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EVALUATION OF CREATIVE ECONOMY REGULATION AND IMPLEMENTATION IN INDONESIA AND ITS RELATION TO ASEAN MEMBER STATES (AMS) IN ORDER TO EFFECTUATE CREATIVE ASEAN RELIABILITY

Anugrah Adiasuti, Lushiana Primasari*

Abstract

Competitiveness in trade activity does get higher time after time. It can be seen from the powerful competitive products either from quantity or quality aspects. ASEAN as one kind of regionalism throughout the world has affected into international trade flows development. The sector that cannot be forsaken is culture industry and creative economy. Through creative economy development, it influences states economic transformation which is can be perceived from the upgrading state qualification, based on World Bank system, for instance Singapore and Malaysia. It becomes important due to the creative economy development is not only limited to trade in goods circulation but also happening on trade in services, intellectual property rights and investment. In accord with those circumstances, this research intends to evaluate the creative economy regulation and implementation in Indonesia and its relation to ASEAN Member States (AMS) either for people to people connectivity, physical connectivity, institutional connectivity and/or resources connectivity in order to be contemplated as standard regulation considerations of creative economy protection in ASEAN. Ultimately, based on this evaluation, it could achieve Creative ASEAN reliability for enhancing economic growth and income in ASEAN.

Keywords: trade, creative economy, ASEAN, Indonesia.

I. INTRODUCTION

Creative economy nowadays creates not only additional value on science and knowledge but also cultural heritage, technology even up to supporting sector to national income. It's one of strategic sector on national development because significantly contributes to national income around 7% out of national gross domestic income¹. This sector absorbs more than 11 million of labor or more than 10% out of national labor and provides 5.4 million new business industries (equal to 9.68%

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¹ Rencana Pengembangan Ekonomi Kreatif 2015-2019, access to : <http://web.parekraf.go.id/asp/detil.asp? ?c=16&id=2617>.

out of national business industries)².

Creative economy comes from creative ideas and innovations until the manifestation of creative products and markets. In Indonesia itself, the development of creative economy has been protected through several regulations such as Act Number 3 of 2014 regarding Industrial Act; Act Number 7 of 2014 regarding Trade Act; Strategic Planning of Ministry of Trade 2010-2014 (Renstra Kemendag); Presidential Instruction Number 6 of 2009 (Inpres Nomor 6 Tahun 2009) and so on. Besides those domestic or national regulations, creative economy has been also regulated in regional scope which is below ASEAN. ASEAN as regional organization covers not only for socio cultural cooperation and political and security cooperation but also economic cooperation. ASEAN Economic Blueprint secures the enlargement of creative economy. The other regulations where are also involved the urgency of creative economy in ASEAN are Initiative for ASEAN Integration Strategic Framework and Work Plan; ASEAN IPR Action Plan. These several regulations in ASEAN are created in order comfort and accelerate the implementation of better relation among ASEAN Member States (AMS).

According to those provisions either in national or regional ASEAN regarding creative economy, there are also barriers in implementing the regulations in our society and ASEAN Community. In national scope, the ultimate barrier comes from the overlapping regulations, policies, procedures, and finances. In regional part, the most constraint of the implementation of advancing creative economy is the clarity of standard of creative economy which can represent each state's comparative and competitive advantageous for promoting ASEAN economic growth in international trade.

According to those conditions, the writers are trying to analyze the implementation of creative economy regulation in Indonesia and also review its Relation to ASEAN Member States (AMS) in order to effectuate creative ASEAN reliability regarding creative economy itself in supporting of ASEAN Economic Community Blueprint.

² It results national income around 119 billion rupiah (5.76%) where its growth position higher than national economic growth (5.74%)

II. ANALYSIS

A. THE IMPLEMENTATION OF CREATIVE ECONOMY REGULATION IN INDONESIA

Globalization in economy sector increases pressure in interstate competition specifically massive conventional industries which create higher number of jobless. This condition, mostly in developed countries produces weightless economy activity that produces enormous profit which is also acceptable in politic way³. Reviewed from definition aspect, creative economy can be defined as the sequence of economy activity which combines concept, creativity, and cultural production with the function of massive of manufactured industries and commercialization of cultural products⁴. UNCTAD (United Nations Conference on Trade and Development) states that:

*“creative industries as the cycles of creation, production and distribution of goods and services that use creativity and intellectual capital as primary inputs. They comprise a set of knowledge-based activities that produce tangible goods and intangible intellectual or artistic services with creative content, economic value and market objectives”*⁵.

This sector is not only purposed for performing their own sector but also providing economic benefit. In Indonesia, the meaning of creative economy is clearly stated in Presidential Instruction Number 6 of 2009 regarding Creative Economy Development⁶. Besides that regulation, Indonesia has several regulations related to the development of creative economy, for instance Act Number 3 of 2014 regarding Industrial Act; Act Number 7 of 2014 regarding Trade Act; Act Number 23 of 2014; Government Regulation Number 38 of 2007; Presidential Regulation Number 92 of 2011; Ministerial Regulation Number 7 and Number 35 of 2012; Strategic Planning of Ministry of Trade

³ Basuki Antariksa. *Konsep Ekonomi Kreatif : Peluang dan Tantangan dalam Pembangunan di Indonesia*. Kementerian Pariwisata dan Ekonomi Kreatif Republik Indonesia. p. 3

⁴ D. Throsby. *The Economics of Cultural Policy*. Cambridge University Press. Cambridge. 2010. p. 89.

⁵ UNCTAD. Creative Economy Report 2008. Geneva. 2008. pp. 3-4, 15.

⁶ first Dictum of Presidential Instruction Number 6 of 2009 : “ economy activity is based on creativity, skill, and individual talent to create potential creation and creative force which having economic value and affecting Indonesia’s prosperity”

2010-2014 (Renstra Kemendag); Mapping of Creative Economy Indonesia 2014; Enhancement Planning of National Creative Economy 2015-2019; Enhancement Planning of National Sub-sector Creative Economy. The acceleration of creative economy specifically under The Ministry of Tourism and Creative Economy of Republic of Indonesia⁷ (one of the newest ministry in government structure) coordinates with the other ministry through meeting and focus group discussion in order to enhance the enlargement of creative economy. These coordination either intra division on the same ministry or inter ministry coordination result seven (7) strategic potential issues. There are : the availability of creative resources (professional and competitive); the availability of natural resources that have great quality, diversity, and competitiveness, and accessible of culture; diverse, expansion and competitiveness of creative industry; appropriate, accessible, and competitive financial availability; broaden market for creative artwork; competitiveness technology and accessibility of infrastructure; and supporting institution for the development of creative economy⁸.

From all of those sub-sectors including several regulations in creative economy, the current barrier is that the overlapping regulations, policies, procedures, and finances. The clarity of each obligation and authority implicates to the accomplishment of creative economy's growth in Indonesia. The overlapping of regulations and policies can be seen from various regulations and policies that has been issued related to creative economy⁹. For example, the involvement of government authorities, does the authority creative economy under the central government or the municipal government? And to what extend the authority of each government (either central government or municipal government) and how they coordinate?

Overlapping procedures and finances occur due to the regulation

⁷ The sub-sectors on the development of creative economy are : 1) architecture; 2) design; 3) movie, video, and photography; 4) cuisine; 5) craft; 6) fashion; 7) music; 8) publishing printing; 9); 10) advertising; 11) research and development; 12) fine art; 13) performing art; 14) information technology; and 15) radio and television

⁸ Rencana Pengembangan Ekonomi Kreatif 2015-2019. *Loc.cit.*

⁹ Including the existence of Norma, Standar, Prosedur dan Kriteria (NSPK)-norm, standart, procedure and criteria as the guideline for the government institution in implementing their job and function.

where the controlling coordinator for each strategy that has declared in the presidential instruction regarding creative economy leads to overlapping of responsibility among ministries¹⁰, incorporating less optimisation of intellectual property rights protection where for all of this time is only conducted by the Directorate General of Intellectual Property Rights, Ministry of Human Rights and Law which focusing more on the delivering of registration process, supervision and law enforcement without emphasis on creating and developing the creativity containing additional economic value¹¹.

The present obstacle does not only see from the government perspective but also from the other stakeholders, for instance from creative individual creative community, the society, the business entity, etc.

For example, the establishment of creative community in Bandung, Bandung Creative City Forum (BCCF) which was formed since 2008¹². This community occurs base on the creativity and life's necessity. One important thing that we can learn from this community is that the different requirements for each region including the mindset of creative community. In BCCF, there are at least three pillars of mindset. First, the establishment of the community structure. Second, this creativity produces creative economy lines such as entrepreneur hub, festival, award, so on. The last one as the third pillar is the satisfactory infrastructure to support the growth of creative economy for instance secure feeling, private-space intervention. Coming from these three pillars, either BCCF or government decides that the main actors of creative economy development is consisted of four which is called "qUAD-HELIC", there are government, academician, business, and community itself.

¹⁰ *vide* Annex of Presidential Instruction of republic of Indonesia Number 6 of 2009.

¹¹ The other problem regarding Intellectual Property Rights (IPRs) in Creative Economy is related to the minimum understanding by our society about the IPRs and its implementation involving the different mindset of IPRs in developed countries which individualistic while in most developing countries or Asia countries are more collective IPRs. Worsen situation happens when the creator of creative economy migrates to another country where gives them better protection in IPRs (including the unmotivated in creating new products; illegally commercialized by other party; inappropriate legal protection).

¹² Based on the depth interview with one of the Committee of BCCF-Rizky Adi Wilaga at 22nd of August 2014

The importance of creative economy, now, has been covered through the blueprint of creative economy. Its uses as guideline for any unit, any division or government representative in enhancing the creative economy. The weakness part in issuing the creative economy blueprint was no clear information about the exact regulation about norm, standard, procedure and criteria (*Norma, Standard, Prosedur, Kriteria*-NSPK). Even if there is any document related to NSPK, it is still a preliminary version of regulation (draft), so it cannot be applied to solve creative economy nuisance¹³. By regulating the NSPK, it will accelerate the creative economy such economic incentives, promotion facilitation and legal efficacy due to the integrated system of central and municipal government.

The other problem revealed in improving the quality of creative economy is no coherency and clarity procedure and responsibilities related to the implementation of legal protection in IPRs. Does only below The Ministry of Human Rights and Law specifically Directorate General of IPRs and to what extend the responsibility of municipal government (Institution) in having protection of IPRs and creative economy?¹⁴

Preconditions of creative economy, soft creative infrastructure and hard creative infrastructure are ideal conditions that obligated by Article 28 C section (1) Second Amendment of UUD 1945. The close actions as solutions that have been made regarding creative economy such as creative city making which already declared that there are five (5) cities: Jakarta, Bandung, Yogyakarta, Solo, and Pekalongan¹⁵. The other progress is the discussion and preparation of new regulation which will be issued by The Ministry of Tourism and Creative Economy regarding The Guideline of Creative Economy Develop-

¹³ The BCCF surveyed that there were two main problems in creative economy. First, creative products that illegally produced by the creative person/creative individual. Second, the availability and affordable of legitimate products (either from capital element or tool element). Based on the depth interview with one of the Committee of BCCF-Rizky Adi Wilaga at 22 of August 2014.

¹⁴ It is caused by no particular regulation regarding the segregation responsibility of creative economy between central government and municipal government in former establishment of Ministry of Tourism and Creative Economy in 2012.

¹⁵ Stronger competitiveness aspect is needed including the involvement of ICT optimally and the institutionalization of creative industry.

ment. Over and above, effective coordination and holistic approach are needed among ministry or unit (government institution), central government and municipal government in advancing creative economy in the following time.

B. RELATION TO ASEAN MEMBER STATES (AMS) IN ORDER TO EFFECTUATE CREATIVE ASEAN RELIABILITY

ASEAN Declaration is the based rule in connecting countries in southeast area. This regional organization was built in order to intensify and to strengthen cooperation in particular Asia region specifically ASEAN. The connectivity in ASEAN is in natural progression which can be seen starts from the initiation of AFTA, and ASEAN Vision 2020. The ASEAN Vision 2020 has been changed due to acceleration integrative regional cooperation through ASEAN Community Blueprint announcement which is consisted of three (3) main pillars, i.e. ASEAN Political Security Community Blueprint; ASEAN Economic Community Blueprint; and ASEAN Socio Cultural Community Blueprint. From all of those blueprints, the more reliable development in ASEAN is hasten the progress cooperation in economic aspect through ASEAN Economic Blueprint. ASEAN Economic Blueprint and ASEAN Socio Cultural Blueprint also expand the issue of creative economy as the real encourage cooperation on culture industry¹⁶.

Creative economy as the following focus on economic development is a key step towards the realizing ASEAN Community of continued economic growth, reduced development gap and improved connectivity among ASEAN Member States (AMS). The linkage of connectivity among AMS has been developed through Master Plan on ASEAN Connectivity.¹⁷

The interrelation between ASEAN Economic Community Blueprint and Master Plan of ASEAN Connectivity are required to achieve competitive growth, to facilitate economies of agglomeration and in-

¹⁶ Stated in ASEAN Economic Community Blueprint Part C. *Towards a Region of Equitable Economic Development* (implicitly support to the advancing of creative economy), and it clearly states in ASEAN Socio Cultural Community Blueprint in Part. E.3. Promotion of Cultural Creativity and Industry.

¹⁷ The Master Plan ensures the synchronization of ongoing sectoral strategies and plans and its used for strategic document for achieving overall ASEAN Connectivity.

tegrated production networks including enhance intra-regional trade which covers creative economy development.

There are three pillars i.e. people to people connectivity, physical connectivity, institutional connectivity which leads to resources mobilization¹⁸ in order to be contemplated as standard regulation considerations of creative economy protection in ASEAN.

1. People to people connectivity

This pillar hubs people in ASEAN especially people who create, work, and develop in creative economy sector¹⁹. Its cooperation in creative economy is not only benefits for the producer of creative economy products but also the consumers who enjoy the one of a kind artwork. One of the three main focuses²⁰ of people to people connectivity is culture. Community in ASEAN is composed by diverse ethnic, religion, culture even up to diverse natural resources which are the richness and comparative advantageous rather than other region. The richness of culture among ASEAN countries is life-long asset (tangible and intangible) which can be promoted and supported to any other aspect such economy and tourism. On account of culture, it brings at close quarts to cooperation among AMS. The connectivity in ASEAN will bring into well positioned to take advantage of global developments. The challenge comes up from this pillar regarding first, the arise of interdependence of cultural growth and economic sustainability cultural policies in Member States development strategies; second, the development of third party insurance; and facilitation to inflow of tourists across the region

2. Physical connectivity

Physical connectivity in here is mainly focuses all aspect related to the establishment of hard infrastructure. Hard infrastructure in here is built to support the sustainability of people to people connection. Great productivity in private sector in creative economy especially on creative industry, which supposed to be comforted with the establishment of (hard) infrastructure. This connectivity encompass infrastruc-

¹⁸ Master Plan of ASEAN Connectivity, p. 3.

¹⁹ As information, in Indonesia, there are 15 sub-sector associate with creative economy

²⁰ The other two focuses are tourism and education

ture either in transport, ICT and energy. This, as well as importance of software and regulatory framework to deliver associated services and utilities²¹. Broaden infrastructure in transportation²² is needed because it is considered as entry point to hub point-to-point for any economic activities. One of the most concerned about the progress in transportation is ASEAN Highway Network (AHN) which is considered as critical for facilitating goods in transit (connected with creative economy products). To connecting archipelagic regions of ASEAN requires efficient and reliable shipping route and air transport (besides AHN) to reduce the cost of delivering products²³.

The other two sectors, energy and ICT also plays crucial role's to the continuity of economic growth of ASEAN region because its fundamental in supporting trade including to the improvement of creative economy sector. These three sectors even it really important to be applied in ASEAN Connectivity but it does not guarantee seamless movement of goods and people across countries.

3. Institutional connectivity

While the physical connectivity aims in hard infrastructure, this element focuses more on soft infrastructure such as trade liberalization and tradition, investment liberalization, foreign direct investment, mutual recognition arrangements and capacity building programs. Institutional connectivity links various international or regional agreements and protocols to facilitate international transactions of goods and services as well as the movement of natural persons across borders²⁴. It purposed to create efficiency and effectivity of logistic. Clear procedure of bureaucracy is also important to sustain the investment atmospheres especially in foreign direct investment (FDI) (apart of goods and services).

Above and beyond, mutual recognition arrangements (MRAs) are also part of institutional connectivity in order to provide and facilitate the free movement of skilled labor²⁵. But those MRAs still face other

²¹ Master Plan of ASEAN Connectivity. *Op.cit.p.11*.

²² Such as land, maritime and air transportation development

²³ Master Plan of ASEAN Connectivity. *Op.cit.p.14-15*

²⁴ *Ibid.* p. 18-19.

²⁵ Currently, there are 8 (eight) MRAs that have been concluded for the following professional groups :engineering services (2005); nursing services (2006);

difficulties to be implemented. for instance, the tendency of AMS to impose nationality conditions prior to issuing the license²⁶; particular AMS require professionals to have a compulsory membership in professional association in domestic countries²⁷.

The above three pillar of connectivity should be formed into comprehensive and integrative approach in order to optimize the development of ASEAN community and connectivity especially in the development and enhancement of creative economy sector, and expected to reduce business transaction cost; time and travel cost²⁸. It genuinely urgent due to the projection of ASEAN, ASEAN is the World 5th largest trading power²⁹ where its chance can secure and fasten the economic growth due to the multiples sub-sector in creative economy where from each sub-sector can be managed and contributed into each AMS income's.³⁰

III.CONCLUSION

A. CONCLUSION

From all above analysis it can be concluded that

1. Regarding the regulation of creative economy and its implementation in Indonesia, there are several points that can be stated :
 - a. The existence of overlapping regulations, policies, procedures,

architectural services (2007); framework arrangement for the mutual recognition of surveying qualifications (2007); tourism professionals (2009); medical practitioners (2009); dental practitioners (2009) and MRA framework on accountancy services (2009)

²⁶ Nationals are more familiar with local rules than foreign service providers

²⁷ It comes from the divergence of those requirements across AMS.

²⁸ Sanchita Basu Das. *Master Plan on ASEAN Connectivity from Planning to Implementation*. ASEAN Studies Centre. Institute of Southeast Asian Studies. 2013

²⁹ After the EU, US, China and Germany at Lim Chze Cheen. *Master Plan on ASEAN Connectivity : An Overview*. Capacity Building Workshop on PPP Infrastructure Development. Singapore. 2012.

³⁰ SME potential value absorbs 97.2% economy activities in ASEAN which presented by Arief Budiman, CEO of Petakumpet and practician of creative economy in Indonesia, delivered at Socialisation of Creative Economy Blueprint provided by The Ministry of Tourism and Creative Economy of Republic of Indonesia at Jogja Digital valley, 23rd of October 2014.

- and finances about creative economy
- b. Less optimization of intellectual property rights protection which is only conducting by the Directorate General of Intellectual Property Rights, Ministry of Human Rights and Law
 - c. There is no clear information about the exact regulation about norm, standard, procedure and criteria (*Norma, Standar, Prosedur, Kriteria-NSPK*)
2. There is no clarity of responsibility segregation between central and municipal government about creative economy Regarding Creative Economy, and ASEAN Member States (AMS) in order to Effectuate Creative ASEAN Reliability, it can be affirmed that:
- a. There are three pillars interrelated between AMS and MPAC, i.e. people to people connectivity, physical connectivity, institutional connectivity
 - b. The people to people connectivity benefits for the producer and also consumer
 - c. The physical connectivity is considered as entry point to hub point-to-point for any economic activities but on the other side does not guarantee seamless movement of goods and people across countries
 - d. The institutional connectivity needs clear procedure of bureaucracy to sustain the investment atmosphere's

B. SUGGESTION

There are several suggestions that should be taken in order to broaden the significant of creative economy:

- The ICT convergence among ASEAN Member Countries (AMS) in enhancing creative economy and sustainable development
- Point out more creative city making with more specific creative economy productivity
- The development of creative economy should be based on certain material which should be preserved and can be survived for long competition
- There should be a way in connecting the producer of creative artwork and industries so the products can be produced in certain of great quantity including facilitating the capital element for creative

economy products

- The rewriting or revision of education syllabus which should be changed so it can be appropriate with the creative economy and creative industry necessities, incorporate the importance atmosphere of entrepreneurship.

REFERENCES

ASEAN Economic Community Blueprint.

ASEAN Socio Cultural Community Blueprint.

Basuki Antariksa. *Konsep Ekonomi Kreatif : Peluang dan Tantangan dalam Pembangunan di Indonesia*. Kementerian Pariwisata dan Ekonomi Kreatif Republik Indonesia.

D. Throsby. *The Economics of Cultural Policy*. Cambridge University Press. Cambridge. 2010.

<http://web.parekraf.go.id/asp/detil.asp?c=16&id=2617>

Lim Chze Cheen. *Master Plan on ASEAN Connectivity : An Overview. Capacity Building Workshop on PPP Infrastructure Development*. Singapore. 2012.

Master Plan of ASEAN Connectivity.

Presidential Instruction of Republic of Indonesia Number 6 of 2009 on Creative Economy Development.

Rizky Adi Wilaga. Depth interview with one of the Committee of BCCf at 22nd of August 2014.

Rencana Pengembangan Ekonomi Kreatif 2015-2019.

Sanchita Basu Das. *Master Plan on ASEAN Connectivity from Planning to Implementation*. ASEAN Studies Centre. Institute of Southeast Asian Studies. 2013.

Socialisation of Creative Economy Blueprint provided by The Ministry of Tourism and Creative Economy of Republic of Indonesia at Jogja Digital Valley, 23rd of October 2014.

UNCTAD. *Creative Economy Report 2008*. Geneva. 2008.