Commitment To ASEAN Banking Integrating Framework: Equality of Access, Treatment and Environment

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Abstract: Through the Association of Southeast Asian Nations (ASEAN) many countries in the region was agreed to liberalize their financial market and integration. The Commitment is to strengthen economic growth and promote financial stability in ASEAN region. In 2014, ABIF has the plan to achieve more integrated banking market spearheaded by Qualified ASEAN Banks (QABs), with promoting financial development and higher regional economic growth as the priority outcomes. QABs are anchored by the principles that emphasize inclusiveness, transparency, and reciprocity. Based on ABIF, any two ASEAN countries may enter the reciprocity bilateral agreements to provide QABs with greater market access, and operational flexibilities consistent with those of domestic banks in the respective host countries. Indonesia is expecting the reciprocity principle to be enforced under bilateral agreement. This research was conducted by using the normative juridical method with an analytical descriptive approach. The result from this research is a good to go bilateral agreement should consider the current condition, be business friendly, and give priority to the national interest. Reciprocity principle becomes an important element in bilateral agreement to gain the equality of access, treatment, and environment for QABs in host countries.

Keywords: Equality of Access, Qualified ASEAN Banks, Bilateral Agreement

1. Introduction

Major changes have occurred a broader rivalry develops over the bank’s institutions, securities firms, mutual funds insurance companies, etc. Meanwhile, a long term trend toward globalization linked financial markets from many countries more closely, with many emerging markets received large investments. Overall expansion in global finance seems fairly well established. In 2007, leaders of the Association of Southeast Asian Nations (ASEAN) affirmed their commitment to the creation of ASEAN Economic Community (AEC) 2025. The AEC made a Declaration aimed at transforming ASEAN into a single market and production base, a highly competitive economic region, a region of equitable economic development, and a region fully integrated into the global economy.

This commitment will make ASEAN more dynamic and competitive with new mechanism and measures to strengthen the implementation of economic initiative, accelerate regional integration for specific sectors, facilitate business movements and experienced workers, and strengthen ASEAN Institutional mechanisms. The ASEAN single market and production based consists of 5 elements, such as; (i) free flow of goods; (ii) free flow of services; (iii) free flow of skilled labor; (iv) free flow of investments; and (v) free flow of Capital. The AEC 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.[1] Furthermore, the purposes of AEC community are reducing the gaps and eliminating or reducing poverty significantly. In this matter, there is a gap between ASEAN member states which remains very large and has mixed record on income inequality.
AEC 2025 has implemented measures to deepening economic integration effectively and provided a conducive environment for business activities to boost economic growth and the region’s development. This will be guided by the AEC Blueprint 2025, which focuses on three key pillars of financial integration, financial inclusion, and financial stability in the region. According to AEC declaration, there are several principles enacted to ASEAN member such as reciprocity principle; the principles of an open, reducing gaps, outward looking, inclusive, and market driven economy; consistent with multilateral rules as well as adherence to rule-based systems for effective compliance and implementation of economic commitments.

The AEC will benefit from the successful liberalization of the capital account and the domestic financial market in individual countries, and from the ASEAN wide integration of financial markets and institutions supported by regulatory harmonization and the strengthening of policy coordination among the member states.[2] Based on article IV of the ASEAN Framework Agreement on Services (AFAS) and guided by principles and Governor Meeting (ACGM), it is stated that the purpose of this commitment is deepening regional banking integration. The banking sector is a leading role in the financial integration process, two or more member states may conduct negotiations and agree to liberalize their banking sectors after finalizing the sixth package of commitments. Each member state should consolidate the schedule of specific commitments. Indonesia's Financial Services Authorities (OJK) stated that Indonesia is ready to implement the financial integration. In the implementation process, Indonesia’s FSA has to ensure the head of agreement to be made with the partner countries which can be implemented, give priority to national interest, and provide mutual benefit.

The ABIF should be able to accommodate cross-border banking relationships between ASEAN members, and break the barriers which can be done through bilateral agreement. In order to enhance the readiness of ASEAN member states to implement ABIF, member countries must reach a bilateral Agreement. In the implementation process, ASEAN Central Banks and financial supervisory authorities formulate ABIF Head of agreement, which is followed by bilateral agreement. Under the ABIF, banks can do the expansion for greater access and flexibility through bilateral agreement. A good to go bilateral agreement should consider the current condition, be business friendly, and give priority to the national interest.

Indonesia has signed a head of agreement with Bank Negara Malaysia at first and will be followed by a bilateral agreement with Philippines and Thailand. According to sixth packages of commitments on financial services, Indonesia will send the selected Banks as Qualified ASEAN Banks. The bilateral agreements are the best opportunity to negotiate and support either national economies or regional economies hence the reciprocity principle becomes important to apply, for the purpose of gaining the equality of access, treatment, and environment with local banks in host country. It also provides market access and flexibilities for Qualified ASEAN Banks (QABs). This is a good step towards greater banking integration as stated in AEC blueprint.

The understanding of equality of access, treatment, and environment is a balance and proportional treatment in accordance with the policies prevailing in their respective countries and is depended on the banking readiness in those countries. Consequently, equality access in the bilateral agreement between Indonesia and Malaysia might be different from the equality access that will be agreed between Indonesia and other countries. Reciprocity is about a mutual benefit principle to the parties bound by bilateral agreements.
2. Methodology

This research is a theoretical legal research and it uses descriptive approach. Tools and techniques for data collection are primary and secondary sources. Primary sources are ASEAN Framework Agreement on Services and Banking Regulation as related to ASEAN Banking Integration Framework. Secondary sources are law journal, articles, and textbooks. The research will be guided with the collection of the materials. For academic legal research, it can be purely descriptive, generally including normative standpoints and description of the law from the point of view of achieving a particular aim. This research used an international source (convention) and any related documents such as international commentaries. This research refers to documents from ASEAN Protocol, The Sixth Package of Commitments on Financial Services under The ASEAN Framework Agreement on Services.

3. Findings

ASEAN Banking Integration Framework (ABIF) has the potential to increase the financial stability in ASEAN, the main objective of ABIF is to provide market access and operational flexibilities. The banking integration will contribute to the region’s economic growth, financial economic growth, and financial inclusion. The aim of the ABIF is to enable regional banks to compete on the same level as local banks in a host country. Bank participants in ABIF should meet a uniform set of criteria to be stated as QABs. QABs criteria are: (i) well-managed; (ii) have sufficient capital; (iii) obtain a recommendation from the authorities; (iv) pass the Basel provisions; and (v) is considered as important banks in the country of origin.[3] Banks that comply with the criteria of QABs will gain access to the banking markets in a host country. QABs should meet predetermined requirements agreed by ASEAN Members. The requirements or indigenous ASEAN Banks are financially strong.

So far, Financial Services Authority has signed The Heads of Agreement (HOA) with Bank Negara Malaysia. Consequently, the bilateral agreement was signed as well. The agreement would be bilaterally implemented between Indonesia and Malaysia under ABIF, as it is proof for both countries’ commitments to the six packages of protocols for the ASEAN Framework Agreement on Services–Financial Services Liberalisation (AFAS-FSL). However, ratification process for the sixth protocol is still underway in Indonesia. Based on the data, the research team from Financial Services Authority obtained the information that the ratification process is still under discussion in the House of Representative of the Republic of Indonesia.

The schedule of specific commitment for banking sector between Indonesia and Malaysia is specified for commercial presence[1] for the purpose of determining QABs, in which each bank is considered as one QAB. Regulatory measures will not be imposed as barriers to unduly restricted market access and national treatment/operational flexibility for QABs. Malaysian QABs shall become a member of Indonesia’s deposit insurance cooperation. The successful implementation of ABIF towards ASEAN’s economic growth is by sustainable, inclusive, and mutually reinforcing growth in the region.

In July 2017, PT. Bank Mandiri (Persero) announced that they meet the criteria as Qualified ASEAN Bank and will establish a full branch office in Malaysia by the end of 2017. Subsequently, PT. Bank Rakyat Indonesia (BRI) (Persero) is considering to establish a presence in Malaysia. Bank Mandiri will be the first QAB in Malaysia, the principles that have to implement the bilateral agreement are emphasis, inclusiveness, transparency, and reciprocity. Based on ABIF, any two ASEAN countries may enter into reciprocity bilateral agreements to provide QABs with greater market access and operational flexibilities consistent with those of domestic Banks in the respective host countries. Reciprocity principle becomes an important element in bilateral agreement to gain the equality of access, treatment, and environment for QABs.
An equal access means to promote the active penetration of the regional banking market by ASEAN based banks, the member states should first agree on the conditions that ASEAN-based banks must meet to qualify. The qualification must be sufficiently stringent to relieve the prudential concerns of all member states. The member state should agree to facilitate QAB access to their domestic banking market. Equal treatment is about allowing ASEAN Based banks to participate actively in domestic banking markets. Regulators must take into account the intended activities of each bank and its capacity to manage the risks to which it is exposed. The process of granting equal treatment to all banks, specifically in the matter of regulatory supervision, should be based on their risk profile. Equal environment of the harmonized licensing requirement during the initial stages of banking market integration could be based on the QAB qualifications. Regional integration of the banking markets demands a consistent, if not uniform regulatory environment throughout the region. The prudential requirements for banks must be harmonized to prevent potential conflict among national supervisors. The International Monetary Fund (IMF) has set capital requirement framework, but those requirements need to simpler and resolution should be an essential part of the capital requirement framework. The changes of capital regulation is discussed about specifications in the following features: [4] (i) capital requirements set in terms of level common equity, on a bank by bank basis, by Bank Supervisors; (ii) prompt, corrective action (PCA) regime built into the capital requirements; (iii) disclosure requirements sufficient to facilitate bank compliance with capital requirements, public and private monitoring of bank compliance with capital requirements, and private monitoring of regulatory compliance with PCA standards.

ABIF is a positive enhancement to encourage Indonesian Banks, as a QAB’s licensed bank, Bank Mandiri will operate in Kuala Lumpur to support business activities. To open a full branch in Malaysia, Bank Mandiri is preparing 300 Million Malaysian Ringgit for capital or equivalent to 933.97 Billion Rupiah (Exchange Rate: Rp. 3.113 = 1 Malaysian Ringgit).[5] Referring to a schedule of Commitment, [6] bilateral agreement between Indonesia and Malaysia are covering several things, such as national treatment will be set for branching and off site ATMs and access to networking with e-payment system including ATM networks, internet banking, mobile banking and other electronic channels. Market access has been agreed upon designating existing Malaysian Banks in Indonesia as 2 (two) QABs may establish a presence as a commercial bank or both. The third Malaysian QAB shall be established after 3 (three) Indonesian QABs in Malaysia fully operate.

The entry of Bank Mandiri into Malaysia is providing an opportunity to enhance the regional integration in payment system between Indonesia and Malaysia. The collaboration between ATM switches in Malaysia between Malaysian Electronic Payment System (MEPS) and Indonesia (ATM Bersama) to facilitate cross-border cash withdrawals can be enhanced to facilitate cross-border remittances and also be extended to facilitate retail payment card transactions. ATM in Malaysia and Indonesia will be linked seamlessly, thus reducing cost, enhancing safety, and expanding outreach. Indonesia also has been treated equally with local banks operating in Malaysia. Consequently, this is a milestone for both countries and it represents the realization of a vision of the ABIF, allowing QABs to operate freely in the host country. Under ABIF, banks will be leading greater role in facilitating cross-border trade and investment in ASEAN. Indonesia’s QABs will enjoy similar treatment as accorded to domestic banks in the host country. In this regard, Indonesian banks must anticipate ABIF by strengthening their capital, human resource quality, and well-managed management, reforming the banking regulation and efficiency in order to be able to compete at regional or even in global levels.
4. Conclusion

According to sixth packages of commitments on financial services, Indonesia will send the selected Banks as Qualified ASEAN Banks. PT Bank Mandiri (persero) is licensed as QABs and will be the first QAB in Malaysia. ABIF is a positive enhancement to operate in Kuala Lumpur to support business activities. To open a full branch in Malaysia, referring to a schedule of commitment, national treatment will be set for branching and off site ATMs, access to networking with e-payment system, including ATM networks, internet banking, mobile banking, and other electronic channels. Indonesia’s QABs will enjoy similar treatment as accorded to domestic banks in the host country. The understanding of equality of access, treatment, and environment is a balance and proportional treatment in accordance with the policies prevailing in their respective countries and is depended on the banking readiness in those countries.

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