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Preparing for the Challange of Governance in International Economic Relations in the 21st Century: A Plea to the Indonesian Legal Profession

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Preparing for the Challenge of Governance In International Economic Relations In the 21st Century: A Plea to the Indonesian Legal Profession

H.S. Kartadjoemena*

Kita semua mengetahui bahwa globalisasi telah meng-hantarkan hubungan antar negara, antar organisasi, pelaku ekonomi, dan interaksi diantara mereka. Seperti yang telah dinyatakan dalam judul, secara garis besar artikel ini sangat mempunyai pengaruh dan menantang, pada saat yang bersamaan mendorong para praktisi hukum di Indonesia untuk mengambil bagian yang lebih nyata dalam forum-forum internasional pada perkembangan di abad-21 ini. Walaupun peranan praktisi hukum tidak terlalu dominan sebagai konsekuensi lemahnya sistem hukum di Indonesia, namun mereka harus siap menghadapi masalah-masalah yang timbul sebagai konsekuensi dari globalisasi dan perkembangan organisasi internasional, seperti WTO, ASEAN Free Trade, dan lain-lain. Bidang keahlian praktisi hukum dalam memasuki abad baru tidak hanya memerlukan penguasaan keahlian yang baik, pengetahuan, dan etika, masalah-masalah dalam negeri, tapi juga perlu diperluas ke lingkup internasional, untuk memperkuat dirinya agar sejajar dengan para praktisi hukum asing dan untuk membawa kepentingan nasional dalam setiap perundingan yang berhadapan dengan pihak asing.

I. Introduction

This paper has been especially written in reply to a gracious invitation extended by the editors of this journal to write an article that might be of interest to Indonesian lawyers dealing with international economic issues. It is with great pleasure that I have

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* H.S. Kartadjoemena, yang lahir pada tahun 1941 adalah mantan Duta Besar RI pada GATT, periode 1988-1994, dan Ketua Perundingan *Uruguay Round*. Pada kurun tahun yang sama juga memegang jabatan rangkap selaku Duta Besar RI pada *Textiles Surveillance Body* di GATT dan Ketua Internasional *Textiles and Clothing Bureau*, gabungan negara-negara berkembang eksportir tekstil. Tahun 1970-an dan 1980-an aktif sebagai anggota delegasi RI pada Perundingan Perdagangan Internasional dalam rangka UNCTAD. Buku yang telah diterbitkan: "GATT dan WTO-Sistem, Forum dan Lembaga Internasional di Bidang Perdagangan" (UI-Press, 1996), GATT, WTO dan Hasil Uruguay Round" (UI-Press, 1997) dan "Substansi Perjanjian GATT/WTO dan Mekanisme Penyelesaian Sengketa" (UI-Press, 2000).

accepted the invitation but also with some trepidation. The challenge for this writer has been to answer the following question: what contribution could a retired bureaucrat make that would be relevant and useful to the professional lawyers dealing with international economic issues?

Being a mere a retired bureaucrat, I am neither a scholar, nor an intellectual, nor an academic. Therefore, it would seem more reasonable to draw as the source of my observations principally from my own direct experience in Indonesia's international economic relations in the past 30 years. Therefore this paper is written from the perspective of the evolving personal experience in various international fora in the past three decades working on behalf of the Indonesian Government and the lessons that I derive from the experience during that period.

While the lessons are derived from looking at the past experience, the intention is to signal possible future developments and the challenges that are likely to be faced in international economic relations. Indonesia will almost inevitable be engaged in a more complex set of international economic relations in the 21st century than in the past century. It would be a challenging world, requiring proactive public policy, and sensitivity to the views of an increasingly more educated public. The legal profession would be called upon to play an important role in meeting these future challenges. Indeed, it cannot be absent from the forefront of discussion because expanding international economic activities would also be accompanied by expanding legal obligations among states.

The challenges arising from an increasingly more complex world are faced by all countries, both developed and developing. Indeed, there are some generalizations that could be made that would apply to most countries. However, our concern here is to address the specific case of Indonesia in particular with respect to the legal system and the legal profession. In this connection, this paper strongly argues that the specific case of Indonesia requires

some special attention to aspects which are uniquely related to the evolution of its domestic political experience since independence.

These historical factors have some serious impacts on the functioning of the legal system and the legal profession in the society. Given the importance of the legal system and the legal profession in the effective functioning of modern and democratic governance resolving these burdens arising from past practices is also essential for those who are "users" of legal expertise and services of the profession.

II. Specific Problems Faced by the Legal Profession

In addressing the challenges of international economic relations that Indonesia will face in the years ahead in this century this paper also addresses the specific problems of the profession in the Indonesian context. Thus, this paper attempts to address those questions because the manner in which problems are resolved --- problems which arose from the unique and specific experience of Indonesia --- would have a bearing on how Indonesia could address the challenges of external economic relations.

My own direct professional experience in public service in the past has led me to take this small effort to remind the legal profession of the critical need to for it to be more actively engaged in dealing with the legal issues of external economic relations. The participation of the profession is indeed sorely needed. At the same time this paper recognizes the impediments being faced by the legal system and the legal profession, and accordingly offers some suggestions from the perspectives of the "users" of the expertise that could be offered by the legal profession.

In approaching this endeavor it should be kept in mind that the legal profession, and indeed the legal system in Indonesia have been badly mistreated for decades. The profession and the system have been deprived of the opportunity for orderly development and self-renewal because political factors of expediency at the time had increasingly deprived the profession and the system of their

necessary independence. For decades the legal system has been increasingly used as an instrument of power of the ruling government. It would be unfair to expect the system or the profession to exercise professional judgment in a situation that would be difficult politically to do so.[1] In economic matters clearly the legal profession has been cast aside from the decision-making and rule-making exercise. Although the legal profession is not entirely blameless in allowing this situation in economic decision-making from taking place, nevertheless we are now paying the price for past mistreatment of the profession. This situation prevailed not only during the New Order government but it began in progressively since the late 1950's. As reforms are being undertaken it should be recognized that it take many years for meaningful rectification of the situation to fully materialize.

In the process it is in the interest of the society that the legal profession be given all the support possible to place its role back at the center stage of the society in order for it to play its rightful role in the modernization of the society. In the meantime new challenges are emerging, not the least being the reality of an increasingly global mode of operation of the international community. This paper focuses on the emerging challenges in international economic relations and what the society is likely to expect of the legal profession.

To meet the challenges the profession needs to engage in dialogue with the society that it serves and with the legal community in other countries. As a small endeavor to assist this dialogue this paper has been written deliberately in English in order to solicit the sharing of experience and views as quickly as possible, that would support the Indonesian legal profession in its endeavor to again play a center stage role in societal renewal and modernization. The process is complex and it requires patience.

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[1] Efforts are being undertaken to reform the legal system, to improve the administration of justice, to restore the integrity of the professionals, and to regain public trust. A cursory look at the media will show that while efforts are continuously being made, it would take some time to re-establish the legal profession and the system.

However, there is no short-cut and no substitute to the process than to deal with the problems directly.

III. Evolution of Indonesia's External Economic Activities: Escalation of the Process of Internationalization

Throughout its history, willingly or unwillingly, the archipelago that is now known as Indonesia has always been engaged with the outside world. External entanglements are therefore long historical realities in view of the specific geopolitical realties of Indonesia. They have shaped the country's history, and not always leading to happy circumstances. Moreover, both the circumstances leading to Indonesia's colonial past as well as the circumstances leading to its political independence as a sovereign state had been shaped by interactions with the outside world.

Thus willingly or unwillingly Indonesia is drawn into adopting an international vocation in the exercise of its statecraft and governance. Although in some segments of the society there have been emotional outbursts arguing for a more inward-looking orientation, it would be an illusion to advocate isolation from external engagement, given Indonesia's geopolitical situation and historical past. In the meantime, Indonesia's international economic relations have evolved over the years, with expanding activities that are taking place both at the intergovernmental and private sector levels.

a. Growth and Development Objectives

For purposes of our discussion on Indonesia's external economic relations, we can identify two major streams of events took place almost simultaneously leading to a complex set of activities. First, domestically, a relatively rapid economic transformation has taken place in Indonesia leading to a situation where Indonesia has shifted from an agrarian and raw materials producing country into a more diversified and complex economy. A diversified economy with growing manufacturing sector and rapidly emerging services sector require a set of regulatory environment and a different paradigm of public policy.

This is doubly true when the players involved include large enterprises and foreign direct investors operating as corporate entities incorporated in Indonesia. Looking from present perspective it should be noted that sooner or later, these activities must necessarily be accompanied by an effective manner in dealing with the legal issues. This aspect however, has been regrettably neglected over the years.

Secondly, there had been an opportunity to deal with the problem of growth through a specific strategy of external engagement, first in the context of UNCTAD through the creation of international commodity agreements, and then, when this failed, through the engagement in the GATT/WTO system of multilateral trade and the process of trade liberalization. There factors had been the driving force that accelerated the process of internationalization of Indonesia's economic activities. It would be useful to deal with both aspects in somewhat more detail below.

b. Fundamental Shift in Domestic Economic Structure

The relatively rapid fundamental sectoral shift has been the outcome of a series of interactions between a deliberate public policy choice and the emergence of external opportunities. The public policy choice domestically was centered on the fundamental political decision to adopt a policy of achieving a relatively high growth to absorb unemployment and eradicate poverty.

The external opportunity was available, at first through developments of what was perceived to be the possibility of gains from increased oil and commodity rent, through the development of OPEC-type commodity cartels. Secondly, when that failed in the 1980's, through a more active engagement in international trade through the development manufacturing for exports, implying the adoption of strategies developed by the successful newly industrializing countries of East Asia.

Import Substitution

In the 1970's it was tempting to opt for the attainment of the growth objective through a policy of import-substitution that is, by

developing domestic industry through protection, while financing it through income arising from high oil and raw materials prices. However, that strategy was simply not available any longer even if Indonesia wanted, to because in the late 1970's and early 1980's oil and commodity prices had collapsed. Moreover, in retrospect, as a matter of policy option, this import-substitution strategy, which was practiced elsewhere as well, was faulty and it failed in countries that tried. Thus, even if the commodity prices did not collapse, the industrialization policy through import-substitution would not have succeeded in developing viable and competitive industries.[2]

Export-Oriented Growth

That situation, specifically the situation of deteriorating oil and raw materials prices, left Indonesia with the choice of maintaining the objective of achieving relatively high growth through international trade, and, more specifically, through exporting of manufactured goods. In this respect Indonesia and other ASEAN countries, at least the original ASEAN-5, had deliberately chosen the strategy of the East Asia countries export-oriented growth. The consequence of the choice was to be actively engaged in ensuring that access to market for the manufactured goods would be safeguarded.[3]

[2] Import-substitution strategy had been the preferred road among many developing countries in the 1950's. It has since been shown that it did not succeed in achieving the growth objective that intended. The strategy has been discarded by the mainstream of development economists. See Gerald M. Meier, "Trade Policy, Development and the New Political Economy." *The Political Economy of International Trade: Essays in Honor of Robert E. Baldwin* Ronald W. Jones and Anne O. Krueger, eds. (London, Basil Blackwell, 1990) pp. 179-95.

[3] Conceptually, the export-oriented approach had an intellectual basis in the writings of development economics that have argued somewhat persuasively about the superiority of export oriented strategy to that of import-substitution strategy. Export-oriented strategy had been inspired by the success of East Asian countries in transforming their domestic structure and achieve high growth rate. Economists such as Anne O. Krueger have argued the success of export oriented strategy. See Anne O. Krueger, "The Experience and Lessons of Asia's Super Exporters." *Export Oriented Development*

This meant that Indonesia and other ASEAN countries had to be active in the GATT and in its successor institution, the WTO to safeguard market access opportunities, especially in the developed countries. Today, it has become more urgent to expand trade opportunities in other regions as well. It the years to come, other developing countries and the newly emerging market economies in Europe and Asia must also receive the same attention in view of their increasing important as economies and therefore as trading partners.

c. Growing Importance of Trade and Foreign Investment

As mentioned, the strategy of developing the non-oil sector has led Indonesia to be more active in the GATT, in particular in the Uruguay Round negotiations. Similar strategy to develop trade capabilities in manufacturing has been adopted by other ASEAN countries, although the domestic factors are not necessarily identical.

The current crisis, which was triggered by the run on the Thai currency in 1997, had temporarily dampened the active role of ASEAN countries in the WTO and in the current Doha Round. Domestic factors have claimed most of the attention of the governments in ASEAN countries.

Nevertheless, the fundamental interest in the multilateral system remains valid. It serves as framework to help mitigate the temptation of powerful countries to take unilateral actions. Without the multilateral system, bilateral relations would place ASEAN countries as hostage to unilateral actions of powerful countries. In the ensuing time, since the decision to follow the policy of increasing export earning of the non-oil sector and the diversification of the economy, manufacturing activities expanded relatively rapidly in Indonesia.

To the extent that Indonesia wishes to continue to develop manufacturing capabilities in its exports it must adopt policy that

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Strategies Vittorio Corbo, Anne O.Krueger and Fernando Ossa, eds. (Boulder/London: Westview Press, 1985) pp. 187-212.

would encourage the continued development of the sector. It was made quite clear that growth in manufacturing activities requires investments by the private sector. Domestic resources are not sufficient to meet the needs for a more rapid development in manufacturing capabilities. Therefore part and parcel of the strategy for the development of manufacturing must involve the encouragement of the private foreign investment.[4]

To resolve the shortage of capital, technology and managerial expertise, foreign participation is required. Therefore foreign investment became important for manufacturing growth. Thus, Irrespective of our preference for domestic enterprises, the fact remains that if the principal objective is to manufacturing capabilities, if domestic resources are not sufficient to meet the challenge alone, then the policy of attracting foreign investors must be part of that strategy. Accordingly, attracting foreign manufacturing activities must be a policy that is part of the overall strategy of developing manufacturing capabilities.

d. Trade, Investment and the Legal Issues

With respect to foreign investments, it is worth noting by the legal profession that one of the factors that have been regarded as essential by the foreign direct investors is the predictability of the legal environment. The issue of good governance of the state, which investors consider as an importance factor, encompasses the issue of legal reform and access to legal remedies in case of violation of contractual obligations. Hence escalated international engagement requires some important legal reforms a subject which in the past tend to be regarded is a remotely peripheral subject.

While the above policy discussions reveal the economics of the strategy in external economic relation --- and most public discussion are likely to be focused on the economic and political

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[4] For a description of Indonesia's trade policy in the 1980's see H.S. Kartadjoemena, "Indonesia's Trade Policy: Problems and Options." *Selected Key Policy Issues in the Indonesia Economy* (Jakarta: Bank Indonesia, 1988). The volume was published as Proceedings and Papers of Bank Indonesia-IMF Seminar on Financial Programming and Policy, Jakarta, 17–38 November, 1986.

implications of the choices being made --- it should be emphasized that the legal implications are quite clear although often understated. For example, the legal implications of the activities around the WTO are quite clear. The WTO is a set of legal obligations covering the rights and obligations of members in the conduct of international trade. It cannot be dealt with meaningfully without legal understanding of the issues involved.

On the investment side one area which has become more known to the legal profession in Indonesia is the negotiations in with foreign companies and the legal contracts connected with investment. However, it should also be stressed that at present, there are increasing trend to push for an international agreement on investment binding on states. The developed countries, in particular the European Union, whose enterprises are investors abroad, have argued for an international agreement on investment to be administered by the WTO. Developing countries have largely opposed to this type of binding agreement up to now.

However, even in the earlier period of the 1970's and early 1980's where activities are largely centered on the negotiations to formulate international agreement on the trade in commodities, the legal implications are already quite clear and the role of the legal profession was equally quite clear. Here it should be stressed that despite its importance, the role given to the legal profession had been at best quite minimal. This is in retrospect án anomaly but perfectly consistent with the trend and practices prevailing in Indonesia at the time.

IV. Facing More Complex External Realities: The Practical Meaning and Implications of Globalization

So far the discussion on external economic relations has been in relation to the more "conventional" aspects of the situation. They are conventional in the sense that those activities have been done for quite some time and that other countries have normally have been engaged in those activities for quite sometime as a matter of

course. Moreover, the respective legal professions in those countries have been engaged in those activities for quite some time.

However, there are new things in the horizon that are not essentially "conventional" in terms of past practices. It is in this connection that the much used and indeed the overused term "globalization" needs to be brought into the surface.[5] The term has been used to mean many things to many people that it has elicited outbursts of ebullience and elegy as well as condemnations. Those who eulogize the coming era of globalization announce the emergence of new political arrangements and entities and the disappearance of nation-states.[6]

Those who condemn the new phenomenon define it as the coming of dark forces that would destroy the social fabric of society as it is known today and the emergence greedy multinational enterprises dominating the world.[7] Our interpretation in this paper is more modest and hopefully more realistic. However, to be more meaningful, it needs to be more clearly

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[5] Discussions on globalization could be said to have started with the business community, or at least those among them who have operated internationally for some time. See for example Kenichi Ohmae, *The Borderless World: Power and Strategy in the Interlinked Economy* (London: Fontana, 1990. The business community signaled the advantages of a global system in mobilizing resources across the world. In the 1980's views about begin to be formulated from the perspective of the business entities faced by an increasingly internationalized business environment. See for example the volume *Competition in Global Industries* Michael E. Porter, ed. (Boston: Harvard Business School Press, 1986).

[6] Kenichi Ohmae, *the End of the Nation State: the Rise of Regional Economies* (London: Harpercollins Publishers, 1985).

[7] The debates on globalization have been lively, emotional and sometimes even violent. At the end of the 20th century it seems to be one issue that has provoked such passion. For those who argue about the merit of globalization as they define it, the prospects are bright for humanity. See Alain Minc, *La mondialisation heureuse* (Paris, Edition Plon, 1997). There are also those who are highly critical of the prospects for humanity. See Hans Peter Martin and Harald Schumann, *Le Piege de mondialisation* (Arles, Solin/Actes Sud, 1997).

defined for the purposes of our discussion that hopefully would be more meaningful operationally to the legal profession.[8]

a. International Economic Interdependence and Globalization

In the discussion on the evolving pattern of Indonesia's external economic relations above, we can note the evolving interdependence of the economies of different countries in the world. Governments (and increasingly also private entities notably business entities and NGOs) of different countries interact with each other in pursuit of some *common interests* as well as some *competing interests*. Although some parties to the process may entertain the elimination of a competing party, most players see the situation as one of seeking negotiated solutions and the formulation of commonly agreed rules of conduct that govern their interactions.[9]

Most actors would accept the existence of differences among them as normal but also their mutual dependence. Evidence of the

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[8] Some are violently opposed to it. Among those who are critical of the way the process has been done include highly respected economists and other in different professions. See Joseph Stiglitz, *Globalization and Its Discontents* (London, Penguin Books, 2002). Sitglitz, a Nobel Prize winner of 2001 in economics argues that "No longer is it a question of whether globalization is good or bad: globalization is a powerful force that had brought enormous benefits to some. Because of the way it has been mismanaged, however, millions have not enjoyed its benefits and millions more have even been made worse off. The challenge today is how to reform globalization, to make it work not just for the rich and the more advanced industrial countries, but also for the poor and the least developed countries." p. 268.

[9] The pattern of increasing interdependence has been recognized since the late 1960's when the phenomenon of the operation of multinational corporations became a subject of attention. Technological development in telecommunications, data process and transportation coupled with some changes in policy led to a more extensive cross-border operation. It led to a phenomenon that has been described as transnational relations involving actors other than government to also participate in activities that had been so far largely those of governments. In 1971 a special issue of *the journal International Organization* published a collection of inter-related papers dealing with the phenomenon edited by Robert O. Keohane and Joseph S. Nye, Jr. See *International Organization* (Summer, 1971).

increasing number of agreements and formal arrangements shows that more often than not, different parties, with opposing ideas, do often come to agreement on rules of conduct as a preferred solution to an alternative of conflict. There are more factors that argue for more cooperation than dispute. To the extent that disputes are inevitable mechanisms exist to resolve them through varying degrees of formality.

However, there are some fundamental underlying changes in the interdependence of actors in international economic relations. The changing situation makes the nature of interdependence different from the past. It is not longer a difference in degree but a difference in kind. To express it differently, we can say that the pattern of interdependence and the intensity of interdependence between the present and the future make what is initially a difference in degree becoming increasingly a difference in nature.[10]

b. Features of Globalization

The most notable aspect of what is now known as globalization is the increasingly porous nature of national borders and the increasing ease with which cross-border transactions and operations are undertaken. There are two aspects to the situation. On the one hand, the rapid development of the technology of telecommunications and electronic data processing makes it possible for instantaneous decision making to be taken in a coordinated manner by elements within an organization whose location is dispersed throughout the world. This allows for concerted operations of an entity across the world. This permits organization, including business enterprises (and also NGOs) to operate globally in a coordinated and simultaneous manner.

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10. For an early attempt to depict the political dynamics of the transnational economic relations see Edward L. Morse, "Transnational Economic Processes." *International Organization* (Summer, 1971) pp. 373-97. For an attempt to examine these issues from the perspective of Indonesia and written in the 1970's, when these phenomenons began to appear, see H.S. Kartadjoemena, *The Politics of International Economic Relations: Indonesia's Options* (Singapore: Institute of Southeast Asian Studies, 1975).

However, technology alone would not bring what is potentially possible into reality without a simultaneous development of the policy environment that would permit such an operation to take place. The emerging policy environment that permits cross-border operation to take place involve the removal of barriers to trade and investment flow and the adoption of the market mechanism as the principal signaling device for the allocation of resources. Establishing such a policy environment requires major political decisions, especially in countries which had not previously be practitioners of such policies.

In the global arena, there was one major *political* event which curiously, caught many governments by surprise, which began to take place in the late 1980's, which helped to quicken the pace of globalization. The collapse of Marxism in Eastern Europe ended the hostility between the West and Eastern Europe. The bipolar world pitting two ideologically hostile and competing sides had ended. This effectively ended the territorial divide between economies based on the exclusive role of the state and economies that relied on market mechanism to allocate resources.

In *economic policy*, it meant that market based approach to managing the world economy won the day. The role of the private sector will accordingly increase. Correspondingly, there is also a reticence about the role of governments in the economic life of most countries. Moreover, even in economies of the West which are based on reliance on the market mechanism, there were also shifts in economic orientation. There was a growing sentiment that government intervention has reached its limits. Accordingly, in non-Marxist countries, developed and developing, including in ASEAN countries, deregulation began to be implemented.

c. Steersmanship and Governance of a Modern State

The above developments create a more fluid atmosphere in trade and investment. It allows greater mobility, not only for goods and services globally, but also for investment decisions, including *foreign direct investments* which would help to enhance transfer of management know-how, technology and capital. Investment flows

have occurred throughout history, including foreign direct investment. However, now, through progress in the technology of transport, telecommunication and data processing, decisions are able to be taken *instantaneously* in corporate decision making so that the world economy will become more *globalized.*

This also creates some obvious problems for governments because many corporate decisions which were previously under some control by governments will escape their control in the future. A certain change in perception, attitude and methods must be developed where governments could still exercise some sovereignty, although technically, the exercise will be difficult. In fact governments may in the end resign to the idea that certain corporate operation are likely to escape their control for good if they wish to maintain continued flows of investments.

d. Domestic Policy Implication

Recognizing the limits of the state implies removing the web of regulations that distort market mechanism. The success of deregulation in the 1980's was relatively quickly evident. Non-oil export performance in Indonesia, for example, dramatically increased and soon overtaking oil and gas exports after a series of deregulation measures. However, there are also new problems arising from an overenthusiastic deregulation. The 1997 crisis and its aftermath show the limits of relying only on deregulation as if that was the only factor needed to make the market mechanism work.[11]

[11] There are many other factors to consider in order to put the market mechanism to work that were cast aside as trivial by those obsessed *only* with deregulation and liberalization. The institutional and legal "infrastructure" needed to make the market mechanism work had hitherto been neglected. Much has been written about the crisis. Whatever might be the direct mechanism triggering the immediate crisis, it led to a revelation of a much bigger problem than financial folly and ineptitude. That aspect leads us need pay more attention to the whole range of practices in governance. For a good discussion on the multiple aspects of the Asian crisis and the Indonesian context, see chapters contributed by various experts in *Asian Contagion: The Causes and Consequences of a Financial Crisis* Karl D. Jackson, ed. (Singapore: Institute of

Implicit in the effectiveness of the market mechanism is the efficiency derived from the efficient allocation of resources. For that to take place there must be competition. Domestically, one area of crucial public interest which had not been given adequate attention is the question of developing the mechanism to ensure that competition takes place. For the legal profession, a new area of great interest in the coming years will be how to develop the proper regulatory framework to ensure that competition takes place and therefore also efficiency, and in turn, the efficiency of the economy to compete in the international market.[12]

The subject is both delicate and complicated. On their part, lawyers must maintain the degree of flexibility and imagination not to formulate ideas which are dogmatic, mechanistic and legalistic. One must not forget that the main objective of competition policy is to ensure the existence of competition so as to enable the economy to function optimally.

Looking to the future, in order to be able to sustain the high growth rates of the ASEAN economies, the world trading system must also be kept open. The closure of the world market would be damaging to ASEAN economies. This is equally the case for much of the countries in the Asia-Pacific rim. That is why ASEAN has insisted for an open regional system and not an inward-looking and closed regional system.

Southeast Asian Studies, 1999) and in *Tigers in Trouble: Financial Governance, Liberalization and Crisis in East Asia* Jomo K.S. ed. (London, Zed Books, 1999).

[12] The legislation on fair competition has been promulgated. An institution to deal with it has been established. If we examine the experience of other countries it will take some time before this kind of institution operates effectively and meaningfully. See *Undang-Undang Republik Indonesia No. 5 Tahun 1999 Tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat* (Jakarta, Sekretariat Negara, 5 March 1999) State Gazzette No. 33 and Addendum to State Gazzette No. 3817.

V. Political and Legal Implications of Globalization: Deeper Integration and Greater External Intrusion in National Policy Making

The above discussion on the specific meaning of globalization that we have defined leads us to examine the fundamental meaning of the changes that are likely to take place and their political and legal significance. To deal with these issues sensibly it would be useful to take a convenient approach that would capture the essential features of the substantive issues before us. *The essence of what we define as "globalization" within the meaning of our discussion is the process of "integration" of economic and societal activities through the world.*

Although the process can be described in an abstract manner it is a real process which has been implemented in some set of countries. The process of integration in Western Europe which evolved since the creation of the European Economic Community through the Treaty of Rome is a concrete example of the process integration. The European experience has been the most extensive and intensive example of economic integration. However, to varying degrees, other processes also imply integration. Let us go beyond the rhetorical smokescreen and deal with the essence of the question related to integration.

In the economic field, Indonesia and other ASEAN countries are now simultaneously involved in three major international institutions, the WTO, APEC and ASEAN's own regional cooperation. The nature of the relations has become increasing more complex. Accordingly, it is important that we prevent confusion and contradictions from occurring, which can easily happen because of the complexity of the subjects being dealt with simultaneously. For our purposes, however, it is important to stress the hierarchy of commitments in the context of the three major institutions above. For the legal profession clearly WTO and ASEAN should receive the most attention.

The "Choreography" of Integration Process

This process of integration we have briefly described has significant political and legal ramifications. There will be difficult choices to be made. Some deeply held views and controversies arising from those views are inevitable between countries and within a country about the extent of integration that would be regarded as acceptable as well as the speed in which the integration process is to take place. Therefore, in its application, this process of "integration" needs to be "choreographed" in a manner that could ensure orderly sequence and the compliance of all in the international community if it is not to result in chaos of hostile resistance from this who oppose.

The range and intensity of integration vary according to different arrangements involving different parties. As we have seen, on the one hand of the scale is the European arrangement. The Europeans make no hesitation about the final end-point of their exercise of integration. What they have chosen is a process of complete economic integration of the European economic and cultural space. That is one option and one version of integration.

However, on the other end of the scale are the milder forms of integration. There is the version of multilateral system of the WTO whose final end-point is more ambiguous. In between is the ASEAN arrangement, which has gone further than the WTO in the commitment that its members have made to establish a free trade area but is unlikely to move anywhere near what the Europeans have set for themselves in their own region.

Process of "Integration" in the WTO

Let us deal with the question of integration a bit further as it relates to various fora. First, it would be useful to deal with the WTO as the multilateral forum which establishes the rules-of-the-game in the conduct of international trade. Up to the Uruguay Round negotiations, trade as defined by the GATT/WTO system was quite straightforward. The rules relate to trade in goods and they deal principally with cross-border barriers to trade in the form of tariffs and other barriers.[13]

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[13] For the legal profession it is important to note that a whole body of GATT/WTO jurisprudence has been developed over the years, which is quite impressive in the way it

However, the meaning of "trade" in the WTO has been enlarged since the Uruguay Round with the introduction of some "trade-related issues." In so doing, the system has broadened its coverage and it has gone into "deeper" commitments not restricted to cross-border measures taken by members. Agreements in the WTO arising from the Uruguay Round have covered areas beyond trade in goods. These extensions of the multilateral rules are part of the multilateral system with a set of binding rights and obligations.[14]

Trade in Services

A comprehensive framework agreement on trade in services, the General Agreement on Trade in Services (GATS) is now in operation. The GATS framework agreement is supplemented by specific sectoral agreements in various areas reflecting the "sectoral specificities" of particular sectors. In addition, there is a list of specific commitments made by each member, known as the Schedule of Specific Commitments indicating the range of liberalization and other commitments that each member makes in the context of the WTO.[15]

Trade in services involves modes of entry of foreign service-providers through:

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has evolved. The body of literature has become quite vast. Admittedly, at present, the emphasis is uneven in the sense that more efforts had been devoted by developed countries' professional than by developing countries'. But that will change as developing countries begin to assert their presence in the WTO and to express their views. For an excellent overview of the evolving GATT/WTO system by a leading jurist in the field see for example Jackson, John. *The World Trading System: Law and Policy of International Economic Relations* (Cambridge: MIT Press, 1989).

[14] Emerging issues that go beyond the already expanding substance of the Uruguay Round have already been a part of discussion in the OECD countries. The question of the interlink between investment, competition policy and technology has already an area of policy studies in developed countries. Developing countries should not refrain from examining these issues even if the views on the approach to those issues differ. See *Market Access After the Uruguay Round: Investment, Competition and Technology Perspectives.* (Paris, OECD, 1996).

[15] "General Agreement on Trade in Services.". *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Text* (Geneva: World Trade Organization, 1995). pp. 327–64.

a) cross border supply of services, without the presence of the providers;
b) consumption abroad, where the consumers come to the location of the service providers:
c) commercial presence of service providers, which in practical terms, is another words for foreign investment of the service providers; and
d) presence of natural persons, either independently, or as a part of commercial presences.

These considerations reflect and parallel the already existing General Agreement on Trade in Services (GATS) in the WTO.[16]

Intellectual Property

Another comprehensive agreement in the WTO that is beyond the confines of trade as it is traditionally known is the Agreement on Intellectual Property Rights or in the WTO jargon, TRIPS. Although it is debatable whether such an agreement should be in the WTO there was a strong pressure from the technology and pharmaceutical lobby in developed countries to have the agreement as part of the Uruguay Round. At the end the TRIPS agreement was finally accepted as part of the Uruguay Round package.[17]

Although the present content of the TRIPS agreement heavily slants towards protecting owners of intellectual property (who are mostly from developed countries) rather than the concerns of public interest, developing countries need to learn to make a better use of the agreement. At the same time attempt through negotiations, to make some modifications on some of the provisions that would serve the interest of developing countries. This can be done during period of WTO rounds of multilateral negotiations such as the one currently being undertaken.

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[16] *Ibid.*, p. 328. Article I specifies the four "modes of supply" through which services are delivered by the providers to the consumers.

[17] "Agreement on Trade-Related Aspects of Intellectual Property Rights." *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Text* (Geneva: World Trade Organization, 1995) pp. 365 – 403.

Investment

Moreover, attempts had been made in the Uruguay Round to deal with investment when negotiations were undertaken to deal with "trade-related investment measures" or TRIMs in the acronym in the WTO. Although it did not lead to an international agreement on investment, it left an opening on making investment policy an area that is potentially to be discussed in the WTO. The TRIMs agreement also left an opening to discuss competition policy at some future date.[18]

All the above trends which go beyond the subject of trade in goods as traditionally understood, involving rules on border measures indicate the expanding frontier of what is defined as "trade" and what constitute areas where the WTO has a mandate. These issues are already implicit in the WTO system at present. It will be increasingly part of future negotiations. What it implies is that developing countries must be prepared to deal with negotiations in such issues.

Urgent Need of Legal Specialists on WTO

The role of the legal profession is critical to ensure that developing countries do not find themselves prematurely agreeing to texts on complicated issues, on which understanding of the substance may be imperfect. Conceptual preparations on the policy aspects as well as the legal aspects vital for their interest are needed. The areas where Indonesia and other developing countries need to make further preparation and policy analysis as well as to study the legal implications are in investment and competition policy although there will be other issues on the horizon as well.[19]

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[18] See "Agreement on Trade-Related Investment Measures." *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Text* (Geneva: World Trade Organization, 1995) pp. 163 – 7. Article 9 of the TRIMs agreement stipulates that during the review process of the agreement which must be done no latter than five years after the date of entry into force of the agreement, whether members of the WTO could decide whether the TRIMs agreement could be "complemented with provisions on investment policy and competition policy.

[19] For an initial attempt to deal with the issues of competition policy in the WTO from the perspective of Indonesia, see H.S. Kartadjoemena, *Aspect Internasional dari Masalah Competition Policy: Menghadapi Perundingan WTO Tahun 2000* (Jakarta: Yayasan Indonesia Forum, 1999).

Dispute Settlement

Because the WTO system is a rule-based system, with binding sets of rights and obligations, there are also procedures developed to deal with violation of WTO obligations. An important feature of the WTO is the establishment of a dispute settlement mechanism which has functioned well over the years since the establishment of the GATT, the predecessor of the WTO, in 1947. Since the conclusion of the Uruguay Round, the procedures have been much improved and tightened. The length of time to resolve issues has been shortened considerably. An appellate system has been introduced. The system has been evolving towards a tribunal, the Dispute Settlement Body, with panelists acting as judges.[20]

Indonesia needs to prepare for the eventuality of being called upon to the Dispute Settlement Body because a Member has filed a complaint for causing injury by measures Indonesia has taken. A system of consultation has been developed under Article XXII of the GATT and the GATS, further developed in the Dispute Settlement Understanding. Disputes could be resolved during period of consultations among the parties involved before the matter would be taken to the tribunal.

When consultation fails, Indonesia would have to face the Dispute Settlement Body under Article XXIII. Being called before the DSB may be an irritation. But it also means that Indonesia has become a sufficiently important trading nation to merit being called to answer charges before the DSB. But it must answer those charges formally. Mastery of the WTO agreements and the procedures in the DSU is therefore crucial.[21]

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[20] "Understanding on Rules and Procedures Governing the Settlement of Disputes." *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Text* (Geneva: World Trade Organization, 1995) pp. 404-37.

[21] For an attempt to introduce the WTO dispute settlement system to the legal profession at a basic level, and written from the Indonesian perspective, see the volume H. S. Kartadjoemena, *Substansi Perjanjian GATT/WTO dan Mekanisme Penyelesaian Sengketa: Sistem, Kelembagaan, Prosedur Implementasi dan Kepentingan Negara Berkembang* (Jakarta: UI – Press, 2000).

Integration and the ASEAN Process

Whereas in the WTO the "choreography" of process of "integration" is a subtle and elastic notion, subject to much closer control of the members, the "choreography" of the ASEAN notion of integration is more explicitly extensive and essentially more automatic. There is an explicit commitment made by Heads of Government for regional economic integration although it is not clear what the end point would be. Nevertheless, the commitment has explicitly called for the creation of a free trade area. Therefore, at least one milestone is already specified that would be beyond the threshold of commitments in the WTO.

Political factors: The institutional legacy of ASEAN political success

Initially, the motivation for the creation of ASEAN was political. Regional peace and security was always in the background of the thinking in ASEAN because no progress in the economic and social fields in the region could be achieved without a sense of security. It was necessary that peace in the region be maintained and that no one in ASEAN should feel threatened by the other. Thus, fundamental to the increasing web of relationships in the region is the *political foundation* on which the relationships are based. ASEAN has gone a long way in achieving this goal of establishing the political foundation which allows for mutual trust to take place.

Mutual Respect/non-Interference

That political foundation, in simple terms, involves mutual respect, non-interference in domestic affairs. There is recog-nition that the security of one member will affect the fate of the others. This also implies, among other things, the necessity of ensuring transparency and intimacy in the channel of communication be continuously nurtured so that our intentions are clearly understood by each other and would not be misread. There has been an important progress in the institutional development inherited by the political activities in ASEAN.

Heads of Government

At the pinnacle of political authority in ASEAN, at the level of heads of government, the process of consultation and exchanging views has been highly developed. That process has been

undertaken since the beginning of ASEAN and, one can assume, it will continue to be developed in the years to come. Given the stakes for ASEAN, nothing should be taken for granted and efforts must be made to strengthen what we have. Meetings of heads of government would signal the continuity of priority that member governments place on ASEAN affairs.

Ministerial and Senior Officials' Meeting

The mechanism has also expanded at the level of cabinet ministers. It also involves ministerial consultations held at very regular intervals allowing continuity in handling urgent and/or sensitive issues which must be dealt with in a careful manner. To support the work of an increasing frequency of ASEAN ministerial meetings covering many fields, which, over time has developed a methodical and business-like style of work, maximizing effectiveness and informality, senior officials have also developed the institutional practices and mechanism to meet regularly, with agenda, plan of work and time-table.

Permanent ASEAN Secretariat

Further institutional developments in ASEAN can also be noted with the creation of ASEAN national secretariats in each of the capitals, each headed by senior officials at the level of director general of foreign ministries. Taking the step further, ASEAN as an organization has also developed as a full fledged regional organization. A permanent ASEAN Secretariat has been established with a permanent headquarters in Jakarta, headed by a very senior ASEAN official, and manned by officials from member countries.

The political areas where legal expertise would be increasingly required would be increasingly required would be among others the system of *good offices* and *conciliations* in matters regarding differences which may arise concerning demarcations of borders at the peripheries of national territories. In addition, maritime issues and policies regarding the law of the seas must be properly handled, in view of the importance of the *economic zones* in the seas to a number of ASEAN countries.

The economic dimension of ASEAN activities

In the economic field, ASEAN countries have cooperated with each other over wide-ranging areas since ASEAN's creation. First, in the early part of ASEAN history, cooperation was conducted in

order to better coordinate our position in facing other countries outside the region. In the process, we have created a system of dialogues with major economic entities. And these circles of dialogues have expanded over the few years.

In the early 1970's, ASEAN began to initiate a mechanism of dialogues, first with the European Economic Communities (EEC), now the European Union, where ASEAN first created the ASEAN Brussels Committee (ABC) to coordinate ASEAN's relations with the EEC. Since then, similar ASEAN committees have become the standard practice for ASEAN the world over in order to coordinate ASEAN position and strategy to deal with third parties.[22]

At present ASEAN is moving one step further in strengthening ASEAN cooperation. One should not underestimate the importance of this step. This time, cooperation will also be directed at matters related to intra-ASEAN economic endeavors. Fundamentally, the cooperation implied at the intra-ASEAN level would cover a wider dimension of domestic economic and social policy than the previous relations. This time, the emphasis is to deepen the domestic economic interdependence within ASEAN.[23]

The agreement for ASEAN Free Trade Area (AFTA) calls for a gradual reduction of tariffs among ASEAN countries for products which are produced by ASEAN countries. In a free trade area, the final objective is the free movement of products which are produced by member countries within the territories of the member countries. Those countries in turn are free to set their own individual tariff levels with respect to the rest of the world.

The process of creating a *free trade area*, in its progression, could lead to *customs union* and to *economic integration*, if the political decision is made to carry out the essence of intra-ASEAN

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22. For an assessment of ASEAN economic cooperation from an Indonesian perspective during the 1970's see H.S. Kartadjoemena, "Regional Cooperation in Southeast Asia: an Indonesian Perspective." *Performance and Perspective of the Indonesian Economy* (Tokyo, Institute of Developing Economies, March 1976) pp. 199–250.

23 For a discussion on the choices of integration process in ASEAN and the implications on ASEAN's WTO commitments see H. S. Kartadjoemena, "ASEAN and the International Trading System: Regional Trade Arrangements vs. the WTO." *ASEAN Beyond the Regional Crisis: Challenges and Initiative* Mya Than, ed. (Singapore: Institute of Southeast Asian Studies, 2002) pp. 203-242.

cooperation to its logical conclusion. The process will affect a much wider aspect of the domestic life of the regional countries than the first phase of ASEAN economic cooperation, which was largely concerned with coordinating ASEAN strategy and position in facing external events.

In the economics of free trade area, countries which are engaged in the process must face the prospects of *trade creation* or *trade diversion* which could result in depending in the differentials between intra-free trade area imports and imports from third countries. The more significant the differentials are the more there will be trade diversion. Thus the new trade context may not be the most efficient. This in turn will affect member country's competitiveness in the external markets.[24]

In ASEAN therefore, there are two steps to take, one is for each member country to gradually reduce the protection level at the level of global engagement within the GATT/WTO, and second, at a more rapid pace, reduce and indeed remove the barriers among ASEAN so that there is a margin of preference for ASEAN. However in the process, as a part of the obligation under the WTO, the region is also reducing its barriers to third parties globally, but at a generally slower pace.

More intensified regional relations will require better coordination at operating levels, both at governmental as well as private sector levels. Rules and procedures must be developed to ensure orderly relations. This is even truer for the conduct of business and economic relations among ASEAN countries, especially when we begin to put the ASEAN Free Trade Area in operation. For the legal profession, there are at least two areas where its expertise would be needed in helping the proper functioning of the free trade area.

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[24] Although the legal profession would not be directly concerned about this debate as professionals, nevertheless it would be useful to be aware of this debate as ASEAN proceeds with the integration process. For a discussion on the European experience, see Madelaine O. Hosli, "Trade Flows in Western Europe: The Experience of the European Community and the European Free Trade Association." *Free Trade Agreements and Customs Unions: Experiences, Challenges and Constraints* Madelaine O. Hosli and Arild Saether, eds. (Brussels/Maastricht: Tacis Services DG-I, European Commission/European Institute of Public Administration, 1997) pp. 145-62.

First, any free trade area, to be operational, must have rules and procedures regarding origin of goods. There must be means to determine what constitutes a regional product. In part, the determination of what is defined as an ASEAN product requires political decision. Countries must be willing to agree on the threshold level indicating what would be an ASEAN product. However, once the political decision is agreed, the establishment of *rules of origin* must be drawn up in a legally precise way, in cooperation with the customs authorities.[25]

It must also be stress that there will be increasing disputes at operational level, as a necessary consequence of greater interactions among ASEAN countries. Although inconvenient, technical disputes could in fact be regarded as a success. It would mean that meaningful economic activities have taken place. Therefore ASEAN Free Trade Area must also have precise rules for dispute settlement should there be differences of interpretation concerning whether a member has complied with the commitment and whether certain decision made domestically reduces the presumed benefits from the Free Trade Area agreement.[26]

Harmonization of Policy

At present, and, increasingly, in the years to come, more intensified regional cooperation in ASEAN would logically to lead to an increasing need to harmonize practices in the region. These developments are signs of progress. If they are properly managed, they will bring about the peace and prosperity that we all want. On the other hand, if the process is mishandled, we would be paying the price of missing opportunities which might have been

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[25] The subject is quite technical involving operation of customs officials. However, the agreed rules are legal documents binding on the signatories and therefore must be dealt with by lawyers. See David Parlmeter, "Rules of Origin in Customs Unions and Free Trade Areas." *Regional Integration and the Global Trading System* Kym Anderson and Richard Blackhurst, eds. (London, Harverster Wheatsheaf, 1993) pp. 326-43.

[26] Some legal scholar in ASEAN countries have already examined the matter in anticipation the coming into operation of a possible free trade area in ASEAN and its relations with the WTO system. See Sonarajah, M. "WTO Dispute Settlement Mechanism: An ASEAN Perspective." *ASEAN in the WTO: Challenges and Responses* Chia Siow Yue and Joseph L.H. Tan, eds. (Singapore, Institute of Southeast Asian Studies, 1996) pp. 111-136.

forthcoming, if we paid more attention to dealing with gradual harmonization of practices.

In the process of developing harmonized practices, rules, and procedures in ASEAN, which would enable intra-ASEAN economic activities to develop in a more predictable ways, the legal profession has an important place. The legal profession in ASEAN is entering an interesting period, unprecedented in the history of the region. In so doing, however, we must keep in mind that we must avoid a number of pitfalls. Not everything needs to be harmonized. Moreover, harmonization should not be an end. It should be regarded as means to achieve the more important objective of increasing the welfare of ASEAN citizens through greater intra-ASEAN trade and other economic undertakings.

VII. Institutional Implications of Expanding Economic Relations

We have so far dealt with the most obvious international institutions dealing with economic activities requiring a more proactive participation of the legal profession. Clearly the WTO presents a challenge for the legal profession to be proactive in dealing with the daily operation involving WTO-related issues. However, Indonesia's external engagements are not limited to the WTO although that has been the most significant in terms of the sectoral coverage as well as the intensity of technical activities. Other intergovernmental as well as regional institutions related to international economic relations also have claims of time and attention.

Up to now our discussions have been confined to the WTO and ASEAN. On the other hand there are the Bretton Woods Institutions, the IMF and the World Bank, with which Indonesia and other countries have been dealing for decades with a high degree of intensity. From the perspective of economic policy the relationship will continue to be intense and at times also controversial. However, the legal aspects are relatively straight forward and therefore, less intensive attention by the legal profession would be needed compared with issues related to the WTO and, in the years to come, with ASEAN.

We have also refrained from discussing APEC as another quite important forum for regional cooperation. From policy point of view APEC is important politically and economically. However, engagements in APEC are largely "voluntary" i.e. are not formulated in legal terms in the form of treaty-like documents. From the political point of view, in view of the presence of major economic powers in APEC, it cannot be said to be free from political pressures on the less developed members on some issues. But these are not the professional concern of the legal profession.

At the national level, specialized agencies have been increasingly active in international engagements in their respective areas of specialization. Their roles in the respective field will continue to grow as the society becomes more technologically oriented. Their international interactions are likely to escalate as countries, societies, enterprises, and the civil society come to the realization of the increasing need for policy harmonization in areas where these agencies operate.

The wide ranging issues that need to be handled by specialized agencies require that those national governmental agencies themselves deal directly with external relations involving activities in specialized international agencies in their fields. They can no longer leave the handling of these matters to other agencies. Moreover, these specialized agencies increasingly deal with agreements on the rule of conduct in those specific sectors, containing rights and obligations that are increasing binding in nature. Although in the past the legal aspects have been frequently side-stepped in the process of dealing with technical agencies, this cannot continue without the risk of agreeing to something that soon be damaging to Indonesia's interest.

VIII. Implications of Globalize Economy on the Legal Profession: a Summary

The activities at the regional and international fora described above have direct implications on the activities of the legal profession. There are wide ranging issues in the WTO that require attention of the legal profession. Looking ahead, future agenda in the WTO is likely to include many issues not previously touched by the organization. There are political and policy decisions that

needs to be made on whether Indonesia would agree to all, some, or none of these new approaches. However, once it is agreed, the legal aspects must be directly treated.

Moreover, since these are rules that contain rights and obligations, there will be dispute arising from differences on the interpretation of rights and obligations, in particular when a party is injured from measures considered by the injured party to be the cause of injury. Part of the preparation of the legal profession in the WTO is to learn to deal with disputes as a necessary part of reality. Government agencies must strengthen their respective legal departments and making them truly a legal counsel to the institutions. There will be opportunities for private law firms to be engaged in there activities because not all issues of dispute could be handled by the legal departments of the government institutions.[27]

There are also wide ranging new areas of regional activities within ASEAN where legal expertise is needed. In ASEAN, the areas requiring legal expertise ranged from the political areas where intergovernmental relations have become regularized, and, therefore, would become more amendable to standardized practices and procedures developed jointly by ASEAN governments. These areas also include procedures of settling differences which could be defined in "technical" terms, because of greater mutual understanding on the political aspects of the question, perhaps in areas of defining frontiers and boundaries where the broader aspects are not contested politically.

ASEAN being a region which has strong interest in maritime issues, problems involving the law of the seas are also areas where the legal profession can contribute significantly. Although certain aspects of the subject are political, there are also many technicalities connected with the economic aspects of the law of the seas. The field is wide open. Indonesia has a specific perception of

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[27] After the conclusion of the Uruguay Round, the College of Europe organized a conference of European lawyers to examine and analyze the entire agreements concluded in the Round, from the European lawyers' perspective. Such a step would be useful to undertake for the Indonesian lawyers with respect to the whole range of international economic relations, starting with the WTO. The conference result was published in a volume. See *the Uruguay Round Results: A European Lawyers' Perspective* (Brussels: European Interuniversity Press, 1995).

the law of the seas with its conception of the archipelagic state. Development of expertise in this area must be developed by Indonesia, with its distinctive aspects.

In the trade area, both the WTO Uruguay Round agreements and the ASEAN Free Trade Area contain specific obligations phrased in legal language which must be mastered and interpreted in operational ways. With the opening of intra-regional trade in goods and services, investment flows and movements of natural persons in ASEAN, much remains to be done to ensure harmonization of practices, rules and procedures. They should not be approached in a dogmatic way. But to develop them with pragmatism and flexibility requires hard work, patience, and perseverance.

IX. Interdisciplinary Approach and the Need for Specialization: Preparing the Human Resources for Legal Issues

Let us return to the specific context of the Indonesian case and examine what to be done by the legal profession as it prepares the coming generation in dealing with international economic relations. Although there are specific aspects related to legal issues that needed to be resolved explicitly by the legal profession on its own, there are operational issues related to international economic relations where multidisciplinary approach would help.

In those areas where a multidisciplinary approach is needed, there is an urgency that a specific initiative be taken. This may raise problems in an academic tradition where different academic disciplines do not talk to each other. On matters related to international economic issues, if such a tradition still exists, it is time to break the tradition. There are substantive issues related to the subject of international economic relations which must be mastered in terms of the technicalities of the specific issues. Mastering elements of those issues would make it possible for the legal profession to extend its expertise as legal counsel.

To address the realities of international economic relations, one point needs to be kept in mind. International economic relations by definition deal with economic issues. Therefore, the issues must make economic sense.

Table 1
Selected Issues in International Economic Relations Requiring Attention of the Legal Profession

Issues – Areas	Essence of the Problems	Steps to be Taken
WTO Rule Implementation: Anti Dumping, Subsidies, Safeguards for Trade in Goods	Trade in goods is conducted within the framework of WTO rules. Fairness and injury are the contentious issues. For Developing countries anti dumping has been the most contentious. Subsidies rules have been more frequently violated by developed countries.	- Developing legal specialists in the area - Developing dialogues with sectors concerned - Develop us communication with government agencies - Develop advisory activities
WTO Technical Rules	There are whole ranges of technical rules that are to be mastered such as in customs valuation. Rule of origin, technical barriers to trade, import licensing procedures and other technical rules.	There are 2 types of "client" in the legal profession: (1) Government in formulating rules (2) Business community charged with violation when they export to other countries
WTO Trade in Service	Services are a new area and largely less known than goods. Restrictions are largely done by regulation. There is a very wide sectoral coverage. Specialized understanding is needed.	Develop advice - Master the GATS and the sectoral annex - Ensure that domestic regulations are consistent with GATS - Develop sectoral experts - Develop capacity to be legal council.
WTO TRIPS Agreement	Intellectual property protection has become an obligation. Implementing procedures need to be developed.	- Ensure that the obligation under TRIPS are implemented - Argue for flexible time frame when needed - Develop capacity to make use of agreement to serve Indonesia's needs.

Issues – Areas	Essence of the Problems	Steps to be Taken
WTO Rule Making	WTO Rounds are the period where improvement, modification and introduction of new rules and undertaken.	- Through examination of WTO Agreement - Developing legal arguments for new rules Indonesia wishes to propose.
WTO Dispute Settlement	To be able to defend a case where Indonesia is the plaintiff or the defendant	To be able to deal with WTO disputes in legal council the entire range of WTO agreement must be mastered specialization a specific areas and/or sectors would be needed.
WTO New Issues	The interlink between trade, investment, competition policy, environment, public health and other issue will be initiated developed countries.	Preparing to anticipate the emergence of new issues and new agreements in other areas that may affect WTO and Indonesia's obligation.
ASEAN Free Trade Area	Behind the simple word of free trade agreement lies a whole range of adjustments in domestic	Active participation in the formulation technical rules needed by agencies and the business community.
Consistency between WTO and ASEAN Commitments and Domestic Law	With increasing degree of commitments in harmonization of policy and rules, the "intensive" aspect of WTO and ASEAN takes increases.	Advising government agencies to ensure the coherence and legal consistency of domestic rule with international obligations.

Thus economic analysis touching on the economics must be part of the exercise in dealing with international economic relations. Therefore, activities in international economic relations must make economic sense. Accordingly, economic analysis must be the underpinning of economic arrangements.

Therefore, in the effort to develop the national human resources to deal with international economic relations, an interdisciplinary cooperation with the economic profession needs to

be undertaken by the legal profession. The law schools in Indonesia need to address this point as quickly as possible. In so doing, the legal specialists dealing with the subject would gain the economic understanding of the substance that is being examined.

It may also be noted that in the bureaucracy some work has been done to address the legal issues connected with the WTO. Therefore, despite the weaknesses of the bureaucracy in dealing with new issues, there have been efforts to address long-term implications of the certain issues connected with the WTO. For example, in 1995, right after the conclusion of the Uruguay Round, Bank Indonesia held a dialogue with legal experts to examine the legal implications of the Uruguay Round on the investment regime in the light of the WTO provisions in connection with commercial presence, another term for investment.[28]

Similar efforts have been undertaken by the Ministry of Finance where in preparation for the WTO Doha Round currently in progress, some 20 lawyers from the Legal Department are currently being trained in-house to deal with the legal issues connected with trade in services. They are expected to serve as the legal experts to deal with the services negotiations, together with the legal specialists from Bank Indonesia. It would be highly desirable if the academic community would work together with these legal specialists from government agencies who are being trained to deal with legal issues related to the WTO.

As we look ahead towards a more active participation and more prominent role of the legal profession in the area of international economic relations, perhaps it would be useful to suggest a summary tentative program to develop the human resources. Table 1 provides some tentative list of the activities that the legal profession and the law schools might with to undertake.

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[28] A volume was subsequently published as a book which records the proceedings of a dialogue with the legal profession sponsored by Bank Indonesia attended by many prominent legal specialists in Indonesia. See *Rezim Investasi di Indonesia Dalam Kaitannya dengan Perjanjian Hasil Uruguay Round* (Jakarta: Bank Indonesia. 1995). The dialogue was entitled "Diskusi Dengan Pakar Hukum 26 Oktober 1995).

Conclusion

This paper has been an attempt to deal with the challenges in international economic relations in the years ahead as Indonesia enters the 21st century. In so doing it has highlighted the range of issues that are likely to be important in a world of more intensive economic and political interactions among countries. These developments have been examined from the perspective of a practitioner in trade policy with a specific experience in trade policy and economic diplomacy.

As the title suggest, it has been written as an appeal to the legal profession in Indonesia for a more proactive stance in its participation in international economic relations. There is urgency for this in view of a more complex world of international economic relations, with escalating degree of formal commitments at virtually all levels of governance, with the ensuing rights and obligations.

The paper also recognizes the special difficulties faced by the legal profession in Indonesia arising from circumstances that are the results of the accident of the political history of the country since independence. These difficulties have been imposed on the profession because the specific turns of events making its developments constrained by forces beyond its control.

On the other hand, a modern state cannot allow its legal system to be constantly under uncertainties. Reform of the system, which has been left dormant for so long, is crucial. Pressures to modernize its practices in consonant with contemporary requirements have mounted. Domestic pressures have come from a wide range of areas of governance. It is part of the process of creating a modern state.

Externally, Indonesia's escalating engagements in international economic relation have also led to the need to be accompanied by a more prominent role of the legal profession in the process. The profession needs to accompany more closely those officials who deal with economic relations as they engage in their

professional work. In this connection, this paper has attempted to outline the areas in need of attention in view of the changing nature of external economic relations and the emerging policy environment.

It closes with a tentative list of some key areas where expertise is needed as well as some suggestion on how to deal with developing the skills and knowledge for the younger generation of legal experts to deal with emerging issues. In tackling those issues, in view of the complexity of the environment in the future, it urges a multi-disciplinary approach for some specific aspects where such a an approach would help to speed the process of developing an expertise and to prepare the younger generation.