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**THE PROTECTION OF SMALL AND MEDIUM ENTERPRISES IN  
YOGYAKARTA TOWARDS ASEAN ECONOMIC COMMUNITY BASED ON  
ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

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**Abstract:**

The ASEAN Economic Community (AEC) is one of the pillars of the ASEAN Community were set out in the Bali Concord II. AEC shall be the goal of regional economic integration by 2015. AEC envisages the following key characteristics: (a) a single market and production base, (b) a highly competitive economic region, (c) a region of equitable economic development, and (d) a region fully integrated into the global economy. Yogyakarta is a city in Indonesia where many citizens are involved in the business, actually in small and medium-sized enterprises (SMEs). Based on the data obtained from the Department of Trade, Industry and Cooperatives Yogyakarta, in 2015 there were 230.047 SMEs industries. With the increasingly fierce competition as a result of the single market of the AEC will very likely have an impact on the survival of these SMEs, since many imported-products will flood the domestic market. Indonesia has ratified International Covenant on Economic, Social and Cultural Rights (ICESCR). On October 28, 2005, the Indonesian government ratified the ICESCR into ICESCR Ratification Act 2005. This study aims to analyze the protection of small and medium enterprises in Yogyakarta towards ASEAN Economic Community based on economic, social and cultural rights. The study is normative legal research which is conducted through library research. The results shows the government has a binding obligation to take various measures and policies to implement the obligation such as “to respect”, “to protect” and “to fulfill” human rights toward SMEs in Yogyakarta, especially in Economic, Social and Cultural Rights.

**Keywords:** AEC 2015, SMEs, Yogyakarta, Economic, Social and Cultural Rights

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## 1. Background

The implementation of ASEAN Economic Community (AEC) was implemented in the end of 2015. The AEC is one of the pillars of the ASEAN Community were set out in the Bali Concord II. ASEAN hopes to establish a single market and production in the end of 2015.<sup>1</sup> The ASEAN Economic Community shall be the goal of regional economic integration by 2015. AEC envisages the following key characteristics: (a) a single market and production base, (b) a highly competitive economic region, (c) a region of equitable economic development, and (d) a region fully integrated into the global economy.<sup>2</sup>

The first AEC characteristic seeks to create a single market and production base through free flow of goods, services, investment, skilled labor and freer flow of capital. The second characteristic helps to create a business-friendly and innovation-supporting regional environment through the adoption of common frameworks, standards and mutual co-operation across many areas, such as in agriculture and financial services, and in competition policy, intellectual property rights, and consumer protection. It also supports improvements in transport connectivity and other infrastructure networks. The third characteristic seeks to achieve equitable economic development through creative initiatives that encourage small and medium enterprises to participate in regional and global value chains and focused efforts to build the capacity of newer ASEAN Member States to ensure their effective integration into the economic community. The fourth characteristic envisages ASEAN's full integration into the global economy pursued through a coherent approach towards external economic relations, and with enhanced participation in global supply networks.<sup>3</sup>

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

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<sup>1</sup> Ana Syukriah, 2013, "Peningkatan Eksistensi UMKM Melalui *Comparative Advantage* dalam Rangka Menghadapi MEA 2015 di Temanggung", *Economics Development Analysis Journal*, Vol.2 No.2 2013, p. 111.

<sup>2</sup> ASEAN, ASEAN Economic Community, <http://www.asean.org/communities/asean-economic-community> Jakarta, accessed on Wednesday, October 28, 2015, at 12.30 a.m.

<sup>3</sup> ASEAN, AEC, <http://www.asean.org/storage/2012/05/56.-December-2015-Fact-Sheet-on-ASEAN-Economic-Community-AEC.pdf> Jakarta, downloaded on Monday, February 8, 2016, at 1.30 p.m.

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growth in Indonesia is very stable in the range of 5.5 percent,  $\pm$  1 per cent with an average growth of 6.11 percent, from 2007 to 2012.<sup>4</sup>

Yogyakarta is a city in Indonesia where many citizens are involved in the business, actually in small and medium enterprises (SMEs). From the data obtained from the Industry and Commerce Bureau of Yogyakarta, in 2015 there were 230.047 SMEs industries.<sup>5</sup> With the increasingly fierce competition as a result of the single market of the ASEAN Economic Community will very likely have an impact on the survival of these SMEs, cause will many imported products that will flood the domestic market.

Small and medium enterprises (SMEs) play a vital role in the development and economic growth. Actually, since small and medium enterprises is the main provider of goods and services it's has a low-income.<sup>6</sup> So the protection of Economic, Social, and Cultural (ESC) rights of small medium-sized enterprises is very needed towards free market in ASEAN Economic Community in Yogyakarta.

The Economic, Social, and Cultural rights are vague, inherently of a positive nature which required positive measures for their implementation, and resource dependent<sup>7</sup> becomes the departure point in discussing the justifiability of these rights in this article. Although international law recognizes ESC rights as genuine rights, a lively and contentious debate over the ideological and technical nature of these rights is still ongoing.<sup>8</sup> The debate about the justifiability of ESC rights has become an issue since the development of human rights.

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

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<sup>4</sup> AbduRofiq, Atep, 2014, "Menakar Pengaruh Masyarakat Ekonomi ASEAN 2015 Terhadap Pembangunan Indonesia", *Jurnal Filsafat dan Budaya Hukum*, Jakarta, Vol. 1 No.1 2014. p. 251.

<sup>5</sup> See, small and medium enterprises data from Industry and Commerce Bureau of Yogyakarta on 2015.

<sup>6</sup> Tambunan, Tulus, 2012, "*Pasar Bebas ASEAN: Peluang, Tantangan dan Ancaman Bagi UMKM Indonesia*", Jakarta: Kementerian Koperasi dan UMKM. p.32.

<sup>7</sup> Malcolm Langford, "The Justiciability of Social Rights: from Practice to Theory", in: Malcolm Langford (ed), *Social Rights Jurisprudence, Emerging Trends in International and Comparative Law*, Cambridge: Cambridge University Press, 2009, pp. 3-45.

<sup>8</sup> Jackbeth K. Mapulanga Hulston, "Examining the Justiciability of Economic, Social and Cultural Rights", *The International Journal of Human Rights*, Vol 6, No. 4, 2002, pp. 29-48.

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## **2. Research Method**

### **A. The Type of Research**

The type of this research is a normative legal research with the international law and Indonesian law approach through the regulations and conventions that regulate it, especially that related with the issue of economic, social and cultural rights. This research would use statute approach,<sup>9</sup> because it would tell some regulations such as Universal Declaration of Human Rights and other conventions relating to the issue of refugees which applicable to the protection of small and medium enterprises based on economic, social and cultural rights, for instance International Covenant on Economic, Social and Cultural Rights and its Protocol. This research would also use case approach,<sup>10</sup> because this research aims to study the norms or regulations in practice pertaining to the Yogyakarta's protection towards small and medium enterprises.

### **B. Technique of Collecting Data**

The methods of collecting data in this research will be done through library research by literature learning. This method will collect data from reading, analyze, and try to make conclusion from related documents namely convention, laws books, legal journals, and others which related to the main problem as the object of this research.

### **C. Technique of Data Analysis**

The data will be analyzed systematically through juridical thinking. Systematically means the research will be analyzed based on international law and Indonesian law, especially relating to the issue of economic, social and cultural rights. Juridical thinking means it would be connected with the principle of law, conventions, and others related regulations.

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<sup>9</sup> Ibrahim, Johnny, 2006, *Teori dan Metodologi Penelitian Hukum Normatif*, Malang: Bayu Media, p.302.

<sup>10</sup> Ibid p. 321.

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### **3. Discussion and Result**

#### **A. Small and Medium Enterprises in Yogyakarta Towards AEC 2015**

SMEs are defined by a variety of different ways depending on the state and other aspects. Therefore, it is necessary to review specific to these definitions in order to obtain an appropriate understanding of SMEs, which adheres to a quantitative measure in accordance with economic progress. In Indonesia,<sup>11</sup> there are many different definitions of SMEs based on the interests of the institution to give a definition.

- 1) The Central Statistics Agency (BPS): SMEs is a company or industry with the total workers between 5-19 people.
- 2) Bank of Indonesia (BI): SMEs is a company or industry with characterized by: (a) the capital less than IDR 20 million; (b) for one round from his business only needs IDR 5 million; (c) has some maximum assets of IDR 600 million, excluding land and buildings; and (d) annual turnover of  $\leq$  IDR 1 billion.
- 3) Ministry of Cooperatives and Small and Medium Enterprises (Law No. 9 of 1995): SMEs are the economic activities of small-scale of the people and traditional, with a net income IDR 50 million - IDR. 200 million (excluding land and buildings) and annual turnover of  $\leq$  IDR 1 billion. SMEs Act 2008, with a net income between IDR 50 million - IDR 500 million and annual net sales of IDR 300 million - IDR 2.5 billion.
- 4) Ministry of Industry and Commerce: a) the Company had assets up to IDR 600 million, excluding land and buildings (Department of Industry before combined), b) the Company has a working capital less than IDR 25 million (Department of Commerce before it merged).

In general, small businesses have characteristics, such as: a self-management, provided the capital itself, a local marketing area, small company assets, and a limited number of employees employed. SMEs is the implementation of the principle of solidarity, democratic economy, independence, balance, progress, sustainability and efficiency of justice, as well as national economic unity. The people's economy is also often called informal sector, because of backwardness and the production volume is very small and not

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<sup>11</sup> Musa, Hubeis, 2009, "*Prospek Usaha Kecil Dalam Wadah Inkubator Bisnis*". Bogor, Ghalia, p.23.

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equipped with a formal business license<sup>12</sup>. The importance of growth and development of SMEs sector regional scale must be considered, especially in the framework of ASEAN economic integration.<sup>13</sup>

SMEs are also an integral part of economic development and growth of the ASEAN Member countries because of the number of SMEs exceeds the number of large companies in both the company and the quantity of the labor force employed. SMEs directly impact the advancement AFEED Program. This is evident from the number of SMEs that stand covers more than 96% of all companies and 50% -85% of domestic work is absorbed by SMEs.<sup>14</sup>

SMEs is one of the economic development aspects in Yogyakarta, because so many people involve in SMEs. It can be established by all people which only need a small capital. Moreover, the freedom was the main reason they set up SMEs, many of the founders of SMEs claimed that they were forced to set up SMEs because they already do not like working as a laborer in a factory which has so many rules that should be obeyed at the factory. This is evidenced by the growing number of SMEs from year to year.<sup>15</sup>

The author obtains the data of SMEs in Yogyakarta from the related institutions such as the Cooperation and Small Medium Enterprises Bureau of Yogyakarta and Industry and Commerce Bureau of Yogyakarta which are shows the number of SMEs in Yogyakarta with some Indicators, as described below.

**Table**  
**Number of SMEs**

No.	Sector	2013	2014	2015
<b>I</b>	<b>SMEs</b>			
	<b>By Type of Enterprises</b>			
	Various Enterprises	44,45	47,8	49,9

<sup>12</sup> Mubyarto, 2002, "Siklus Tujuh Tahunan Ekonomi Indonesia (1931-1966-2001-2036)", *Jurnal Ekonomi dan Bisnis Indonesia*, Yogyakarta, Fsakultas Ekonomika dan Bisnis UGM, Vol. 16 No. 3. 2002, p.13.

<sup>13</sup> Tiurmaida, Masnur, 2014, "Aspek Hukum Peraturan dan Kebijakan Pemerintah Indonesia Menghadapi Liberalisasi Ekonomi Regional Masyarakat Ekonomi ASEAN 2015", *Jurnal Rechtsvinding*, Jakarta, Kementerian Hukum dan HAM RI, Vol. 3. No. 2. 2014, p.166.

<sup>14</sup> Lemhannas RI, 2013, "Peningkatan Peran Indonesia dalam ASEAN Framework on Equitable Economic Development (Eed) Dalam Rangka Ketahanan Nasional", *Jurnal Kajian Lemhannas RI* Edisi 16 2013, p. 61.

<sup>15</sup> Ana Syukriah, Op, Cit, p. 117.

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		2	08	26
	Trading	58,60 1	63,0 26	65,8 23
	Agriculture Industry	55,76 7	59,9 77	62,5 41
	Non-Agriculture Industry	46,39 0	49,8 92	51,7 57
	<b>Total</b>	<b>205,2 10</b>	<b>220, 703</b>	<b>230, 047</b>
<b>II</b>	<b>By Scale Enterprises</b>			
	Micro Enterprises	111,9 12	101, 600	104, 171
	Small Enterprises	51,45 9	67,5 09	71,2 89
	Medium Enterprises	31,12 1	51,5 94	54,5 87
	Large Enterprises	10,71 8	-	
	<b>Data Correction</b>	<b>205,2 10</b>	<b>220, 703</b>	<b>230, 047</b>
<b>III</b>	<b>New Enterprises</b>			
	Target			



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		24,79 8	90,0 00	90,1 80
	Realization	16,42 1	65,3 33	65,5 93
<b>IV</b>	<b>Detail per Region/City</b>			
	Yogyakarta City	4,643	18,4 20	18,4 70
	Sleman	2,608	10,3 65	10,4 30
	Bantul	4,479	17,8 68	17,9 33
	Kulon Progo	1,578	6,26 8	6,30 8
	Gunung Kidul	3,113	12,4 12	12,4 52
	<b>Total</b>	<b>16,42 1</b>	<b>65,3 33</b>	<b>65,5 93</b>

**Sources: Industry and Commerce Bureau of Yogyakarta**

Based on data above, SMEs have a huge opportunity to develop their business. However, the development of SMEs in Yogyakarta is still hampered a number of issues. they are still having a barrier to the development of SMEs in terms of two factors: internal factors and external factors of SMEs, where the handling of each of these factors must work together to obtain the maximum results, namely: (1) the internal factor, SMEs is weak in terms of capital, management capabilities, production, marketing and human resources; (2) External

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factors: the issues arising from competition. For example, the lack of government supports to protect SMEs in term of legislation to facing the AEC 2015.

In other hand, the number of SMEs in Yogyakarta is growth smoothly, we may see from the development each year. The development of SMEs is uncontested; there is also the government action to develop and protect SMEs in Yogyakarta and SMEs gives the highest contribution in Yogyakarta economic development rather than others.

Based on elaboration above shows that the SMEs in Yogyakarta is growth gradually year to year and it would be needed protection from the government. However, they cannot survive to facing the single market and production base, and a region fully integrated into the global economy in AEC 2015 without any protection and action from the government.

**B. Economic, Social and Cultural Rights and ICESCR**

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

The concept of ESC rights, the state set as the parties have an obligation to the protection of small and medium-sized enterprises. This happens because it is a consequence of ICESCR ratification in the form of our positive law, i.e. ICESCR Ratification Act 2005. Those consequences, according to Eko Prasetyo,<sup>16</sup> briefly mention that the absence of reasons for the whole country to inevitably have to carry out all things which are mentioned in the ICESCR. All these things will be linked to the issue of implementation of the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (Limburg Principles) will be applied in the fulfillment of ESC rights.

Obligations undertaken by states and consequently by the international community, under international human rights instruments shall be implemented in good faith.<sup>17</sup> This standard applies to all parts of the contemporary human rights system. However, many

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<sup>16</sup> Result from the Interview with Eko Prasetyo as a head of Centre for Human Rights Studies of UII.

<sup>17</sup> See, in so far as treaty obligations are concerned, this is expressly provided for by Article 26 of the Vienna Convention on the Law of Treaties of 1969: “Every treaty in force is binding upon the parties to the treaty and must be performed by them in good faith”.

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obstacles must be overcome in fulfilling this standard, including that of the relative neglect of economic, social and cultural rights, another problem has been the slow process in clarifying the content of these rights and their corresponding obligations. Greater and more detailed precision has been obtained during later years. However, by way of the “general comments” interpreting the relevant international instruments by the UN Committee on Economic, Social and Cultural Rights.<sup>18</sup>

State responsibility in this context is a statement of "commitment" and "goodwill", which does not recognize "half-committed" or "commitment patchy" but "full commitment" to guarantee the non-discrimination principle, including ensuring the equality of men and women to enjoy all ESC rights which is guaranteed in Article 3 of the Covenant. The Covenant gives a significant impact, particularly to the developing country such as Indonesia. The State must guarantee the fulfillment of economic, social and cultural rights of its citizens.

The ratification has consequences to the implementation of human rights, because Indonesia has bound themselves legally among other. The government has an obligation to adopt a treaty that has been ratified into the legislation, well-designed and that has been enacted as Act, the other is that the government has an obligation to bind to take various measures and policies to implement the obligation to respect, to protect and to fulfill human rights. This obligation also followed by other government obligations, namely to create a report relating to the adjustment of law, measures, policies and actions.<sup>19</sup>

The formulations in ICESCR, “...undertakes to take step,.. to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present covenant...,” The formula gives an indication that the economic, social and cultural rights is positive rights. As a positive right, then right to economic, social and cultural cannot be prosecuted in court (non-justiciable).<sup>20</sup>

ICESCR which command the state parties to protect their citizen from the violation of ESC rights, where the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights more specific regulate about the obligation to fulfill requires States to take appropriate

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<sup>18</sup> Asbjorn Eide, Catarina Krause, and Allan Rosas (ed.), 2001, *Economic, Social and Cultural Rights*, Netherlands, Martinus Nijhoff Publishers, p. 9.

<sup>19</sup> Adi, Yosep, 2012, “*Hak EKOSOB dan Kewajiban Negara*, Penguatan Pemahaman Hak Asasi Manusia untuk Hakim Seluruh Indonesia”, Lombok: Komisi Nasional Hak Asasi Manusia. p. 5.

<sup>20</sup> A. Masyur Effendi. 2005, *Perkembangan Dimensi Hak Asasi Manusia (HAM) Proses Dinamika Penyusunan Hukum Hak Asasi Manusia (Hakham)*, Bogor, Ghalia Indonesia, p. 130

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legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights.<sup>21</sup>

In line with Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Prof. Dr. Nik Ahmad Kamal Nik Mahmud argues that “*every country who ratify the Covenant should be consistent to implement the Covenant and have to reforming their law which is related to the Covenant. Thus, Indonesia might implement the values of ICESCR into society*”.<sup>22</sup>

Based on elaboration above, the government should implement the ICESCR with their consequences such as *to respect, to protect and to fulfill* the economic, social and cultural rights. However, Indonesia already bind himself with the covenant as international law which mean Indonesia should run the obligation on it, such as: make or reforming a related legislations and make a progress reports to United Nations.

The protection has to be done in order to implement the obligation *to fulfill* the Economic and social rights of Indonesians. As the member of United Nations (UN); Indonesia is asked by UN Charter to implement such code of conduct in implementing human rights (Article 55 UN Charter), since the center of the purpose of UN is human rights. Therefore, the decisions of Indonesia policy, shall always take in to account the human rights aspect. Moreover, Article 103 of UN charter states: “In the event of a conflict between the obligations of the Members of the United Nation under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail”.

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<sup>21</sup> See, Article 6 of Masstricht Guidelines on Violations of Economic, Social and Cultural Rights stated “Like civil and political rights, economic, social and cultural rights impose three different types of obligations on States: the obligations to respect, protect and fulfill. Failure to perform any one of these three obligations constitutes a violation of such rights. The obligation to respect requires States to refrain from interfering with the enjoyment of economic, social and cultural rights. Thus, the right to housing is violated if the State engages in arbitrary forced evictions. The obligation to protect requires States to prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation of the right to work or the right to just and favourable conditions of work. The obligation to fulfill requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights. Thus, the failure of States to provide essential primary health care to those in need may amount to a violation.”

<sup>22</sup> Result from the Interview with Prof. Dr. Nik Ahmad Kamal Nik Mahmud as Professor of Law, International Islamic University Malaysia.

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Therefore, Indonesia government in general and Yogyakarta government in particular have no reason to do not implement ICESCR as their obligations. Hence, these elaborations above give an obvious clue to the states about which obligations that states have to prioritize if they are facing double obligations that contradict each other.<sup>23</sup>

From above explanation, shows that the distinguish role of ICESCR with their instruments are very important and needed to fulfill the ESC rights in each country, especially in Indonesia because Indonesia already ratify the Covenant and legally binding with international law. Moreover, Yogyakarta should fulfill their obligations on ESC rights consistently to protect small and medium-sized enterprises towards AEC 2015.

**C. The Protection of Yogyakarta Provincial Government to the SMEs towards ESC Rights**

Yogyakarta government protection to SMEs towards AEC 2015 is very necessary to shield the economic, social and cultural rights of SMEs. However, Indonesia already ratified ICESCR into Indonesian legal system that has consequences to implement it well. Yogyakarta is the one of cities in Indonesia where they should protect SMEs based on ICESCR.

The government's role is expected as complementary to encouraging the efforts that have been made to improve the competitiveness of SMEs. With a conducive-business climate which is created by the government, it will be easier for SMEs to improve competitiveness, both the competitiveness of companies and the competitiveness of the products produced. Other stakeholders should improve the system of alliances that have been created by SMEs, due to the support of stakeholders in the form of education / training/counseling, promotion and facilitation proven to encourage efforts to improve the competitiveness of SMEs significantly

According to Firsan Edy as the Head of Productivity and Marketing Division at Department of Cooperation and Small Medium Enterprises of Yogyakarta believe that *"The government has conducted several activities to minimize the factors that hinder the development of SMEs by providing soft loans, providing training services to the owners of*

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<sup>23</sup> Darrow Mac, 2003 *Between Light and Shadow: The World bank, The International Monetary Fund and International Human Rights Law*, Hart Publishing, p. 127.

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*SMEs to be able to expand its business by working with relevant parties, infrastructure development such as road construction, simplify licensing. The government's role would be particularly important for the readiness of SMEs to compete other businesses in utilizing the AEC in 2015*".<sup>24</sup> Several attempts have been made to empower local governments to SMEs are:

- 1) Improve access to finance;
- 2) Improving the quality of human resources; and
- 3) Facilitating SMEs access related to the information and promotions.

Like previous argumentation, the Head of Integrated Business Service Center (*Pusat Layanan Usaha Terpadu*) at Cooperation and Small Medium Enterprises Bureau of Yogyakarta, Darso argues that *"To preparing the readiness of SMEs towards AEC 2015, Yogyakarta has set up the SMEs Center which is located in the Cooperatives and SMEs Bureau of Yogyakarta. Government hopes with the SMEs center would be a place to promote the product or services from SMEs as well as the products marketing of SMEs from various community groups. Thus, SMEs products would be produced and sold in the market will improve the welfare of society"*.<sup>25</sup>

According to Eko Riyadi as the Head of Centre for Human Rights Studies of Universitas Islam Indonesia argues that *"Yogyakarta Government should have two kinds of way to protect SMEs towards AEC 2015, those are legal protection and administrative protection"*. The legal protection means the government should protect the ESC rights of SMEs through legislation. Aside, administrative protection is the government should fulfill the ESC rights through give the social insurance such as incentive, program, etc.

In other hand, According Dewo Isnu, Head of Law Bureau of Regional Secretary of Yogyakarta argues that *"Nowadays, Yogyakarta government do not have Regional Regulation or equal regulations to protect the ESC rights of SMEs in Yogyakarta because the government think that the Government Regulation is already clear to be implemented in Yogyakarta"*. However, the role of government to protect ESC rights is very needed.

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<sup>24</sup> Result from the Interview with Firsan Edy as the Head of Productivity and Marketing Division at Department of Cooperation and Small Medium Enterprises of Yogyakarta

<sup>25</sup> Result from the Interview with Darso as the Head of Integrated Business Service Center at Cooperation and Small Medium Enterprises Bureau of Yogyakarta

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Moreover, the covenants and the guidelines have given a rigid explanation about how to guard and implement the economic, social and cultural rights, Yogyakarta still does not promulgate the legislations to protect small and medium enterprises towards AEC 2015, especially on economic, social and cultural rights.

Based on the discussion above, Yogyakarta has strong efforts to protect the economic, social and cultural rights of SMEs in term of administrative matters such as: incentives, program for SMEs as well as coaching and partnership, etc. Nevertheless, the protection on economic, social and cultural rights of SMEs in term of legislation is still vulnerable. However, ICESCR has an outstanding role to protect SMEs in Yogyakarta and Yogyakarta government should fulfill the ESC rights of SMEs through all aspect equal and consistently.

#### **4. Remarks**

##### **A. Conclusion**

From the above-cited explanation, the author may conclude that the International Covenant on Economic, Social and Cultural Rights has an outstanding role to shield the small and medium-sized enterprises in Yogyakarta toward ASEAN Economic Community 2015 since ICESCR as a tools to bind government with their obligations to protect SMEs principally in Economic, Social and Cultural rights. Moreover, International Covenant on Economic, Social and Cultural Rights more specific than other covenants which are compose about Economic, Social and Cultural rights. However, ICESCR was ratified into ICESCR Ratification Act 2005. It would be more vigorous to put into effect in Yogyakarta and it as government's guidance to protect small and medium-sized enterprises, especially on ESC rights.

In contrast, the Yogyakarta government's protection on ESC rights within small and medium-sized enterprises toward AEC 2015 is vulnerable in term of legislation because they do not have Regional Regulation neither about small and medium-sized enterprises nor the protection of SMEs. The legislation is momentous to protect small and medium-sized enterprises which raising some consequences on the budgeting, programing and schema to protect SMEs. Nonetheless, the SMEs has been protected by government through administrative fields in term of government policies, such as partnership strengthening, made decision to helping SMEs in term of credit and capital, and make a connection between SMEs and exporter, etc.

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In addition, notwithstanding ICESCR is very meritorious to shade the Economic, Social and Cultural rights of SMEs in Yogyakarta towards AEC 2015. Furthermore, Indonesia notably Yogyakarta should be implementing ICESCR properly to protect the SMEs towards AEC 2015. However, international law is only soft law but the Covenant should be respected by every country which had ratified it and they shall implement covenants appropriately indeed. Otherwise, if Indonesia through Yogyakarta government does not respect and implement the Covenant felicitous even unto ignore ICESCR, it would be “shameful” and “unsavory labeled” by other countries in the international meeting as well as in United Nations meeting.

**B. Suggestion**

Based on the discussion and conclusion above the author would give recommendations to overcome the problem, the author has two recommendations which are consists of one for Yogyakarta government and another one for ASEAN, those are:

Firstly, Yogyakarta should make Regional Regulation which regulate about small and medium enterprises in term of economic, social and cultural rights protection. However, Regional Regulation is stronger than other regulation in province level.

Secondly, the author suggest that ASEAN should establish institution to settle the violations of economic, social and cultural rights towards ASEAN Economic Community 2015 in particular and violation of Economic, Social and Cultural rights at ASEAN in general. Whatever the form is, it may court as well as European Human Rights Court or arbitration.



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