

CHAPTER II

ASEAN AND PRINCIPAL OF COOPERATION

In combating arms smuggling, it need the mutual and cohesive action from all parties in the world. It can come from the civilian, state officials, government, think tank and also local, national, regional and international organization. In Southeast Asia, ASEAN is hoped has bigger role in combating any transnational crime especially arms smuggling in Southeast Asia.

A. A Brief History of Association of Southeast Asian Nations (ASEAN)

ASEAN is the biggest regional inter governmental organization in Southeast Asia. It consists of ten states in Southeast Asia that is divided into two big categorizes. The first is states founder which consist of five states such as Indonesia, Malaysia, Singapore, Thailand, and the Philippines. Whereas the second category is states which joined after ASEAN developed. They are Brunei Darussalam, joined in January 8th 1984, Vietnam joined in July 28th 1995, Laos and Myanmar joined in July 23rd 1997 and Cambodia joined in April 30th 1999.²⁰

²⁰ = [ASEAN - A Brief History - ASEAN.org](#) [http://www.asean.org/About/About%20IDP-6&l=ind](#)

There is a new state in Southeast Asia who want to join become an ASEAN new member. The state is East Timor, which got its independence in May 20, 2002. East Timor wishes to become a new member of ASEAN in 2012. Willingness of East Timor to become the new member of ASEAN gets support from Indonesia and Portugal.

Formally, ASEAN was established based on Bangkok Declaration in August 8th, 1967. In the future, August 8th is commemorated as birth date of ASEAN. The Bangkok Declaration was signed by five prime ministers and foreign ministers of five state founders. They are Adam Malik (Indonesia), Tun Abdul Razak (Malaysia), Thanat Khoman (Thailand), S. Rajaratman (Singapore) and the last was Narsisco Ramos (the Philippines).

Based on Bangkok Declaration, the aims of the Association shall be:²¹

- 1) To accelerate the economic growth, social progress and cultural development in the region through joint endeavors in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of South-East Asian Nations.
- 2) To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter.

²¹ *The ASEAN Declaration*. Accessed in <http://www.aseansec.org/1212.htm>

- 3) To promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields.
- 4) To provide assistance to each other in the form of training and research facilities in the educational, professional, technical and administrative spheres.
- 5) To collaborate more effectively for the greater utilization of their agriculture and industries, the expansion of their trade, including the study of the problems of international commodity trade, the improvement of their transportation and communications facilities and the raising of the living standards of their people.
- 6) To promote South-East Asian studies.
- 7) To maintain close and beneficial cooperation with existing international and regional organizations with similar aims and purposes, and explore all avenues for even closer cooperation among themselves.

Actually ASEAN is not the first regional organization in Southeast Asia. There are several predecessor organizations have been established (intra regional or extra regional). They were Southeast Asia Treaty Organization (SEATO); the Asian-Pacific Council (ASPAC); Association of Southeast Asia (ASA); Malaya, the Philippines and Indonesia (Maphilindo); South East Asian Ministers of Education Organization (SEAMEO). SEATO, ASPAC and SEAMEO were extra

regional organization whereas ASA and Maphilindo were intra regional organization.²²

SEATO was military defense organization in Southeast Asia. The members were five European states, Pakistan, Thailand and the Philippines²³. The organization was actually the effort of United States in fighting communist influences in Southeast Asia so that is why, the initiative of SEATO was come from outside of Southeast Asia²⁴.

ASPAC was also extra regional organization in Southeast Asia which had members not only come from Southeast Asia but also from Australia, Japan, New Zealand, Malaysia, Thailand, the Philippines, South Korea, and South Vietnam.²⁵ From the members, the writer could see that ASPAC was a regional organization of anti-communist at that time.

ASA was the first regional organization that had members from Southeast Asia. The organization which established in 1961 had three members of states namely Malaya, the Philippines and Thailand. Unfortunately, ASA dispersed because of a conflict between Malaya and the Philippines. The cause was Sabah's status which was claimed as a part of the Philippines.

²² *ASEAN Selayang Pandang*. Accessed in www.deplu.go.id/Documents/ASEAN%20Selayang%20Pandang.doc

²³ Abdulgani, Roeslan. *Problem Nasionalisme, Regionalisme, dan Keamanan di Asia Tenggara*. Duta Wacana University Press. Yogyakarta. 1995. Page 30.

²⁴ Cipto, Bambang. *Hubungan Internasional di Asia Tenggara, Teropong terhadap Dinamika Relaitas dan Masa Depan*. Pustaka Pelajar. Yogyakarta. 2007. Page 12.

²⁵ Abdulgani, Roeslan. *Problem Nasionalisme, Regionalisme, dan Keamanan di Asia Tenggara*. Duta Wacana University Press. Yogyakarta. 1995. Page 30.

The next regional organization was Maphilindo. The organization which consist of three states, also dispersed because Indonesia got conflict with Malaya. Soekarno who was a president at that time, did politics confrontation toward Malaya because Indonesia opposed to the formation of Malaysia by United Kingdom.²⁶

In its history, ASEAN did not have charter that functions as ASEAN constitution. ASEAN was established based on Bangkok Declaration signed in 1967. In its development, the members initiated to create a charter as ASEAN's constitution and shows legal personality of ASEAN. Finally, ASEAN Charter signed up by the members of ASEAN in 13th AMM in Singapore on November 2007.

In ASEAN Charter, the members agree to maintain and enhance peace, security and stability as well as further strengthen peace-oriented values in the region, and to enhance regional resilience by promoting greater political, security, economic as well as socio-cultural cooperation.²⁷ ASEAN members are also agreed to promote its common ASEAN identity and sense of belonging among its people in order to achieve its shared destiny, goals and values. By slogan *One Vision, One Identity, One Community*, ASEAN wish can prove its regional identity.

²⁶ *Ibid.* Page 27

²⁷ *Ibid.* Page 28

For ASEAN, ASEAN Charter is a crowning achievement that will strengthen the unity and solidarity of the members. Another advantage is, by owning ASEAN Charter, it makes ASEAN has its legal personality. A regional or international organization will be an international law subject if it has a legal personality. Furthermore, ASEAN Charter also makes this organization able to cooperate not only between the members but also to other international actors. In conclusion, ASEAN Charter changed ASEAN from a not-binding or loose association becomes *rule-based organisation*, as it is easier for ASEAN to cooperate with other groups.

The main plan contained in ASEAN Charter was ASEAN Vision 2020. There were three things that wanted to be reached by ASEAN. They are *ASEAN Economic Community*, *ASEAN Political-Security Community* and *ASEAN Socio-Cultural Community*. ASEAN Vision discussed for the first time in Kuala Lumpur in 1997 and in 12th AMM in Cebu, the Philippines at 2007, ASEAN Community 2020 was accelerated from 2020 become 2015. It is signed as *Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015*.

One of three ASEAN's pillars is ASEAN Political-Security Community (APSC). By this pillar, ASEAN want to accelerate political-security cooperation between the members so peace stability can be reached in regional as well as

Action Programme (VAP) consists of political development, shaping and sharing of norms, conflict prevention, conflict resolution, post-conflict peace building, dan implementing mechanism.

Along forty years existence of ASEAN, this organization claimed as a secure and stable regional organization in the world. It can be seen that for forty years, there is no open fighting among states members. Another indicator that ASEAN as successful regional organization is high economic growth and there are many states which want to be ASEAN dialogue partners.²⁸

B. Transnational Crime

Globalization and economic interdependence bring not only positive impact upon human life but also its negative impacts. One of the distinctive negative impacts of globalization is the emerging of transnational crimes as well as organized and unorganized transnational crimes. As in globalization era, the development of science and communication make the world seems borderless. People and goods become easier to distribute. In other word, the nature of transnational crimes is globalization itself.

²⁸ ASEAN, *Organisasi Regional yang Sukses*. Accessed in

Other causes of transnational crimes are the weaknesses in socio-politics, economic, security conditions of a state and weak foreign policy.²⁹ Transnational crime will develop fast in a state which has weak conditions. For transnational crime organization, it is easier to develop transnational crime in weak states than in stable conditions states.

Generally, transnational crime is defined as a criminal act in international range or cross country or state. There are several characteristics for a crime can be called as transnational crimes such as the crime is done in more than one state; preparation, planning, directing and monitoring are done in different states; engage *organized criminal group* and the last is given serious impact toward other states. In 10th United Nation Congress at 2000 about International Cooperating in Combating Transnational Crime: New Challenges in the Twenty-First Century defined transnational crime as offences, whose inception, perpetration and/or direct effect involved more than one country. Here, it also discussed about the characteristics of transnational crime, such as:³⁰

1. The actors of transnational crime usually engage several citizenships from several states.
2. *Locus Delicti* or place of incident or event is done out side of victims state.

²⁹ *Kesiapan Indonesia dalam Menghadapi Kejahatan Lintas Negara di ASEAN*. Accessed in <http://katalog.pdii.lipi.go.id/index.php/searchkatalog/downloadDataById/2856/2857.pdf>

³⁰ *Kejahatan Lintas Negara*. Dikumpulkan dari *Kejahatan Lintas Negara*

aspects. First of all, bad impact of transnational crime is crippling the law system of states. It is because crime done by transnational organized crime group can threaten the integrity and independency of law upholder by influencing law process including when the judge gives verdicts to criminals.

Second bad impact is influencing economic system of states. It is because generally, transnational crime has a purpose to get money and other real profit in significant quantity. It can influence monetary control (inflation, deflation, etc), fiscal policy, acceptance of tax, integrity of finance institution and fair economic competitions. The third impact is bothering socio-cultural system if transnational crime occurred in a society. The next impact is descending society trust upon law upholder. There is permissive feeling toward crime acts and they do not have brave to fight the crime.

The forth impact is destroying governmental order, political life because transnational organized crime will always try to influence any decision in executive institutions as well as legislative institutions to safe their existence. Finally, the impact is that transnational existence can disturb sovereignty of state. It is related to characteristics of organized transnational crime which can be controlled in other state.

In its early time, kinds of transnational crime just focus on narcotics and trafficking in illegal drugs but by the expansion and diversification of

transnational crime, the scope of transnational crime become wider. In 1995, UN

had identified eighteen kinds of transnational crimes such as, money laundering, terrorism, theft of art and cultural objects, theft of intellectual property, illicit arms trafficking, aircraft hijacking, sea piracy, insurance fraud, computer crime, environmental crime, trafficking in persons, trade in human body parts, illicit drug trafficking, fraudulent bankruptcy, infiltration of legal business, corruption and bribery of public or party officials.

ASEAN states acknowledge several types of crimes above as transnational crimes, such as, illegal mass migrations, illegal trade of drugs and narcotics, cyber crime, arms smuggling,³³ terrorism, money laundering, traffic in person (women and child), and piracy.³⁴

C. ASEAN Way (ASEAN Style)

There are many definitions about ASEAN Way. ASEAN Way is described as the characteristic feature in the way ASEAN manages conflict and maintains peace and security in Southeast Asia.³⁵ Other simple definition of ASEAN way is the customs of ASEAN in solving the problems.³⁶ Based on the

³³ *ibid*

³⁴ *Declarations and Agreements on Transnational Crime*. Accessed in

<http://www.interpol.go.id/id/uu-dan-hukum/deklarasi/291-asean-declaration-on-transnational-crime>

³⁵ Caballera, Mely. *Regional Security in Southeast Asia Beyond the ASEAN Way*. Institute of Southeast Asian Studies Singapore. Singapore. 2005. Page 2.

³⁶ Cipto, Bambang. *Hubungan Internasional di Asia Tenggara, Teropong terhadap Dinamika Realitas*

Asia Pacific Security Lexicon, ASEAN Way is a style of diplomacy or conduct that involved in intra ASEAN relations.³⁷

Conflict here means all problems in Southeast Asia include inter state and intra states. There are several kinds of conflict, namely, inter-states conflict, states formations conflicts, revolutionary conflicts, ethnic conflicts, religious conflicts, socio-political conflicts and International Social Conflicts (ISC's).³⁸ In this case, ASEAN just concern on inter states conflicts and intra state conflicts which have possibility to influence regional as well as international security.

Basically, ASEAN Way stressed on patience, evolution, informality, pragmatism and consensus.³⁹ Patience means in solving the problem, ASEAN do not hurry to find the solutions. Evolution means problem solving process run slowly parallel with the fact, situations and conditions. Informality can be defined as ASEAN more often in the using informal ways than formal ways. Pragmatism means in looking for the solutions, ASEAN considers the development of situations. The last point is consensus which means in taking decisions, ASEAN prefers to use consensus in order to look for the best decisions.

³⁷ Capie, David., Paul Evans. *The Asia Pacific Security Lexicon Institute of Southeast Asian Studies*. Singapore. 2002. Page 14

³⁸ Askandar, Kamarulzaman. *Management and Resolution of Inter-State Conflicts In Southeast Asia*. Penang Malaysia. SAECSN. 2004. Page 18-19.

ASEAN Way can be named as ASEAN diplomacy. It is because ASEAN Way prefers to use informal than formal ways in solving the problems or conflicts. This concept is still debatable and being criticized by western thought or scholar as something inconsistent but ASEAN has proved that by this way, there is no open conflicts in Southeast Asia since ASEAN exists.

ASEAN Way consists of several points that become the soul of ASEAN itself such as doctrine of non-interference, non-use of force, intense dialogue and consensus, solving conflict peacefully, and so on.

From descriptions above, there are several main points or elements of ASEAN Way which will be discussed in this paper, such as, doctrine of non-interference and intense dialogue and consensus. Doctrine of non interference means that the state members and ASEAN must respect others state's sovereignty by not interfering internal affairs as well as their internal conflicts and problems. As the consequence, it needs consciousness of the states in not being coercive toward internal affair of other states.

Even though ASEAN has doctrine of non-interference, it does not mean that ASEAN apply this doctrine unconditionally. Interference still gets tolerance in ASEAN Way as long as the interference does not give impact in using force. In several cases, ASEAN also employ interference efforts. For example, when Cambodia got conflict with Vietnam, interference done by ASEAN is still in line

with ASEAN Way concept that prefers using preventive diplomacy, long negotiations, intense dialogue and consensus.

ASEAN way is also called as the effort of ASEAN members to solve the problems or conflicts without breaking the sovereignty of other states.⁴⁰ It is related to one element of ASEAN Way that is doctrine of non-interference. A state can only spur and shove other state members to do or not to do something related to the case.

Another important point of ASEAN Way is intense dialogue and consensus (*musyawarah mufakat*). *Musyawarah* is described as psychological disposition on the part of the members to give due regard to the larger interest.⁴¹ Beside *mufakat* means the consensus reached through the process of *musyawarah*.⁴² Consensus or taking decisions in ASEAN is described as something which is done in relax situation and step by step hence decision is taken in several phases. As the impact is, in reaching a decision needs along time. One note for consensus is that disagreement does not mean lost of role in decision making. When *mufakat* can not be reached by the members, the next step is using *agree or disagree mechanism*.

⁴⁰ ASEAN Charter. Accessed in <http://www.kemlu.go.id/Documents/ASEAN-Charter.pdf>

⁴¹ Capie, David., Paul Evans. *The Asia Pacific Security Lexicon Institute of Southeast Asian Studies*. Singapore. Page 19

⁴² *Ibid.* Page 20

Thus, by applying ASEAN Way as elements of ASEAN, the conflicts or problems can be solved without open war among members. It means that the members can avoid high cost because of war and also avoid many sacrifices or victims from military forces as well as civilians.