirer.net/204563/asean-enters-2016-as-a-community>. Retrieved 15 April 2016.

Temasek Business Group's ownership of Telkomsel and Indosat has resulted in:⁴

- control of more than 50% of the cellular market by the “Temasek Business Group”
- control or collusion between Telkomsel and Indosat to impact Indosat's performance for the benefit of Telkomsel, leading to decreased competition in the Indonesian cellular market
- Price leadership by Telkomsel
- Excessive pricing causing consumer loss

As understood, ownership of shares in one or more companies with similar business is it directly or indirectly through its subsidiary company that involves dominating the market in a similar or exact product is an act of oligopoly and it is prohibited. The term oligopoly itself is coined from two Greek words “Oligoi meaning “a few”” and “pollein means “to sell””. It occurs when an industry is made up of a few firms producing either an identical product or differentiated product. Economically oligopoly typically

⁴ Allison Grande, “Temasek pays \$2M Fine For Indonesian Anti-Trust Claims” http://articles.economictimes.indiatimes.com/2011-02-11/news/28540032_1_temasek-holdings-investment-firm-largest-sovereign-wealth-funds, Retrieved 20 June 2016

affects the economy by:⁵

— Restrictions On Output:

Implies that oligopoly results in small output and high prices as compared to other market structures, such as perfect competition.

— Price Exceeds Average Costs

Implies that under oligopoly, there are restrictions on entry of new organizations. Thus, organizations charge prices more than the average costs. Therefore, consumers have to pay more in case of oligopoly market.

— Lower Efficiency

Leads to non-optimum levels of output. This is because the output produced under oligopoly depends on the market share held by the organization. Thus the oligopoly organizations fail to build the optimum scales of economics and achieve optimum output.

— Selling Costs

Refer to high promotional costs. The oligopolists engage in high promotion tasks to take the share of its rivals. Thus, the

⁵ Nitisha, “4 Economic Effects of Oligopoly”, <http://www.economicdiscussion.net/oligopoly/4-economic-effects-of-oligopoly/3790>, Retrieved 20 June 2016

resources are wasted in form of high selling costs which do not add to the satisfaction of customers.

Theoretically, the case aforementioned above will be considered an act of oligopoly, which can be defined by its market form in which a market or industry is dominated by a small number of sellers. An oligopoly act such as the act of the Singapore Company is prohibited in Indonesia and it is illegal.

Cases such as the aforementioned above suggest that there is a need to prioritise the discussion of competition law in the ASEAN Economic Community to be done as early as possible. This is to prevent cases like this to happen and if it should happen, a regulation would have been established which stands by the legal doctrine of legality.

B. RESEARCH QUESTIONS

Based on the background of the study above, statements of the problems to be researched are as such:

1. What are the similarities in oligopoly laws between Indonesia, Singapore, and Malaysia as members of the ASEAN Economic Community?
2. What are the differences in oligopoly laws between Indonesia, Singapore, and Malaysia as members of the ASEAN Economic Community?
3. What is the ideal oligopoly in accordance to comparative law?

C. OBJECTIVES OF THE RESEARCH

1. To find out the similarities of regulations in oligopoly competition regulations between Indonesia, Singapore, and Malaysia.
2. To find out the differences in oligopoly competition regulations between Indonesia, Singapore, and Malaysia
3. To find out the ideal oligopoly competition regulations in accordance to comparative law between aforementioned countries as members of the ASEAN Economic Community

D. SIGNIFICANCE OF THE RESEARCH

1. Theoretical Significance

This study is hoped to be able to put in to good use for the study of the science of laws, in competition law's oligopolistic regulations regionally.

2. Practical Significance

It is hoped that this study would be able to bring a mean of study and knowledge for the Author and for others, business owners or law practitioner in relation to oligopoly competition law.