

## HARMONIZING COMPETITION LAW IN THE ASEAN ECONOMIC COMMUNITY

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### ABSTRACT

*The paper aims to discussing the implementation of competition law (antitrust law) in ASEAN countries since ASEAN Economic Community (AEC) has been implemented. This legal research finds that there are only six of all ASEAN countries belonging to the competition law, i.e. Indonesia, Singapore, Thailand, Vietnam, Malaysia and the Philippines. Whereas, the other are formulating or planning to stipulate the competition law. It impacts that unfair business competition occurs such as abroad company merger, acquisitions, monopoly and cross border cartels which negatively impact on the economic sector of ASEAN countries. Monopoly and cartel offenders can easily raise prices in manner which the holding companies coordinate each other. Therefore, integrated ASEAN market in the AEC needs to implement the national and regional competition law in order to supervise businessmen behaviors in the ASEAN locally and regionally. It will be better to immediately establish an institution for controlling business competition in each ASEAN country and establish a regional agency for supervising business competition in the ASEAN regions.*

Key words: Competition, ASEAN Region, Challenges, Economy, Businessmen.

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### Introduction

The geopolitics and geo-economics of Southeast Asia have strategic values. The condition brings the region into the competition arena of influences as in the era of the cold war between the West Block and the East Block. One proof of the rivalry between the superpowers and great powers at that time was the Vietnam War between the North Vietnamese backed by communist forces and South Vietnamese supported by the US-led Western.

In addition, there is a competition of ideology between the Western and East powers, as well as the military conflict in Southeast Asia involving three countries, namely Laos, Cambodia, and Vietnam, as well as bilateral conflicts such as Indonesia and Malaysia, Cambodia and Vietnam. This situation encourages the leaders of countries in Southeast Asia to establish a partnership that can reduce mutual suspicion and to encourage joint development efforts in the region.<sup>1</sup>

On August 8, 1967, held in Bangkok Thailand, five representatives of governments from Southeast Asia, the Indonesian Foreign Minister-Adam Malik, Deputy of Prime Minister of Malaysia-Abdul Razak, Minister of Foreign Affairs for the Philippines-Narciso Ramos, Minister of Foreign Affairs for Singapore-S. Rajaratnam, and the Foreign Minister of Thailand-Thamat Khoman met and signed the ASEAN Declaration called The ASEAN Declaration or Bangkok Declaration.<sup>2</sup> The founding countries were subsequently Brunei Darussalam (1984), Vietnam (1995), Laos (1997), Myanmar (1997), and Cambodia (1999).<sup>3</sup> The cooperation initially focused on issues of peace and security in Southeast Asia.

Along with dynamic time and change of regional strategic environment, the ASEAN also focused on economic issues which carried the spirit of economic and social stability in Southeast Asia through the acceleration of economic, social and cultural progress by promoting equality and partnership. The shifting more increasingly appeared when the economic crisis occurred in 1997 in Thailand as the impact of globalization and financial integration of the world. The economic crisis then spread to the

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<sup>1</sup> ASEAN, (2010), *ASEAN Selayang Pandang Edisi ke -19, Tahun 2010*, Jakarta: Sekretaris Jenderal Kerjasama ASEAN, p.1.

<sup>2</sup> The Association of Southeast Asian Nations or ASEAN was established in Bangkok on 8 August 1967 by the five original member Countries: Indonesia, Malaysia, Philippines, Singapore and Thailand. Brunei Darussalam joined on 8 January 1984, Vietnam on 28 July 1995, Laos and Myanmar on 23 July 1997 and Cambodia on 30 April 1999. The ASEAN region has a population of about 500 million, a total area of 4.5 million square kilo meters, a combined gross domestic product of US\$ 737 billion and a total trade volume of US\$ 720 billion.

<sup>3</sup> Edmund W. Sim, (2014), The Outsourcing of Legal Norms and Institutions by The ASEAN Economy Community, *The Indonesian Journal of International & Comparative Law*, Volume 1 Issue 1 (January), pp. 314-315.

member countries of the ASEAN such as Indonesia, Malaysia and Singapore. Hence, the ASEAN as a regional organization was also actively responded to the spirit of cooperation known as a regional self-help.

The leaders of the ASEAN countries issued a statement of "the ASEAN Vision 2020". The vision is to strengthen a unity and economic integration and to increase economic cooperation among others by implementing the ASEAN Free Trade Area and accelerating trade liberalization. Strengthening this vision was made in 9<sup>th</sup> Nusa Dua Bali Summit on October 7-8, 2003.<sup>4</sup>

In three years later the ASEAN meeting was held in Cebu Philippines and declared "Cebu Declaration on the Acceleration of the Establishment of an ASEAN by 2015" on January 13, 2007. The Cebu Declaration states: first, the ASEAN's strong commitment towards accelerating the establishment of an ASEAN Community by 2015 along the lines of the ASEAN Vision 2020 and the Declaration of ASEAN Concord II, in the three pillars of the ASEAN Security Community, ASEAN Economic Community and ASEAN Socio-Cultural Community; second ASEAN's strong determination to Accelerate the full implementation of the ASEAN Community's program areas, measures and principles, with Appropriate flexibility; third ASEAN's determination to create a stronger, more united and cohesive ASEAN that can better manage the challenges posed by the evolving regional architecture and economic climate; and fourth, that ASEAN remains committed to further expanding our engagement with our Dialogue Partners and other parties, and Believes that such interaction will assist ASEAN in its integration Efforts to Achieve the ASEAN Community by 2015.<sup>5</sup>

At the end of December 2015 the AEC will be enforced effectively. The AEC is a form of economic integration of ASEAN in terms of a system of free trade between ASEAN countries. This will transform the regions into free and integrated region with the global economy of the world.<sup>6</sup>

One of the goals listed in the AEC blueprint is to create a competitive economic region in which one element is the importance of competition policy. It means that the role of competition law and competition policy is crucial in ensuring the fair competition in the ASEAN region. Currently, there are only six ASEAN member countries that have competition law, namely Indonesia, Thailand, Singapore, Malaysia, Vietnam and the Philippines. The Philippines is the most recent state that enacts competition law on July 21, 2015, namely the Philippines Competition Act. Meanwhile, four other ASEAN member states, Brunei, Cambodia, Laos and Myanmar are still in the process of making competition law respectively.<sup>7</sup>

The prohibition of unfair business competition in Indonesia is regulated in Act Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. Monopolistic practices constitute a centralized economic activity by one or several businessmen, so that the goods and/or services producing and/or marketing are under his/her or their control. The activity makes a business competition unfair and can harm the public interests. Meanwhile, unfair business competition constitutes a competition occurring among businessmen in producing and/or marketing the goods and/or services dishonestly or unlawfully.

Competition law regulates the prohibition of which businessmen conduct agreements with business competitors horizontally to stipulate the prices, to set the amount of production, to divide the marketing area, to rig tender, to make agreements vertically, to prohibit the abuse of dominant position and the mergers and acquisitions that are able to appear unfair competition on the relevant market.<sup>8</sup>

The AEC has the risk of unfair competition e.g. through the merging companies abroad, mergers, acquisitions, monopolies on certain sectors and international new cartels (cross border cartel) which have negative impact on economics of the ASEAN. The economy can be affected by monopoly or cartel on particular sectors, that is, easily increasing the prices by way of coordinating the companies that are included in the holding companies for example in the field of CPO cartel that can be done by CPO companies in Indonesia, Malaysia and Thailand.<sup>9</sup>

Based on the issue background stated above, this paper aims to discussing the implementation of the competition law in ASEAN countries since the ASEAN Economic Community has been implemented.

## Research Design

<sup>4</sup> M. Udin Silalahi, (2012), Accelerating The Development of An ASEAN Competition Culture, *Law Review*, Volume XII No. 2 - November, p. 242.

<sup>5</sup> Cebu Declaration on The Acceleration of The Establishment of an ASEAN Community by 2015, <http://www.aseansec.org/19260.htm> Read also Edmund W. Sim, *op.cit.*, pp. 314-315.

<sup>6</sup> M.Udin Silalahi, "Peranan Hukum Persaingan Usaha dan Tantangannya dalam Mengawasi Kegiatan usaha di Era MEA," in <http://www.aci.or.id>, downloaded on October 12, 2015, 10:30 pm.

<sup>7</sup> *Ibid.*

<sup>8</sup> Choong kwai Fatt, Edward Wong Sek Khin and Priscilla Yap, "Doctrine of Corporate Governance and Competition laws: The Malaysian Perspectives", *African Journal of Business Management* Vol. 4(6), p.1175, June 2010. Competition laws have their origins that date back to ancient Roman times. As civilization matured and market matured, this area of laws has also matured from the punitive edict under Emperor Diocletian in 301 AD. Under Emperor Diocletian, the death penalty was imposed on anyone who violates a tariff system, for example, by buying up, concealing or scheming to control the supply and price of everyday goods. That edict was a further extension of the "Lex Julia de Annona" enacted during the Roman Republic around 50 BC to protect the corn trade. Competition law has its roots not only due to liberalization of markets to allow competition but also providing social protection with an embedded public policy.

<sup>9</sup> Jawa Pos, (2015), Waspada Kartel Internasional saat MEA, *Jawa Pos*. Senin, 5 Oktober, p. 6.

The research is a legal research relating to academic activities. Black's Law Dictionary defines legal research as:

- a. The finding and assembling of authorities that bear on a question of law and;
- b. The field of study concerned with the effective marshaling of authorities that bear on the question of law.<sup>10</sup>

Jurisprudence has a distinctive character by which the nature is normative.<sup>11</sup> In this case, the jurisprudence has distinctive properties (*sui generis*) characterized by:

- a. Empirical analysis that expose and analyze the content and structure of the law;
- b. Systematizing symptoms of law;
- c. Doing interpretation of the substance of the applicable law; and
- d. That practical sense of law is closely related to its normative dimension.

The legal research is conducted by method according to the character and typical of the jurisprudence which differs from the social sciences and natural science. The research method includes the approach the determination of legal materials and critical analysis of the material contained therein legal process to think that is explorative, inquiry and interpretation. The research method uses normative research that is a research referring to the legal norms contained in competition/antitrust law. The problem approach used in the research is an approach of legislation (statute approach).<sup>12</sup>

Furthermore, sources of law in the research consist of primary source of law, secondary source of law and tertiary source of law. The primary source of law is competition law. Secondary source of law covers literature, scholarly writings such as textbooks, journals, papers, dictionaries, and articles contained in the print and electronic media. According to Black's Law Dictionary, the definition of source law is: "something such as constitution, treaty, statute, or custom that provides authorities for legislation and judicial decisions; a point of origin of law or analysis." Explained further sources of law include: "In the context of legal research, the term" sources of law "can refer three roommates rent concept should be distinguished. One, sources of law can refer to the origin of legal concepts and ideas ...; two, sources of law can refer to governmental institutions that formulate legal rules ...; three, sources of law can to the published manifestations of the law. The books, computer databases, forms, optical disks, other media that contain legal information are all of law."<sup>13</sup>

The sources of law are collected by: reading, learning, quoting, comparing and connecting source of law from statutory law and literature, so that they become a unity so that the process is easy. The sources of law are processed by many steps:

- a. Editing, that the data are carefully checked to avoid errors of collected data;
- b. Classifying, that the collected data are then classified based on their respective subjects, this process is done to avoid errors in grouping data; and
- c. Organizing, that the collected data are then sorted according to the grouping, to avoid mistakes in the sense according to the systematization of materials.<sup>14</sup>

The sources of law are finally analyzed in several steps in accordance with the classification of problems. The analysis is carried out and poured in the form of descriptive analysis that contains activities of explaining, studying, systematizing, interpreting and evaluating. The next step is a theoretical analysis of the ingredients of the law to find, understand and explain in depth the competition law.

### Harmonizing Competition/Antitrust Law

The ASEAN Summit on December 15, 1997 in Kuala Lumpur Malaysia achieved understanding of the ASEAN leaders to ratify the ASEAN Vision 2020 with the goal of creating stable, prosperous and highly competitive economic zones of the ASEAN marked with free flow of goods, services and investment, freer flow of capitals, easy to move or free movement of workers and equitable economic development and reducing poverty and socio-economic un-justice.

On the 6th ASEAN Summit, December 16, 1998 in Hanoi, Vietnam, the ASEAN leaders made the Hanoi Action Plan that is the first step to realize the goal of the ASEAN Vision 2020. This action plan has a time limit of six years from 1999 till 2004. On the 7th ASEAN Summit, November 5, 2001 in Bandar Seri Begawan Brunei Darussalam the Roadmap for Integration of ASEAN was approved to map important milestones to be achieved and specific steps of the achievement schedule.

A commitment to create the ASEAN community as declared in the vision was confirmed by the ASEAN Concord II on October 2003 in Bali, known as the Bali Concord II on which the ASEAN leaders declared the establishment of the ASEAN Economic Community with the goal of regional economic integration in 2020.<sup>15</sup> On the 10<sup>th</sup> ASEAN Summit in Vientiane, Laos in 2004, the concept of the ASEAN Community reached the progress that the Vientiane Action Program (VAP) which was a strategy and work program to realize the ASEAN Vision was approved.

<sup>10</sup> Bryan A. Garner, (1999). *Black's Law Dictionary, Deluxe Eighth Edition* St.Paul: MN West Group, p. 394.

<sup>11</sup> Philipus M.Hadjon, Pengkajian Ilmu Hukum, *Makalah Pelatihan Metode Penelitian Hukum Normatif*, Pusat Penelitian Pengembangan Hukum, Universitas Airlangga, June 11-12, 1997, p. 1.

<sup>12</sup> Johnny Ibrahim, (2008), *Teori & Metodologi Penelitian Hukum Normatif*, Malang: Bayumedia Publishing, pp. 310-320.

<sup>13</sup> Bryan A. Gardner, (1999), *op. cit.*, p. 1429.

<sup>14</sup> Hamzah, (2011), *Asuransi Tanggung Jawab Produk*, Jakarta: Lembaga Studi Hukum dan Ekonomi Fakultas Hukum Universitas Indonesia, p. 22.

<sup>15</sup> Masnur Tiurmaida Malau, (2014), Legal Aspect of Indonesian Government Regulation against Regional Economic Liberalization: ASEAN Economic Community 2015, *Jurnal Rechts Vinding*, Volume 3 No. 2, p.164.

The ASEAN Community achievement is stronger since the "Cebu Declaration on the Acceleration of the Establishment of the ASEAN Community by 2015 had been signed by the ASEAN leaders on the 12<sup>th</sup> ASEAN Summit in Cebu, Philippines on January 13, 2007. The leaders also agreed to accelerate the establishment of the ASEAN Economic Community in 2015.

For the purpose of accelerating the economic integration, the ASEAN leaders prepare ASEAN Charter as an "umbrella law" which becomes the principle to promote and encourage cooperation among the ASEAN member countries. The charter contains principles that must be obeyed by all ASEAN member countries; the principles have been proclaimed on the 10<sup>th</sup> Summit until the 13<sup>th</sup> Summit in Singapore, November 20, 2007.

Simultaneously, by signing the ASEAN Charter, the ASEAN leaders also signed the ASEAN Economic Community Blueprint which is a master plan for the ASEAN to establish the ASEAN Economic Community in 2015. Furthermore, the ASEAN leaders declared the ASEAN Economic Community Blueprint (AEC Blueprint) as follows:

"... The AEC Blueprint which each ASEAN Member Country shall abide by and implement the AEC by 2015. The AEC Blueprint will transform ASEAN into 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 ..."<sup>16</sup>

The Blueprint identifies steps of economic integration that will be pursued through the implementation of detail various commitments with clear goals and target of time. The target of time is divided into four (4) phases: 2008-2009, 2010-2011, 2012-2013 and 2014-2015. The ASEAN Economic Community Blueprint has four (4) main characteristics, namely to realize the ASEAN as:

- a. The single market and production base with five (5) main elements, namely: (i) the free flow of goods, (ii) the free flow of services, (iii) the free flow of investments, (iv) the free flow of skilled labor, and (iv ) more freely capital flows. In addition, the single market and production base also include two (2) other essential components, namely the Priority Integration Sectors (PIS) and cooperation in the field of foods, agriculture, and forestry.
- b. Highly competitive economic zone with 6 (six) main elements, namely: (i) competition policy, (ii) consumer protection, (iii) intellectual property rights (IPR), (iv) infrastructure development, (v ) taxation, and (vi) e-commerce.
- c. Equitable economic development zone with two (2) main elements, namely: (i) the development of small and medium enterprises (SMEs) and (ii) initiative for the ASEAN Integration.
- d. The integrated zone into the global economy with two (2) main elements, namely: (i) an integrated approach to the economy outside the region, and (ii) increased participation in global supply networks.

The four characteristics above are closely related to each other. For the purpose of realizing the ASEAN as a single market and production base, the ASEAN should have a high economic competitiveness, either individually or regionally among member countries. To create a region which has high competitiveness, the development gap among member countries should be minimized so that each ASEAN member countries have an equivalent level of economic development. Achievement of the three things above is needed to make the ASEAN as ready region to fully integrate into the global economy.

The legal basis of the ASEAN single market is stated in Article 1 number 5 of the ASEAN Charter. Article 1 number 5 states that to create a single market based which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment in which there is a free flow of goods, services and investment; facilitated movement of business persons, professionals, talents and labor; and free flow of capital. The provision of Article 1 number 5 does not only establish a single market but also sets the culture of competition within the ASEAN. This can be seen from the words "... highly competitive and economically integrated with ... ". It means that all business actors in doing their business may not effect trade between ASEAN member countries. To ensure a fair competition between ASEAN member countries, business actors need a competition law. With the ASEAN Free Trade Area the business actors are free to supply the product from one member country to the other ASEAN member countries. Every business actor can trade among ASEAN member countries. This will lead to competition between the business actors among ASEAN member countries in ASEAN single market. It means that the culture of competition is already exists within every business actor.<sup>17</sup>

There are at least three factors that encourage the effort to achieve the AEC, namely: first, the process that leads to a market economy because of the deeper integration of the ASEAN economies with the global economy and the turmoil in the country; second, the consequences that are resulted by members of the ASEAN countries in multilateral organizations, especially the World Trade Organization and Asia Pacific Economic Cooperation; and third, growing number of Multi-National Companies that engage in productivity and provide goods and services in the ASEAN countries.<sup>18</sup>

Lawan Thanadsillapakul states that the ASEAN needs competition law because:<sup>19</sup> first, since the ASEAN aims to strengthen economic integration in the region, it needs laws and institutions to support the implementation and elaboration of trade and investment within the ASEAN market liberalization; and second, in an emerging ASEAN free market economy, monopolies and restrictive business practices are viewed as undesirable, since they are likely to distort prices and inhibit the efficient allocation of resources.

<sup>16</sup> M.Udin Silalahi, (2012), *op.cit.*, p.234.

<sup>17</sup> M. Udin Silalahi, (2012), *op.cit.*, pp. 242-243.

<sup>18</sup> G. Sivalingam, (2005), *Competition Policy in ASEAN*, Singapore: Thomson Learning Ltd, p. 56.

<sup>19</sup> Lawan Thanadsillapakul, (2004), *The Harmonization of ASEAN Competition Laws and Policy and Economic Integration*, *Unif. L. Rev.* -3, p. 4.

Hence, it can be properly inferred that the common competition law and policy framework in ASEAN are the main prerequisite towards the attaining objectives & mentioned above. The actual goal of the ASEAN Competition Policy is to ensure a level playing field and to nurture fair business competition culture in the regional economic performances of ASEAN in the long run. Most development and many developing jurisdictions have competition laws. At its most basic, competition law "consists of rules that are intended to protect the process of competition in order to maximize consumer welfare." The theory behind competition law is that market competition within a jurisdiction leads to efficiency in the delivery of goods or services which benefits consumers, a decreases output and economic growth. Competition is at its best when all market participants operate from a level playing field and compete to supply goods and services to others.<sup>20</sup>

The competition law in the ASEAN regions is divided into 3 groups. First, there are four member countries that have national competition policy and competition agency. Moreover, in several ASEAN Countries namely Indonesia, Singapore, Thailand and Vietnam, the initial competition laws have temporarily been implemented with Indonesia's Law Number 5 Year 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (Law Number 5 of 1999 on Competition Law), Thailand's Price Control and Anti-Monopoly Act 1979 lastly Amended by Trade Competition Act of 1999, Vietnam's Competition Law in 2004 and Singapore's Competition Act, 2004. The second group is filled by Malaysian ratify competition law in 2012 and Philippine ratify competition law on July 21, 2015 called Philippine Competition Act. The third group is the other ASEAN member countries, namely Laos, Myanmar, Brunei, and Cambodia which are in the process of preparing or planning to introduce competition law.<sup>21</sup> The condition of 4 countries that do not have a competition law is recently as follows:

Brunei does not have laws that specifically regulate business competition. However, the economy is open for market-oriented and seeks to improve competition in accordance with the domestic situation and the provisions of the WTO. These efforts include the deregulation and privatization of the corporation as well. Brunei reviews the framework of regulations that govern the industrial sector continuously for the purpose of enhancing the economic competitiveness as a whole. Nowadays, Brunei is developing a competition law by considering comprehensive regulatory bodies in accordance with the country's economic structure and by planning for implementing the rules of competition correctly.

Cambodia does not have a complete competition law. However, the Royal Government of Cambodia promotes fair competition policy. For example, the law on trade mark and unfair competition action contains a section which prohibits unfair competition. Article 56 of the Constitution of Cambodia, adopted in 1993, stipulates that Cambodia shall adopt the market economy system, and the preparation and process of this economic system shall be determined by the law.

Laos is elaborating and developing the competition law and policy. The government is preparing a decision on antitrust law and competition policy. However, competition law and policy are a complex problem, because Laos faces the fundamental problem that is the lack of experience and no culture of competition.

Myanmar also has no competition law and policy. However, Myanmar government is looking for solutions that will balance the interests of competition with the existing economic structure. Like the other countries in the region, Myanmar does not have a culture of competition; for three decades the policy in the form of a closed system of socialism has been applied.

The ASEAN Regional Guidelines on Competition Policy (Regional Guideline) as a guide of assessment do not directly affect the behavior of businesses and industry and market structures. The ASEAN Regional Guideline only assists member countries to improve the awareness of the importance of competition, not to preserve competition among ASEAN member countries. With the integration of the ASEAN market, the competition agencies in each country not only supervise and ensure competition in each country, but also indirectly supervise competition in the regional markets of ASEAN.<sup>22</sup>

The future challenge is that there are still no competition law and institutions that control the implementation of business activities among the ASEAN member countries. Differences of legal systems among the ASEAN member countries of ASEAN, differences in implementing competition laws in several countries, the nature of nationalism and protectionism, sector egoism, and no harmonization of one competition law with another still become obstacles of the regional integrated market by regulating the ban of horizontal and vertical agreements, dominant position and abuse of dominant positions and regulating mergers and acquisitions.

For example in the case of mergers, Indonesia controls the mergers and acquisitions with post notification, coupled with voluntary pre-notification by setting the threshold of asset values, Rp. 2.5 trillion or sale values, Rp. 5 trillion and Rp. 20 billion for the Bank, while Singapore conducts voluntary self-assessment in both pre and post-notification with the threshold of market share more than 40%, or between 20-40% of market share and at post-merger the market share 70% or more. Thailand and Vietnam shall be notified.<sup>23</sup>

<sup>20</sup> Deborah Healey, (2011), Application of Competition Laws to Government in Asia: The Singapore Story, *Asian Law Institute Working Paper Series No. 025*, September 05, 2011- October 05, p. 1.

<sup>21</sup> M. Muchtar Rivai and Darwin Erhandy, (2013), Kebijakan dan Hukum Persaingan Usaha yang Sehat: Sinergi Kawasan ASEAN di Era Globalisasi, *Jurnal Liquidity* Vol. 2, No. 2, July-December, p. 196.

<sup>22</sup> Phanomkwan Devahastin Na Ayudhaya, (2013), ASEAN Harmonization of International Competition Law: What is the Most Efficient Option?, *International Journal of Business, Economics and Law*, Vol. 2 Issue 3 (June).

<sup>23</sup> M.Udin Silalahi, (2012), *loc.cit.*

Due to the enactment of the AEC at the end of 2015, it will invite companies in the ASEAN region to merger and do acquisition for the purpose of enhancing competitive capability. Competition between businessmen becomes more intense after the enforcement of the EAC. Example, the extraterritorial doctrine has been applied by the Commission for Supervising Business Competition to *Temasek Holding Company* and its subsidiaries outside the territory of the Republic of Indonesia. The Commission provides financial penalty to *Temasek Holding Company* and subsidiaries and they obey it. The question is that whether the same action will also be obeyed by businessmen in one of the ASEAN member countries but resulting unfair competition in other countries, if the institution for controlling business competition issues the verdict. Thus, cooperation between the institutions for controlling business competition among the ASEAN member countries should be enhanced to enforce competition law in the ASEAN region in the era of the EAC. It is also necessary to establish the institution for controlling business competition and to enact competition law of the ASEAN in order to easily harmonize competition laws among the ASEAN member countries.<sup>24</sup>

Thus, for the long term we can see that the competition law in the ASEAN will not become an obstacle to run and merge the regional economy; however, it gives an assurance of business certainty to effectively enforce the ASEAN economic community after 2015.<sup>25</sup>

## Conclusions

There are still several countries of the ASEAN members not to have the competition law. Differences of legal systems in the ASEAN countries and of the implementation of the competition law in some ASEAN countries, nationalism, protectionism, and egoism mostly constitute the limiting factors in harmonizing the competition law in the ASEAN countries.

Harmonizing the competition law in the ASEAN countries should be soon implemented to ensure that the business competition can run fairly, and to defend the principle of public openness in the ASEAN region. Therefore, the most important thing to do is to substantively harmonize the competition law in each ASEAN country as well as to regionally implement the competition law in the ASEAN region.

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<sup>24</sup> *Ibid.*

<sup>25</sup> A.Junaidi, (2013), Asas Comity dan Hukum Persaingan di ASEA, *Jurnal Kompetisi*, the 42<sup>nd</sup> Edition, p. 21.