

**REPORT OF THE RAPPORTEUR GENERAL TO
THE 34TH GOVERNING COUNCIL OF THE ASEAN LAW ASSOCIATION**

I. TOPICS AND THE ORGANIZING OF THE WORKSHOPS

During the ALA General Assembly the Indonesian Organizing Committee held six workshops on six different topics of interest to ALA members. The topics comprised of:

1. The Establishment of Center of ASEAN Law Information
2. Framework for Judicial Cooperation in Case Management: The Experience of each ASEAN Country
3. Critical Issues on Investment Law Harmonization within ASEAN
4. Implementation of International Agreements in the Realization of the ASEAN Charter
5. Mediation Practices: ASEAN's Experiences; and
6. The ASEAN Charter and the ASEAN lawyers.

Workshop I chaired by Singapore discussed Topics 1, Workshop II chaired by Thailand on topics 2, Workshop III chaired by Malaysia on Topics 3, Workshop IV chaired by Brunei Darussalam on Topic 4, Workshop V chaired by Vietnam on Topics 5, and Workshop VI was chaired by Philippines on Topic 6.

There were distinguished panel of speakers / paper writers for the six workshops representing Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand and Vietnam.

II. THE UNDERLYING REFERENCE OF THE WORKSHOPS

The underlying reference for writing the papers and for the workshop is based on the ASEAN Leaders' commitment to:

- Promoting ASEAN connectivity through enhanced trade, tourism, people-to-people exchange and development;
- Strengthening ASEAN community centered on ASEAN as a rule based organization, with the ASEAN Charter as the foundation. (ASEAN Summit held in Jakarta 7-8 May 2011); and
- Establishing ASEAN Economic Community by 2015.

III. THE METHODOLOGY OF THE WORKSHOP

The paper presentation and discussion of the workshop focused on the following three aspects, i.e.:

- Country's best practices for each topics including the underlying legal frameworks;
- Legal analysis of such best practices and the underlying national legal frameworks;
- Recommendation for future action for harmonizing laws of ASEAN member countries with the objective of building legal frameworks for ASEAN Economic Community by 2015.

IV. SUMMARY AND CONCLUSION OF EACH WORKSHOP

WORKSHOP I: Establishment of Center of ASEAN Law Information.

- In conjunction with the establishment of Asian Economic Community, the information on ASEAN Law become both the main interest and the important elements to be acknowledged

by its community, thereby it meets the needs to establish the ASEAN Law information center to accommodate such interest.

- The identified issues to be resolved are language and funding. The question of the language to be used by the proposed center would be an issue as some of the countries had their laws in their native languages. Some of the panelists felt that the task of translating the laws can be daunting. On the issue of funding no concrete proposal was advanced by either panelists or speakers from the floor.
- All panelists and speakers from the floors agreed that establishing the ASEAN Law information center would be critical to achieve the goal of ALA.

WORKSHOP II: Framework for Judicial Cooperation in Case Management: The Experience of each ASEAN Country.

In this workshop the panelist discussed how to solve the problems of case backlog that hampered the delivery of justice. All presumed that “justice delayed is justice denied”. The possible way to reduce backlog of cases might be done through the use of modern information technology and the improvement of overall court system.

The experience of some countries stems from the court legislation that does not allow the limitation cases to be tried in any level of courts. Indonesia is one example of this nature.

The possible solution aside from the adoption of modern technology is to continuously improve the judges' competency as well as the case management by the court registrar office.

WORKSHOP III: Critical Issues on Investment Law Harmonization within ASEAN

The issue of Investment harmonization was discussed by the panelists as seen from the interests of their respective countries. The workshop discussed that each country:

- Should first concentrate on the laws and procedure of conducting investment that would contribute to the productive investment undertakings that would eventually contribute to the growth of their economy.
- Create a “level playing field” so that at the minimum infrastructure, financial institutions, and courts in each ASEAN member state can meet on a level of parity with the most developed ones.
- Ensure there is political support and unified view on matters of law to be harmonized in each ASEAN member state
- Establish a common ASEAN institution having the duty to receive performance report from all ASEAN countries with respect to their respective achievements or obstacles in fulfilling the action plans determined under the ACIA agreement, AEC Blueprint
- Involve private sector participation in harmonization efforts
- Zero tolerance for corruption in the investment administration.
- Islamic sharia law may be used as basis for investment as suggested by Malaysia.

WORKSHOP IV: Implementation of International Agreements in the Realization of the ASEAN Charter

The panelist and floor discussion discussed that:

- The ASEAN Charter does not provide concrete guidance as to how each ASEAN country conducts their international agreements done through bilateral or multilateral engagements. There is the need to define the scope of international agreements under the aegis of ASEAN Charter.

- The ASEAN should work together with its member countries how best their international agreements be conducted under the umbrella of the ASEAN Charter.

WORKSHOP V: Mediation Practices: ASEAN Experiences

All panelists reached a consensus that mediation is an alternative to court resolution. The issue discussed was whether the court should actively seek mediation process first by the parties before they proceed to the court proceedings. Indonesia gave example on this matter.

The panelists agreed that ASEAN Mediation Center should be established that serves the ASEAN community to settle their disputes amicably. The ASEAN Secretariat should actively pursue this matter as an agenda in the future.

WORKSHOP VI: The ASEAN Charter and the ASEAN Lawyers

The panelists identified in the ASEAN Charter that would provide legal basis for the works of lawyers in the region. Freedom of movement of people provides opportunities for legal professionals to practice laws in the ASEAN territory. In order for this to happen, ASEAN should issue concrete guidelines and that all member countries should also issue similar ruling to this effect.

The panelists and floor discussions reached consensus that legal service should be liberalized thereby the lawyers' monopoly of legal services is gradually being eroded. Lawyers must be competitive at all times. They need to be flexible to move into new jurisdictions and to new area of practice according to the changing need of the market forces.

CONCLUSION

The six workshops are very timely for ALA to respond to the suggestion of His Excellency President of Indonesia in his opening address of the ALA General Assembly. The President recommends that:

1. ALA should provide a platform for the study and analysis of the laws of ASEAN countries with a view to identifying legal issues of common concern.
2. ALA should enhance professionalism and integrity among the legal professions of each member country,
3. ALA needs to expand engagement and collaboration with all relevant stakeholders by reaching out to government institutions, private sectors, the academic world, civil society.

Future initiatives of ALA should therefore be directed towards implementing those suggestions and the workshop proceedings and recommendations have been in line with these suggestions.

Drs. Normin Pakpahan S.H., M.B.A