

The Protection of Small and Medium Enterprises in Yogyakarta: The Challenges of ASEAN Economic Community

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ABSTRACT

The ASEAN Economic Community (AEC) is one of the pillars of the ASEAN Community. AEC goal is regional economic integration by 2015. AEC envisages the following key characteristics: (a) a single market and production base, (b) a highly competitive economic region, (c) a region of equitable economic development, and (d) a region fully integrated into the global economy. Yogyakarta is a city in Indonesia where many citizens are involved in small and medium-sized enterprises (SMEs). Based on the data obtained from the Department of Trade, Industry and Cooperatives Bureau of Yogyakarta, in 2015 there were 230,047 SMEs. The fierce competition from the single market will have an impact on the survival of the SMEs. The Indonesian government ratified the ICESCR into ICESCR Ratification Act 2005. The government has a binding obligation to take various measures “to respect”, “to protect” and “to fulfil” human rights towards SMEs in Yogyakarta.

Keywords: AEC 2015, economic, social and cultural rights, SMEs, Yogyakarta

INTRODUCTION

The ASEAN Economic Community (AEC) was implemented at the end of 2015. The AEC is one of the pillars of the ASEAN Community were set out in the Bali Concord

II. ASEAN hopes to establish a single market end of 2015 (Syukriah, 2013). The ASEAN Economic Community shall be the goal of regional economic integration by 2015. AEC envisages the following key characteristics: (a) a single market and production base; (b) a highly competitive economic region; (c) a region of equitable economic development; and (d) a region fully integrated into the global economy (ASEAN AEC, 2015).

The first AEC characteristic seeks to create a single market and production

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base through free flow of goods, services, investment, skilled labour and freer flow of capital. The second characteristic helps to create a business-friendly and innovation-supporting regional environment through the adoption of common frameworks, standards and mutual co-operation across many areas, such as in agriculture and financial services, and in competition policy, intellectual property rights, and consumer protection. It also supports improvements in transport connectivity and other infrastructure networks. The third characteristic seeks to achieve equitable economic development through creative initiatives that encourage small and medium enterprises to participate in regional and global value chains and focused efforts to build the capacity of newer ASEAN Member States to ensure their effective integration into the economic community. The fourth characteristic envisages ASEAN's full integration into the global economy pursued through a coherent approach towards external economic relations, and with enhanced participation in global supply networks (ASEAN 2016).

Indonesia's readiness to face the ASEAN Economic Community 2015 can be seen from the aspect of economic growth, the national export growth and Gross Domestic Product (GDP). The readiness of Indonesia can be viewed from the aspect of economic growth. Based on the economic growth report that was launched by the International Monetary Fund (IMF) in 2012, it appears that in the last 10 years of economic growth, Indonesia is very stable in the range of 5.5% ±1 per

cent with an average growth of 6.11% from 2007 to 2012 (Abdu Rofiq, 2014).

Yogyakarta is a city in Indonesia where many citizens are involved in small and medium enterprises (SMEs). From the data obtained from the Industry and Commerce Bureau of Yogyakarta, in 2015 there were 230,047 SMEs. With the increasingly fierce competition as a result of the single market of the ASEAN Economic Community will very likely have an impact on the survival of these SMEs, cause will many imported products that will flood the domestic market.

Small and medium enterprises play a vital role in the development and economic growth. Actually, since small and medium enterprises is the main provider of goods and services it's has a low-income (Tambunan, 2012). So, the protection of Economic, Social, and Cultural (ESC) rights of small medium-sized enterprises is very needed towards free market in ASEAN Economic Community in Yogyakarta.

The Economic, social, and cultural rights are vague, inherently of a positive nature which required positive measures for their implementation, and resource dependent becomes the departure point in discussing the justiciability of these rights in this article (Malcolm, 2009). Although international law recognizes ESC rights as genuine rights, a lively and contentious debate over the ideological and technical nature of these rights is still ongoing (Mapulanga, 2002). The debate about the justiciability of ESC rights has become an issue since the development of human rights.

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

METHODS

This research is a legal and socio-legal research of the international law and Indonesian law which are related to economic, social and cultural rights. This research would use statute approach (Ibrahim, 2006) because it discusses regulations such as the Universal Declaration of Human Rights and other conventions relating to the issue of ESC rights which applicable to the protection of small and medium enterprises based on economic, social and cultural rights, for instance International Covenant on Economic, Social and Cultural Rights and its Protocol.

Small and Medium Enterprises in Yogyakarta towards AEC 2015

SMEs can be defined in many different ways. In Indonesia, there are many different definitions of SMEs based on the institution (Hubeis, 2009):

- (a) The Central Statistics Agency (*BPS*): SME is a company or industry that has between 5 and 19 employees.
- (b) *Bank Indonesia (BI)*: SME is a company or industry which is characterised by: (a) having

a capital of less than IDR. 20 million; (b) for one round from his business only needs IDR.5 million; (c) has maximum assets of IDR. 600 million, excluding land and buildings; and (d) annual turnover of \leq IDR.1 billion.

- (c) Cooperatives and Small and Medium Enterprises Ministry (Small Enterprises Act 1995): SMEs are small scale and are usually focused on traditional economic activities with a net income IDR.50 million - IDR.200 million (excluding land and buildings) and an annual turnover of \leq IDR.1 billion. According to the SME Act 2008, SMEs have a net income between IDR.50 million – IDR.500 million and annual net sales of IDR.300 million – IDR.2.5 billion.
- (d) Presidential Decree No.16/1994: SME is a company that has a net income of up to IDR. 400 million.
- (e) Ministry of Industry and Commerce: (a) the Company had assets up to IDR.600 million, excluding land and buildings (Department of Industry before merger); and (b) the Company has a working capital less than IDR.25 million (Department of Commerce before merger).

In general, small businesses have characteristics, such as: a self-management, self-funded, local marketing area, small company assets, and a limited number of employees. SMEs are the implementation of the principle of solidarity, democratic

economy, independence, balance, progress, sustainability and efficiency of justice, as well as national economic unity. It is also called the informal sector as it is not highly sophisticated. The production volume is very small and the SMEs do not have a formal business license (Mubyarto, 2002). The importance of growth and development of SMEs must be considered, especially in the framework of ASEAN economic integration (Tiurmaida, 2014).

The SMEs are also an integral part of economic development and growth of the ASEAN Member countries because of the number of SMEs and their employees exceed those of other types of companies. The SMEs also directly impact on the advancement of ASEAN framework on equitable economic development (AFEED) Program. This is evident from the fact SMEs account for more than 96% of all companies and 50%-85% of domestic industry (Lemhannas, 2013).

SMEs only need a small capital and many SME founders say they set up their own company because they do not like working as labourers in factories which has too many rules and regulations. This is evidenced by the growing number of SMEs (Syukriah, 2016).

Data for this study was obtained from the Cooperation and Small Medium Enterprises Bureau of Yogyakarta and Industry and Commerce Bureau of Yogyakarta.

The number of SMEs in Yogyakarta is growing exponentially. However, the development of SMEs in Yogyakarta is hampered by two main barriers, namely:

(1) the internal factor, SMEs are weak in terms of capital, management capabilities, production, marketing and human resources; and (2) External factors: the issues arising from competition. For example, the lack of government supports to protect SMEs in term of legislation to facing the AEC 2015.

Economic, Social and Cultural Rights and ICESCR

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

The terms that explain the economic, social and cultural rights related to ICESCR are:

- (a) Economic rights in the ICESCR are the rights to work and to just and favourable conditions of work; the right of everyone to form trade unions, join a trade union of one's own choice; and the right to strike.
- (b) Social rights in the ICESCR are the rights to social security; protection and assistance of the family; the right of everyone to an adequate standard of living for them and their family, including food, clothing and housing, the continuous improvement of living conditions and the right to be free

Table 1
Number of SMEs

No.	Sector	2013	2014	2015
I	SMEs			
	By Type of Enterprises			
	Various Enterprises	44,452	47,808	49,926
	Trading	58,601	63,026	65,823
	Agriculture Industry	55,767	59,977	62,541
	Non-Agriculture Industry	46,390	49,892	51,757
	Total	205,210	220,703	230,047
II	By Scale Enterprises			
	Micro Enterprises	111,912	101,600	104,171
	Small Enterprises	51,459	67,509	71,289
	Medium Enterprises	31,121	51,594	54,587
	Large Enterprises	10,718	-	
	Data Correction	205,210	220,703	230,047
III	New Enterprises			
	Target	24,798	90,000	90,180
	Realization	16,421	65,333	65,593
IV	Detail per Region/City			
	Yogyakarta City	4643	18,420	18,470
	Sleman	2608	10,365	10,430
	Bantul	4479	17,868	17,933
	KulonProgo	1578	6268	6308
	Gunung Kidul	3113	12,412	12,452
	Total	16,421	65,333	65,593

Sources: Industry and Commerce Bureau of Yogyakarta 2016

- from hunger; the right of everyone to the highest attainable standard of physical and mental health; and the right of everyone to education.
- (c) Cultural rights in the ICESCR are the rights of everyone to take part in cultural life, to enjoy the benefits of scientific progress, to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (Amnesty International, 2016).

Obligations undertaken by states and consequently by the international community, under international human rights instruments shall be implemented in good faith (Article 26). However, many obstacles must be overcome in fulfilling this standard, including that of the relative neglect of economic, social and cultural rights. Another problem is the slow process in clarifying the contents of these rights and their corresponding obligations. However, by way of the “general comments” interpreting the relevant international instruments by

the UN Committee on Economic, Social and Cultural Rights (Asbjorn, Catarina, & Allan, 2001).

State responsibility in this context is a statement of “commitment” and “goodwill”, which does not recognize “half-committed” or “commitment patchy” but “full commitment” to guarantee the non-discrimination principle, including ensuring the equality of men and women to enjoy ESC rights guaranteed in Article 3 of the Covenant.

The ratification of the Charter has consequences for the implementation of human rights and create a report relating to the adjustment of law, measures, policies and actions (Yosep, 2012). ICESCR commands state parties to protect their citizens from the violation of ESC rights, and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights seeks to regulate State obligations (Article 6, Maastricht Guidelines on Violation of Economic).

Indonesia is bound by international law and to *fulfil* the Economic and social rights of Indonesians. As the member of United Nations (UN); Indonesia is required by UN Charter to implement a code of conduct in implementing human rights (Article 55 UN Charter). Article 103 of UN charter states: “In the event of a conflict between the obligations of the Members of the United Nation under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail”. ICESCR with its instruments is very important for

ESC rights in each country that has ratified the Covenant.

ESC Rights of SMEs in Yogyakarta

The Yogyakarta Government tries to protect not only economic or social rights, but also the cultural rights. The government provides freedom to choose cultural life as long as it does not contradict the social norm in Yogyakarta. Through AEC it will be a bridge to cultural transformation in Yogyakarta the government introduced programs to strengthen local cultural identity to ensure its survival. Yogyakarta still does not promulgate the legislations to protect small and medium enterprises towards AEC 2015, especially on economic, social and cultural rights.

CONCLUSION

Although Yogyakarta has made strong efforts to protect the economic, social and cultural rights of SMEs legislation is still vulnerable. The ICESCR has an important role to protect SMEs in Yogyakarta and as such, the government should fulfil the ESC rights of SMEs. There is also a need for Yogyakarta to promulgate and enact Regional Regulation to regulate small and medium enterprises based on economic, social and cultural rights.

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