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REGIONAL CONFERENCE 2016
INTERNATIONAL LAW AND A DYNAMIC ASIA

14-15 June 2016 | Hanoi, Viet Nam



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AsianSIL Regional Conference 2016

"INTERNATIONAL LAW AND A DYNAMIC ASIA"

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in partnership with

Department of International Law and Treaties

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14-15 June

2016

Melia Hotel

Ha Noi

Tentative Programme Schedule (as at 10 June 2016)

Time	DAY 1 PROGRAMME
8.00-8.30	Registration
8.30-9.00	Conference Opening Welcome Remarks: Acting President of Diplomatic Academy of Viet Nam (TBC) Keynote Speech: Deputy Minister of Foreign Affairs
9.00-10.00	Opening Plenary Chairperson: Amb. Mme. NGUYEN Thi Thanh Ha, former Director-General, Department of International Law and Treaties, Ministry of Foreign Affairs of Viet Nam • Judge PAIK Jin-Hyun Judge, International Tribunal for the Law of the Sea (ITLOS), President, Asian Society of International Law

- Mr MA Xinmin

Deputy Director-General, Department of Treaty and Law, Ministry of Foreign Affairs of the People's Republic of China, Vice-President (East Asia), Asian Society of International Law

- Prof Amal Kumar GANGULI

Senior Advocate, Supreme Court of India, Vice-President (South Asia), Asian Society of International Law

- Prof Harry L. ROQUE

Associate Professor, College of Law, University of the Philippines, Vice President (Southeast Asia), Asian Society of International Law

10.00-10.30

Coffee Break (the Conference will break into parallel sessions)

10.30-12.00

PARALLEL PANEL SESSION 1

Panel 1A: International Trade and Investment Law

Chairperson: Prof LEE Keun-Gwan, Seoul National University

Competing Reform Methodologies in the Asian Century: Consequences of Maladapted International Law-making

Jeremy SHELLEY & Ashlee UREN, Legal Officer(s), Australian Attorney-General's Department

From Third to First: Asian Participation in the WTO Dispute Settlement System

Jason TAN, Legal Counsellor, Permanent Mission of Singapore in Geneva

The Role of Transparency Principle: How Domestic Regulation Contribute to the Non-Tariff Barriers Among ASEAN Nations

JOHAN Eva, Lecturer, Law Faculty, University of Sultan Ageng Tirtayasa, Indonesia

Anti-Corruption Law and Practice: Same Idea, Different Approach in Cases of Korea and Brazil

JO Hee Moon, Professor, Law School, Hankuk University of Foreign Studies, Korea

Panel 1B: International Environmental Law

Chairperson: Judge Raul C. PANGALANGAN, International Criminal Court

International Watercourse Negotiations and the Obligation of Good Faith: the Role of the

Environmental Impact Assessment

Thomas D. GRANT, Fellow, Lauterpacht Center for International Law, University of Cambridge, UK

The Paris Agreement and its Future Agenda

PARK Deok-Young, Professor, Yonsei Law School, Yonsei University, Korea

From Enforcement to Compliance: the Experience of International Climate Change Law

Benoit MAYER, Assistant Professor, Faculty of Law, Chinese University of Hong Kong

Developing Country Implementation of Multilateral Environmental Agreements: The Philippine Experience

Rommel J. CASIS, College of Law, University of the Philippines

Climate Change and the Protection of Human Rights: The Issue of Climate refugees

Marta PICCHI, Associate Professor, Department of Legal Sciences, University of Florence, Italy

12:00-14:00

Lunch Break

14:00-15:30

PARALLEL PANEL SESSION 2

Panel A: International Commercial Arbitration (Including Investor-State Arbitration)

Chairperson: Dr TRINH Hai Yen, Diplomatic Academy of Viet Nam

The Emergence of Hybrid International Commercial Courts and the Future of Cross Border Commercial Dispute Resolution in Asia

Firew TIBA, Lecturer, School of Law, Faculty of Business and Law, Deakin University, Australia

International Commercial Arbitration in India and the Recent Amendments to the Indian Arbitration Act

Amal Kumar GANGULI, Senior Advocate, Supreme Court of India

Development of Mining Sector of Mongolia

Munkhselenge PUREVDORJ, Lecturer, National University of Mongolia

Role of Domestic Courts in the Investor-State Dispute Settlement Process: The Case of South Asian BITs

SARAVANAN Azhaham Perumal, PhD candidate, Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology (IIT) Kharagpur & S. R. SUBRAMANIAN, Assistant Professor, Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology (IIT) Kharagpur

Forum non Concurrence and the Investment Court Proposal

Jarrod WONG, Professor of Law and Co-Director, Global Center, McGeorge School of Law, University of the Pacific, USA

Exploring the Interaction Between Regional and International Level to Expand the Access to Social Protection in ASEAN

Chairperson: Prof MOGAMI Toshiki, Waseda University

Exploring the Interaction Between Regional and International Level to Expand the Access to Social Protection in ASEAN

Elisa FORNALE, Marie Curie Researcher, Jean Monnet Excellence Centre of Migration Law in Nijmegen, Netherlands

Retrieving the Voice of Silent Majority: The Expansion of "Human" Horizon through Justiciability on Economic, Social and Cultural Rights in International Law

ITO Shinya, PhD Candidate & Research Assistant, Graduate School of Arts and Sciences, University of Tokyo, Japan

Toward the Asian Intergovernmental Human Rights Mechanism

Dinesh TRIPATHI, Secretary General, International Law Association, Nepal

Network Governance for Human Security: A New Paradigm for Business and Human Rights

SATO Yasunobu, Professor, Graduate School of Arts and Sciences, University of Tokyo, Japan

15.30-16.00

Coffee Break

16.00-17.30

PARALLEL PANEL SESSION 3

Evolution of Intellectual Property Rights

Chairperson: Dr TRAN Le Hong, Director of General Administrative Office, National Office of Intellectual Property of Viet Nam

Evolving a Global Treaty to Protect Traditional Knowledge: A View from Asia

Venkatachala Gajanana HEGDE, Associate Professor, South Asia University, New Delhi,

India

The Teaching Method of Traditional Knowledge in Indonesia

Agung SUJATMIKO, Associate Professor, Faculty of Law, Airlangga University, Indonesia

Intersection of Trademark Rights, Right to Health, and Principle of Proportionality; A Sri Lankan Perspective

WIJESINGHE Arachchilage Sanath Sameera, Lecturer, Department of Legal Studies, Faculty of Humanities and Social Sciences, Open University of Sri Lanka

Viet Nameese Capacity to Cope with Challenges of Intellectual Property in TPP

HO Thuy Ngoc, Associate Professor, International Trade Law Department, Faculty of International Education, Foreign Trade University, Viet Nam

Panel 3B: Enforcement of Human Rights

Chairperson: Ms Kelisiana THYNNE, International Committee of the Red Cross

Asian Engagement in International Criminal Law

Raul C. PANGALANGAN, Judge, International Criminal Court, Netherlands

Human Rights Protection in Criminal Law Enforcement: Achievement of the Fair Punishment as a State of Law

Edita ELDA, Lecturer, Faculty of Law, Andalas University, Indonesia

Litigating World War II

Timothy WEBSTER, Assistant Professor, Director of Asian Legal Studies, Case Western Reserve University, USA

The Extraterritorial Application of the Non-Refoulement Obligation in Human Rights Law

Ralph WILDE, Faculty of Laws, University College London, UK (TBC)

Litigating Economic, Social and Cultural Rights against Transnational Corporations in Indonesian Court

IMAN Prihandono, Lecturer, Faculty of Law, Universitas Airlangga, Indonesia

Time

DAY 2 PROGRAMME

9.00-10.30

PARALLEL PANEL SESSION 4

Chairperson: Dr. DANG Hop, Partner, Allens (TBC)

Legitimisation of the Principle of Party Autonomy from an ASEAN Perspective: Contractual and Non-Contractual Obligations

Akawat LAOWONSIRI, Lecturer, Faculty of Law, Thammasat University, Director, International Law Association of Thailand (ILAT)

Harmonizing Conflict of Laws in E-Commerce Consumer Contracts: ASEAN Reciprocation

Sheela JAYABALAN, Senior Law Lecturer, Faculty of Law, Universiti Teknologi Mara (UiTM), Malaysia

Enhancing International Credibility of Chinese Judiciary: A Focus on the OBOR Initiative

XIAO Yongping, Dean, School of Law, Wuhan University, China

Coordination Games: Unravelling ASEAN's Mechanisms and Processes to Integrate its Financial Markets

Michelle A. DY, Research Associate, Centre for Banking and Finance Law, National University of Singapore

Chairperson: Judge PAIK Jin-Hyun, International Tribunal for the Law of the Sea

The South China Sea Arbitration

Harry L. ROQUE, Associate Professor, College of Law, University of the Philippines

Legal Status of the Airspace over an Indeterminate Territory: The Case of the Spratly Islands

Herbert Aclan LOJA, PhD Candidate, Faculty of Law, University of Hong Kong

International Legal Implication of Archipelagic State Status on Navigational Rights over Indonesian Waters

Dhiana PUSPITAWATI, Senior Lecturer, International Law Department, Faculty of Law, Brawijaya University, Indonesia

Status Quo Post Bellum and the Legal Resolution of the Territorial Dispute Between China and Japan over the Senkaku/Diaoyu Islands

Severina Melissa Hubahib LOJA, University of Hong Kong

10.30-11.00

Coffee Break

11.00-12.30

PARALLEL PANEL SESSION 5

National Implementation of International Law

Chairperson: Prof Upendra D. ACHARYA, Gonzaga University

Sources of Law and Obligation in International Law and their Use in the Practice of Domestic Courts in South East Asia

Diego German MEJIA-LEMOS, Fellow, Faculty of Law & Associate, Centre for International Law, National University of Singapore

War Trade: Ensuring the ATT and IHL Risk Assessments are Adequately Implemented in South East Asia

Kelisiana THYNNE, Regional Legal Advisor for South East Asia, International Committee of the Red Cross

Indonesia and International Law Negotiating National Interests and International Obligations

Atip LATIPULHAYAT & Susi Dwi HARIJANTI, Department of International Law, Faculty of Law, Padjadjaran University, Indonesia

Modern Sources of Law: A South Asian Perspective

Md. Raisul Islam SOURAV, Assistant Professor and Coordinator, Department of Law, Dhaka International University, Bangladesh and Advocate, Supreme Court of Bangladesh & Abdullah Al ARIF, PhD Candidate, Macquarie University, Australia and Senior Lecturer (On Leave), Department of Law, Daffodil International University, Bangladesh

Peaceful Settlement of International Disputes

Chairperson: Dr PHAM Lan Dzung, Diplomatic Academy of Viet Nam

The Legalization of ASEAN Dispute Settlement Mechanisms

WU Chien-Huei, Associate Research Professor, Institute of European and American Studies, Academia Sinica, Taiwan

→ ASEAN Dispute Settlement Mechanism - TAC - ASEAN - Proposed

International Law and Peaceful Settlement of the Iranian Nuclear Dispute

at 4 NPT.

Pouria ASKARY, Assistant Professor, Allameh Tabataba'i University, Iran

International Crisis and its Response by the World Community - Case of Nuclear Test by the

North Korea

ZHU Wenqi, Professor of International Law, School of Law, Renmin University, China

Dispute Settlement Procedures of the UNCLOS and Annex VII Arbitration

MA Xinmin, Deputy Director General, Treaty and Law Department, Ministry of Foreign Affairs of the People's Republic of China

12.30-14.00

Lunch Break

14.00-15.30

PARALLEL PANEL SESSION 6

Chairperson: Prof AGO Shinichi, Ritsumeikan University

Ever Greening of Patents in the Context of Trans – Pacific Partnership Agreement: Implications for South Asian Countries

RENUKA Pachaiyappan, PhD Candidate, Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology (IIT)

"Giving More and Getting Less" V.S. "Equality and Mutual Benefits" in China - ASEAN Economic Regionalization

HAN Yonghong, Associate Professor, Guangdong University of Foreign Studies, China

A Delicate Rebalance of State's Rights to Regulate and Investor Protections in TPP and CETA

Leifan WANG, PhD Candidate, Law School, Renmin University of China

Could A Historical Trade Agreement Trigger Historic Legal Transformation for Viet Nam?: TPP, Non-Economic Development Standards, and the Law

BUI Thu Hien, Research Associate, Faculty of Law, Centre for Asian Legal Studies, National University of Singapore

The Trans-Pacific Partnership Agreement: Model Treaty for a New Era?

Kate APOSTOLOVA, Attorney, Freshfields Bruckhaus Deringer & Adjunct Faculty, National University of Singapore (TBC)

Panel 6B: ASEAN after 2015

Chairperson: Prof Simon CHESTERMAN, National University of Singapore

The ASEAN Community: Its Ambitions, Laws, and Dispute Settlement Mechanisms

TAN Hsien-Li, Assistant Professor, Faculty of Law, National University of Singapore

The Role of ASEAN in the Development and Internalisation of Legal Response to Human Trafficking and People Smuggling in Southeast Asia

NASU Hitoshi, Associate Professor, College of Law, Australian National University

Free Flow of Skilled Labor in ASEAN: Is it A Threat for Labor Market in Indonesia?

✓ **KOESRIANTI**, Associate Professor, Faculty of Law, Universitas Airlangga, Indonesia

Business and Human Rights in ASEAN: The Role of Multi-Stakeholder Corporate Norms

Aliya ALIMU, PhD Candidate, Graduate School of International Social Science, Yokohama National University, Japan

Balancing the Economic and Social Goals of ASEAN: A Reflection from the European Union

Patriani Paramita MULIA, Netherlands Institute of Human Rights, Faculty of Law, Economics, and Governance, Utrecht University, Netherlands

The ASEAN Convention against Trafficking in Persons, Especially Women and Children: Is It Up to the Task?

Ranyta YUSRAN, Research Fellow, Centre for International Law, National University of Singapore

15.30-16.00

Tea Break (the Conference then resumes in Plenary session)

16.00-17.00

CLOSING OF THE CONFERENCE

Chairperson: Dr. NGUYEN DANG Thang, Executive Council Member, Asian Society of International Law,

- **Prof Simon CHESTERMAN**

National University of Singapore, Secretary-General, Asian Society of International Law

- **Prof AGO Shin-ichi**

Ritsumeikan University, Co-chair, Planning Committee, Member of Executive Council, Asian Society of International Law

- **Prof LEE Keun-Gwan**

Seoul National University, Executive Council Member and Co-Chair of Planning Committee, Asian Society of International Law

- **Judge PAIK Jin-Hyun**

Judge, International Tribunal for the Law of the Sea, President, Asian Society of International Law

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Free Flow of Skilled Labor in ASEAN: Is it A Threat for Labor Market in Indonesia.?

Koesrianti, Assoc. Professor

Department of International Law, Faculty of Law
Universitas Airlangga - Indonesia

Email address: koesrianti@fh.unma.ac.id

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- TIP KE 14 for I.D.M.
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Date of Presentation (delete where applicable)	Tuesday, 14 June 2016 Wednesday, 15 June 2016
Panel Assigned	

Free Flow of Skilled Labor in ASEAN: Is it A Threat for Labor Market in Indonesia.?

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Abstract

Since 2007 ASEAN has moved towards an ASEAN Economic Community (AEC) as an economic integration of its ten member states based on four economic pillars. One of AEC economic pillar, the single market and production base, means, the region as a whole must become a single market and production base to produce and commercialize goods and services anywhere in ASEAN.

The establishment of AEC is offering opportunities in the form of a huge market of US\$ 2.6 trillion and over 622 million people. Of this number, around 40 per cent or 245 million people live in Indonesia. Numerous officials and others have their doubts and worried that Indonesia will mainly be the market for the AEC and Indonesia's progress in developing its human capital will be negatively impacted by competition from migrant workers from other ASEAN nations.

The crucial further step of the AEC is to implement the free movement of skilled labors as one of five core principles of single market and production base pillar, as it will boost economic integration in the region. It requires policy reforms and harmonized procedures at both the national and regional levels. In practice, however, progress towards freer mobility has been slow and uneven, due to rigid national immigration policies, inequalities in professional education and licensing regimes, public ambivalence toward the AEC, and the vast income gap that many countries fear will contribute to brain drain. This article examines impediment of free movement of skilled labors as a result of weak political and public support to drive the process forward as well as the myriad policy and procedural obstacles of free movement of skilled labors. Having considered that the achievement of a free movement for skilled labor of selected categories of professions associated mainly with trade in services and investment, this article also reviews the AMSs' policies in these areas.

Key words: skilled labor, AEC 2015, economic integration, single market

I. Introduction

On 23 November 2015 in the 27th meeting of the ASEAN Summit in Kuala Lumpur, ASEAN has declared the establishment of ASEAN Community¹ and adopted further Blueprint referred to as AEC Blueprint 2025.² This part II AEC Blueprint consists of ASEAN Member States' commitment toward the fully

¹ Kuala Lumpur Declaration on ASEAN 2025: Forging Ahead Together, see at <http://www.asean.org/storage/2015/12/ASEAN-2025-Forging-Ahead-Together-final.pdf> (Accessed on 12/02/2016)

² <http://www.asean.org/storage/images/2015/November/aec-page/AEC-Blueprint-2025-FINAL.pdf>

establishment of ASEAN Community which is divided into three communities.³ It can be said that the most important of ASEAN Community is the AEC, which is described as the 'meat' of the ASEAN Community. One of the aims of the AEC Blueprint 2025 is envisioned to "create a deeply integrated and highly cohesive ASEAN economy that would support sustained high economic growth and resilience even in the face of global economic shocks and volatilities".⁴ The AEC Blueprint 2025 consists of the interrelated and mutually reinforcing characteristics, namely, (i). A Highly Integrated and Cohesive Economy; (ii) A competitive, innovative, and dynamic ASEAN; (iii). Enhanced Connectivity and Sectoral Cooperation; (iv) A resilient, inclusive, people-oriented, and people-centred ASEAN; (v) A global ASEAN.

The member states' compliance to AEC Blueprint 2007 was considerably weak, not all the AMSs have accomplished it completely, which has ended its' term in December 2015. For example, Indonesia has only implemented 92,7 percent or 469 of the total 506 measures.⁵ Nevertheless it was considered as significant progress in achieving the ambitious AEC goals. The unfinished measures of AEC Blueprint 2007 are becoming priority of the AMS with deadline in the end 2016 for ASEAN Six, and 2018 for CLMV countries. So that per 1 January 2016 the ASEAN Economic Community (AEC) came into effect. This is a long process toward an integrated region that needs stronger cooperation and integration among the AMS in the years to come. According to its Blue Print the AEC involves the launch of a single market and production base among its member nations, hence allowing the free flow of goods, services, investment, and skilled labor as well as the freer flow of capital.

By inserting free flow of skilled labor in AEC scheme, some Indonesian have deep concerned whether there would be a massive inflow of foreign workers into Indonesia that lead to more competition on the domestic labor market. The 2014 joint study conducted by the ILO and the ADB shows that the implementation of the AEC could generate up to 14 million additional jobs, with 1.9 million jobs in Indonesia.⁶ On one side the AEC is going to bring an improving the livelihoods of a lot of people in Indonesia, on the other side Indonesia must be ready to take hold of these challenges. This article discusses and evaluates the AMSs' performance in particular free flow of skilled labor as a part of the trade liberalization in the region as demand for skilled employment under the AEC is predicted increase substantially. The demand for high-skill, medium-skill and low-skill employment will increase by an additional 55.7 percent, 26.1 percent and 3.2 percent respectively. Since free flow of skilled labor has important implications on trade services, foreign direct investment and productivity, this article also analyses the investment and service liberalization under the AEC, in particular its

³ Three ASEAN Communities are the ASEAN Political Security Community (APSC), the ASEAN Economic Community (AEC), and the ASEAN Socio Cultural Community (ASCC), see at <http://www.asean.org/asean-economic-community/>

⁴ Point 6 para.1 the AEC Blueprint 2025 see at <http://www.asean.org/storage/images/2015/November/aec-page/AEC-Blueprint-2025-FINAL.pdf>

⁵ Rizky Jaramaya, *Republika.co.id*, 23 August 2015 "Mendag Lembong: Implementasi Cetak Biru MEA Sulit", see at <http://www.republika.co.id/berita/internasional/global/15/08/23/mj2ku254-mendag-lembong-implementasi-cetak-biru-mea-sulit> (accessed on 10/01/2016)

⁶ Jakarta Globe, ILO Warns Indonesia to Invest in Skilled Labor or Lose Out, <http://jakartaglobe.beritasatu.com/news/ilo-warns-indonesia-invest-skilled-labor-lose/>

implementation in AMS. In this context, this article highlights the Indonesian policy on its workforce in innovating and improving its labor sector.

It also examines the nature of ASEAN organizational structure by comparing with the European Union in term of ASEAN as intergovernmental organization. Finally, it offers some solutions for structural transformation for ASEAN towards productive economic activities in order to raise living standards by increasing aggregate labor productivity in the region.

II. ASEAN Decentralized Regional Governance

The impetus of the establishment of AEC 2015 has started in 2003 when ASEAN adopted the ASEAN Concord II in the meeting of the 9th ASEAN Summit in Bali.⁷ Eventually the economic agreements of AMSs have developed into economic integration. The last economic integration was the establishment of AEC 2015 with its Blueprint that consists of roadmap and hundreds of measures for the AMS to accomplish by 2015. The AMS in fact could not accomplish the full implementation of the AEC measures. The insufficient time is likely as an excuse for the AEC Blueprint had been declared in 2007 in addition the deadline 2020 has been brought forward to 2015 by Cebu Declaration,⁸ or that was 5 years earlier than the planned date set by Bali Concord II. The ASEAN economic integration agreements are mainly based on commitments of the AMSs without legally binding provisions. There is no sanction for the non-compliance of the AEC Blueprint measures.⁹

Compare to European Union, ASEAN is more informal and less legalistic, although, some people claimed that ASEAN is a rule-based organization after the adoption of ASEAN Charter in 2008.¹⁰ ASEAN is lack of legal instruments and judicial body to put some pressures on the AMSs to fulfill their commitments. It is questioned the implementation of the 2025 AEC Blueprint will be experienced similar fate.

ASEAN has been operated based on decentralized regional governance, means collective management with focus on dialogue and consultations. Historically, ASEAN is a group of nations, with societies that deeply divided upon ethnic, linguistic, cultural and religious lines. ASEAN is used by member' governments as a regional mechanism that freeing up attention and resources toward building unified nation-states of societies. Indeed, ASEAN aware of the existence of mutual interest and interdependence among the peoples and Member States of ASEAN, which bound by geography, common objectives and shared destiny.

⁷ Bali Concord II, see at http://www.asean.org/?static_post=declaration-of-asean-concord-ri-bali-concord-ii (accessed on 01/02/2016)

⁸ Cebu Declaration, see at <http://www.asean.org/cebu-declaration-on-the-acceleration-of-the-establishment-of-an-asean-community-by-2015/> (accessed on 01/02/2016)

⁹ Koesrianti, Pembentukan Masyarakat Ekonomi ASEAN (ASEAN Economic Community/AEC) 2015: Integrasi Ekonomi Berdasar Komitmen Tanpa Sanksi, see at https://www.researchgate.net/publication/279915791_Pembentukan_Masyarakat_Ekonomi_ASEAN_ASEAN_Economic_CommunityAEC_2015_Integrasi_Ekonomi_Berdasar_Komitmen_Tanpa_Sanksi (Accessed 20/02/2016)

¹⁰ Koesrianti, Analisa Kekuatan Mengikat Piagam ASEAN dan Perkembangan Mekanisme Penyelesaian Sengketa di ASEAN, see at <http://e-journal.unair.ac.id/index.php/YDK/article/download/262/140>

In the regional level, in the context of free flow of skilled labor, AMSs have agreed several agreements. Three important agreements are (1) the mutual recognition arrangements (abbreviated MRAs), which recognize education, experience, licenses, or certifications obtained in one of the ASEAN member countries for engineering, nursing, surveying, architecture, medicine, dentistry, tourism, and accounting; (2) streamlined visa and employment regulations for professionals and skilled laborers engaged in cross-border trade and investment; and (3) enhanced cooperation among universities in the ASEAN region in order to increase the mobility of students and staff.

ASEAN's ineffectiveness mainly laid on the ASEAN intergovernmental institutional model, which is in tandem with ASEAN main principle centred on mutual respect for the sovereignty of member states, non-interference in the internal affairs of member states. ASEAN has built inter-state relations based on informal basis and for many years did an aversion to rule-based and centralized approach to cooperation.

Jaques Pelkmans described ASEAN as follows,¹¹

"Conflict avoidance took primacy and good connections between the administrations were regarded as the lubricant of a successful ASEAN. Not the striving for economic regionalism, nor, for that matter, any formalisation of their relationship. Except for a tiny elite which was in favour of deepening ASEAN into a form of economic regionalism, the economic cooperation networking remained a de facto instrument of good political and bureaucratic relations."

In the context of economic cooperation, article 1 (5) ASEAN Charter stated one of the general goals of ASEAN is 'to create a stable, prosperous and highly competitive ASEAN economic region with effective facilitation for trade and investment in which there is a free flow of goods, services, investment and a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities'. Nearly two decades ago, before the adoption of the ASEAN Charter 2008, ASEAN has economic programs such as AFTA, AFAS, AIA as well as industrial complementation under AICO, which has encouraged FDI by MNCs in ASEAN by locating their multi-plants in the ASEAN regions. All of these economic programs had a modest progress except AFTA.

ASEAN as an intergovernmental organization means as top-down organization. The leaders decide the decisions and the implementation of the agreements have to be done by the agencies and ministries in national level. It can be said that the ASEAN leaders have showed their strong commitments and political will consistently to integrate ASEAN economies, but the process of implementation at the national and provincial levels remains slow, especially in Indonesia, due to decentralization system whereby the provinces and local governments have been given considerable autonomy to determine policies the extent to which they would implement AEC agendas and agreements, regardless those agendas or agreements have been agreed initially by the central government in the regional level. There is coordinating problem in national level that lead to regional level problem. For example, AMSs continue to uphold national regulations

and laws that protect their domestic workers. For example, laws that ban the use of foreign workers in specific sectors are still in place. Or, if not banned, they are subject to additional levies in order to discourage the hiring foreign workers. This means that in practice progress towards the target of freer mobility of skilled workers within the ASEAN region is slow due to member nations' rigid immigration policies.

Similarly in liberalizing services, Indonesia only offer limited foreign equity participation as some health care sub-sectors in Indonesia closed to foreign investors e.g., general medical clinic, ambulance services¹² so that services liberalization was low. This also due to poor coordination across many government agencies where there is no clear service-sector policy in place.¹³ Mobility of services providers within the region has become an important aspect of regional economic integration with the adoption of the 1995 ASEAN Framework Agreement on Services (AFAS) and the Movement of Natural Persons (MNP) Agreement. Free movement of skilled labor within ASEAN region is promoted through the so-called Mutual Recognition Arrangements (MRAs) of professional services. Furthermore, the goal to achieve the free flow of skilled labor and professionals within the AEC has brought along a series of reforms envisaged to enable AMSs to meet these liberalization targets. There is also a regional Declaration on Migrant workers signed by ASEAN leaders in 2007 on aspects related to migrant workers' rights.

Members agreed that "there shall be a freer flow of capital, skilled labor and professionals among Member States" (AFAS art.4.e). The flow of skilled labor and professionals related to trade in services is associated with the so-called "mode 4" mobility of natural persons, one out of the four modes of cross boarder services supply, as defined by the 1995 WTO/GATS agreement. The objective of the movement of natural persons was sought to expanding trade in services and deepening economic integration. AMSs have concluded eight packages of commitments within the AFAS framework, laying down Mode 4 conditions for market access and national treatment under the horizontal commitments.¹⁴

Moreover, the schedules of specific commitments and MFN exemptions lists contain provisions taken by individual countries in specific sectors, for certain categories of service providers. For example, Singapore's MFN exceptions allow the presence of unskilled/semi-skilled natural persons that come from traditional sources of supply, measures under periodical domestic policy review; Indonesia reserves low level occupations/semi-skilled jobs to Indonesians, with limited exceptions for citizens from Malaysia, Singapore, Brunei Darussalam, Papua New Guinea and Australia). Despite these several rounds of services negotiations and commitments packages signed, ASEAN members have not moved much beyond the initial WTO/GATS outcome. In particular, commitments on mode 4 are mainly linked to investment and business flows, and seen as only facilitating the movement of professionals, managers, and qualified staff under the intra-corporate transferee

¹² Sanchita Basu Das, Introduction: State of Readiness of ASEAN Economies and Businesses, in Sanchita Basu Das (ed), *Achieving the ASEAN Economic Community 2015: Challenges for Member Countries & Businesses*, ISEAS Singapore, p. 3

¹³ Ibid

¹⁴ For initial up to eight package see at, http://asean.org/?static_post=member-countries-horizontal-commitments-schedules-of-specific-commitments-and-the-list-of-most-favoured-nation-exemptic

category.¹⁵ Recent developments have sought to include all mobility-related commitments in a separate binding document – the Agreement on Movement of Natural Persons – that would supersede all mode 4 provisions codified previously in AFAS.

The services Trade Restriction index shows that the commitments of AMS toward ASEAN service liberalization for mode 1, mode 3, and mode 4, are not always similar to their ACIA commitments as show in table 1.

Table 1. Services Trade Restriction Index in some AMSs

No	Country	Overall	Mode 1	Mode 3	Mode 4
1	Cambodia				
	Overall	23,7	42,95	18,73	75
	Professional	60	66,67	40	75
	Accounting & Auditor	N/A	100	50	75
	Legal	N/A	0	33,33	75
2	Indonesia				
	Overall	50	11,22	56,47	70
	Professional	76	0	100	70
	Accounting & Auditor	N/A	0	100	50
	Legal	N/A	0	100	83,33
3	Malaysia				
	Overall	46,1	32,49	46,52	90
	Professional	73	33,33	65	90
	Accounting & Auditor	N/A	50	50	75
	Legal	N/A	0	75	100
4	Philippina				
	Overall	53,5	27,56	57,59	80
	Professional	80	0	100	80
	Accounting & Auditor	N/A	0	100	75
	Legal	N/A	0	100	83,33
5	Thailand				
	Overall	48	65,99	44,03	100
	Professional	74	66,67	50	100
	Accounting & Auditor	N/A	100	50	100
	Legal	N/A	0	50	100
6	Vietnam				
	Overall	41,5	23,16	38,43	60
	Professional	31,5	0	10	60
	Accounting & Auditor	N/A	0	25	50
	Legal	N/A	0	0	66,67

Source: Services Trade Restriction Database
[http:// http://iresearch.worldbank.org/servicetrade/](http://iresearch.worldbank.org/servicetrade/)

Notes:

¹⁵ Nikomborirak Deunden Nikom and Supunnavađee Jotdumrong, 2013, ASEAN Trade in Services, in the ASEAN Economic Community: A Work in Progress, Sanchita Basu Das, Yayan Menon, Rodolfo Severino, Omkar Lal Shrestha (Editors); Joint Study ILO/ADB, 2014.

*) 0 = completely open, 25 = virtually open with minor restrictions, 50 = major restrictions, 75 = virtually closed with limited opportunities to enter and operate, 100 = completely closed.
 See more at: <http://www.asiapathways-adbi.org/2014/12/asean-economic-community-2015-what-is-next/#sthash.LJfWBPH.dpuf>

Table.2: Definition of mode under the GATS – WTO

<p>Cross-border supply of services (mode 1): Under the GATS, this mode is defined as the supply of a service from the territory of one Member into the territory of any other Member. It is analogous to trade in goods, and arises when a service crosses a national border, for example, if a consumer in country A purchases software or insurance from a provider located in country B. It would also include the purchase by a consumer in country A of transportation services – such as a train ride or flight – from a provider located in country B.</p>
<p>The supply of services through commercial presence (mode 3): Under the GATS, “commercial presence” means any type of business or professional establishment, including through (i) the institution, acquisition or maintenance of a juridical person, or (ii) the creation or maintenance of a branch or a representative office within the territory of a Member for the purpose of supplying a service commercial. This survey considers four types of commercial presence: a firm from country B might open a branch or subsidiary in the territory of country A, it might acquire part or all of an already existing firm in the territory of country A, or it might enter through Joint Venture with an already existing firm in the territory of country A. Thus, the service is provided within A by a locally-established affiliate, subsidiary, or branch of the foreign-owned and controlled firm.</p>
<p>The temporary presence of natural persons (mode 4): Under the GATS, this mode is defined as the supply of a service by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member. Thus, it covers the temporary presence of individuals for the purpose of providing services directly to firms or consumers or for employment in service providing firms.</p>

Source: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/06/28/000158349_20120628130854/Rendered/PDF/WPS6108.pdf

Note: Measures governing mode 1 are slightly different from measures related to mode 3 in that they typically stipulate conditions under which cross-border trade may take place. Mode 4 measures, covered only in professional services, cover also immigration rules and qualification requirements that significantly affect this mode.

Table 3: Indonesia and Malaysia Service Trade Restrictiveness

Indonesia		Accounting and Auditing	
Professional	Mode 1	Mode 3	Mode 4
Accounting	Allowed.	Not allowed.	<p>No licensing conditions for foreign-licensed professionals are set forth by law. Entry as an SSE or an IP who is a contractual service provider is permitted. General conditions: for a foreigner to work in Indonesia as set forth by local labor law, the foreign worker must:</p> <ol style="list-style-type: none"> 1) appoint a local worker as an assistant to the foreign worker for the purpose of technology and skills transfer; 2) provide education and training; 3) have education and/or work experience of at least five years; 4) transfer his/her skills to an Indonesian worker; and 5) communicate in Indonesian. <p>There is a quota: one foreigner to three Indonesians. There is also a minimum wage/wage parity requirement. The limit on the length of stay initially allowed is one year. Extensions of stay are allowed up to five times, for one year each.</p>
Auditing	Allowed.	Not allowed.	<p>No licensing conditions for foreign-licensed professionals are set forth by law. Entry as an SSE or an IP who is a contractual service provider is permitted. General conditions: for a foreigner to work in Indonesia as set forth by local labor law, the foreign worker must: 1) appoint a local worker as an assistant to the foreign worker for the purpose of technology and skills transfer; 2) provide education and training; 3) have education and/or work experience of at least five years; 4) transfer his/her skills to an Indonesian worker; and 5) communicate in Indonesian. There is a quota: one foreigner to three Indonesians. There is also a minimum wage/wage parity requirement. The limit on the length of stay initially allowed is one year. Extensions of stay are allowed up to five times, for one year each.</p>
Legal			
Legal Advice	Allowed.	Not allowed.	No licensing conditions for foreign-licensed professionals are set forth by law. Entry as an IP

Foreign Law			who is a contractual service provider is permitted. General conditions: for a foreigner to work in Indonesia as set forth by local labor law, the foreign worker must: 1) appoint a local worker as an assistant to the foreign worker for the purpose of technology and skills transfer; 2) provide education and training; 3) have education and/or work experience of at least five years; 4) transfer his/her skills to an Indonesian worker; and 5) communicate in Indonesian. There is a quota: one foreigner to three Indonesians. There is also a minimum wage/wage parity requirement. The limit on the length of stay initially allowed is one year. Extensions of stay are allowed up to five times, for one year each.
Legal Advice Domestic Law		Not allowed.	Not allowed.
Legal Representation in Court		Not allowed.	Not allowed.
Malaysia			
Professional	Accounting and Auditing		
	Mode 1	Mode 3	Mode 4
Accounting	Allowed.	Ownership by foreign nationals is limited to 30 percent. Ownership by non-locally-licensed professionals is not permitted.	Accountants licensed in the UK, Australia, New Zealand, Canada, and India may have their licenses recognized and be registered as a chartered accountant with the Malaysian Institute of Accountants. Applicants must attend a two-day introductory course. Three years' work experience is also necessary. The duration of stay is limited to one year; extensions are not permitted.

		There must be at least one Malaysian partner in the firm.	
Auditing	Not allowed.	Ownership by foreign nationals is limited to 30 percent. Ownership by non-locally-licensed professionals is not permitted. There must be at least one Malaysian partner in the firm.	Not allowed. In practice, the Auditor General's Office will not issue an audit license to a foreigner regardless of his/her registration with the Malaysian Institute of Accountants as a chartered accountant.
Legal			
Legal Advice Foreign Law	Allowed, as long as the foreign firm is staffed with professionals	Not allowed. Exceptions include corporations incorporated in the Federal Territory of Labuan which can only provide	Not allowed, but ad hoc, special admission may be given to foreign-licensed lawyers with at least seven years of experience to appear before a court in Malaysia. The lawyer must have qualifications or experience not available in Malaysia.

	licensed to provide the service desired.	services to offshore corporations established in the Federal Territory of Labuan.	
Legal Advice Domestic Law		Not allowed. Exceptions include corporations incorporated in the Federal Territory of Labuan which can only provide services to offshore corporations established in the Federal Territory of Labuan.	Not allowed, but ad hoc, special admission may be given to foreign-licensed lawyers with at least seven years of experience to appear before a court in Malaysia. The lawyer must have qualifications or experience not available in Malaysia.
Legal Representation in Court		Not allowed. Exceptions include corporations incorporated in the Federal	Not allowed, but ad hoc, special admission may be given to foreign-licensed lawyers with at least seven years of experience to appear before a court in Malaysia. The lawyer must have qualifications or experience not available in Malaysia.

MCA 2012/2013 - 2014/2015

	Territory of Labuan which can only provide services to offshore corporations established in the Federal Territory of Labuan.	
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From the table 3 it can be seen that service liberation in AMSs is not fully ^{free} implemented, at least, in Indonesia and Malaysia there are still service trade restrictions on certain profession, such as, accountant, auditor, and legal profession. In other words, free movement of professionals in ASEAN is not really implemented even though accountancy services agreement has been signed by AMSs in 2009 (see box 1). The AEC is detrimental to ordinary people because it will to an erosion of sovereignty. Even in Indonesia, representative from civil society organizations and NGOs have had filed a judicial review to the Constitutional Court against Law No. 38/2008 on the Ratification of the Charter of the ASEAN. They claimed that the ratification contradicts the 1946 Constitution, in particular Article 33 paragraphs (1), (2), and (3). They further claimed that Article 1 paragraph (5) and Article 2 paragraph (2) ASEAN Charter a blatant breach of the Constitution. They suggested that the country's economy should not be trusted to market mechanism.¹⁶ In term of free flow of skilled labour, they claimed that by joining regional organization create job insecurity. AEC is regional initiative; it is implemented by national economies. Domestic law and policy is required to do things as their commitments to AEC, such as, reduce tariff, remove non-tariff barriers, and liberalize the service sectors. With economic growth and resources, ASEAN is seen as the next engine of growth in Asia provided that it became successful in achieving AEC. Also with various

¹⁶ Ernesto Simanungkalit, Judicial review for ASEAN Charter?, The Jakarta Post, May 13, 2011, See more at: http://www.thejakartapost.com/news/2011/05/13/judicial-review-asean-charter.html#sthash.sTxYDml1_dpuf (Accessed 24/01/2016)

economic, cultural, and demographic issues to overcome, the proximity of ASEAN region bring a unique opportunity for all ASEAN members to get significant benefit.

Investors and corporations are especially anticipating ASEAN economic integration in the hope exploiting the opportunities to expand and consolidate their business operation in the region. In order to support the foreign investors in the region, ASEAN launched its vision that to enhance connectivity for ASEAN people and business and foster growth, culture and welfare. ASEAN vision is to forge a better future for the Southeast Asian region, strengthen the links between countries, people and business, and enhance the region's prosperity. Therefore it is big relevancy when AMSs participate in liberalizing their professionals in the region. If AMSs succeed at uniting economically, ASEAN also could have a stronger bargaining position and political voice in facing other economies in international forum. Having saying that, AMSs do not have other choices than forge together through the establishment of AEC 2025 as ASEAN connectivity will help AMSs to became stronger, safer and better prepare for the future. In order to support the AEC agenda, the AMS should also liberalize the professional to fulfill the job-creation as a result of the single market and production base in the region. Some agreements have been signed to liberalization some professional as shown at box 1.

Box 1: Free Movements of Skilled Labour by 2015 (AEC 2015)

1. Engineering Services (signed December, 2005)
2. Nursing Services (signed December, 2006)
3. Architectural Services (signed November 2007)
4. Surveying Qualifications (signed November 2007)
5. Accountancy services (signed February 2009)
6. Dental Practitioners (signed February 2009)
7. Medical Practitioners (signed February 2009)
8. Tourism Professionals (2012)
9. ASEAN Agreement on Movement of Natural Persons (signed November 19,2012) – Business visitors, intra-corporate transferees, contractual service supplier)

Furthermore, there are 124 economic agreements under AEC related to trade in goods, investment, transport and the cosmetics directive, and for period 2008-2009 only 75,5 per cent achievement rate according the scorecard, and in December 2015 as the final deadline for the 2015 AEC Blueprint, not all AEC measures are accomplished. Apparently some AMS still are doubtful about the benefits of such liberalization.

This low rate implementation is due to the different capabilities of the diverse economic development of AMS, in particular for the CLMV countries. In order to reduce economic gap between ASEAN-6 and CLMV countries, it has been new approaches in place that "ASEAN help ASEAN approach" which consist of three schemes; by sharing expertise and experiences through bilateral development assistance, by increasing intra-ASEAN investments so that can help to transfer knowledge and technical know-how to CLMV countries, and by introducing targeted and tailored programmes for each of these countries, for example, the Lao Pilot Project (LPP) that gains aid from the donor the Japan International Cooperation Agency (JICA).¹⁷

III. Liberalization of trade in the region: free flow of investment and skilled labor

ASEAN as a regional mechanism to accommodate the member states of ASEAN to have reliable inter-state relations thereby devoted all attention and resources that could now be directed toward building unified nation-states. In this context, the measures of AEC Blueprint 2025 is taken have to lead in creating a networked, competitive, innovative, and highly integrated and contestable ASEAN.

It can be said that in the period of the first AEC Blueprint between 2007 and 2015 ASEAN has made commendable progress in terms of the establishment of AEC, notably, the eliminating tariffs on intra-ASEAN trade. The ASEAN-6, for example applied zero tariffs on 99 per cent of goods traded within the region as it has been guided by the ASEAN Trade in Good Agreement (ATIGA) that came into effect in 2010 provides more coherence and transparency for businesses in ASEAN.¹⁸ It reflects the compliance of AMS in implementing one of AEC pillar free of flow of goods. Other pillars such as, free flow of investment, free flow of selected services, free flow of capital and free flow of skilled labor are other AMS commitments should be complied.

The AEC Blueprint calls for four strategic approaches to be taken to ensure the free flow of investments, namely, liberalization, facilitation, promotion, and protection. In the context of investment liberalization, the ASEAN Comprehensive Investment Agreement (ACIA) has utilized by AMS as guidance to market ASEAN as a single investment destination and buttress the single market and production base of ASEAN. It liberalizes, facilitates and promotes investment in ASEAN region by ASEAN investors and ASEAN-based foreign investors. The ACIA also provides some protections for investments. In general, the AMSs have no real difficulty in implementing the measures necessary for facilitation, promotion, and protection as prescribed in the Blueprint, but AMSs had some challenges in realizing a free and open investment regime by the end of 2015.

¹⁷ S Pushpanathan, "ASEAN's Readiness in Achieving the AEC 2015: Prospect and Challenges", in Sanchita Basu Das (ed), *Achieving the ASEAN Economic Community 2015: Challenges for Member Countries & Businesses*, ISEAS Singapore, p. 17

¹⁸ David Parsons, "Challenges to Achieving the ASEAN Economic Community" in *Life after the Charter*, edited by S Tiwari, Singapore: Institute of Southeast Asian Studies, 2010

The implementation of the investment agreement in the national level of each AMS, however, is differed based on the investment regulations and policies of AMS. In other words, there are sectors that have more restrictive than the ACIA commitments suggest that the ACIA commitments are not binding enough to the AMS. For example, the ACIA reservation list did not influence the creation of the current Indonesian Negative Investment List. It can be said that the investment liberalization in Indonesia is largely autonomous and it is more Indonesia's appreciation of the critical role of FDI for the development of its economy based on Indonesian assessment of its national interests.

Indonesia for example, allows up to 100 per cent foreign ownership during concession period in same sectors like power generation of more than 10 megawatts or power plant transmission and distribution in order to encourage foreign investors to participate in public-private partnership scheme. Indonesia substantially lowered allowable foreign equity in sectors, such as, information and communication (e.g. call centers, data communication services, telecom content services like ringtone or premium, text), oil and gas drilling offshore sector.

Indonesia however effectively closed some sectors from foreign equity participation, such as drilling services and supporting oil and gas services (design and maintenance) which, had previously open up to 95 per cent foreign equity same sectors are reserved for domestic micro, small or medium enterprises. This kind of regulation is common to some AMSs. In Thailand the remaining ACIA commitment not yet implemented is forestry from forest plantation. In general Thailand has no plans to liberalize more than what Thailand had committed to ACIA agreement.

In implementing the AEC Blueprint especially liberalization of investment, every AMS has its own reasons to postpone the implementation of free flow of investment measures. For example Brunei Darussalam claimed as a developing economy with embryonic private sector, which comprises small and medium enterprises (SMEs), the government should guarantee a balance between the growth of local SMEs and foreign investment inflows into the country.¹⁹ It also does not have investment law so for foreign investment activities are governed by administrative policies and guidelines. This may lead to difficulties to identify sectors that could be liberalized and create unpredictability for foreign investors due to their margin for administrative discretion. Indeed, one can see that in reality there is slow process of true legal harmonization in ASEAN. As Darryl Jarvis stated that empirically²⁰

¹⁹ ASEAN countries tend to prioritize the preservation of nationalism versus regionalism, particularly in investment policies, which then results in segmented/sectional sheltering and investment protectionism. The ASEAN countries may not be perceived as really pushing liberalization, but instead

¹⁹ Lim Jock Hoi, *Achieving the AEC 2015: Challenges for Brunei Darussalam*, in in Sanchita Basu Das (ed), *Achieving the ASEAN Economic Community 2015: Challenges for Member Countries & Businesses*, ISEAS Singapore, p. 26

²⁰ Darryl Stuart Jarvis, *Foreign Direct Investment and Investment Liberalization in Asia: Assessing ASEAN's Initiatives*, *Australian Journal of International Affairs*, Vol. 66, No.2, pp 223-264, April 2012. Can be accessed on line at https://www.academia.edu/4233339/Foreign_Direct_Investment_and_Investment_Liberalization_in_Asia_Assessing_ASEAN_s_Initiatives, (Accessed 23/01/2016)

perhaps only trying to protect their own regional-based enterprises against threats of the western ones”.

ASEAN seems adhere to the sovereignty principles compare to the AMS' commitments and has generally demonstrated a marked reluctance to impose regional rules and standards on its member states. Furthermore, the AMSs have interpreted the non-interference principle broadly including government authorization to exclude any issues that considered as sensitive issues both politically and culturally for regional level deliberations.

IV. ASEAN skilled labor movement: threat for Indonesian labor market?

Mobility of service providers within the Southeast Asian region has become an important aspect of regional economic integration with the adoption of the 1995 ASEAN Framework Agreement on Services (AFAS) and then later with the initiative to conclude an agreement on Movement of Natural Persons (MNP). Mobility of skilled labor within ASEAN is also promoted through the so-called Mutual Recognition Arrangements (MRAs) of professional services. Furthermore, the goal to achieve the free flow of skilled labor and professionals under the AEC has brought along a series of reforms envisaged to enable member states to meet these liberalization targets. In addition, aspects related to migrant workers' rights are covered in a regional Declaration signed by ASEAN leaders in 2007.

IV.A. ASEAN free flow skilled labor: an overview

ASEAN region is a prospective region in terms of investment for foreign investors, the region also one of the world's dynamic regions since ASEAN has made strong economic performance since 2007. ASEAN annual average growth was 5.1 per cent while the global economy was only 3.3 per cent.²¹ This has boosted living standards: between 1991 and 2013, 83 million workers moved out of poverty into the middle class. The region also has one of the world's highest foreign investment inflows – attracted by its workforce of 300 million, growing consumer markets and expanding networks of infrastructure.

Per 1 January 2016 the AEC was commence. This will lead to the freer flow of goods, services, investment capital and skilled labors in the region. The 2014 joint study conducted by ILO and ADB showed that the implementation of the AEC could generate up to 14 million additional jobs, improving the livelihoods of the 600 million women and men in the region. This will be new opportunity for growth and prosperity of AMS, but the challenge is to ensure that growth is inclusive and prosperity is shared among AMS' people. The region is also a dynamic region with approximately 14 million migrant workers from ASEAN Member States, of whom 6 million moved within Southeast Asia.²²

It is worth to note that according the joint study, demand for high-skill employment under the AEC will increase by an additional 55.7 per cent during the 2010 to 2025 period, compared to increases of 26.1 percent for medium-skill

²¹ ILO and ADB Joint Study, ASEAN Community 2015: Managing Integration for Better Jobs and Shared Prosperity, 2014, p. xi

²² ILO, Tripartite Action to Enhance the Contribution of Labor Migration to Growth and Development in ASEAN (Triangle II) see more at http://www.ilo.org/asia/whatwedo/projects/WCMS_428584/lang--en/index.htm

employment and a contraction of demand of 3.2 percent for low-skilled jobs. Thus, it is apparent that the biggest part of the AEC is high-skilled jobs.

It is also important to note that the AEC scheme of free flow of skilled labor is limited on eight professions only and require fulfilling Mutual Recognition Agreements (MRAs) based on national and ASEAN Qualification Frameworks with temporary visa. The objective of facilitating the movement of skilled labor in ASEAN began with MRAs that would allow practitioners in eight professions to practice in other AMS through mutual recognition of their qualifications and, where appropriate, through the implementation of the ASEAN Qualifications Reference Framework (AQRF). In this context, referencing by the AMS is voluntary, to support lifelong learning and enhance recognition and the ASEAN Agreement on Movement of Natural Persons (MNP).

The arrangements aim to facilitate the temporary cross-border movement of natural persons and business visitors engaged in the conduct of trade in goods, trade in services, and investment. Strategic measures include the following:

1. Expand and deepen commitments under the ASEAN Agreement on MNP where appropriate; and
2. Reduce, if not standardize, documentation requirements.

In practice, however, the workers should also fulfill other requirements for their mobility, such as, technical qualification, recruitment process that is primary handled by the private sector.²³ Furthermore, there are other elements that contribute to slow process of mobility of skilled labor in ASEAN, namely labor market demand and supply gaps, admissions and visa policies, and the recruitment process related to determine who migrates and under what circumstances. Therefore progress toward free flow of skilled labor has been slow and uneven.

According to Sugiyarto and Agunias, there are three key challenges as the reasons that the implementation of agreements and frameworks of ASEAN remains difficult, namely: (1). It difficult to adapt domestic policies and regulations to meet the provisions of the MRAs; (2). Low political and public support to drive the process; (3). The migration process requires regional cooperation and action along with the mutual recognition of qualification and experience.²⁴

The agreement on the Movement of Natural Persons (MNP) and ASEAN Comprehensive Investment Agreement (ACIA) are government policies in substance that do not apply to individuals seeking employment, citizenship, residence, or permanent residence in another AMS. The MNP aims to establish streamlined and transparent procedures for business visitors, intra-corporate transferees, and contractual service suppliers to apply immigration formalities.²⁵ The ACIA provides the legal framework to facilitate temporary cross-border movement of people engaged in the conduct of trade in goods, services and investment. In short, the ACIA desires to eliminate substantially all restrictions in the temporary cross-border movement of natural persons. The ACIA grants entry, temporary stay, and work authorization to investors, executives' managers, and

²³ Guntur Sugiyarto and Dovelyn Rannveig Agunias, 2014, A 'Freer' Flow of Skilled Labour within ASEAN: Aspiration, Opportunities, and Challenges in 2015 and Beyond, Bangkok and Washington D.C., International Organization for Migration and Migration Policy Institute, pp 8-9

²⁴ Ibid

²⁵ Agreement on the Movement of Natural Persons, see PDF version,

http://www.asean.org/storage/images/2012/Economic/sectoral_aem/service/agreement/ASEAN%20AGREEMENT%20ON%20THE%20MOVEMENT%20OF%20NATURAL%20PERSONS.pdf

board members of corporations in the process of 'committing a substantial amount of capital or other resources'.²⁶

ASEAN has undertaken two key initiatives in addressing the various problem of mobility of skilled labors, namely, Mutual Recognition Arrangements and the ASEAN Qualification Framework (AQF). Between 2005 and 2015 AMSs has signed 8 MRAs, namely, engineering, nursing, architecture, medicine, dentistry, and tourism, surveying and accounting.²⁷ Each MRA aims to facilitate mobility within ASEAN, exchange information and enhance cooperation on the mutual recognition of qualifications, promote the adoption of best practices in standards and qualifications, and provide opportunities for capacity building and training.

Accordingly, movement of regulated professions for example, nurses is actually not easy due to the differences in underlying legal schemes, education systems, and quality standards, as well as the hesitation of established domestic constituents (i.e., professional associations). ASEAN is taking a very interesting movement in this. ASEAN has adopted a unique free movement of skilled labor policy, as the AMS do not aim to facilitate a wholly unrestricted "free" flow of skilled labor. It means, the AEC do not guarantee or seek full labor mobility even among the highly skilled, it only facilitates the movement.²⁸ The European Union (EU), in comparison, provides full freedom to the right of work as a citizen can freely move, reside, and seek employment in any Member State of EU, regardless of skill level. ASEAN does not allow general movement of people; thus, the MRAs are also constrained by immigration regulations.

In the EU context, there are pull and push factors for mobility of workers. Pull factors include educational opportunities and the acquisition of language skills in the host countries.²⁹ Meanwhile, significant push factors include corruption, territorial conflicts, poor governance and state protection policy in the sending countries. However, the shortage of skilled labor in the European Union has yet to be filled. The main barriers to mobility from the European Neighborhood Policy (ENP) countries to the European Union include restrictive visa regimes and costly immigration procedures, non-recognition of academic diplomas and professional certificates, strict limitations on the possibility to stay in the host country for migrants who lose their job and a lack of information about labor market opportunities. Restrictive immigration management, including binding quotas, language barriers and negative attitudes toward immigrants further hinder migration flows.

Hence, the potential benefits of immigration in Europe include: effects on the distribution of earnings, improved allocated efficiency in the labor market, a better flow of ideas, knowledge and technology, goods and services, as well as capital, increased diversity of the labor force and positive effects on public finance.³⁰ On the other hand, the outflow of young and skilled workers poses risks

²⁶ The ACIA, full text in PDF version, http://www.asean.org/storage/images/2013/economic/ais/ACIA_Final_Text_26%20Feb%202009.pdf

²⁷ The MRAs main text can be seen at, <http://investasean.asean.org/index.php/page/view/asean-free-trade-area-agreements/view/757/new/sid/858/mutual-recognition-arrangements.html>

²⁸ Sugiyarto and Agunias, n.22 above, p 4

²⁹ Martin Kahanec, Skilled Labor Flows: Lessons from the European Union, Report under the World Bank ASEAN Labor Markets Program funded by AusAid, IZA Research Report no 49, December 2012 (accessed on 01/06/2016)

³⁰ Ibid

to sending countries' welfare systems. These risks seem to persist in spite of the potential of remittances and brain gain to compensate for the loss of labor.

ASEAN is also starting to address the issue of movement of 'unregulated professions' (e.g., tourism professionals) for which the differences in legal and education systems matter much less than in regulated professions.³¹ The employment of foreign workers, whether associated with foreign investments or not, often brings new technology, new management skills, and new ideas and can thus help ASEAN countries upgrade their industrial structure to upper middle- or high-income levels. In addition, the actual movement (or even a potential one) will engender greater contestability in the host country, which leads to a better provision of skilled services because of skills upgrading and a competitive price that is a basis for competitive manufacturing sectors.

The MRA assessment at the national level is divided into two parts: (1) the stages of MRA implementation in each country, and (2) preparation of the regulatory environment in member states.³² For the free movement of architectural services, the first element examines the progress in the following items: (1) submission of notification of participation, (2) establishment of a monitoring committee, (3) preparation and submission of an assessment statement, (4) screening of domestic applicants, (5) approval for domestic applicants by the ASEAN Architect Council (AAC), and (6) establishment of a system to authorize Registered Foreign Architect (RFAs).³³ Probably an important progress up until 2015 is the full participation of all the members to MRAs. While the MRA became effective on 19 November 2007, Article 8.3 requires member states to notify the ASEAN Secretariat of their intention to participate. With the notification by Brunei Darussalam (January 2013) and Cambodia (April 2012), all ASEAN countries are now members of the MRA.

Example
Architectural

IV.B. Indonesia's labor market and government policies

Free flow of skilled labor under the AEC scheme will certainly encourage people in the region to move to pursue better job to other member countries. Migration is a significant driver of economic growth and poverty reduction in both countries of origin, such as employment, livelihoods, and remittance flows, and countries of destination, such as private sector growth and economic stability. The numbers of migrant workers are expected to continue to increase as migration offers significant opportunities for development. In ASEAN region, at least 6 million migrant workers are intra-ASEAN migrant workers who moved within Southeast Asian region out of approximately 14 migrant workers in total. Majority of the intra-ASEAN migrant workers is irregular and temporary and is not reflected in official data – the true number of migrant workers is much higher.³⁴ Nearly half of these migrant workers are women who majority work in the services sector, including in domestic work, construction, manufacturing, agriculture, seafood processing and informal workplaces.³⁵ This lead to some concerned among AMSs

³¹ Yoshifumi FUKUNAGA, *Assessing the Progress of ASEAN MRAs on Professional Services*, ERIA Discussion Paper Series, p. 1, see PDF version at, <http://www.eria.org/ERIA-DP-2015-21.pdf> (Accessed on 01/06/2016)

³² FUKUNAGA, p. 5

³³ *Ibid.*

³⁴ ILO, n. 21, see at http://www.ilo.org/asia/whatwedo/projects/WCMS_428584/lang-en/index.htm

³⁵ *Ibid.*

in particular Indonesian government, as it can become trafficking or people smuggling in the region.

The implementation of the AEC will create an additional 1.9 million jobs in Indonesia.³⁶ It also predicted that the Indonesia's labor market continued to expand over the years after the establishment of the AEC. The individuals earning income from employment has increased, but the growth in average wages has lagged, as one in three regularly employed Indonesians receive a low wage of less than 950,000 rupiahs or \$71 per month and that low-wage workers tended to be disproportionately women.³⁷ While ASEAN's rapid growth over the last four decades was largely fueled by strong manufacturing exports, the services sector and services trade have become increasingly important. On average, services contributed more than 40 percent of total value added in AMS in 2010 and accounted for more than 50 percent of total employment. Trade in services has also risen sharply. The share of services in total export of all AMS has increased except Indonesia.³⁸

In 2015 it has been found that 128.30 million Indonesians were part of the national labor force, or 69,50 percent out of total population of 252.7 million. This is a high number of labor forces as an asset for national development. However, Indonesia is facing low workers quality, limited job opportunities and a high unemployment rate. Out of the total labor force, some of 56.65 million (or 44.15 per cent) is elementary school background and 23.12 million (or 18.02 per cent) is junior school educational background. The rest is divided into two categories; senior high school and university educational background, with total 34,53 and 10,56 percent respectively.³⁹ Thus, the labor force in Indonesia majority has low level of educational background, that in total of 62.17 percent (elementary and junior high school).

The government should pay serious attention because structure of Indonesian work force filled with unskilled labor. It is apparent that Indonesian work force can only get the low-skilled level that predicted only 3.2 percent, i.e, the smallest number of skilled labor mobility under the AEC. The quality and quantity of Indonesia's work force should be improved, especially, skilled labor of eight professionals that covered in the AEC scheme.

No	Destination country	Total number	Percentage
1.	Malaysia	1,410,787	42 %
2.	Saudi Arabia	641,039	19 %
3.	Middle East	379,963	11 %
4.	East Asia	359,844	11 %
5.	Southeast Asia	249,100	7 %
6.	The United State of America	130,851	4 %
7.	Europe	59,735	2 %
8.	Pacific Countries	55,591	2 %
9.	Africa	4,439	1 %

³⁶ ILO Warns Indonesia to Invest in Skilled Labor or Lose Out, Jakarta Globe, see at <http://jakartaglobe.beritasatu.com/news/ilo-warns-indonesia-invest-skilled-labor-lose/>

³⁷ Ibid

³⁸ ASEAN Services Integration Report, see at

³⁹ Guntur Witjaksono, Menuju Instrument ASEAN untuk Perlindungan Tenaga Kerja Migran, paper presented in Forum Group Discussion on the Protection Indonesian Migrant Workers: Legal Issues, Bandung, 12 November 2015

10.	South Asia	2.760	1 %
	Total	3.294.109	100 %

Table.1: Destination countries and total number/percentage⁴⁰

Approximately 400,000 Indonesians are registered to have legally migrated to other countries each year since 1998. The Ministry of Foreign Affairs stated that total number of Indonesian citizens who reported to the Indonesian Embassy in foreign countries is more than three million people as can be seen at Table.1 From the table 1, it can be seen that Indonesian workers who migrate to the other countries is more than 3 million workers. Of the total number, more than 1.6 million workers are intra-ASEAN migrant workers with the highest number are in Malaysia. Malaysia becomes the top destination of Indonesian migrant workers because the similarity of language, issuance of working visa less tight, and the role of 'middle man' in the migration process. Meanwhile, the total number of foreign workers from other AMSs who work in Indonesia as shown in table 2 is only 10,458.⁴¹ At the moment, Indonesia labor market is still conducive due to small number of foreign workers from other AMS.

No	AMS	Population	Indonesian MW	Foreign MW in Indonesia
1.	Brunei D	372.361	72.000	6
2.	Cambodia	16.607.000	1.100	2
3.	Laos	6.217.000	220	-
4.	Malaysia	23.953.000	3.000.000	4.000
5.	Myanmar	42.909.000	200	98
6.	Philippines	87.857.000	9.800	2.670
7.	Singapore	4.425.000	112.000	1.300
8.	Thailand	65.444.000	3.200	2.300
9.	Viet Nam	83.535.000	330	82

Table 2: Indonesian Migrant Worker and Foreign Migrant Worker (ASEAN), 2015⁴²

National economic development needs elements such as natural wealth, human resources, technology and innovation. In this context, Indonesia should be able to utilize its manpower to enhance its natural resources for the prosperity of the people by applying technology and innovation. Considering that the significant benefit that can be gained from the AEC is the high-skilled labor mobility, Indonesia should invest in higher education sector. Manpower in Indonesia in the field of eight professions needs to meet certain qualifications to be able to compete regionally and globally

V. Conclusion

⁴⁰ Tatang Budi U Razak, 2013, Directorate of Protection Indonesian Citizens and Legal Entities, Ministry of Foreign Affairs, Workshop on the Improvement Capacity of District Civil Servant in Implementing Diplomacy and Technical Cooperation, Manado, 21 March 2013 ; see also Koesrianti, 2016, An Overview of Indonesia's Protection on Women Migrant Workers, ASIAN Yearbook of International Law, Januari 2016, (2012) Vol.18, see at <http://www.dilafoundation.org/asian-yearbook-of-international-law-2012-vol-18.html>

⁴¹ Guntur, see n. 38, loc.cit

⁴² Guntur, ibid

60.376
10.458
3.192.850
331.319.361

The AEC Blueprint 2025 underlines the need for "the movement of business persons, skilled labor and talents", as a key element for achieving greater economic integration in the region. The movement of skilled labor in line with the trade liberalization, the skilled labors easily move from one country to another country without major restriction. The free movement of skilled labor in ASEAN is not free mobility of labor since the implementation of agreements of the MRAs and AQF does not guarantee the mobility of professionals within AMS. In other words, qualification frameworks enable professional service providers who are registered or certified in signatory countries to equally recognize in other signatory countries. In the AEC economic integration context, MRAs and AQF are a part of a larger system for facilitating free movement of skilled labor.

Having considered the structure of workforce, that majority is low-level education, Indonesia should have a comprehensive education and training policy to enhance its manpower so that they can compete regionally and globally. At the moment, Indonesia can only focus on eight professions as the labor demand of the AEC scheme. A failure to respond to changes in labor demand could have significant impact on the national economy. Indonesia need to put skills investments on workforce, then Indonesia will be well placed to take advantage of the AEC. Since AEC is a process, Indonesia can maximize its' current large supply of low-skilled labor force to the competitive sectors of AEC, such as manufacture and services in the region.

1. Rendah nilai kerja $\rightarrow 154, 184, 60 \mu$ \leftarrow $128, 30 \mu$ (67, 80%)
 Tingkat kerja (128, 30 μ) (67, 80%) \leftarrow $56, 30 \mu$ (30, 22%)

SD = 56, 65 μ (44, 15%)
 SMP = 23, 12 μ (18, 02%)
 SMA = 22, 56 μ (16, 80%)
 SMK = 12, 97 μ (10, 11%)
 Dipl. I/II/III = 3, 39 μ (2, 64%)
 Univ = 10, 58 μ (8, 24%)

Sektor - pengajaran bahasa = 7, 45 μ (5, 81%)
 SD = 3, 51 μ
 SMP = 1, 65 μ (22, 49%)
 SMA = 1, 16 μ (3, 62%)
 SMK = 1, 17 μ (10, 70%)
 Dipl = 0, 25 μ (3, 35%)
 Univ = 0, 56 μ (7, 52%)

2. Berkeaja = 120, 85 μ (94, 19%)
 Sektor: Pertanian = 49, 12 μ (33, 23%)
 Pertambangan = 1, 42 μ (1, 18%)
 Industri = 16, 38 μ (13, 56%)
 Konstruksi = 0, 31 μ (0, 26%)
 Perdagangan = 7, 71 μ (6, 38%)
 Perhubungan = 26, 65 μ (22, 07%)
 Angkutan = 5, 19 μ (4, 30%)
 Keuangan = 3, 64 μ (3, 02%)
 Jasa lainnya = 19, 91 μ (6, 06%)
 Rendah
 SD = 54, 61 μ (45, 23%)
 SMP = 21, 47 μ (17, 77%)
 SMA = 19, 80 μ (16, 39%)
 SMK = 11, 80 μ (9, 76%)
 Dipl = 2, 14 μ (1, 76%)
 Univ = 2, 14 μ (1, 76%)

(7, 52)