

Juridical Analysis of the Impacts of the Entry into Force of ASEAN Economic Community on the Transport of Goods through Sea Transport Services

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Abstract: This research aims to analyze the impacts of the entry into force of the ASEAN Economic Community (AEC) on the national shipping industry, especially on the transport of goods through sea transport services. There are two questions in this research, how is the mechanism for the implementation of AEC in transport service sector and how are the impacts of the implementation of AEC on the transport of goods by sea by national shipping companies. It is a normative legal research with a descriptive analytical nature. Data in this research is a secondary data. The research findings show that mechanism for the implementation of AEC in transport service sector is implemented based on the objective of the establishment of AEC, ASEAN economic integration. One of its elements is free flow of sea transport services, which is included in the ASEAN Framework Agreement on Services (AFAS). The entry into force of AEC, affects national shipping business. One of its negative impacts is weak national shipping business. It, however, has some positive impacts such as increase in exports and imports in the ASEAN region and the construction of Indonesia's sea toll road as an effort to improve national shipping business activity.

1 INTRODUCTION

Indonesia is a maritime country with the highest number of islands in the world. With its more than 17,000 islands, Indonesia becomes one of the biggest maritime countries in the world. It has big potential in sea transport. Sea transport service is a vital business element in good distribution at national and international levels (Agusdianto, 2017).

Indonesia was affirmed as an archipelagic state in the declaration of the United Nations Convention on the Law of the Sea (UNCLOS) III. As an archipelagic state, Indonesia is one of countries which benefits from the UNCLOS. The country has established sea lines of Indonesia's islands which are used as a guide for international shipping routes or foreign ships which across Indonesian territorial seas. As a maritime state or an archipelagic state, Indonesia consists of about 17,508 islands, from Sabang to Merauke, as long as about 5,000 kilometers, and lies across Miangas Island and Marore Island to Rote Island, as long as about 2,000 kilometers. Indonesia has a total area of about 8

million square kilometers and its sea area is about two third of the total area of Indonesia. The rest is land area. This shows that Indonesia is the main market place for other countries not only for trade but also for shipping routes (Limbung, 2014).

Indonesia's sea transport sector ever reached its golden era in 1960s after the nationalization of a Dutch shipping company, NV. KPM (*Koninklijk Paketvaart Maatschappij*), through Government Regulation Number 34 Year 1960 date 24 September 1960. Sadly, it slowly faded away after the issuance of the Ministry Regulation Number 57 Year 1984 through which government bans the operation of more than twenty-five-year-old ships. Due to the lack of ships, businessmen are forced to use foreign ships and this continues until 2005 (Rahmat, 2015).

In response to this situation, the Government of Indonesia issued Presidential Instruction Number 5 Year 2005 on the Empowerment of the National Shipping Industry. It regulates the implementation of the cabotage principle in the Indonesian waters. Then, the cabotage principle is regulated in Law Number 17 Year 2008 on Shipping.

The implementation of the cabotage principle has been proven to be able to stimulate and accelerate the development of national shipping industry and greatly affected the national economy. Data from the Department of Transportation shows that there were 13,244 Indonesian-flagged ships in February 2014 while there were only 6,041 Indonesian-flagged ships in May 2005. The data shows that the number of Indonesian-flagged ships has significantly increased by 7,203 units or about 119%. This has a positive impact on the installed capacity of the Indonesian-flagged ships which reaches 19.2 million gross tonnage, or it increases 238% compared to the capacity of the Indonesian-flagged ships in 2005 which was only 5.67 million gross tonnage (Rahmat, 2015).

The national shipping industry weakened again following the entry into force of AEC in 2015. It brings Indonesia into the concept of economic globalization and the liberalization of free trade.

Free trade in sea transport services results in weak national shipping industry because trade transaction rules may slow down shipping industry. Almost 90 percent of coal and crude palm oil (CPO) exports use importer (foreign) ships. Consequently, many cargo and logistic shipping companies lose their shipping activities and ships which operate suffer loss due to the lack of goods that they transport. This happens because the foreign importers use their own ships to transport the imported coal and crude palm oil (Hidayat, 2016).

Logistics transportation by sea is an integral part of export and import activities. The application of AEC and liberalization of shipping services has had an impact on national shipping businesses. National shipping industry activities experienced a downturn due to the entry of foreign ships carrying logistics from and between ports in Indonesia.

Based on the background described in this introduction, it is important to answer the research questions, among others, how is the mechanism for the implementation of AEC in transport service sector and how are the impacts of the implementation of AEC on the transport of goods by sea.

2 RESEARCH METHODOLOGY

This type of research is a normative legal research. Data in this research is secondary data consisting of: Primary legal materials such as laws and regulations, secondary legal materials such as books, journals and articles containing comments and analysis

related to the subject matter, and tertiary legal materials such as dictionaries.

The data was collected through library research. Then, the collected data was processed through data and document analysis by using a qualitative approach based on a deductive logical thinking.

3 RESULT AND DISCUSSION

3.1 Mechanism for the Entry into Force of AEC in Sea Transport Services

The establishment of the ASEAN Economic Community (AEC) started from the agreement of ASEAN leaders at the ASEAN Summit held in December 1997 in Kuala Lumpur, Malaysia. The agreement aims to improve the competitiveness of ASEAN so that it can compete with China and India and attract foreign investment. Foreign capital is needed to enhance job opportunity and the prosperity of ASEAN community. Embryo of the ASEAN Economic Community (AEC) started at the Informal Meeting of Heads of State/Government of the Member States of ASEAN in 1997 to formulate the vision of ASEAN which will be achieved in 2020. In other words, the initial purpose of the establishment of ASEAN Community is to ensure durable peace, stability and shared prosperity in the region (Balakrishnan, 2015).

At the subsequent ASEAN Summit held in Bali in October 2003, ASEAN leaders declared the establishment of AEC in 2015.

ASEAN Economic Community is one of pillars of the ASEAN Community (AC). AC comprises of three pillars, namely: political-security cooperation, economic cooperation and socio-cultural cooperation (The Directorate General of ASEAN, 2003).

Economic cooperation is the realization of the end goal of economic integration underlined in the ASEAN Vision 2020, to transform ASEAN into a stable, prosperous and highly-competitive region which is marked by the free flow of goods, services, investments and economic development, poverty reduction and socio-economic disparities by 2020. The AEC is a form of ASEAN economic integration. It means that there is a free trade system among ASEAN countries. Indonesia and the other nine ASEAN member countries have agreed AEC agreement.

At Bali Summit in October 2003, ASEAN

leaders declared that the AEC shall be the goal of regional economic integration by 2020. The ASEAN Security Community and the ASEAN Socio-Cultural Community are the other two integral pillars of the envisaged ASEAN Community. All the three pillars are expected to work in tandem in establishing the ASEAN Community in 2020 (Rachmat, 201)

Subsequently, the Meeting of the ASEAN Economic Ministers (AEM) held in August 2006 in Kuala Lumpur, Malaysia, agreed to advance the AEC with clear targets and timelines for implementation of various measures. At the 12th ASEAN Summit in January 2007, ASEAN leaders affirmed their strong commitment to accelerate the establishment of an ASEAN Community by 2015 as envisioned in the ASEAN Vision 2020 and the ASEAN Concord II, and signed the Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015. In particular, the Leaders agreed to hasten the establishment of the ASEAN Economic Community by 2015 and to transform ASEAN into a region with free movement of goods, services, investment, skilled labour, and freer flow of capital (ASEAN, 2018).

The AEC has four main pillars and envisages the following key characteristics: 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 (Kementerian Luar Negeri RI, 2015).

The realization of AEC as a single market and a production base has five elements, namely: free flow of goods, free flow of services, free flow of investment, free flow of skilled labors and freer flow of capital (Simanjuntak, 2015). In particular, this research elaborates the element of free flow of services.

Service sector plays a strategic role in the economy of ASEAN member countries as about 40%-50% of their Gross Domestic Product (GDP) are contributed by this sector. In addition, service sector is a sector with the fastest growth in the ASEAN region (Kementerian Luar Negeri RI, 2018).

As an effort to improve economic cooperation through the liberalization of trade in service sector, the ASEAN member countries agreed the ASEAN Framework Agreement on Services (AFAS) on 15 December 1995 in Bangkok, Thailand. To follow-up the agreement, a Coordinating Committee on Services (CCS) was established to develop modalities to manage the negotiation of the liberalization of services in the framework of AFAS which includes eight sectors: air and sea transport

services, business services, construction services, telecommunication services, tourism services, financial services, health services and logistic services (Kementerian Luar Negeri RI, 2015).

AFAS agreement includes the objectives of the establishment of AFAS: to enhance cooperation amongst member states in order to improve the efficiency and competitiveness, diversify the production capacity and supply and distribution of services of their service suppliers within and outside ASEAN; to eliminate substantially restriction to trade in services amongst member states; and to liberalize trade in services by expanding the depth and scope of liberalization beyond those undertaken by member states under the GATS with the aim to realizing a free trade area in services.

AFAS serves as a basis for all ASEAN member countries to agree on the realization of ASEAN region as a free trade area in service sector, including sea transportation service. As a sovereign state, although the free trade era has been open, Indonesia has to keep the sovereignty of its sea territory. The sovereignty of Indonesian sea territory has to be kept and protected. National shipping companies get the top priority and are given the biggest opportunity to transport goods or passengers inter-harbor for national and international shipping.

To keep and protect the legal sovereignty of the Indonesian waters, government issued the Presidential Instruction Number 5 Year 2005 on the Empowerment of the National Shipping Industry. It regulates the implementation of the Cabotage Principle in Indonesia so that the country is recognized as one of maritime axis in the world.

The Cabotage Principle is one of legal principles contained in sea transport law. The law regulates that sea transport activity in Indonesia is implemented by a national sea transport company by using an Indonesia-flagged ship and manned by Indonesian ship's men crew (Article 8 from Law on Shipping, 2008)

As a result of the implementation of the principle, government requires national shipping companies to own Indonesian-flagged ships/their own ships and use services from a national ship's men crew. Government implements the cabotage principle to ensure that Indonesian-flagged ships become a king on their own sea area.

Then, the government issued the Decision of the Transportation Minister Number 71 Year 2005 on important commodities such as oil and gas, general cargo, coal, logs, rice, crude palm oil, fertilizer, cement, excavated materials, vegetables and fruits, agricultural products, liquid and chemical substances

that must be transported by Indonesian-flagged ships. The Cabotage Principle is regulated in Article 8 of Law Number 17 Year 2008 on Shipping. It contains administrative and criminal sanctions for the infringement of the cabotage principle.

Again, the government issued Decision of Minister of Number 48 Year 2011 on the Implementation of Cabotage Principle for Upstream Oil and Gas. However, the government still gives a dispensation to foreign ships for off-shore activities and under water works until the end of this year. In addition, dispensation for the use of foreign ships for oil and gas survey activities also ends in December 2015.

Indonesia encourages the liberalization of service sector through the Coordinator Team for Service Sector (*Tim Koordinator Bidang Jasa – TKBJ*) which works under the Ministry of Trade. It was established through the Decision of the Minister of Trade of the Republic of Indonesia Number 288/M-DAG/KEP/3/2010 date 5 March 2010 (Kementerian Luar Negeri RI, 2015).

According to Article 3 of Law Number 17 Year 2008 on Shipping, the objectives of the implementation of the Indonesian shipping system are, among others, to facilitate the flow of movement of people and/or goods through the waters by prioritizing and protecting transport in water in order to facilitate the activities of the national economy; foster marine life; uphold the sovereignty of the country; create competitiveness by developing national water transport industry; support, mobilize, and encourage the achievement of national development objectives; strengthen the unity and integrity of the nation in order embodiment Archipelago; and improve national resilience.

To achieve these objectives, according to the Elucidation of the Regulation of the Government of the Republic of Indonesia Number 20 Year 2010 on Water Transportation, the implementation of water transportation is done, among others, through the following ways:

Implement the cabotage principle consequently and consistently so that national water transport companies can be host in their own country;

Develop transport in waters in disadvantaged areas and/or isolated areas through pioneer shipping and tasking;

Create a conducive business climate for the empowerment and independency of national water transport industry;

Develop relevant service industry to support water transport activities;

Develop an integrated information system for transport in water which involve all relevant parties by utilizing the development of information and communication technology.

32 The Impacts of the Entry into Force of AEC on the Transport of Goods by Sea

Economic globalization means a process through which many countries are involved in the global economic activities (Tambunan, 2004). In the global economic, this is marked by public awareness of their integral relation pattern as members of the borderless world community (Limbong, 2014).

The establishment of AEC leads to the realization of a free market in capital, good and service as well as labor sectors. This also affects the free flow of goods and services in ASEAN member countries.

The free flow of service sector also affects sea transport service (logistics), both the transport of goods and the transport of passengers. It is a fact that logistic system in Indonesia is weaker than that of its neighboring countries such as Singapore and Malaysia. Therefore, the Government of Indonesia must anticipate this by strengthening its international harbors (ports) to enable them to serve trade from the Atlantic and the Pacific and implement the Cabotage Principle for distribution to areas visited by national ships. So far, business activities of national shipping service are protected by the cabotage principle so that national shipping companies can survive until now.

Cabotage Principle means a principle stating that shipping activities within the waters of a state are only allowed for the vessels of the state concerned. Cabotage principle has been recognized in the law and practice of shipping worldwide and is the manifestation of the sovereignty of a state in controlling its own seas. This principle serves as a protection for domestic shipping companies against unreasonable conditions due to unfair business competition (Kusumaatmadja, 1994).

As a result of the implementation of the principle, government requires national shipping companies to own Indonesian-flagged ships (their own ships) and use services from Indonesian ship's men crew. Government implements the cabotage principle to ensure that Indonesian-flagged ships become king on their own waters.

The United Nations Convention on the Law of the Sea (UNCLOS) 1982 recognizes the rights of states to claim for various types of maritime zones

with different status which can be divided into the following:

Under the full sovereignty of state covering deep sea, territorial sea and straits which are used for international shipping; state has a special and limited jurisdiction i.e. additional zone; state has an exclusive jurisdiction to utilize their natural resources i.e. Exclusive Economic Zone and continental shelf; under a special international rule i.e. international sea-bed area; and not under the sovereignty or jurisdiction of any state i.e. high seas (Kusumaatmadja and Agoes, 2003).

Free flow of trade in goods and services for ASEAN countries which is applied in AEC agreement, including the effects of free flow of sea transport service sector (logistic), has to respect the cabotage principle although Indonesia is bound by the AEC agreement and although free trade in AEC agreement has no artificial obstacle (obstacle from government) in trade among individuals and companies in different countries (wikipedia ensiklopedia, 2017).

An efficient and well-managed shipping system is a very important factor in economic competition and national integrity. National shipping business activities, especially transport of goods by sea, decrease after the entry into force of AEC.

Data from the Central Bureau of Statistics shows that number of goods which were transported by ship increased 1.62% only in 2017, lower than that of in 2016 which was 8.37%. Based on data from the Central Bureau of Statistics, there were a total of 262.43 million tons and 258.24 million tons which were transported in 2017 and 2016 respectively. In general, trend of cargo slowed down, from 8.91% in 2016 to 1.95% in 2017. Other harbor share reaches 83% of the total cargo (Maulana, 2018).

Similar to the business activities of national shipping industry, business activities of offshore shipping were also weak (Grizhaldo, 2015). Offshore shipping is shipping on offshore. Meanwhile, offshore building is a building or structure built on the offshore to support exploration and exploitation of mining products such as oil and natural gas.

In addition to decline in oil and gas business activities due to legal uncertainty which fails to give protection to domestic shipping industry, this situation has resulted in the cut of operational cost, employment termination and decrease in the number of offshore ships. Offshore shipping industry is one of business which declines as a result of the effect of the entry into force of AEC (Dewi, 2015).

Data from the Indonesian National Shipowners'

Association (INSA) shows that 4,900 ships or 35% of the total number of national ships which is 14,000 units do not operate (Hidayat, 2016).

According to Carmelita Hartoto (General Chairwoman of the Indonesian National Shipowners Association), the condition of both national and international shipping is about to enter into a crisis because of weak global economy. Due to the weak economy, many domestic companies are forced to make efficiency. As a result, domestic transport business is slow. According to her, about 60 percent of coal tug boats, 40 percent of general cargo ships and 60 percent of upstream oil and gas ships do not operate (Hidayat, 2016).

Water transport, as a part of the national transport system, plays a vital role in supporting national economy, realizing the embodiment of Archipelago (*Wawasan Nusantara*), strengthening the unity and integrity of the nation, improving national resilience and strengthening international relation. Water transport has strategic functions to support trade and economic activities (ship follows the trade) and stimulate economic and regional growth (ship promotes the trade) so that it functions as a strategic infrastructure for Indonesia as an archipelagic state.

The negative effect of the entry into force of AEC in sea transport service has resulted in weak national shipping industry. The implementation of the cabotage principle can increase the activities of logistic shipping industry. The implementation of the cabotage principle consequently and consistently which is clearly regulated in the Government Regulation Number 20 Year 2010 on Water Transport makes provisions on free trade in sea transport service sector contained in EAC irrelevant because AEC alone has to comply with provisions which are the rights and authorities of any sovereign state.

The entry into force of AEC in logistic shipping also has some positive impacts such as increase in exports and imports in the ASEAN region, the use of technology in shipping industry sector and the construction of Indonesia's sea toll road as an effort to improve national shipping business activity.

AEC gives ASEAN member countries opportunities to accelerate the movement of human resources and capital which are two vital production factors. Trade increases because AEC brings investment flow from abroad into Indonesia which will create a multiplier effect in various sectors, especially in economic development sector. The creation of a single market has made companies in ASEAN region easier to establish a joint venture so

that they have a greater access to production materials.

Especially for technology sector, the entry into force of AEC leads to the transfer of technology from developed countries to developing countries in the Southeast Asia region. Indonesian shipping industry tries to build ships with more innovative design and equip them with modern technology although it is still unable to compete with advanced technology used by foreign ships.

The construction of sea toll road is government's priority program as a manifestation of *Nawa Cita* (Nine Priority Agendas) aiming to build an effective and efficient sea transport connectivity in order to ensure the availability of goods and reduce price disparity as well as to ensure the sustainability of good transport services to disadvantaged, isolated, outer and border areas (Achmadi, 2018).

The construction of sea toll road is an effort to provide sea transport network consistently and regularly through the organization of sea transport service with a subsidiary pattern and is supported by the improvement of harbor or port facilities. Sea toll road can support connectivity and reduce logistic cost to get greater economic benefits.

Government's support for the sea toll road program is realized through sea transport infrastructure development such as sea transport, harbors or ports as well as shipping safety and security. According to the Presidential Regulation Number 71 Year 2015, there are some types of cargo that can be transported by using sea toll road ships such as agricultural products (rice, soybean), industrial products (sugar, oil, flour), farming products (meat, eggs, fishes) and necessary materials (fertilizers, seeds, cement).

4 CONCLUSION

Mechanism for the entry into force of AEC in sea transport service is applied in accordance with the signed ASEAN Framework Agreement on Services (AFAS) date 15 December 1995 on the Liberalization of Sea and Air Transport Services. However, as a sovereign state, although the free trade era has been open, Indonesia has to keep the sovereignty of its territory. The interests and prosperity of the nation must be prioritized. The sovereignty of Indonesia's waters has to be kept and protected through the implementation of the cabotage principle. National shipping companies get the top priority and are given the biggest opportunity to transport goods or passengers inter-harbor for

national and international shipping.

The negative effect of the entry into force of AEC in sea transport service has resulted in weak national shipping industry. The implementation of the cabotage principle can increase the activities of logistic shipping industry.

The entry into force of AEC in logistic shipping also has some positive impacts such as increase in exports and imports in the ASEAN region, the use of technology in shipping industry sector and the construction of Indonesia's sea toll road as an effort to improve national shipping business activity.

The implementation of AEC in the field of shipping services must still respect the cabotage principle of the sovereignty of each marine region of ASEAN member countries, especially Indonesia as a maritime country. The government should make strict implementing regulations regarding the implementation of the AEC in the field of shipping, so that the opening of ASEAN free market can bring benefits, the interests of the nation remain protected and not interfere with national shipping business.

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