

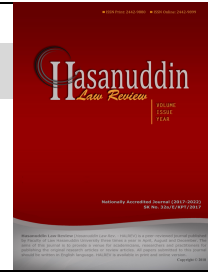
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## Lessons Learned from the British Exit from the European Union for Indonesia and the ASEAN Economic Community

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### ABSTRACT

A soft Brexit scenario will include an implementation period from the day the UK formally leaves the EU to 31 December 2020. During the implementation period, the UK will continue to be functionally treated as an EU member state and remain a party to EU international agreement. Associated with the ASEAN single market, should be considered the readiness of Indonesian regulations and legislations that in sectorial concerns at least three aforementioned legal instruments to be harmonized with the laws of the ASEAN countries. Important findings were shown by the research from the perspectives of business law, especially, capital investment law, intellectual property and international trade law that Brexit has significant impact for the EU itself, Indonesia and also AEC.

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## 1. Introduction

The public debate during the EU referendum campaign and the British government's opening position on the Brexit negotiations highlight an overarching blindness to how embedded the European *acquis* has become within the British social model.<sup>1</sup> British exit (Brexit) is expected to take place on 29 March 2019. On 23 June 2016 it was particularly true of British Referendum on whether to remain in European Union (EU). A soft Brexit scenario will include an implementation period from the day the UK formally leaves the EU to 31 December 2020. During the implementation period the UK will continue to be functionally treated as an EU member state and remain a party to EU international agreement.

Disruption to trade and investment flows would be minimized and business continue will be preserved while the UK irons out its future trade and investment relationship with other partners, including Indonesia. So what would be the consequences on

<sup>1</sup> Guerrina, R., & Masselot, A. (2018). Walking into the footprint of EU Law: unpacking the gendered consequences of Brexit. *Social Policy and Society*, 17(2), 319-330.

Indonesia and UK relations and what will be the impact on Indonesia economy? And what could be learned as lesson from the Brexit to the ASEN Economic Community (AEC)?

## 2. Brexit Impact for the European Union

The European Union is formed in Maastricht, November 1993 after long journey from A European Economic Community (ECC) founded in March 25, 1957. The ECC was a regional organization which aimed to bring about economic integration among its member states. It was created by the Treaty of Rome 1957, upon the formation of the European in 1993, the ECC was incorporated and renamed as the European Community (EU).

There are six stages of regional integration that are generally carried out in countries in the world, namely:<sup>3</sup>

- a. Preferential Trading Areas (PTA);
- b. Free trade areas (Free Trade Areas / FTA);
- c. Customs Union / CU;
- d. Single market (Single Market);
- e. Economic and monetary union (Economic and Monetary Union);
- f. Overall economic integration (Complete Economic Integration/Political Union).

PTA provides access to preference for relief or convenience for member countries for certain types of products. The relief is in the form of an effort to reduce tariffs but not tariff elimination. Examples of PTAs are the European Union with 71 countries ACP (African, Caribbean, and Pacific Group of States).<sup>4</sup>

FTA is an agreement of several countries to make their territory a free transaction area between them. Examples of FTAs are China-ASEAN Free Trade Area (CAFTA) between China and ASEAN; North American Free Trade Agreement (NAFTA) between the United States, Canada and Mexico; European Free Trade Association between Iceland, Norway, Switzerland and Liechtenstein; The South Asia Free Trade Agreement between India, Pakistan, Nepal, Sri Lanka, Bangladesh, Bhutan and the Maldives.

The next stage is the Single Market. The difference in the Single Market with CU lies mainly in joint policies regarding product regulation, free flow of goods, services, capital and workers (common policies on product regulation, free movement of goods, services, capital and labor). Examples of major Single Markets in the world to date is the European Union.<sup>7</sup>

The peak stage of regional integration is economic integration and overall politics (Political Union). In this case, there is a single market with the implementation of the same currency among countries implementing the agreement. An example of the Unification of Economics and Monetary is the Eurozone.<sup>8</sup>

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<sup>3</sup> Betharia Noor Indahsari, (2016). *Personalitas Hukum Internasional Pasar Tunggal ASEAN*, Kencana Prenada Media,, p.45-47 quoted from Philip Boulton, *Economic Integration: A Course Companion*, Hand out Subject Economy, Escuela Compo Alegra, American International School, Caracas Venezuela, 2007, p.3.

<sup>4</sup> Ibid, 46

<sup>7</sup> Ibid, 48.

<sup>8</sup> Ibid, 49-50.

What we so called “*economic integration*” started from globalization. Easing of the cold war marked by the shift of military technology the original to be toward technology of communication and information has made the market is not just the country's territory but leverage spanning the globe.

Globalization when international community reach Agreement on Establishing the World Trade Organization in Marakesh Maroco in 1994. This so called globalization that the process by which businesses or other organizations develop international influence or start operating on an international scale. Globalization has become an integrated market mechanism, including changes in the labor and government policies. Key tendencies in the labor force associated with the various changes in technology, which consists of reducing the costs of international transport, the increase in global communications and increased massively and massive computing power generated by the microprocessor.<sup>9</sup>

Globalization has also resulted in the expansion of market access through trade liberalization, deregulation of investment restrictions and licensing agreements, and the rules for the establishment of rights in the services sector, privatization of state enterprises, as well as the adoption of the exchange rate freely convertible currency and tax reform.

After years in the stage of economic integration then EU tends to become de-globalization that is the process of diminishing interdependence and integration between certain units around the world, typically nation-states. It is widely used to describe the periods of history when economic, trade and investment between countries decline.<sup>11</sup>

Organization for Economic Co-operation and Development (OECD ) have looked at the overall impact of leaving the European Union (EU) by United Kingdom(UK). The implications for the job, and the effect on the politic finance, international organizations such as OECD. Have contributed to the debate looking both at the impact on UK but also potential rush for the global economy while the Bank of England has stressed it duty to speak up when it identifies rush in particular to fundamental stability.

### **3. Brexit Impact on Indonesia Economy**

The main objective of the Republic of Indonesian is as set in Fourth Paragraph of Preamble of the 1945 Constitution, which provides:

*And then to form a Government of the State of Indonesia that protects all Indonesian people and the entire land of Indonesia and to develop the welfare of the people, the life of the nation, and participate in the world orderliness based on freedom, eternal peace and social justice,..*

One aspect that is used to describe the well-being of a nation is the success of economic development. It is constitutionally stipulated in Article 33 Paragraph 3 of the 1945 Constitution which determines that the desired Indonesian economy is family-based devoted to the welfare of the people. This family-based principle in this case does not mean Indonesia is 'anti' fair competition.<sup>12</sup>

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<sup>9</sup> Rahmi Jened, *Teori dan Kebijakan Hukum Investasi Langsung*, Kencana Prenada Media, Jakarta, 2016, p.409.

<sup>11</sup> Source: <https://piiie.com/microsites/globalization/what-is-globalization.html>

<sup>12</sup> There is a mistaken interpretation that the family-based principle translates that the most suitable container is cooperative. Though there are structural constraints cooperatives as associations of people

The role of the government in implementing economic development is stressed towards the direction supervision of economic activity and not on the acquisition of as many as possible of economic activity". Supervision and not the control, in the sense of composition of regulations (prescribing rule)<sup>13</sup>instead of setting (regulating) in order to create a harmony (preserving harmony) in business activity.

In the framework of the Market Economy system as the open policy (open door policy),<sup>14</sup> Indonesia as part of the international community through Act No. 7 of 1994 (hereinafter referred to as Act No. 7/1994) has ratified the Agreement on Establishing the World Trade Organization (WTO).

The ratification is based on the awareness of the opportunities and challenges arising from the progress of science and the development and convergence information, communication, technology (ICT) that have been able to break through the boundaries of the state, following its social cultural, economic and legal equipment. Through this WTO, the international community reached an agreement regarding the enactment of the Free Market System and more opened Trade Patterns which is a global agenda that has implications for and supported fair competition as the goal of the WTO.

Fair Competition is defined as: "open, equitable, just competition which is fair as between competitor and between any of his customer."<sup>16</sup> In order to achieve Fair Competition there are 3 (three) legal instruments that must be enforced, namely:<sup>17</sup> Intellectual Property Law; Anti-Monopoly Law or Competition Law; and Unfair Competition Prevention Law;

IP law aims to provide protection for intellectual creations of piracy or counterfeiting actions. Competition law aims to ensure the existence of the market as a place of fair competition, for example, it is prohibited from monopolistic practices, it is forbidden to abuse the dominant position in the market. Unfair competition prevention law aiming so that in market competition, business people do not act in opposition to honest practices in the industrial and commercial fields, for example, are prohibited from misleading consumers, false allegation to discredit its competitors. This can be described as the following side triangle:<sup>18</sup>

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have the institutional decision-making based on the 'one person one vote'. Components of cooperative capital consist of principal savings, compulsory savings and voluntary savings. When a member of the Cooperative is exit, the concerned will withdraw his savings (furthermore if the volunteer savings in in large numbers). This will affect the cooperative capital because usually no one else will take his place. Unlike the case with Limited Company as capital association, mobility shift of its shares is very high. Transfers of shares from one shareholder to another have no effect on capital PT. The mobility of these shares is based on the interest attached to the shares, such as voting rights based on the principle of 'one share one vote', dividends and capital gains..

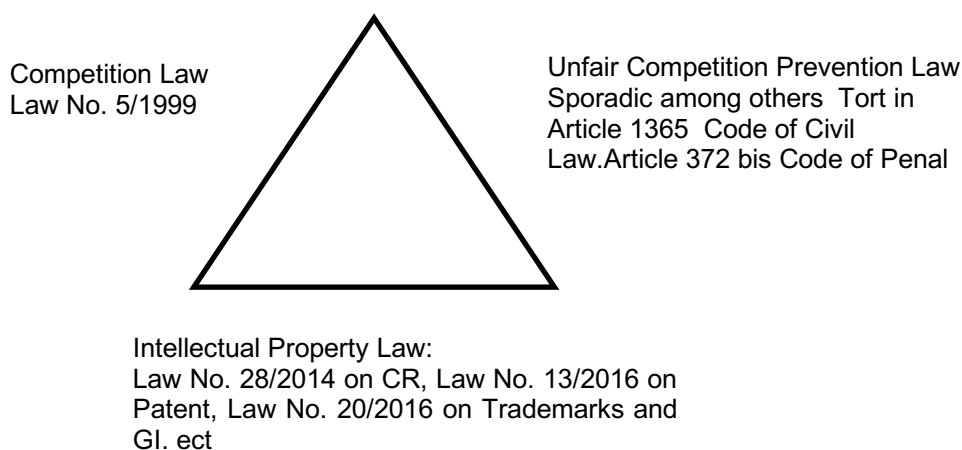
<sup>13</sup> Peter Mahmud Mz, *Hukum Ekonomi dan Globalisasi*, Teaching Materials, Post-Graduate Program, Airlangga June 3, 2001 (hereinafter referred to Peter Mahmud I), p. 3-6.

<sup>14</sup> Peter Mahmud Mz, "Realigning Indonesia Law Concerning Economic Activities Under The State G Mzuidelines of 1999", *Yuridika*, Vol.17, No. 1 January-February 2002, p. 61-62.

<sup>16</sup> Henry Campbell Black, *Black's Law Dictionary*, West Publishing, St Paul Minn, 1996, p. 596.

<sup>17</sup> Rahmi Jened, *Loc.Cit.*

<sup>18</sup> Rahmi Jened, *Penyalahgunaan Hak Kekayaan Intelektual*, Disertation, Graduate School, Airlangga University, p.8.



As a result, by applying of one of the three legal instruments depends specifically on the point of view and interests related to the case at hand.

WTO so called globalization where the application is supported by principle of *Free Movement of Goods, Services, Personnel and capital*.<sup>19</sup> The influence of globalization on investment activity and trade is very significant based on the following empirical facts. First, globalization has resulted in a mechanism by which markets become integrated, including changes in labor and government policies. A key trend in the power of labor is associated with various technology companies, which consist of reducing international transportation costs, increasing global communication and massive and massive increases in the power of computers produced by the microprocessor and now become industry 4.0.

Last but not least, a change in government policy that allows large international companies or multinational corporations (multinational corporations) to gain greater access to the domestic market. In addition, globalization has also resulted in expansion in market access through trade liberalization, deregulation of investment restrictions and licensing agreements, and rules for the establishment of rights in the field of services, privatization of state enterprises, adoption of free exchange rates and tax reform.

Indonesia has largest economy in Southeast Asia and is one of the emerging market economy of the world. Indonesia is also a member of G 20 and classified as a newly industrialized country. However, it DGP ranks below the world average. Indonesia still depends on domestic market and government budget spending and its ownership of state owned enterprise also plays a significant role in economic growth.

The UK is an important partner of Indonesia as the second largest economy within the EU and the fifth largest globally. UK including the Top 10 countries with patent applications throughout the world including in Indonesia. However UK is not included in the 5 capital exporting country in Indonesia. UK as 22<sup>nd</sup> trading partner and import from and export to Britain for from only around 1-2% of the total. The value of Indonesian export to Britain is balanced by the value of Indonesian imports from Britain in 1,406,495- 1, 0495,5. Where the Britain could have more of an impact on Indonesia is fall out from a global rise environment as a result of contagion.

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<sup>19</sup> Rahmi Jened, *Hak Kekayaan Intelektual: Penyalahgunaan Hak Eksklusif*, Surabaya: Airlangga University Press, 2006, p.3-4.

As a matter of fact, Brexit is not too influential for the Indonesian economy. Even more UK expected can increase its export-import activities with Indonesia and can wider its investment project in Indonesia.

#### **4. Lesson Learned Brexit for AEC**

Based on Cebu (Philippines) agreement in 2007 formed an agreement of ASEAN countries towards ASEAN Single Market which is actually an economic integration pattern called ASEAN Economic Community (AEC). AEC is agreed to be effective in 2015. Due to the weakness of ASEAN personality, in fact ASEAN still in the third integration stage and has not be able to become a Single Market.

However, ASEAN will be the key target of British trade deals. Many ASEAN companies have invested heavily in UK and depends on the trade within EU. So there will be losses and there will be the advantages as Great Britain moves away from the European politic bloc. Trade agreement are going to have to be renegotiated and there lies path of opportunities the UK.

Economic development of this kind will lead to a higher increase and the strength of competition, the reduction of the strength of the domestic market which was originally concentrated on industry, the reallocation of economic resources to the area of comparative advantage, reduction of production costs in the sector with increased scale of production and of itself lead to contraction and a reduction in the uncompetitive firms. When competitive and economically viable companies exist, then this is the key resource efficiency in economic liberalization. However, should the efficiency of economic resources not to deny the justice (denial of justice).

Here is the basic cause why the United Kingdom out of the European Union considering its membership in the economic integration through the EU considered not render justice to the UK and does not improve the economy of the UK anymore. In the contrary, for European Union the release of the UK resulted in the law in the European Union becomes more homogeneous for all member states of the European Union adheres to the Civil Law Tradition, so that their legal harmonization policies typically outlined in the Directives to be more readily accepted by all member states.<sup>20</sup>

Lesson learned from EU, in enforcing those three afore mentioned legal instruments, AEC must equipped with several legal institution that are:

- a. ASEAN Court of Justice (ACJ);
- b. ASEAN Competition Commission (ACC);
- c. ASEAN Intellectual Property Office like Office for Harmonization in the Internal Market (OHIM) and ASEAN Patent Office (APO) in ASEAN level;
- d. Ratification of the Brussel Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters( 1968)
- e. Consumer Protection Law in each ASEAN country.

The need for the Court of ASEAN as a single judiciary institution to the authority of the judiciary related to legal disputes in trade and investment, such as trademark disputes or consumer protection are transnational in nature and conflicts of jurisdiction among

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<sup>20</sup> The difference is whether embracing monism or dualism, no longer the Common Law Tradition and Civil Law Tradition. Merryman, John Henry, *The Civil Law Tradition*, Stanford University Press, California, 1969.

ASEAN countries as well as to make regulations that are harmonized the legal difference between ASEAN countries.

Equally important is necessary to establish the ASEAN Competition Supervisory Commission that has the authority to examine the actions that are anti-competitive business owners make is to cross-border. Similarly, to think about the existence of the office of IPR (Intellectual Property Office) to serve the ASEAN level of IPR registration in ASEAN as a single window, as well as the ASEAN Single Window (ASW).

Moreover, ratification of Brussel Convention as an international procedural law to resolve the cases of antitrust and IPR nature conflicts of jurisdiction is just important, urgent and crucial. Consumer protection laws in each member state as a mandatory requirement in AEC.

## 5. Conclusion

In this case, study on the experience of creation of a European Union and the UK exit from the European Union membership, the ASEAN Economic Community should take a lesson from the advantages and disadvantages of the data and the economic integration of the EU. In addition, based on the opinion of several experts that ASEAN personality is still premature. Therefore readiness of AEC is much more important to establish above mentioned institutions.

Associated with the ASEAN single market, should be considered the readiness of Indonesian regulations and legislations that in sectorial concerns at least three aforementioned legal instruments to be harmonized with the laws of the ASEAN countries. Finally, Indonesia should improve and maximize business competitiveness, insightful to export and substitute import, so Indonesia does not just become market another country's market.

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**Conflict of Interest Statement:**

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