

8-31-2016

Dispute Settlement Mechanisms under the ASEAN Legal Framework

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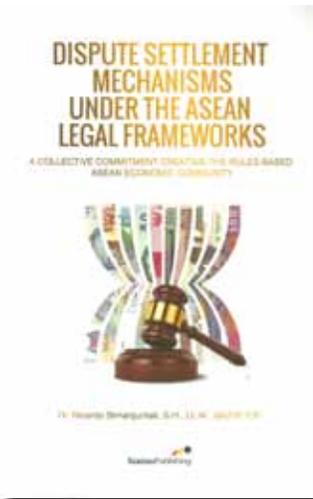
Jayadi, Anbar (2016) "Dispute Settlement Mechanisms under the ASEAN Legal Framework," *Indonesia Law Review*. Vol. 6 : No. 2 , Article 7.

Available at: <https://scholarhub.ui.ac.id/ilrev/vol6/iss2/7>

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BOOK REVIEW

DISPUTE SETTLEMENT MECHANISMS UNDER THE ASEAN LEGAL FRAMEWORK



ASEAN has great ambitions. One (or two, even three and more) of them was laid out in ASEAN Economic Blueprint. It is to make ASEAN achieves higher levels of economic dynamism, sustained prosperity, inclusive growth and integrated development,¹ visionary indeed. Nonetheless, it is necessary to always think and prepare if disputes happen. How to both face and to the extent, solve a dispute will determine whether ASEAN member states are committed to ASEAN and its ambitions as an intergovernmental organization.² This book, as a matter of fact, do point out the necessity to examine existing dispute settlement mechanisms and discuss about it comprehensively by pulling out red line from the ASEAN Charter, the 2010 ASEAN Charter's Protocol on Dispute Settlement Mechanism to the ASEAN Comprehensive Investment Agreement.

The book itself consists of five chapters. The first chapter is introductory part of the book from the writer. In the second chapter, the book brings specific context of ASEAN Economic Community (hereinafter referred to as "AEC"). This chapter indulges readers of the book in reminiscing the history of ASEAN, the intent behind its establishment, and other pivotal aspects of ASEAN including the ASEAN principle of non-intervention which can be problematic if the principle is being argued against the efficacy of solving a dispute among ASEAN nations. Furthermore, the chapter goes beyond questioning the importance of *pacta sunt servanda* for ASEAN. Despite the criticism toward ASEAN and its principle, the chapter provides a constructive view on preparing ASEAN for AEC that will (actually, already commenced) in the end of 2015.

The third chapter of the book scrutinizes ASEAN legal capacity by explaining ASEAN's organs, its rules-based system, and the 2010 ASEAN Charter's Protocol on Dispute Settlement Mechanisms. The latter is needed to be highlighted as in that sub-chapter, readers can find clear depictions on ASEAN way in solving disputes. At first, disputes must be settled with good offices, mediation and conciliation before move up to upper ladder if one of the stated way does not work, which is in the ASEAN Summit.

¹ ASEAN, "ASEAN Economic Community Blueprint", document can be downloaded at <<http://asean.org/wp-content/uploads/archive/5187-10.pdf>>, p.2.

² ASEAN arguably is an intergovernmental organisation since it does not become a supremacy power to its member states. Supreme in a sense that ASEAN does not and more importantly, impose its law and regulations to its member states and to citizens of its member states. Compare to European Union which produces many kinds of laws and regulations that, in general sense, applicable throughout the continent. See Jan Klabbars, *An Introduction to International Institutional Law*, Second Edition (Cambridge University Press, 2009), p. 24.

Another way to solve disputes is through arbitration. The decision of arbitration is final and binding for those involve in the disputes.

The fourth chapter focuses on highlighting the need of conceivable dispute settlement in ASEAN. One of the specific topic in this chapter is about the ASEAN Comprehensive Investment Agreement (ACIA). The interesting part is that the sub-chapter tries to bring the relevance of ACIA within the interest of Indonesia by making a case on whether ASEAN will be the real part of Indonesia's future. From the consistency of the writing, this part can be regarded as irrelevant. Regardless, it is still important to always bear in mind of Indonesia's interests in ASEAN.³ This does not mean making ASEAN more Indonesia-centrist, but to see that what ASEAN does is inline with Indonesia's plan (even supporting it) and *vice versa*.

The last chapter of the book, rather than conclude what have been discussed in previous chapters, take more details on the topic of ASEAN's cross-border insolvency regulation and the issue of bankruptcy. In one hand, this part can be enlightening as it widens the reader's knowledge. Even so, it can be a distractive topic and may shift reader's attention on the importance of dispute settlement mechanisms in ASEAN.

Overall, the book can be beneficial for worldwide readers who does want to know ASEAN in general and specifically about dispute settlement mechanisms. It can give worldwide readers, especially university students writing about ASEAN and/or try to compare ASEAN and European Union (EU), a depiction of how ASEAN works. As for Indonesian readers, the book will be a great source for those who have a thirst for ASEAN knowledge and its dispute settlement issues. Moreover, for those who are skeptics about ASEAN, this book will bring hope that ASEAN with its ways is uniquely has optimistic future. Last but not least, for ASEAN leaders and decision makers, this book is a friendly reminder to have consciousness about possible scenarios of ASEAN faith which includes potential disputes and the need to have accountable dispute settlement mechanisms.

Title : Dispute Settlement Mechanisms under the ASEAN Legal Frameworks: a Collective Commitment Creating the Rules-based ASEAN Economic Community
 Language : English
 Publisher : KontanPublishing
 Author : Dr. Ricardo Simanjuntak, S.H., LL.M. ANZIIF, CIP
 Pages : xxv + 237
 Year : 2015
 Reviewer : Anbar Jayadi

³ It is often perceived that Indonesia has strategic position in ASEAN which proven by several occasions, one of them namely with regard the issue of South China Sea. Further reading of Indonesia and its history related to ASEAN can be found here: Bama Andika Putra, "Indonesia's Leadership Role in ASEAN: History and Future Prospects", *International E-Journal of Advances in Social Science* 1, Issue 2, August 2015. DOI: <http://dx.doi.org/10.18769/ijasos.82584>.