

**HARMONIZATION OF COMMERCIAL TRANSACTION LAW IN THE ASEAN  
REGION: THE IMPORTANCE, POSSIBILITIES AND CHALLENGES**

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***Abstract***

*The Southeast Asian region is viewed as a united block that is ASEAN. The ASEAN roots from a diverse economic system, culture, ethnic, technical, and educational system. In the modern-day globalization, economic globalization continues to develop as well. This economic globalization pushes the importance of having an integrated commercial transaction law of the ASEAN member states. The idea of integration that stems from a rapidly growing economic globalization results in an unavoidable demand for harmonization of commercial transaction law within the ASEAN region. As a united region that is the ASEAN, having different regulations to govern matters of cross border commercial transactions inter-ASEAN would hinder the effectiveness of each country's law itself. Yet, the importance of having a harmonized commercial transaction law within the ASEAN region is still questioned. This paper will analyze on the importance of having a harmonized commercial law among the ASEAN member states, the possibility and challenges of developing such a harmonization and if possible, how the ASEAN Economic Community (AEC) is planning to develop a form of harmonization in its commercial transaction law.*

***Keywords: ASEAN Economic Community, Harmonization of ASEAN Law, ASEAN Economic Law.***

**A. Introduction**

The Association of Southeast Asian Nations (ASEAN) was established on 8<sup>th</sup> of August 1967 in Bangkok, Thailand, by the Founding Fathers of ASEAN, namely Indonesia, Malaysia, Philippines, Singapore, and Thailand. After its establishment, Brunei Darussalam, Vietnam, Laos, Myanmar, and Cambodia then joined as member states of the ASEAN. The establishment of the ASEAN has purpose and aim to *first*, accelerate economic growth, social progress, and cultural development across the ASEAN countries. This is done in the spirit of equality and partnership between the countries in order to strengthen the foundation to creating a peaceful and prosperous community among Southeast Asian nations; and *second*, promote peace and

stability in the regional level through abiding respect for justice and rule of law among ASEAN member states.

One of the key points of the agreement that established the ASEAN was to give priority to the economic and social cooperation as a manifestation of ASEAN solidarity.<sup>1</sup> Economic cooperation in the ASEAN region must not be separated from the economic potential of all its member states. In relation to this and by seeing the rapid growth of economic globalization, integration of law in the field of economy between ASEAN countries became unavoidably needed. Since its establishment in 1967, ASEAN has promoted economic integration at a regional level and has started to work toward realizing ASEAN Free Trade Area (AFTA) in 1992 and the ASEAN Economic Community (AEC) in 2003. This is where the AEC plays a massive role.

The AEC itself is an economic integration that was established in 2015 and became a major milestone in ASEAN's regional economic integration agenda. This vision was based on the interests of all ASEAN member states to deepen and broaden economic integration through existing and new initiatives with a clear timetable. The goal of AEC is to establish ASEAN as a single market that is production-based for the free flow of goods, services, capital, investments, and skilled labor within the ASEAN region, in the interest that it will make ASEAN a more dynamic and competitive region. The AEC seeks to integrate the diverse economies of the ASEAN member states as has the goal to be the 4<sup>th</sup> largest economy in the world by 2050. Today, the AEC is the most advanced and developed economic integration in East Asia.<sup>2</sup>

AEC is a realization of the ultimate goal of ASEAN's vision of the end goal that is economic integration. However, the ASEAN has been relatively slow to adopt binding legal frameworks to govern relationships, particularly relationships in the economic field, between its member states. Instead, ASEAN prefers to operate on the basis of ad hoc understandings

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<sup>1</sup> Association of Southeast Asian Nations, *ASEAN Document Series 1967-1985* (Jakarta: ASEAN, 1985), 2.

<sup>2</sup> Kazushi Shimizu, "The ASEAN Economic Community and the RCEP in the World Economy," *Journal of Contemporary East Asian Studies* 10, no. 1 (2021): 10, <https://doi.org/10.1080/24761028.2021.1907881>.

and informal agreements. This ASEAN way of “musyawarah and mufakat” (consultation and consensus), is highly contrasted with the formal legalism of most Western international institutions. This ASEAN way is deeply embedded in the processes and structures of ASEAN. It has since been widely recognized as the key to ASEAN’s success, or, at least, its survival as a regional entity.<sup>3</sup> However, ASEAN’s disinclination towards the use of “hard” legal mechanisms has been questioned in light of the proliferation of crossborder trade and an increasing dependence on external trade and investment within the region. This has been accompanied by an urgent need for a viable legal framework for trade and investment that has, till date, yet to materialize.

The purpose and aim of the establishment of the ASEAN itself of course relates to commercial transactions between the member states of ASEAN (cross-border commercial transactions). Further, the economic growth among ASEAN countries has been the foundation for the idea of harmonizing its commercial transaction law. One of the most common example of cross-border commercial transaction is e-commerce. In today’s era, e-commerce is a radically new way of conducting commercial activities and is potentially a significant driver in increasing economic growth and strengthening development around the world.<sup>4</sup> Transactions through e-commerce has helped small and medium-sized enterprises access global markets and increase their chances to compete on an international level. In developing economies, especially in less developed countries, e-commerce has enhanced economic growth and created new job opportunities.<sup>5</sup>

Having varying legal framework on commercial transaction law, for example in the field of e-commerce, may lead to issues regarding its implementation between the ASEAN member states that would potentially hinder economic growth. This shows that harmonization of commercial transaction law in the ASEAN region is of utmost importance, as without it,

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<sup>3</sup> Joanne Wong, “On Legal Harmonisation Within ASEAN,” diakses 1 Mei 2021, <http://www.singaporelawreview.com/juris-illuminae-entries/tag/Joanne+Wong>.

<sup>4</sup> Christine Sanderson, “EU Forges Ahead on E-commerce,” *International Tax Review* 11, no. 51 (2000): 51.

<sup>5</sup> ESCAP, *Embracing the E-commerce Revolution in Asia and the Pacific – Executive Summary* (Asian Development Bank, 2018), xii.

economic growth may be hindered. Although we must also acknowledge that the process of harmonization faces stumbling blocks as to forming an economic integration. The process of achieving such a target is barred by a few issues, such as different perspectives of its member states in regards to their economic regulations and how states apparatus prepares and strategize on this harmonization. Hence, emerges two problems: (i) The importance of harmonizing commercial transaction law within ASEAN member states as well as its possibilities and challenges; also (ii) The plan to achieve such harmonization.

The following discussion will first display theories regarding what transnational commercial law and international commercial transaction is. Next, the writer will go into discussing the harmonization of commercial transaction law globally and regionally. The harmonization of commercial transaction law in regards to the economic integration targeted by ASEAN through the AEC will also be explained. Furthermore, this article will discuss how the instruments of regional harmonization plays a role in the economic integration that is in progress by ASEAN. Lastly, an analysis concerning the possibilities of actually harmonizing law in ASEAN countries.

## **B. Discussion**

### **B.1. Transnational Commercial Law and International Commercial Transactions**

The term transnational commercial law, as stated by Roy Goode, is a law which consists of a set of rules, from whatever source, that governs international commercial transactions and is also common to multiple legal systems.<sup>6</sup> From this understanding, it can be inferred that transnational commercial law is set of private law principles and rules, from whatever source, which governs international commercial transactions and is generally common to legal systems or to multiple significant legal systems. Hence, the focus is on private law and on transactions,

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<sup>6</sup> Roy Goode, *Transnational Commercial Law*, 2<sup>nd</sup> Ed. (United Kingdom: Oxford University Press, 2015), 4.

particularly cross-border transactions.<sup>7</sup> Transnational commercial law governs the practice of international commercial transactions.

Commercial transaction, in the context of law, as simply put, is the core of the legal rules that governs business transactions/dealings. International commercial transaction is any type of deal between parties from at least two different countries.<sup>8</sup> These transactions may include sales, leases, licenses, and investments; while the parties to international business deals include various actors such as individuals, small and large multinational corporations, and even states. Although despite of the detail that varies each transaction from one another, all commercial transactions have one thing in common, that is that they serve to transmit economic value such as products, materials, and services, from those who wish to exchange such products, materials, and services for value (usually money) to those who are willing to pay a countervalue.

International commercial transactions, in practice, are governed by transnational commercial law. Of course, the law that governs these transactions covers a wide range of business activities. To elaborate, the law governing commercial transactions regulates concerning the rights and obligations of each party, provide remedies to one party if the other breaches its obligations, provide limitations as to what would be considered a breach, and much more. This clearly shows the potential of conflict in the event member states of ASEAN are involved in a dispute if the laws of the relevant states regulate differently.

## **B.2. Global and Regional Harmonization of Commercial Transaction Law**

The demand for universal harmonization has grown considerably rapid. This harmonization requires more and more initiatives which have an inherently global dimension. Moreover, universal harmonization of law is unfortunately, unquestionably slow and has to

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<sup>7</sup> Norbert Horn, dkk., *The Transnational Law of International Commercial Transactions* (Deventer: Kluwer, 1985), 4-12.

<sup>8</sup> Kenneth C. Randall dan John E. Norris, "A New Paradigm for International Business Transactions," *Washington University Law Quarterly* 71, no. 3 (1993): 599.

cope with many divergent interests.<sup>9</sup> Thus, the unaltered and even increased demand for regional harmonization will more and more frequently be satisfied by the existence of efficient legislative procedures, that is a fast-tracked harmonization at the regional level.<sup>10</sup>

#### B.2.1. Global Harmonization of Commercial Transactions Law

It is inevitable to say that global harmonization of commercial law is not derived by the importance of said harmonization in the regional level. Governments and their intergovernmental organizations are acutely aware that the drafting of commercial law instruments that aspire to address real problems posed by cross-border conduct of business, requires in-depth analysis of the factual situation in any given area of commerce and finance as well as the advice from the professionals and the industry concerned.<sup>11</sup>

There are three backgrounds as to why international harmonization of commercial law is needed.<sup>12</sup> *Firstly*, the utter distrust and hostility most practitioners harbored which continue to harbor *vis à vis* the rules of conflict of laws. To many, such rules seem abstruse and at times seem like a typical “lawyer’s law” or even a “scholars’ law”. *Secondly*, is the desire to reduce the difficulties and the subsequent expenses that emerges when entering into international commercial transactions without being familiar with the laws and regulations applicable to the medium of any commercial transactions. *Thirdly*, there is a political or ideological reason which is to be seen in the historical context of the institutionalized harmonization movement. For instance, the UNIDROIT is formed as a specialized agency of the League of Nations in the wake of World War I.

Today’s modern day that is inspired by many economic theories, transaction costs that is the expenses which incurs to obtain information about the parties to a contract’s rights and obligations, as well as the risks which are inherent in such matters as concluding a contract.

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<sup>9</sup> Jürgen Basedow, “Worldwide Harmonisation of Private Law and Regional Economic Integration — General Report,” *Uniform Law Review* 8, no. 1-2 (Januari 2003): 31–49; Goode, *Transnational Commercial Law*, 183, <https://doi.org/10.1093/ulr/8.1-2.31>.

<sup>10</sup> *Ibid.*

<sup>11</sup> Goode, *Transnational Commercial Law*, 171.

<sup>12</sup> *Ibid.*, 164.

Such risks are presumably lower if the applicable law to all parts of the transaction is the same, irrespective of it being domestic or foreign.<sup>13</sup> Concretely, international and regional professional organizations as well as industry associations are regularly consulted and invited to participate in the work of The Hague Conference, UNIDROIT and UNCITRAL.

In the development of the modern-day world, the laws which regulate international business transaction have changed in response to structural changes in the world legal order itself. With the modern-day centralized global atmosphere, legal institutions are starting to develop a true body of substantive international law to regulate matters on business transactions, internationally. As the world community growing borderless and hence closer, it has established several multilateral treaties, such as the 1980 United Nations Convention on Contracts for the International Sales of Goods (CISG)<sup>14</sup> and the International Institute for the Unification of Private Law (UNIDROIT) Principles on International Commercial Contracts (UPICC).

The establishment of the CISG and the UPICC has undoubtedly brought ease to business actors in the international level. *First*, the CISG. The CISG has simplified and unified international sale law. It is applicable to transactions, where a large portion of it constitutes of international business transactions. As of 2021, 97 countries have adopted the CISG.<sup>15</sup> One of the most essential features of the CISG and why so many countries have adopted it is because of its clarity, practicality, and simplicity.<sup>16</sup> The CISG is also a neutral law acceptable by parties of an international transaction contract. This is because it is fair, and it does not favour whether the buyer at the expense of the seller or vice versa. Thus, by choosing the CISG, parties to a contract would have equal bargaining. It is also an effective choice to help parties avoid issues of conflict of law.

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<sup>13</sup> *Ibid.*, 165.

<sup>14</sup> Annex I U.N. Doc. A/CONF.97/18 Tahun 1980 tentang Final Act of the United Nations Conference on Contracts for the International Sale of Goods.

<sup>15</sup> Institute of International Commercial Law (IICL), “CISG: List of Contracting States,” diakses 13 November 2021. <https://iicl.law.pace.edu/cisg/page/cisg-list-contracting-states>.

<sup>16</sup> The Lawyers & Jurists, “Advantages and Disadvantages of CISG,” diakses 12 November 2021. <https://www.lawyersjurists.com/article/advantages-and-disadvantages-of-cisg/>.

*Second*, the UPICC. The objective of the drafting of the UPICC is to provide a set of rules that is tailored to the specific needs of international commercial transactions. Although it should be noted that the UPICC differs from the CISG, such that the UPICC covers broader than the CISG and that the UPICC, unlike the CISG, is a soft law instrument. This means that whereas the CISG becomes part of a country's domestic law and is applicable to commercial contracts, the UPICC are only applicable to contracts where the parties have agreed so. The key advantage of choosing to use the UPICC is that it provides for a neutral governing law, which eliminates the unfair advantage of one party of being more familiar with a certain domestic law than its counterparty.

The elaboration concerning the CISG and the UPICC and its implementation above shows the advantages and ease it provides for business actors in conducting international commercial transactions. Increase of cross-border commercial transactions would inevitably push economic growth. Hence, in reference to the application of the CISG and the UPICC in an international level, having a harmonized set of law at the regional level which governs commercial transactions for its member states would provide ease and eventually promote economic growth within the ASEAN member states.

#### B.2.2. Regional Harmonization of Commercial Transactions Law

For the last few decades, greater attention has been focused on geographical and political regions as autonomous economic actors in the international arena. Regional organizations are primarily created to promote free trade and the gradual abandonment of barriers to commerce has gained wider and stronger competences. These regional organizations are to devote more time and energies to draft harmonized law also within the field of economic law that is private and commercial law.<sup>17</sup>

The process of regional harmonization roots from the structural and drastic changes in the political and economic environment of some regions as it has created a demand or offer or

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<sup>17</sup> *Ibid.*, 181.



regional legal models to specifically aim at matters of transition and emerging economies. Ultimately, the importance at the regional level has even entered the global law-making agencies agenda, as witnessed by the creation of regional offices by the UNCITRAL and the Hague Conference or by the assistance provided by UNIDROIT in the preparation of the OHADA draft Uniform Act on Contract Law.<sup>18</sup>

Presently, there are a great number of important regional organizations that deals with harmonization of regional economic law. These regional organizations are either well established actors in the production of harmonized law or are beginning to show interest in developing policies in the respective areas and in providing an institutional framework to promote integration and economic growth.<sup>19</sup> A *sui generis* status among these intergovernmental organizations that will be the focused topic of this paper in the Asia-Pacific region is the ASEAN that has been steadily increasing their influence and role. This idea of regional harmonization in the field of economic (private and commercial law) stems from the demand of universal harmonization of the relevant field.

The harmonization of private and commercial law is also due to the geographical regions of the world that tends to coincide with areas where one of the legal families dominated.<sup>20</sup> Consequently, it is also very important to take into account that although large potential benefits exist as to regional harmonization, the manifestation of risks and dangers are also evident. The fear is that the attainment of certain regional harmonization and subsequent unifications will constitute an obstacle to harmonize and unify laws on a larger scale.<sup>21</sup>

In some countries, harmonization and the subsequent unification of law even on a national scale have resulted in a weakening of the international idea and the universal ideals in the law. Furthermore, a regional goal during such harmonization of law may conflict with policies at an international level. Certainly, this is a danger. Yet, it is important to point out that

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<sup>18</sup> José Angelo Estrella-Faria, “Globalization, Legal Identity and Regional Integration: Complementarity or Conflict?,” *Uniform Law Review* 18, no. 3-4 (2013): 435-44, <https://doi.org/10.1093/ulr/unt026>.

<sup>19</sup> Goode, *Transnational Commercial Law*, 172.

<sup>20</sup> *Ibid.*, 182.

<sup>21</sup> René David, *The International Unification of Private Law* (Germany: J.C.B. Mohr (Paul Siebeck), 1971), 131-133.

not all regional harmonization of law will lead to the emergence of such dangers. The benefits of having a regionally harmonized law, especially a harmonized transnational commercial law is that any commercial transactions within the ASEAN region can be evaluated by regional standards<sup>22</sup> as opposed to national standards that differ among ASEAN's member states. This would benefit international commercial transactions among ASEAN member states as the standards that apply, for example, for settling disputes, would be of the same level.

An ideal commercial harmonized law would be a law that provides neutral provisions for all member states so that not one state has an unfair advantage over the other. In the context of settling disputes within ASEAN member states, having a uniformed legal framework that governs the procedure for dispute settlement would allow parties to, for example, have an improved ability to defend themselves in a foreign court. In the event the dispute is not settled in a state court, it would still be more favorable and fairer to all parties to choose a governing law that is not a law that only one party is more familiar with.

### **B.3. The Harmonization Process of Commercial Transaction Law in Regards to ASEAN's Economic Integration**

The harmonization of economic and, in particular, commercial law always has to take into account the relevance of such a process to the regions. A regional harmonization was started as a process as a form of response to the delocalization of economic and political processes and the real or perceived loss of local and national control over them. In regards to this, societies around the world have been placing ever greater emphasis on the regions as a geographical space or political entity capable of defining and protecting cultural identity in the recent decades.<sup>23</sup> Even in some cases, regional harmonization of law is aimed to act as a vehicle that is designed to regain authority in order to establish the rules of the game at an international level.

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<sup>22</sup> Lawan Thanadsillapakul, "The Harmonization of ASEAN: Competition Laws and Policy from an Economic Integration Perspective," dalam *Competitiveness of the ASEAN Countries*, chapter 6, ed. Philippe Gugler dan Julien Chaisse (United Kingdom: Edward Elgar Publishing, 2010), 134.

<sup>23</sup> Goode, *Transnational Commercial Law*, 211.

The purpose and objective of ASEAN as stated in the ASEAN Charter is to accelerate economic growth, social progress and cultural developments in the region through togetherness, in the spirit of equality and partnership to strengthen the basis for a prosperous and peaceful community of Southeast Asian Nations.<sup>24</sup> In the interest of economic integration, ASEAN through the AEC is targeted to be a single market that is production-based which will provide an opportunity to five core components, that is free flows of goods, free flows of service, free flows of investment, free flows of skilled labor and free flows of capital.<sup>25</sup>

Through the AEC, ASEAN has been categorized as a highly competitive economic region. In 2014, with a combined GDP of US\$ 2.6 Billion, ASEAN economy was the 7th largest in the world and the 3rd largest in Asia. ASEAN has also had the 3rd largest market in the world with 622 million people in 2014 and is said to be a region with a fully integrated community. By 2007-2014, ASEAN has been a more integrated market as its market has also 19 ASEAN Secretariat, Article 1(5) of The ASEAN Charter, 2008, p. 3 20 ASEAN Secretariat, *The ASEAN Economic Community (AEC) Blueprint*, 2014, p. 6 been increased by nearly US\$ 1 trillion, with intra-trade within the ASEAN comprising the largest share of ASEAN's total trade.

Outside of the aforementioned contributions ASEAN have given globally, the ASEAN countries still need to develop their sustainable regional market to replace the current separate national ASEAN markets.<sup>26</sup> To do so, ASEAN needs to regionalize its laws and regulations, especially those relating to international business transactions, such as trade and investment, in order to facilitate the free flow of goods, services, capital and labor. The continuous growth of commercial, industrial, investment and transactions of goods and services among cross bordered ASEAN countries are also the few factors that have demanded a form of harmonization of law among these countries.

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<sup>24</sup> Article 1(5) *The ASEAN Charter* 2008.

<sup>25</sup> ASEAN Secretariat, *The ASEAN Economic Community (AEC) Blueprint* (Jakarta: ASEAN Secretariat, 2008), 6.

<sup>26</sup> Thanadsillapakul, "The Harmonization of ASEAN," 2.

The efforts that ASEAN have made in order to achieve a regionally harmonized law among its countries is based on five (5) outlines. *Firstly*, the harmonization process will be economically integrated and cohesiveness based. *Secondly*, it is processed to make ASEAN a competitive, innovative and dynamic regional community. *Thirdly*, harmonization of law is aimed to increase connectivity and sectorial partnerships. *Fourthly*, the ASEAN is targeted to be firm, inclusive and humanity oriented. Lastly, harmonization of commercial transaction law among ASEAN's member states is to achieve a global ASEAN.<sup>27</sup>

The need for harmonization of transnational commercial law as one of the fields in private law has always been clear within the regions where transboundary social and commercial exchange is particularly intense.<sup>28</sup> In the recent past, regional organizations have availed themselves of legislative procedures to accelerate the unification process in their respective parts of the world,<sup>29</sup> as can be seen by the formation of the AEC in ASEAN and also the European Economic Community (EEC), which has been regarded as a model for regional economic integration.

#### **B.4. The Role of Legal Instruments in Regards to Global and Regional Law Harmonization Process**

At first, there was but one instrument as to universal harmonization that is bilateral and multilateral treaties or conventions, which either requires that a ratifying state implements them by adapting to its domestic laws accordingly, or by creating themselves a uniform law that is applicable as such in all its contracting states national laws, as in the beginning, international instruments were intended to be legally binding. However, as the commercial transaction world continues to develop, so does instruments as to universal harmonization of law. The first are international trade terms, most prominently the INCOTERMS as well as rules codifying

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<sup>27</sup> Damos Dumoli Agusman, lecture notes of International Business Transaction Course at Universitas Padjajaran, October 2019.

<sup>28</sup> Goode, *Transnational Commercial Law*, 183.

<sup>29</sup> *Ibid.*, 182.

custom and usage such as the ICC's Uniform Customs and Practice for Documentary Credits. The second consists of model contracts and model general conditions of contract.

As is the case for universal harmonization of law,<sup>30</sup> the first and foremost tool for the regional harmonization of economic law has been bilateral and multilateral treaties and conventions agreed upon by States which are implemented within their national law. A relevant role is played by the underlying philosophy of the Model Law that wits a high degree of flexibility in national implementation which will be seen as a negative or positive aspect.<sup>31</sup> Furthermore, conventions themselves may also function as model legislative provisions in cases when they are not ratified but still influence national law reforms in specific regions.

#### **B.5. Possibilities of Harmonization Economic Law among ASEAN Countries**

In making a harmonization of commercial transaction law within the member states of ASEAN, certainly there a few stumbling blocks that has to be bypassed. These obstacles includes the difference between regulations among the member states, legal void at the international level and limitations on supporting infrastructures which also includes very high limitations of human resources. Moreover, it is also known that the challenges as to regional law harmonizing at certain circumstances may also raise conflicts with Treaties at an international level made by international (supranational) organizations.

The growth of regional harmonization, specifically in the field of commercial law as part of economic law poses the question of its relationship with harmonization at a worldwide level. Indeed, this complication is not a new challenge to the relevant organizations to the field. Conventions elaborated by regional organizations have long coexisted with Treaties drafted under the auspices of a universal organization on the same subject matter or at least with the relevant overlapping scope. Ideally, incorporating regional organizations in a global negotiation process should be handled in such a way that it would not impede formulations of

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<sup>30</sup> *Ibid.*, 183.

<sup>31</sup> European Bank, *Model Law on Secured Transactions* (London: European Bank for Reconstruction and Development (EBRD), 2004), p. v.

region-specific rules. At the same time, said incorporation should also be preserving the multilateral mediums, the individual voices of the various legal traditions represented in those regions, whose legal influence may well transcend continental boundaries.

AEC that is established by the ASEAN for the purpose of focusing on the economic growth of its member states has far developed since it first came to effect in 2015. Under the AEC, ASEAN countries' economic has been developing largely as it improves its member states' economic status as time continues to develop. Yet, the process of harmonization among its countries' national law in regards of commercial transaction law has been growing at a relatively slow pace. This is due to the fact that the ASEAN way of resolving issues, mainly commercial transactions issues, is through "*musyawarah and mufakat*". Hence, ASEAN will most likely rely on such a principle. Applying the "*musyawarah and mufakat*" principle to reach agreement on delicate issues such as harmonizing ASEAN members' national laws into a regional system at certain points clearly has its benefits that is it respects cultural sensitivities and national sovereignty.<sup>32</sup> However, such an application of this principle will be anticipated to have a slow progression in forming a harmonized economic law that is "suitable" to all its member states.

The writer views that the regional harmonization process forms a bit of a paradox since the process itself aims to remove differences, yet its acceptability derives from its own diversity. That being said, it is quite unfathomable to achieve a form of harmonized commercial transaction law in the ASEAN region as regards have to always be given to each member states' economic potential. Furthermore, in regionally harmonizing a set of legal rules in the specific field of commercial transaction, due consideration is to be given to preserve multilateral *fora* at the international level. Complications as asserted above constitute as a like an impediment towards the process of harmonizing economic law, or particularly commercial transaction law, at the regional level as it receives many challenges be it from its own member states' regions or from the multilateral treaties and supranational organizations at the international level.

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<sup>32</sup> Lay Hong Tan, "Law and Policy in ASEAN Economic Integration," *ASIA Business Law Review* 38 (Oktober 2002): 8.

Therefore, the answer to the question as to what the possibilities of harmonizing law in ASEAN countries is that it must be noted that harmonization of law in the field of economy is somewhat conceivable. This is in a sense that economic law is neutral which means that regulations in this field is not influenced by beliefs or customs that develops in each nation.<sup>33</sup> ASEAN countries are indeed not exempt from the vast development of commerce, industry and investment of the world. Even more, transaction of goods and services in the cross border industrial framework demands harmonization of economic law that includes a harmonized law of international commerce, law of contract et cetera.

Consideration must be given to the fact that ASEAN countries are based on diverse legal systems. For instance, Singapore, Malaysia and Brunei embrace a common law system, while countries such as Indonesia, Laos and Vietnam are based on a civil law system. Indeed, the differences of legal systems among ASEAN countries can contribute to challenges as to achieve harmonization of law. However, such a harmonization between two different legal systems is not undoable, all due to the fact economic activities in both common law and civil law systems has in fact became convergence, yet still divergence.<sup>34</sup> Predictability within the ASEAN region through the existence of a unified response to legal issues would allow individualist countries to give participation more fully in international regards to regional economic and foreign investments.<sup>35</sup>

### **C. Conclusion**

Based on the discussion above, it can be inferred that the process of harmonization of transnational commercial law at the ASEAN regional level faces inevitable challenges to it. The fact that the ASEAN member states consist of states where the disparities of economic, political, social and cultural diversity are quite large, this could contribute as a challenge in

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<sup>33</sup> Erman Rajaguguk, "Harmonization of Law in ASEAN Countries towards Economic Integration," *Jurnal Hukum Internasional* 9, no. 4 (2012): 532, <http://dx.doi.org/10.17304/ijil.vol9.4.358>.

<sup>34</sup> *Ibid.*

<sup>35</sup> Megan R. Williams, "ASEAN: Do Progress and Effectiveness Require a Judiciary?," *Suffolk Transnational Law Review* 30, no. 2 (2007): 457.

making the integration effective. As harmonization of law at the regional level has to take into account all the differences of cultural, ethnical and even economic growth of all its member states, as well as maintaining progress with harmonization of law at the international level, it is even more crystalized that the aim of having a regionally harmonized commercial transaction law in specific would cause hindrances towards its member states' national laws.

Harmonizing national laws of the ASEAN member states in order to form one harmonized regional law that governs the field of economics is inevitably as important as having a universally harmonized law that would be applicable to countries as its national law. Its importance roots from the development of a borderless and globalized world we live in today. As all sorts of commercial transactions made easy by the existence of the modern-day globalized world, the idea of having a harmonized law within a region emerges to surface. Having different regulations to govern matters of cross border commercial transactions would hinder the effectiveness of law itself.

Hence, it is unquestionably important to start aiming our focus, as member states of ASEAN, at developing a harmonized law at least at the regional state. To further summarize, the writer concluded that it is indeed possible for the ASEAN region to have a harmonized economic law that will eventually be applied by all its member states. Although in the time being, its implementation still needs great effort as one of the biggest challenges of doing so is the fact that the ASEAN way of solving issues is to first attempt to “*musyawarah and mufakat*”. For the challenges of harmonizing regional law to be solvable, the closest way of achieving such target is to refer to the Western way of formal legalism as adopted by Western international institutions.

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