



TRANSFORMING FUTURE GOVERNANCE OF EXTRACTIVE INDUSTRIES IN ASEAN: FRAMEWORK, OPPORTUNITIES AND CHALLENGES



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Knowledge-Based Governance for Transforming Resource-Dependence To Sustainable Development: IN SEARCH OF A FRAMEWORK

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Abstract

This is an initial attempt to develop a framework for further enhancing the capacity to govern ASEAN community, as it gains more and more prominence in its role transforming common prosperity and security in the region. The idea is to emphasize the importance of knowledge in making deliberate attempt to arrived the stated goal, or enhance the governance which take place simultaneously at local, national and supranational level. This article proposes a particular model of governance, which has been set in place albeit implicitly, but powerful enough for further enhancing the existing capacity. We call it 'knowledge-based governance', within which the transformative capacity of knowledge is devoted to enhance collective advantages of people and country in the region. The knowledge-based character would directs the people's trajectory toward sustainable development, as sustainability has been set as the guiding principle in governing the region.



Keywords: knowledge-based governance, knowledge management, ASEAN

Model for Enhancing Engagement

In A Deep Need

During its course, as aforementioned, ASEAN member states envision ASEAN to be more than merely regional body. Through ASEAN they want to create a one integrated region with the people as a single community of ASEAN. Initiated in Kuala Lumpur in 1997 as Vision of ASEAN 2020, the initiative was then accelerated to commence on 2015 through the Cebu Declaration on the Acceleration of Establishment of an ASEAN Community by 2015³.

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³ Secretariat of Directorate General for ASEAN Collaboration, 2012, *ASEAN: Selayang Pandang-20th Edition-2012*, Jakarta: Secretariat of Directorate General for ASEAN Collaboration, Indonesian Ministry for Foreign Affairs, p.6

The scope of the engagement of ASEAN is so wide and the degree of integration is getting tighter and tighter. Proposing an all encompassing and yet useful model of governance ASEAN, therefore, is a difficult task. For this reason, this article confines its scope on achieving one, among many other purposes of ASEAN, that is:

“to promote sustainable development so as to ensure the protection of the region’s environment, the sustainability of its natural resources, the preservation of its cultural heritage and the high quality of its people”⁴.

To make the challenge of developing the model of enhancing the model of governance, this article further confines its usage on dealing with extractive industries. The model, nonetheless, would be led a pathway for further usage.

Why does the model of governance in search have to leans on the usage of knowledge in the first place? The governance of ASEAN is so complex, and within its complexity a vital element of it have been obscure. It involves different layers, covers virtually all kind of public affairs, but the way governance works has been carefully conducted in such a way which maintain mutual respect and interference of other member state. The way ASEAN presents itself, namely the enabling and the constraining structure for the functioning of its governance, is deceiving. It pretends to be a simple bureaucratic structure by revealing the way they distribute role and responsibility in a simple diagram⁵. It obscures the fact that there are complicated processes to take place. This inevitably leaves fragmentations, as each of them operating in different sphere of authorities. Yet, they eventually bound to solve public affairs⁶. It leaves the public with various form of engagement, yet the problem solving eventually rest on the use of public authority⁷. Given these cross-cutting process, the absence of knowledge would be unthinkable⁸. Bringing the knowledge to the fore is important not only for academic interest, but also for practical engagement.

We notice that the first governing principle of ASEAN is: “respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States.”⁹ It implies that, states have to play its key role in governing the region. But, at the same time, they way each member state operates would inevitably market-driven¹⁰. ASEAN charter explicitly declares that the propose of the association is also to:

⁴ See ASEAN Charter; Article 1.9. In this regard, it is important to note that ASEAN specifies 15 ideas in the article.

⁵ Look at it in : <http://www.asean.org/asean/asean-secretariat/organisational-structure>.

⁶ James N. Rosenau, “Strong Demand, Huge Supply: Governance in an Emerging Epoch”, in Ian Bache and Mathew Flinders, *Multi-level Governance*, Oxford Scholarship Online: April 2014.

⁷ Maarten A. Hajer, *Authoritative Governance: Policy Making in the Age of Mediatization*, Published to Oxford Scholarship Online: February 2010.

⁸ Carolyn J. Hill and Laurence E. Lynn Jr., “Governance and Public Management, an Introduction”, *Journal of Policy Analysis and Management*, Vol. 23, No. 1 (Winter, 2004), pp. 3-11

⁹ ASEAN Charter, Article 2.2.(a).

¹⁰ Alexander Ebner and Nikolaus Beck, *The Institution of the Market: Organisations of the market: Organizations, Social System and Governance*.

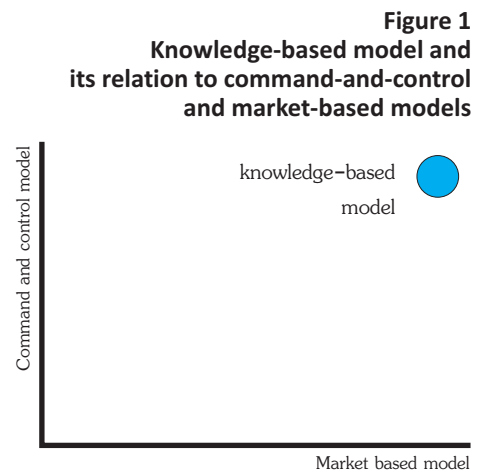
”create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment in which there is free flow of goods, services and investment; facilitated movement of business persons, professional, talents and labour; and freer flow of capital”¹¹.

Given the two quotes of the charter, it is apparent that the model of governance required by ASEAN shall not be entrapped in the academic debate, which has been marked by bipolar contestation between state-centric model and the market-based governance. Debate on the model of governance shall move beyond minimal-optimal role of the state because the current study suggests state need to retain its strategic role, and even engage in smarter way.

The region committed to liberalize the economy in the sense that market-based mechanism is unleashed through voluntary-exchange processes, but the integrative process is keep within the state-guided blueprints. The member states make a deliberate a particular institutional set-up; but theoretically speaking, the set-up is strikingly marked by accumulation of knowledge through series of collective learning.¹² Indeed, the governing mechanism of ASEAN is not in the control-and-command fashion, but the use of state’s authority in targeting socio-economic and cultural changes are vital. Bearing these in mind, the viable model inclines to synthesize the two, and expand the commonality between the opposing poles in the debate. In Mark Whitehead terminology, it requires meta-governance analysis to see how the shadow of hierarchy works.¹³

Within each of the competing models, knowledge sector are highly-valued but never been explicitly formulated. Each model agrees on its vital role in securing the process of governing. In the first model, the governance relies on the dominant role of the state. Conversely, the second model relies on the initiative and voluntary exchanges among the society or business. What really needed, so to speak, is to explore how the supporting role of knowledge play vital role in governance at ASEAN level and to explore its effectiveness. Combining the two models is important because state needs to play important role in governing ASEAN community, and at the same time, it is unimaginable to have ASEAN economic community without allowing market mechanism in place. See Figure 1.

Since its inception in 1967, as expressed in the Bangkok Declaration, ASEAN has been keeping the balance between independence of domestic



¹¹ ASEAN Charter, Article 1.5.

¹² Ebner, Alexander and Nikolaus Beck, *The Institution of the Market: Organisations, Social System and Governance*, Published to Oxford Scholarship Online: September 2008. DOI: [10.1093/acprof:oso/9780199231423.001.0001](https://doi.org/10.1093/acprof:oso/9780199231423.001.0001).

¹³ Whitehead, Mark; “ ‘In the Shadow of Hierarchy’: Meta-Governance, Policy Reform and Urban Regeneration in the West Midlands, Area, Vol. 35, No. 1 (Mar., 2003), pp. 6–14, Published by: Wiley on behalf of The Royal Geographical Society (with the Institute of British Geographers), Stable URL: <http://www.jstor.org/stable/20004284> Accessed: 17/09/2014 06:36.

governance of each member state with the prevailing market exchange in respective country. In doing so, the country in the region has provided important lessons to their neighbours. Its membership then grew from the 6 initial members in 1967 to 10 in 2010 with the entrance of Democratic Republic of Cambodia as its 10th member state. In this regard, reputation seems not a big deal. There has been process of lesson drawing and reputation creating, but they are “unnoticed” given the limit of the existing analytical framework to look at it. The role of reputation in explaining the expansion has not been taken seriously.¹⁴

The importance of improving the model of governance stems also from anxiety, in following the expansive understanding that as sovereignty of national state remain central, but at the same time increasingly less apparent. At the same time, study of governance has revealed that the exercise of state authority has been discursive in nature, but its discursive nature only recently understood.¹⁵ We understand that governance is a matter of interaction, but the interaction has been narrowly portrayed as that among actors. More specifically, the actors has been confined in the three category: state, society and business.¹⁶ For that reason, there has been a big demand to advance interactive governance as a new paradigm.¹⁷ From constructivist point of view, governance is a matter of discursive engagement.¹⁸

In its day to day practices, there are hundreds of policy issues being discussed within ASEAN. In this regard, one to one policy analysis has a limited use. Moreover, the discourse of public policy issue has been increasingly overshadowed by discourse on governance.¹⁹ At the same time, discourse on transformative capacity of the state’s authority withering away. The shifting of academic attention from policy-making to governance carries a slippery assumption: the better the governance the more effective the policy. A comparative study on long terms trend analysis conducted by Kaufman et. al shows that in the long run,²⁰ good governance is positively correlates with growth, but there is no guarantee that it is so in the short run. In the context of governing ASEAN, there should be assurance that the ambition of to achieve the stated goals is not carefully transformed goal seeking.²¹ By bringing to the fore the notion of knowledge-based governance, the authors hope to be able to secure the importance of policy-making within the discourse on governance. Moreover, given the

¹⁴ Picci, Lucio, *Reputation-based Governance*, Published to Stanford Scholarship Online, June 2013, DOI: 10.11126/stanford/9780804773294.001.0001.

¹⁵ Dryzek, John S., *Foundations and Frontiers of Deliberative Governance*, Oxford University Press, Published to Oxford Scholarship Online: 2011.

¹⁶ See for example: Newman, Janet, *Remaking Governance: People, Politics and the Public Sphere*, Published to Policy Press Scholarship Online: March 2012, DOI: 10.1331/1331/policypress/9781861346407.001.0001.

¹⁷ Torfing, Jacob, B. Guy Peters, Jon Pierre and Eva Sorensen, *Interactive Governance: Advancing the Paradigm*, Published to Oxford Scholarship Online: May 2012, DOI: 10.1093/acprof:oso/9780199596751.001.0001.

¹⁸ Diez, Thomas, *Governance – A Matter of Discourse: Discursive Nodal Points in the British Debate over Europe*, Paper for presentation at the Biennial Convention of the European Community Studies Association (ECSA), Seattle, 28 May – 1 June 1997.

¹⁹ See Goksel, Nilüfer Karacasulu, Globalisation and the State, downloaded from: <http://sam.gov.tr/wp-content/uploads/2012/02/1.-NiluferKaracasuluGoksel.pdf>, accessed 16th September 2014

²⁰ Kaufmann, Daniel, Aart Kraay, Eduardo Lora and Lant Pritchett; “Growth without Governance [with Comments]”, *Economía*, Vol. 3, No. 1 (Fall, 2002), pp. 169-229, Brookings Institution Press, Stable URL: <http://www.jstor.org/stable/20065434>, Accessed: 17/09/2014 07:59.

²¹ Frank Fischer, *Reframing Public Policy: Discursive Politics and Deliberative Practice*, Published to Oxford Scholarship Online: November 2003. DOI: 10.1093/019924264X.001.0001.

ever increasingly ambitious objectives has been pursued through ASEAN framework, the notion of governance would be inevitably transformative. In this regard, this article making reference to the way to transform the dependency on natural resources to sustainable stage.

This paper is divided into three sections. The first section discusses the transformation of roles of ASEAN amidst the changing context at both global and national levels that somehow also affect ASEAN. In doing so this section also examines how the existing framework of governance has been tacitly relying on knowledge and managing the knowledge to equip various kind of governance. The second section deepened the analysis by discussing how knowledge-based governance may contribute more in achieving ASEAN goals. To make the point easier to understand, this section relies on the cases of extractive industries which, in terms of governance, is challenging. It is transnational in its nature, and typically involves small circle of elites and, more importantly the failure of governance on this issue would be disastrous. In specifying the model, the third section contains itemizes series of recommendations for further development of knowledge-based governance at the ASEAN level.

Governing ASEAN Community: Unarticulated Mode of Knowledge-based Practices

Throughout 47 years of its existence, ASEAN has been developing, not only in terms of membership, but also in terms of the depth and the size of its coverage. The participation of member state in ASEAN implies dedication to carrying out policy ideas collectively, and impressive performance has been observed. Yet, studies on governance of ASEAN has been overlook the importance and the role of ASEAN in dealing ideas, and hence, knowledge. This paper aims to fill this gap.

The notion of governance, in this regard refers to "... the process of governing societies in a situation where no single actor can claim absolute dominance."²² The situation described in this definition fits the realities of ASEAN where all member states are considered to equal with no governing body above them to set rules and mechanism of their engagements. It is exactly in this situation knowledge that commonly shared among the equals become crucial and vital as it is by and through common knowledge each member state set its approach and behavior to others. From its inception, ASEAN is presented as a forum and channel for the member states to accelerate economic development, fostering regional peace and stability and multi-sector collaboration for mutual benefits. The description goes by emphasizing that, given its nature as collaborating and consolidating forum, the member states of ASEAN engage in numerous substantive issues.

In that regard, it is important to note that, within that process policy ideas do matter. They are the subject being consulted and debated, and discourse on governance tends to take this for granted. Since the obsession of the study has been on the process, procedure or mechanism to arrive at acceptable decision, the dynamic of the ideas has been barely understood. Given the fact that policy content or substance always embedded in the process in governing, analysis of governance ASEAN

²² Fazekas and Burns quoted in Hopfenbeck, Therese; Astrid Tolo; Teresa Florez; Yasmine El Mazri, 2013, Balancing Trust and Accountability? The Assessment for Learning Programme in Norway-A Governing Complex Education Systems Case Study, OECD, p.15

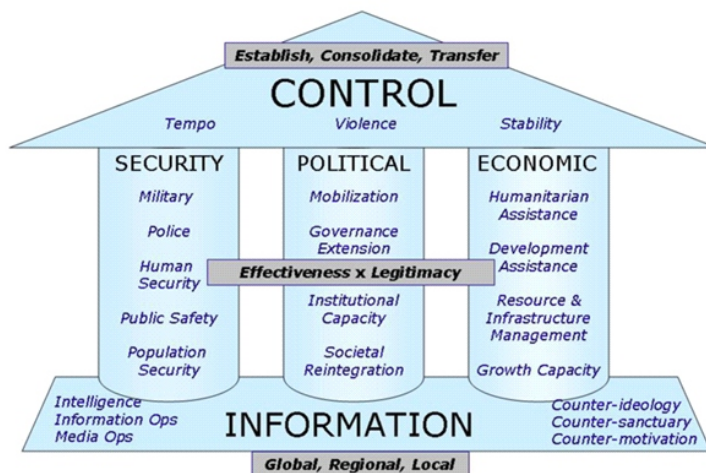
needs to link way the organization work, and the ways policy ideas floating, improving, and more importantly, transform them into practice.

To illustrate that point, let us have a closer look at the working jargon of ASEAN. There has been a proud in reciting the jargon: “united under one vision, one identity and one caring and sharing community”²³. This allows the member states to load extensive range of policy ideas, and at the same time, they rightly locate ASEAN as medium of the debate, and then reformulate the policies. Obviously, in dealing with the interconnecting issues, ASEAN managed to develop an integrative framework to govern policy ideas, dan settle the way to came to a certain degree of agreement. It then end up with commitment, and the commitment has been set within a jargon of ASEAN Community. It even is set to take effect in 2015²⁴. In organising the community, the policy ideas are organised into three clusters: politics, economy and culture.

But what has been so important with the categorization of the policy ideas into three categories? The category lead to the formulation of blueprints and each of them legitimize the dominant role of experts. The legality of the blueprints conceal particular set interests embedded in the given policy ideas. Connectivity, for example becomes a buzzword in developing ASEAN community, but the buzzword set different advantages/disadvantages to different people/country.

These three blueprints have been articulated as the three pillars of the collaboration within ASEAN. It ease everyone to understand what to do or not to do. Policy ideas, apparently is not a neutral entity as they adhere to specific context. The way to organize the complex ideas comprehensible to everyone works simultaneously with the way it sets advantage/disadvantages. This is parallel with what three pillar means when David Kilcullen write his article: Three Pillars of Counterinsurgency. The categorization of ideas corresponds with different set of control in the governing process. He visualizes his idea in Figure 2.

Figure 2 - Inter-agency Counterinsurgency Framework



²³ ASEAN Charter, Preamble.

²⁴ Secretariat of Directorate General for ASEAN Collaboration, 2012, *ASEAN: Selayang Pandang-20th Edition-2012*, Jakarta: Secretariat of Directorate General for ASEAN Collaboration, Indonesian Ministry for Foreign Affairs, pp. 3-6

The point to make here is that, behind the intention of articulating three pillars, Kilcullen has an easy way of transforming information into ability to control. Moreover, by organising the ideas into three category, he has easier way to demand of controlling the entire complexity.²⁵ Looking from Kilcullen perspective, it is apparent that governance is a matter of transforming information into knowledge, and further transforming knowledge into control. By visualizing the ideas as three pillars, the process of governance at three layers

Obviously, this article presuppose that the three pillar of ASEAN is a functional tools of governance. There is something political within it, and unless the politics behind it is revealed, the inconsistency in pursuing the objective of having ASEAN would prevail. To assert in a positive way, sensitivity over the ideas and how it manifest in public discourse would enhance the existing mode of governance.

As a regional body, ASEAN has been successful in maintaining other standards of international governance, such as respect over the position of each member state as sovereign nation-state. It has been successful in translating a number of values into workable principles of consensus, non-intervention, and mutually beneficial collaborations. The feeling that everyone has been working within a certain framework, where the member states are in equal position to one another is the footprint of the governance itself. The sense of clarity of the framework gladly leads this regional body to rely on commonly shared perception and knowledge, yet the mode of governance has not been sensitive to it.

The leader from every member country in charge, need to know what the situation they are facing is and what possible ways to anticipate it are. But the dominant role of experts in the process, potentially undermine their capacity to, discursively engage in decision and policy making. The existence of blueprints facilitates the policy makers to govern, yet it also normalizes certain kinds of negligence derived from bias embedded in the blueprint. Normatively speaking, governance should adhere to many things, including the rule of law, good governance, the principle of democracy and constitutional government. It should also adhere to respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice and alike.²⁶ By specifying the standard, there would be a collective process of transforming people's live in the region. What really understated, in this regard is that, each of the participating states agrees to rely on their own system and their own understanding on what is good/bad.

The workability of a model of governance, presupposes some sort of agreement on certain ideas. The ideas might be retained and unarticulated along the history of the region. In this regard, the underlying ideas of the formation of ASEAN are the common historical experience and situation of its member states. In this regard, we know that history is a matter of collective memory or shared implicit knowledge.²⁷ Unlike the European Union, which was formed out of the functioning implicit knowledge that the exaggeration of the so-called national interests eventually drove them to two time of world wars in time span less than 40 years, ASEAN has been driven by different sort of historical trajectory. These states in ASEAN region at various points of their history, except for Thailand, have

²⁵ Kilcullen, David. J.; Three Pillars of Counterinsurgency, Remarks delivered at the U.S. Government Counterinsurgency Conference, Washington DC, 28 September 2006.

²⁶ ASEAN Charter, 2.2.

²⁷ For the nature of tacit knowledge, its importance and transmission see *Tacit Knowledge: Making It Explicit*, downloaded from <http://www.lse.ac.uk/economichistory/research/facts/tacit.pdf>, accessed on 15th September 2014

experienced colonization. In this regards, the countries in the region share collective memory of reemergence of colonialism in various forms. Bearing this in mind, we can not only expect the persistence of post-colonial political attitude but also collective respond to previously dominating rulers. While European prevent worldwide war by intensifying collaboration among themselves through European Union, it doesn't make any surprise serve as collective agenda to prevent the return of colonialism in its updated form.

Colonialism, in this regard, is matter access to resources. Imbalance control over resources, become a leeway for colonialism to take place. Moreover, the capacity to prevent the return of colonial power, there has been common understanding on the importance enhancing human resources, as oppose to natural resource. Whatever the institutional setup available is, the resources are dedicated to reach the aforementioned set of goals. The fact that countries in SEA are also endowed with abundant natural resources of oil, gas, coal and other minerals, (see Table 1) are not necessarily secure the region in achieving the stated goals of ASEAN. The wealth of natural resources has been the main drive for other countries to colonize this region up to the second half of the last century. In other world, the governance of the region requires a strong basis of knowledge on how the resource should be used. More importantly, strong basis of knowledge is required to ensure that both the regulation and the market mechanism do to discount the future due to the obsession of resolving the current problems. It serves as foundation or infrastructure, upon which, the day to day process of governing take place and taking effect. For example, Brunei Darussalam, which gained its independence on 1 August 1984, remain dependent on their natural resource deposit for revenue to finance their development programs. The abundance revenue from the oil industry might allow the country to maintain its economic growth for some time, but as some point, the growth would be at halt, unless the people the Kingdom of Brunei Darussalam understand and agree on how to consume without leaving some sort of vulnerability.

Shared knowledge is intangible, but very crucial. Being an infrastructure of governance, it is as important as road for a car to pass through. The governing scheme of ASEAN relies on commonly shared knowledge among its member states when addressing crucial issue has long roots in ASEAN. For example, on environmental issue²⁹, James Cotton's study on the ASEAN handling of haze mentions that in order to address the environmental issue ASEAN has been relying on a group of

Table 1: Reserves of Oil and Gas in ASEAN countries²⁸

Brunei	Crude Petroleum – 1.35 bi barrels, natural gas 391 bi cu.m
Myanmar	1473 mi barrels of crude oil and 14,290 bi cubic feet of natural gas. The daily yield is 12,000 barrels of crude oil and 160 million cubic feet of natural gas.
Cambodia	2 billion barrels of oil; 10 trillion cubic feet of natural gas
East Timor	553.8 million barrels; 200 billion cubic meters of natural gas
Indonesia	4.37 billion barrels of oil; 3 trillion cubic meters of natural gas
Malaysia	Domestic oil and gas reserves – 20.13 billion barrels International oil and gas reserves - 6.24 billion barrels
Philippines	8.895 billion barrels of oil
Thailand	290 million barrels of oil reserves; 14.8 trillion cubic feet natural gas
Vietnam	3.41 billion barrels of oil reserves; 0.22 trillion cubic meters natural gas reserves

²⁸ Source: Kirana, Chandra, *Promoting Natural Resources Revenue Transparency and Accountability*, Power Point Presentation in Meeting of the GOPAC Global Task Force on the UN Convention Against Corruption and Monitoring Workshop & Regional meeting of the Southeast Asian Parliamentarians

²⁹ On this sector, this group was initiated through the "ASEAN Environment Program I" in 1977. This initiative then was further institutionalized by upgrading it into annual meetings of the ASEAN Senior Officials on the Environment (ASOEN) in 1989. Cotton, James, "The "Haze" over Southeast Asia: Challenging the ASEAN Mode of Regional Engagement" in *Pacific Affairs*, Vol. 72, No. 3 (Autumn, 1999), pp. 331–351, Pacific Affairs, University of British Columbia, p.342; <http://www.jstor.org/stable/2672225>, Accessed: 30/08/2014 01:22

specialists that regularly holds meetings since 1977. Cotton also mentions that until 1991, the specialists were considered as the main actor in determining policies to address environmental issue. Besides environmental issue, ASEAN also exercises similar scheme to address other crucial issues, such as Human Rights and the ASEAN Community plan as discussed in the following part of this section.

Dependency on commonly shared knowledge in ASEAN is also further tangible when we learn the specific mechanism through which many of its policies have been decided. Diplomacy within ASEAN is largely conducted through “the back door” and loosely regulated, unlike the formal diplomacy process.³⁰ Agreement and consensus are largely built during informal meetings, while formal fora only served as ceremonial stage to make the informally reached consensus and agreement receive formal status. When rigid rules and mechanism are absence, the involved actors must rely on mutual trust. Such trust is impossible without some sort of commonly shared knowledge among the ASEAN member states.

ASEAN is a medium of policy coordination. It inevitably involve sets of epistemic communities.³¹ This explains why ASEAN in addressing issues it considers to be crucial heavily rely on experts and specialists. As further elaborated in following part of this paper, whenever addressing issues considered to be crucial for the collective interest of ASEAN such as environmental and disaster issues, administration & statistic at regional level, international relations with strategic counterparts ASEAN always makes the initiative through a group of experts on the related field.

The establishment and working mechanism of these groups of experts are designed in such a way that the knowledge produced become collective endowment for the ASEAN and its members. These group of experts are established by the ASEAN. Often, the membership is not only based on expertise but also implies symbolic representations of each ASEAN member states. They work to produce knowledge that serves as common reference for the decision makers in the ASEAN.

Working under the guidance of the aforementioned principles, we can find that ASEAN has been working largely based on commonly shared knowledge. The tangible expression of this mechanism can be found in the institutional arrangements either commissions, *fora*, and other bodies subsidiaries to ASEAN. The role of experts working in a form of think-tank has been prominent within ASEAN. One clear example is the ASEAN Charter. ASEAN Charter is the official document on framework for cooperation in ASEAN signed by the head of the member states during the 13th ASEAN Summit in 2007 was formulated by Eminent Persons Group-EPG, followed with High Level Task Force-HETF from 2006.

³⁰ One high profile case that exemplifies the operation and effectiveness of this backdoor diplomacy was the release of Aung San Su Kyi from arrest by the Government of Myanmar, see Asia’s Security Forum Tells Myanmar to Free Prisoners, Admit UN Envoy, <http://aseanregionalforum.asean.org/news-21895/15-asias-security-forum-tells-myanmar-to-free-prisoners-admit-un-envoy.html>, accessed on 15th September 2014. See also Norada, Noel M., “Asia and the Pacific” in Genser, Jared and Irwin Cotler, 2012, *The Responsibility to Protect: the Promise of Stopping Mass Atrocities in Our Time*, Oxford University Press, p. 152

³¹ Haas, Peter M., “Introduction: Epistemic Communities and International Policy Coordination”, International Organization, Vol. 46, No. 1, Knowledge, Power, and International Policy Coordination (Winter, 1992), pp. 1-35; Published by: The MIT Press, Stable URL: <http://www.jstor.org/stable/2706951>, Accessed: 17/09/2014 06:07.

One particular feature that we find if we take a look closely on the diplomacy and policy process in the ASEAN is the operation some sort of think tanks work, comprised of experts, to support the process with relevant knowledge and information. The EPGs have been initiated not only for the formulation of ASEAN Charter. For various issues, especially ones considered to be important, like India-ASEAN cooperation, there was an EMP initiated to probe the issue and produce a report that includes recommendation on how the address the issue best³². The existence of such think-tank indicates the operation of knowledge that is well institutionalized within the ASEAN.

Actually, this was the group of people who drafted the document that would be the ASEAN Charter. The ASEAN EPG was formed on the 12 December 2005 during the 11th ASEAN Summit in Kuala Lumpur. The task for this group is to Take stock of ASEAN's 38 years of existence to "...identify its major achievements and shortcomings, and assess current ASEAN cooperation as well as propose improvements..., Recommend desirable key elements of an ASEAN Charter ..., Recommend a strategy for the ASEAN Charter drafting process..."³³

The incorporation and recognition of the vital roles of think-tanks within policy process has been further institutionalized in ASEAN. There are, ASEAN Centres and Facilities.³⁴ There are also entities associated with ASEAN, to include parliamentarians,³⁵ business organizations,³⁶ network think tanks,³⁷ accredited civil society organizations and other stakeholders³⁸. Networks and engagements of the intellectuals and technocrats is formalized Track II diplomacy and the actors known as Track II actors³⁹.

However, in the future, there are much potential which are still need to be developed if ASEAN is to gain maximum benefit from the knowledge-based governance. One particular feature of the

³² See for example *ASEAN-India Eminent Persons' Report to the Leaders*, Jakarta: ASEAN Secretariat, October 2012, <http://aic.ris.org.in/wp-content/uploads/2014/05/Asean-India-AIEPG-29-10-12-final.pdf>, accessed 10 September 2014

³³ <http://www.asean.org/news/item/terms-of-reference-of-the-eminant-persons-group-epg-on-the-asean-charter>, accessed 16th September 2014.

³⁴ They are: (1) ASEAN Centre for Energy, (2) ASEAN Centre for the Development of Agricultural Cooperatives, (3) ASEAN Coordinating Centre for Transboundary Haze Pollution, (4) Environment Division of ASEAN Secretariat, (5) ASEAN Council on Petroleum, (6) ASEAN Earthquake Information Centre, (7) ASEAN-EC Management Centre, (8) ASEAN Insurance Training and Research Institute, (9) ASEAN Centre for Biodiversity, (10) ASEAN Secretariat, (11) ASEAN Specialised Meteorological Centre, (12) South East Asian Central Banks, (13) ASEAN University Network.

³⁵ ASEAN Inter-parliamentary Assembly (AIPA).

³⁶ This includes: (1) ASEAN Airline Meeting, (2) ASEAN Alliance of Health Supplement Association, (3) ASEAN Automotive Federation, (4) ASEAN Bankers Association, (5) ASEAN Business Association, (6) ASEAN Business Advisory Council, (7) ASEAN Business Forum, (8) ASEAN Chamber of Commerce and Industry, (9) ASEAN Chemical Industry Council, (10) ASEAN Federation of Textiles Industries, (11) ASEAN Furniture Industries Council, (12) ASEAN Insurance Council, (13) ASEAN Intellectual Property Association, (14) ASEAN International Airports Association, (15) ASEAN Iron & Steel Industry Federation, (16) ASEAN Pharmaceutical Club, (17) ASEAN Tourism Association, (18) Federation of ASEAN Economic Associations, (19) Federation of ASEAN Shippers' Council, (20) US-ASEAN Business Council.

³⁷ ASEAN-ISIS Network.

³⁸ (1) ASEANAPOL, (2) ASEANSAL, (3) Federation of Institutes of Food Science and Technology in ASEAN (FIFSTA), (4) Southeast Asian Fisheries Development Centre (SEAFDEC), (5) Working Group for an ASEAN Human Rights Mechanism.

³⁹ Lopa, Consuelo Katrina A., "CSOs' Engagement with ASEAN: Perspectives and Learnings" in Pandey, Nischal N. and Kumar Shresta, 2012, *Building Bridges and Promoting People to People Interaction in South Asia*, Kathmandu: Centre for South Asian Studies (CSAS), p. 55

existence of those EPGs if we look at the report produced is the relative absence of discussion on how the EPGs produce the report. It is hard to believe that the individual members of the EPGs work on its own without back-up from a group or collection of groups that provide him/her with necessary and relevant information in formulating the EPGs' report.

Further, analysis on the issues addressed by those EPGs must be somehow contested. The process through which the contest over those issues are resolved, including the actors; the fora; and the approach to address each of the conflicting opinion on the issues addressed have not been well documented. Such information is important since it contains valuable knowledge on bigger map of policy and epistemic community related to certain issues in the SEA region and even beyond.

The think-tanks, including EPGs, do produce knowledge that inform the policy making process at the ASEAN level. Though it is tacit, this knowledge must be produced through learning process. However, from knowledge-based governance point of view, it is necessary to make this tacit process to be explicit.

Though it might be need further thorough elaboration, there is also tendency of the think-tanks, and ASEAN in general, to be elitist and state dominated⁴⁰. The case of studies related to ASEAN in Indonesia may provide us with some clues. Universities as the institutionalization of knowledge center and the learning process that produce it are the hub of the criss-crossing discourses and knowledge. Thus, it is not an exaggeration if we expect to find accumulation of knowledge, in this case related to ASEAN, in such institution. However, at least in the case of Indonesia, ASEAN Study Center-ASC were established only around 1-2 years ago and only in, up to this day, some prominent universities in Indonesia.⁴¹

The existence of this ASC is also somehow dilemmatic. For example, the ASC in the Faculty of Social and Political Sciences, Gadjah Mada University-GMU, was established in 2013 through collaboration between the GMU's Institute for International Studies and the Indonesian Foreign Ministry. Similar institution were also established in the University of Indonesia in Jakarta through similar pattern around the same period. The involvement of the Indonesian Foreign Ministry may give us the impression that knowledge produced by these institutions will have better access to affect the policy process at ASEAN, at least as initiatives from the Indonesian government. Unfortunately, this is not the case. Up to this day, there is no further significant attempt to synchronize policy activities and research activities conducted by the Foreign Ministry and the ASCs respectively yet.

The existence and operation of think-tanks, represented by the EPGs, ASCs and other think-tanks attached to ASEAN, and their role in providing knowledge for policy making process within the ASEAN indicates operation of knowledge-based governance. More detailed observation, however, shows that there are the existing operation of those think-tanks and the overall governance structure

⁴⁰ Indicated by Lopa's description on ASEAN CSO accreditation mechanism and its product. See Lopa, Consuelo Katrina A., "CSOs' Engagement with ASEAN: Perspectives and Learnings" in Pandey, Nischal N. and Kumar Shresta, 2012, *Building Bridges and Promoting People to People Interaction in South Asia*, Kathmandu: Centre for South Asian Studies (CSAS), pp.56-57

⁴¹ Officially, these ASCs run the function to produce knowledge and foster further cohesiveness of ASEAN as a community. See: <http://edukasi.kompas.com/read/2013/03/18/20022731/ASEAN.Study.Center.Didirikan.di.Kampus.UI>, accessed on 11 September 2014, and also: <http://www.thejakartapost.com/news/2013/05/01/yogyakarta-gets-asean-study-center.html>, accessed on 11 September 2014.

still need further enhancement in order to make well-coordinated knowledge-based governance process, especially in anticipating the coming AEC.

Observation on the operation of EPGs and ASCs presented above shows that the nodes of epistemic community that related to the policy community at ASEAN level are not well connected yet. This does not mean that it is not connected at all. Connections are inarguably exist and operate throughout the whole networks of the epistemic and policy communities, however, most of them are still tacit and not tangibly institutionalized.

The fact that the operation of knowledge-based governance has not been explicitly mentioned and recognized indicates that knowledge is not considered as vital within currently operating governance in ASEAN. Its existence and function may be considered necessary but dedicating specific resources for its further development is still considered not among the top-list priority. While the currently existing knowledge-based governance has greatly contributed to the policy process in ASEAN, there are still much potential that could be maximized if the existing knowledge-based governance is systematically further enhanced, especially in anticipating the very soon coming AEC in 2015.

Knowledge-based governance with varying degree of sophistication, in arguably, exists and operates within each ASEAN's member states. Besides the currently existing nodes of knowledge that ASEAN already has, it is imperative to consolidate and link the nodes of knowledge at the regional and national level if the AEC is to meet its stated goals.

The case of extractive industry, presented in the next section, illustrates the current state of knowledge-based governance in this sector at ASEAN and national levels. The next section will also elaborates vital issues in this sector and how it should be addressed through consolidated and well-oriented knowledge-based governance at ASEAN and national levels.

Bringing Knowledge-based Governance to the Fore: The Case of Extractive Industry in in ASEAN

This section discusses the general application of knowledge-based governance in ASEAN. The elaboration focuses more on the national than regional level. This is because there has been no regional framework that regulates extractive industries sector at the regional level.⁴² However, the absence of such framework is another interesting point to portray the operation of knowledge-based governance in extractive industry at regional level. The case of extractive industry provides us an enlightening instance of the vital role of knowledge-based governance, both at national and regional levels.

As briefly mentioned in the first section, most countries in the SEA region are natural-rich countries and relatively dependent on revenue from extractive industries sector. Unfortunately, this dependency is not simultaneous with capacity create significant added value on the extractive commodities. This

⁴² Currently Institute for Essential Service Reform-IESR linked with other NGOs in ASEAN countries is engaging in formulation process of a draft for regional framework on EI.

phenomenon is still pervasive in this region despite the relatively better general performance of SEA countries in comparison to their African counterparts in term of development.⁴³

Another important factor that simultaneously affect the correlation between extractive industry and development in SEA countries is the type of ruling regimes. Each country in this region, at various point of their histories as modern states, has been ruled under state-centric and authoritarian regime. Under those regimes, as also noted in Donge et.al.'s work, neo-patrimonialism and rent-seeking practices are pervasive and become the norm in those countries.

One interesting point in Donge et.al.'s work is the argument that the relatively better economic growth in ASEAN has been due to rural and pro-poor oriented policy and relative success to develop sectors other than extractive industry⁴⁴. This is despite the rampant rent-seeking practices, a feature shared among the African and SEA Countries. Unarguably, this policy decision is a product of knowledge based governance, through centralist-technocratic guided development planning. The work of Donge et.al argues that macroeconomic stabilization has been a crucial link that enables countries in SEA to economically perform better than their African counterparts. The cases presented in their work are policies, especially in rural development and agricultural sectors, which are products of centrally planned development policies.⁴⁵

The trajectories of this knowledge-based governance in each country in SEA region varies from one to another. This model is still intact in countries such as Singapore and Malaysia. Thailand, reflecting from the development of agricultural industry sector, has been undergoing marvelous development. In country like Indonesia, the political transformation that took place in the late 1990s somehow holds the further development of this knowledge-based governance. Fortunately for Indonesia, related to the extractive industry sector, it relatively succeeds in maintaining the development of other sectors, such as agriculture and manufacture, avoiding the trap of Dutch Disease.⁴⁶

The works of Donge et.al and Dyna and Sothath implicitly show the operation of knowledge-based governance in some SEA countries in managing their respective extractive industry sectors as leverage for development of other sectors. Despite the varying models, state, and the depth of influence of the knowledge-based governance on the domestic policy process in each of the SEA countries, there is an immediate need to collectively up-scale this knowledge-based governance into the regional level. The fact that AEC will be soon initiated next year in 2015 further increase the urgency to develop the knowledge-based governance at regional level.

Why is knowledge-based governance important to ASEAN? Knowledge-based governance is, basically, another term to refer the phenomenon of knowledge politics. Thus, we have one single phenomenon that is referred with two different terms. As a political phenomenon, knowledge politics

⁴³ See van Donge, Jan Kees, David Henley, and Peter Lewis; "Tracking Development in Southeast Asia and Sub-Saharan Africa: the Primacy of Policy" in *Development Policy Review*, vol 30, February 2012, pp. s5-s25, Overseas Development Institute

⁴⁴ van Donge, et.al., op.cit

⁴⁵ Ibid. For the role of technocrats in designing the plan for development in Indonesia during the era of New Order see Dhakidae, Daniel, 2003, *Cendekiawan dan Kekuasaan dalam Negara Orde Baru*, Jakarta: Gramedia Pustaka Utama

⁴⁶ Dyna, Heng and Ngo Sothath, 2013, *Extractive Industries Revenue Management: A Tale of Six Countries*, Research Report 4, Phnom Penh: Cambodian Economic Association-CEA and Cambodians for Resource Revenue Transparency-CRRT, p. xvi and p.50

is related to the phenomenon of power and power relations. Thus, at ASEAN level this knowledge politics refer to the power and power relations between ASEAN and other entities, between its member states, between governance actors in each member states, and between governance actors and the ASEAN itself.

In the extractive industry sector, the importance of knowledge based governance becomes more obvious. As aforementioned, most of the countries in the SEA region are endowed with rich natural resources and relatively dependent on revenue from that sector to finance the development policies in their respective country. It is noteworthy that this revenue mostly comes through sale of the extractive industry products as raw commodity. The countries in the SEA regions have been lacking the necessary knowledge and technology to further process their natural resource products and, thus, to create added value on them. Discrepancies on knowledge and technology between the extractive products producer and the more developed countries that have the technology to process them create unequal power relations leading to unjust governance.

The knowledge and technological gap have produced unequal risk and benefit distribution, especially in the extractive industry sector. The process of extraction of natural resources takes place in the SEA countries. This process inevitably produces multiple impacts that many of them potentially dangerous, even disastrous, when not properly managed.⁴⁷ People in the SEA countries are relatively more exposed to these potentially dangerous impacts related to extractive industry activities.

The dependency of the countries in SEA region is so severe that even in order to be able to extract their natural resources most of them need technologies and knowledge from the more developed countries. Symon mentions in his work that investment and operation in this sector in most SEA countries have been dominated by foreign companies.⁴⁸ Due to their more advanced technologies and knowledge, the processing of these extractive industry's products into consumer goods also take place, mostly, in the more developed countries.

It is noteworthy though they are rich in natural resources, these natural resources are rarely ready to use as consumer products immediately after they come out from the extraction process. For them to be consumer goods, they have to undergo long processing chain. In each link of this chain there is value added to their baseline value, the so called added-value. The longer the chain each of these products undergoes the more added value it has.

Through their advantage in knowledge and technology, the production chain takes place in the more developed countries.⁴⁹ Ironically, some, if not most, of these natural resource products return into the domestic market of its producer as raw material as consumer products with prices much above when they were initially sold as raw material to the more developed countries. The price difference represents the value added to those materials and most of them go to the more developed countries since where most of the processes in production chain take place. In ASEAN context, the description above matches the fact in oil industry sub-sector in Indonesia and Vietnam. Regionally, though some

⁴⁷ See Symon, Andrew, "Petroleum and Mining in Southeast Asia: Managing the Environmental and Social Impacts" in *Southeast Asian Affairs 2007*, pp. 77-100

⁴⁸ Ibid, p. 78.

⁴⁹ Ibid., p.81

of them are prominent oil and gas producers, countries in SEA region is a net importer for oil and gas.⁵⁰

Another common situation that the countries in SEA region have to face due to their lack of knowledge is exposure to huge social and environmental risks related to extractive industry activities. Symon's work discusses how petroleum and mining have caused some social conflict and environmental degradation in SEA countries like the Philippines and Indonesia.⁵¹

Related to this risk of social and environmental impacts, actors involved in the extractive industry governance at global level has been proposing a framework which is claimed intended to reduce those risks, so called Extractive Industry Transparency Initiative (EITI). The emergence of this framework discursively is related with recognition that extractive industry has intertwined relations with broader governance and development issues.⁵² This framework has been endorsed globally by prominence petroleum and mining companies and countries in Africa, South America, and Asia.⁵³ This framework has been a mainstream discourse within the circle of extractive industry governance actors in SEA countries for the last couple years. More countries have ratified it, such as Timor Leste, Indonesia, the Philippines, and Myanmar. One factor that contributes to the fast spread and emergence of this framework as mainstream discourse worldwide is the involvement of international financial and developmental agencies such as World Bank and International Monetary Fund-IMF. These agencies incorporate the EITI framework into their assistance programs for the ASEAN countries.⁵⁴

The emergence and growing of EITI as mainstream discourse that regulate the extractive industry governance, from one standpoint could be seen as a positive development. It provides various extractive industry governance actors with standards that serve as common reference. However related to the issue of knowledge politics discussed in the previous paragraph we have to be cautious and respond it strategically.

One of the main roots of our problem with knowledge politics is the process of epistemological subjugation that has been taking place in the SEA countries and other post-colonial countries for so long. EITI can be seen as another strategy for this epistemological subjugation.

Let us take a closer examination on this EITI. EITI is a framework that projects a collaborative policy process involving extractive industry governance actors, the government; the corporate; and the civil society, according to certain values and principles. These values and principles are presented in the concept of value chain. This concept of value chain incorporates the values and principles which are purported to direct extractive industry, assumed to be related with extraction of non-renewable resources, toward sustainable development. It covers phases starting with award of contracts and licenses; regulation and monitoring of operations; collection of taxes and royalties; revenue management and allocation; to implementation of sustainable development policies and projects.⁵⁵

⁵⁰ Symon, op.cit., pp. 79-81

⁵¹ Ibid.

⁵² Proposed for the first time by British Prime Minister, Tony Blair, in 2002,

⁵³ Symon, op.cit., pp. 96-97

⁵⁴ Symon, op.cit. p.97

⁵⁵ See Alba, Eleodoro Mayorga, 2009, *Extractive Industries Value Chain: A Comprehensive Integrated Approach to Developing Extractive Industries*, a working paper by the Oil, Gas, and Mining Policy Division and the Africa Poverty Reduction and Economic Management Department, The World Bank, p.3

Though many of the proponents of EITI acknowledge that this EITI does not pretend to address all critical aspect of extractive industry but to provide common practical framework to regulate the related governance process, it is necessary for us to be aware the epistemological construction behind this framework. EITI focuses on the aspect of revenue management. It is obvious in the phases and steps incorporated in the framework. Inclination to revenue management implies that in this framework, extractive industries and its products are treated as production in merely its economic sense that is to produce commodity. We need to be aware that this framework potentially misleads us in understanding the phenomenon of extractive industry.

When we are epistemologically led to think of and treat extractive industry as merely process of producing commodity and managing the revenue it yields, simultaneously we have enclosed our mind to think only within this framework. It puts a constraint for us to explore other possible alternatives.

For example, extractive industry sector does not relate to mining products and commodities. It also includes materials which serve as sources of energy such as oil, gas, coal, geo-thermal, and many others. Mining products within this category cannot be treated merely as commodities. They have broader strategic value and closely affect the well-being of the people in where they are extracted. Their use-value cannot be measured merely within the framework that considers them as revenue.

This paper does not intend to discredit EITI and accuse it as totally irrelevant. The point is, EITI is a useful instrument to provide commonly shared standard in extractive industry governance. The institutionalization of this framework has double-edged impacts that we need to be aware of. On one hand, it provides the extractive-industry governance with common frameworks and reference to better organize the process in order to reach the stated goals. On the other hand, however, it also puts constraint on how we think and behave on issues related to extractive industry governance.

It is the implied constraining effect of the institutionalization of EITI framework that we need to be continuously cautious and always open our mind to explore further alternative ideas. Otherwise, EITI would become hegemonic instrument that verify and reproduce the subordinate positions of the SEA countries and the less-developed natural resources-rich countries in general in the field of knowledge politics.

The intensity and severity of this process may vary from one SEA country to another. This process, however, takes place simultaneously in those countries. This is a challenge that needs to be addressed, not only at national level but also at regional level. The coming AEC provides the required opportunity for the countries in SEA region to coordinate their policy in knowledge politics, in order to create more equitable governance, especially in extractive industry sector.

Frame for Engaging in Knowledge Politics

The description of the state knowledge based governance on extractive industry sector in ASEAN gives us an illustration on the general position of SEA countries, more specifically ASEAN, in the global knowledge politics. Still related to the case above, the coming AEC and the collectivity within ASEAN provide as with precious opportunity to be more actively engage in knowledge politics at global level.

The works of van Donge et.al. and Symon mention the development and relative success of extractive industries in ASEAN countries that have enable growth in other sectors of agriculture and manufacture. Due to this relative success, there has been growing internal demands among the member states of ASEAN on extractive industry products, especially related to energy.⁵⁶

In this regard, Singapore, arguably one of the least natural resources endowed ASEAN countries, have a remarkable comparative advantage in term of knowledge and technology. This country possesses the knowledge and technology required for further refining process of the raw extractive products. Thus, there have been complementary relations among the ASEAN member states and broader SEA countries.

The formation of AEC in next year in **2015** means that these countries, at least the ASEAN members, will merge themselves as a single economic entity. The existing complementary networks related to extractive industry and other sectors and nodes of knowledge based governance both at the ASEAN and within each of the member states should be consolidated and linked in order to fit with the projection of ASEAN as a single economic entity.

In doing so, it is necessary to set more specific common goals, derived from what has been stated in the formal document regarding the objectives of the formation of ASEAN and AEC. Reflecting from the relatively subordinate of ASEAN member states and broader countries in SEA region depicted in the previous section, restating the position of ASEAN as a single collectivity among other actors in global governance should be set as the top priority.

In doing so, to further foster the cohesiveness of ASEAN as a community through knowledge-based governance, it is necessary to ensure that the knowledge produced, shared, and commonly referred is available and accessible to the growing numbers of stakeholders in ASEAN. As stated previously, the governance structures in each ASEAN member states and in ASEAN itself have undergone paradigm shift that positions non-state actors as active partners in policy process.

The new mode of governance envisions power relations that resemble the governance in ASEAN that is equality among its members, without superior authoritative body, thus every decision in ASEAN has to be made through deliberative process relying on commonly shared knowledge. As mentioned in the earlier section, commonly shared knowledge becomes vital factor, besides willingness among the stakeholders to engage in long; sometimes heated deliberation process, that enables this group of equal stakeholders to reach consensus.

Connecting and managing knowledge nodes in such scale of ASEAN will be a giant and laborious enterprise. However, it is inevitable, especially when we put the factor of the coming AEC into our consideration. There are so many nodes of knowledge each linked to each other, either directly or indirectly, through criss-crossing discourses and issues in every governance domain. Institutionalizing a center as a hub that connects all of these nodes will be a strategic measure to manage the knowledge based governance.

ASEAN has recognized the need to link the scattered nodes of knowledge, especially as part of the attempts to anticipate the coming AEC. One attempt to materialize the idea of linking the scattered

⁵⁶ van Donge et.al., op.cit.; see also Symon, op.cit., p.79

knowledge nodes and transform them into collective endowment is the project to formulate ASEAN Community Statistical System-ACSS which is scheduled to be ready by 2015⁵⁷. This is a strategic measure to prepare the knowledge infrastructure that is expected to facilitate the execution of the AEC plan.

In order to create firmer foundation for the coming AEC, similar strategies such as the ACSS should be deployed to cover other sectors and involve broader stakeholders beyond the state actors. Establishment of ASEAN University is one strategic way this paper recommends to linked the scattered nodes of knowledge and transforms them into common endowment for all of ASEAN. Academic circles and academic institutions enjoy strategic position. *First*, academicians and academic institutions bridge the state, the business, and civil society agents. Considering the situation of the still relatively strong suspicion among state, business, and civil society actors in ASEAN, academicians and academic institutions are still relatively more acceptable to all stakeholders. *Second*, the universities in ASEAN countries have long been involved in various collaborative activities institutionalized as networks. Third, the main role and occupation for academicians and academic institutions is to produce, disseminate, and manage knowledge covering broad spectrum of disciplines, thus using networks of academician and academic institutions to consolidates scattered nodes of knowledge is the most plausible and logical option.

The nodes of knowledge-based governance and the common framework for its development at ASEAN level then could be further reactivated and re-oriented to the achievement of the intended common goals. These common goals, on its turn, are also set based on thorough and well-informed process based on the common knowledge produced. This common framework should also be used as guidance in determining strategies and roles of each member states, maximizing and developing complementary pattern that already exist based on the principles of mutual-benefits among the member states.

As the governance landscape has changed, it is imperative to adapt the knowledge networks with the new landscape. The knowledge-based governance in this new landscape should be up-scaled to include nodes of knowledge not only from among either state or business actors but also among the civil society.

While how the shape of this common framework is deserves much deeper research, it is necessary to bear in mind that governance process is basically political. As a player that involves in political interplay with other governance at global level, it is important for us as part of the ASEAN, both as regional body and as a community, to be aware of the political nature of the governance process and, thus, play accordingly. The moment of the formation of AEC must be maximized in order to wrestle the initiative in broader global governance and thus set ASEAN's position as equal among other global actors.

⁵⁷ Similar pattern and mechanism, relying on group of experts on the addressed issue, are utilized by the ASEAN to formulate this ACSS. It was started the adoption of ASEAN Framework for Statistical Cooperation-AFSC 2010-2015. As part of the implementation of this framework, ACSS Committee was established in 2011. This committee is comprised of experts and prominent persons in this field. ACSS Asean Community Statistical System, *A Stronger Mandate on ASEAN Statistical Cooperation*, Jakarta: ASEAN Secretariat, November 2012, p.3

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TRANSNATIONAL ADVOCACY FOR ADVOCATING GOVERNANCE REFORM IN EXTRACTIVE INDUSTRIES IN ASEAN: MAKE TRANSPARENCY WORKS¹

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Transnational Advocacy & New Norm in Region

In the last few decades, there has been a significant increase in the role of transnational civil society in promoting extractive industries governance reform in many resource-intensive based countries, including Southeast Asia region. This can be seen mostly from the emergence of transnational advocacy networks and coalition such as Publish What You Pay (PWYP), Affiliated Network for Social Accountability, Sharing on Governance of Extractive Industries (GOXI), the Southeast Asia Partnership for Better Governance in the Extractive Industries (SEA BGEI)⁴, and so forth.

Following Keck and Sikkink's (1999) argument, by building new links among actors in civil society, states, and international organizations, these transnational advocacy proliferate opportunities for dialogue, exchange and coordination, particularly in the issue areas of extractive industries governance reform. Thus, this paper aims to identify the basic norms, shared values of network/coalition and the way to share and institutionalize the norms within policy advocacy. Instead of identifying the ruling actors in transnational advocacy, this paper also aims to discuss the most important sources, channels, opportunities and limits of influence of transnational actors in promoting extractive industries governance reform.

¹ Paper presented at international conference on ASEAN studies (ICONAS) 2014, Yogyakarta, October 1-2, 2014. This paper is based on preliminary finding of on going research on transnational advocacy and sub national governance reform in Southeast Asia, supported by Asia Pacific Knowledge Hub on Extractive Industries Governance. This is still draft, please do not quote or cite without permission from the authors. The data set employed here is a work in progress. We also thank to Fragata Beverly (Alternate Forum for Research in Mindanao, Philippines) and Tricia Yeoh (Institute for Democracy and Economic Affairs, Malaysia) who has sent us a helpful response of ASPAC's questionnaire.

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⁴ This network is part of the IKAT-US project, a project funded by USAID that enhances learning for innovation among the CSO in Southeast Asia countries.

Transnational Advocacy:

A Theoretical Framework

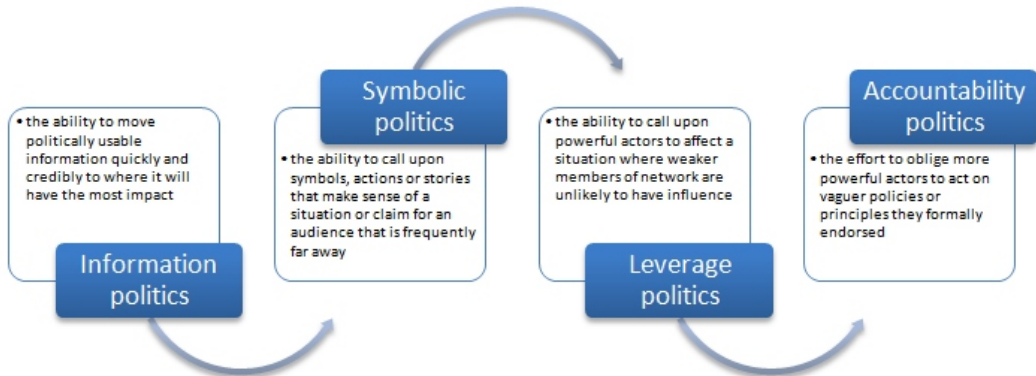
In recent years, there has been an increase in the demand for better governance in extractive industry. This can be seen from the fact that many countries have been undertaking mining and hydrocarbon laws reform over the last two decades in responding to that demand. One of the reasons behind this trend is the significant role of transnational civil society in promoting extractive industries governance reform in many resource-intensive economies.

Transnational civil society involving in various policy changes can perform in various patterns or types (Risse-Kappen, 1995: 1; Khagram, Riker, Sikkink, 2002: 6-8), i.e.: *First*, international nongovernmental organizations (or transnational nongovernmental organizations) that have a decision-making structure with voting members from at least three countries, and their aims are cross-national and/or international in scope. *Second*, transnational advocacy networks that refers to interaction between entities which are situated across state borders and at least one actor in the network is a non-state agent or does not act on behalf a state. Some networks are formalized but most are based on informal contact. Furthermore, Keck and Sikkink (1998:1) state “transnational advocacy network includes those actors working internationally on an issue, who are bound together by shared values, common discourse, and dense exchanges of information and services”. *Thirds*, transnational coalitions or sets of actors linked across country boundaries that coordinate shared strategies or sets of tactics to publicly influence social change. *Fourth*, transnational social movements or sets of actors with common purposes and solidarities linked across country boundaries that have the capacity to generate coordinated and sustained social mobilization in more than one country to publicly influence social change.

This paper, therefore, intends to understand how civil society organizations built and extended new links and managed to proliferate the importance of transparency and civil society engagement in the development of extractive industry. The development of such alliance according to Keck and Sikkink (1999) has been regarded as the emergence of transnational advocacy. Following Keck and Sikkink’s argument (in Park, 2004:83), “transnational advocacy form campaign which are “activities that are combined to further an aim or goal which members from diffuse areas undertake collectively, usually based on a norm or principle and focused on policy change, and whose actions are often not based on rational interest explanations”. The main difference between such transnational advocacies with other transnational activities rests on “the centrality of principled ideas and values in motivating their formation or in other words the network is motivated by values rather than by material concerns or professional norms” (Keck and Sikkink, 1998: 1). In this context, ties of activists are different from ties of scientists and experts that are driven more by their professional ties of firms which are driven more by their economic motivation.

In order to understand how the transnational advocacy, Keck and Sikkink (1999) provide a framework on the typology of the tactics of this ties: information politics, symbolic politics, leverage politics, and accountability politics.

Diagram 1: Tactics of Network

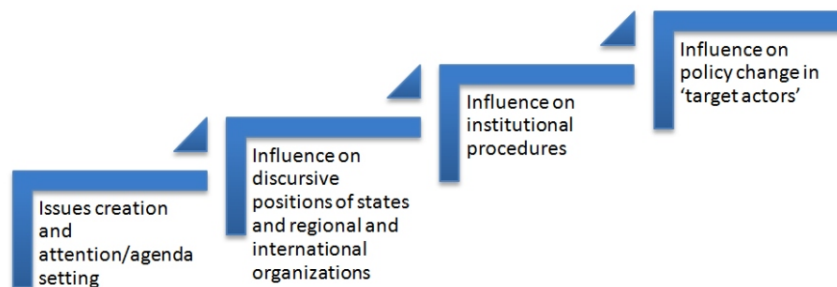


Source: Keck and Sikkink (1998 & 1999)

Based on previous explanation, it is clear that information politics is related to both information creation and information distribution. Symbolic politics is related to the ability of transnational advocacy to frame issues to make them comprehensible to target audience, to attract attention and encourage action and to fit with favourable institutional venues (Keck & Sikkink, 1998). Leverage politics is related to material and moral leverages and accountability politics deals with monitoring and litigation.

In addition to that, in order to assess the influence of advocacy, Keck and Sikkink (1999) identify the types or stages of influence as follows:

Diagram 2: Stages of Network Influence



Source: Keck and Sikkink (1998 & 1999)

Enhancing Open Government (Transparency) as New Norm in Region

The discourse of global governance has been coloured by the idea of open government emerges as new norm⁵ in recent global politics. Open government express the idea that citizens should be ensured to have access to government (information, data, processes) in order to engage governments more effectively and that governments have the willingness and ability to respond to citizens and to

⁵ Norm here refers to standard of appropriate behavior for actors with a given identity. Some scholars use term of institution with similar meaning and definition. For further discussion on see Finnemore and Sikkink (1998: 891).

work collaboratively to solve difficult governance issues. It facilitates an active dialogue between government and its citizens regarding, for example budget allocation and utilization and provision of social services. Citizens have improved access to their leaders and mechanisms in place to demand better services, and government has the capacity to respond.⁶

For civil society activist and academician who are working and engaging at transnational advocacy in extractive industries in ASEAN countries and the rest of the world, the very crucial and strategic values in open government is transparency for some reasons, i.e. First, good institution will help the government to overcome the resource curse.⁷ When good institution then was interpreted into more practical recommendations, many deemed that transparency as breakthrough and key point. Paul Collier (2007: 178), for example, put emphasize that international norms and laws should be used to institutionalise the transparency and accountability, such as charter for resource wealth (as revised and deeper version of Extractive Industries Transparency Initiatives) to overcome the resource curse. Terry Lyn Karl (2007: 276-277) underlined that we need political solution for ensuring fairness since the resource curse is fundamentally a political problems about the efficient, transparent, and just distribution of the cost and benefits from the world's most valuable commodity.

Second, Transparency is less political and more acceptable rather than accountability. As Triwibowo and Hanafi (2014:1) emphasize that transparency is technocratic and relatively neutral idiom appealing to government and companies that want to respond governance problem without being viewed as hardliner. It also attracts to civil society activist, especially in more repressive states, due to its potential to address accountability problem "within conceptual framework tolerated by their rules". In other words, in case of Southeast Asia countries that have varying type of political regimes, from democratic to less democratic country, the idea of transparency is more reasonable to be introduced.

It also can be proven by the endurance and acceptability of transparency that has been introduced for more two decades through collaborative works between government and civil society in various contexts of political regimes in the world. In the past twenty years, issues relating to governmental transparency have risen to the top of the agenda of civil society in all parts of the world. A number of new civil society institutions operating globally, especially Transparency International, Global Witness, and the International Budget Partnership, etc. were established in the 1990s to campaign in different ways for enhanced transparency and against corruption. They were followed in the first decade of this century by the formation of a host of additional civil society institutions that have identified and focused on particular aspects of government transparency. The rapidly growing identification of civil society with the cause of open government during this period has been backed by a significant number of leading philanthropic institutions, which have recognized that transparency is the key to advances in other areas of concern. In the same era, generally in response to strong pressure from civil society, a large number of governments have adopted new laws to further

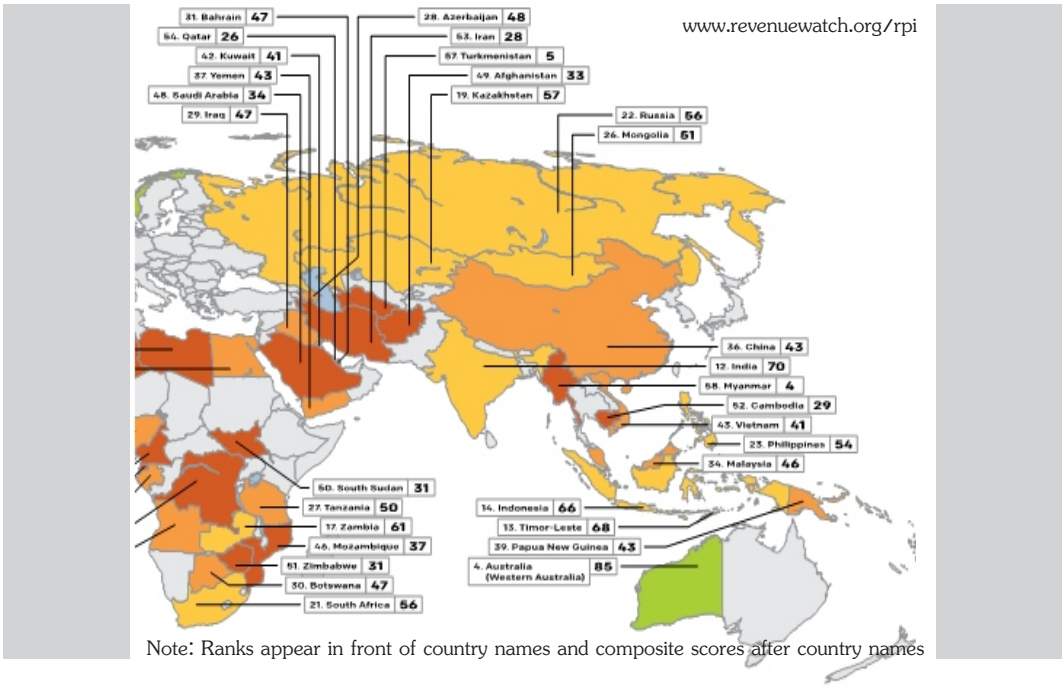
⁶ <http://wbi.worldbank.org/wbi/content/supporting-open-governance>, Accessed July 20, 2014.

⁷ "Resource curse" refers to condition describing the country with large endowments of natural resources, such as oil, gas, and minerals; often perform worse in term of economic development and good governance than do other country with fewer resources. Paradoxically, despite the prospects of wealth and opportunity that accompany the discovery and extraction of oil and other natural resources, such endowment all too often impede rather than further balanced and sustainable development (Humphreys, Sachs, and Stiglitz, 2007:1). In short, resource becomes "curse" when natural resources are bad for development and governance.

government transparency. The great majority of the approximately 90 countries that now have freedom of information laws, for example, have adopted them since 1990.⁸

However, the fact among ASEAN member countries shows that most countries remain keeping their information and not interested strongly to promote the transparency in governance affairs. For instance, there are only two ASEAN' members countries that has passed the law on freedom of information, i.e. Indonesia (in 2008) and Thailand (in 1997). Furthermore, only Indonesia and Philippines that is willing to joint Open Government Partnership (OGP).

Particularly in case of resource governance, most ASEAN member countries did not show good performance. Natural Resource Governance Institute's Resource Governance Index assessing 4 basic elements (institutional setting, reporting practices, safeguard and quality control, and enabling environment) among 58 resource-dependent countries in the world shows various achievement, i.e.: Indonesia (14th) Philippines (23rd) with partial good performance, Malaysia (34th) and Vietnam (43rd) with weak performance, and finally Cambodia (52nd) and Myanmar (58th) with failing performance. In other words, none ASEAN member countries has satisfactory performance (see the picture below)⁹



⁸ http://www.ssireview.org/articles/entry/building_a_global_norm_on_open_government. Accessed July 26, 2014.

⁹ The Open Government Partnership is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. In the spirit of multi-stakeholder collaboration, OGP is overseen by a Steering Committee including representatives of governments and civil society organizations. To become a member of OGP, participating countries must endorse a high-level Open Government Declaration, deliver a country action plan developed with public consultation, and commit to independent reporting on their progress going forward. The Open Government Partnership formally launched on September 20, 2011, when the 8 founding governments (Brazil, Indonesia, Mexico, Norway, the Philippines, South Africa, the United Kingdom and the United States) endorsed the Open Government Declaration, and announced their country action plans. In just two years, OGP has welcomed the commitment of 56 additional governments to join the Partnership. In total, OGP participating countries have made over 1,000 commitments to make their governments more open and accountable. <http://www.opengovpartnership.org/about>. Accessed July 7 2014

Extractive Industries Transparency Initiatives as Breakthrough Instrument of Advocacy

In order to make transparency being adapted and institutionalized either at national government or local government, Extractive Industries Transparency Initiatives (EITI) standard then has been promoted. This standard come into global discourse in 2002 in order to respond the Publish What Your Pay (PWYP), one of leading transnational CSO advocacy in extractive industries, that demanded and called for more greater transparency in extractive governance in order to overcome the resource curse. The assumption shared by PWYP and the EITI is that concerned citizens, often (but not exclusively) meaning civil society activists, can use this information to hold governments and companies to account for the generation and use of the revenues, as a way of mitigating such problems (O' Sullivan, 2013: 4).

EITI standard basically is voluntary mechanism within which the government and the companies of extractive industries must publish what they get (public revenue) and what they pay (tax, royalties, and so forth). It also can read as the global coalition of governments, companies and civil society working together to improve openness and accountable management of revenues from natural resources.¹⁰ In fact, The EITI is not a mechanical process for generating data *per se* but an institution whose rules, history and self-presentation have been shaped by continuous negotiation among participants with diverse worldviews and sometimes conflicting interests (for example, civil society groups and oil companies) (Ibid).

Unfortunately, only a few countries in Southeast Asia concerning on EITI. Until the end 2013, East Timor is the only one country in Southeast Asia region that has been the EITI compliant. Indonesia and Philippines remains candidate of EITI countries. Myanmar also interested to joint EITI.

Critical Engagement in Cross Border Field of Advocacy

Because most ASEAN member countries less concern on issue transparency, including transparency in extractive industries, many CSO in southeast Asia joining the transnational civil society advocacy and concerning on transparency in extractive industries. They concern on improvement or the making of better resource governance in each countries.

Promoting transparency, especially EITI mechanism becomes their strategic issues. They endorse their countries to comply with EITI standard and voluntarily take part as EITI compliant country. Furthermore, in more decentralised countries such Indonesia and Philippines, they enhance the local government to adopt sub national EITI standard and implement transparency mechanism with some adjustments. They also promote additional issues such as resource funds, local content, revenue sharing between central and local government and socio-environmental impact in order to make sure that extractive economy benefiting to all.

They involve within critical engagement. The term of critical engagement here usually used by the CSO activist to describe the partnership among stakeholders, especially between CSO and

¹⁰ <http://eiti.org/eiti>. Accessed April 8 2012.

government to make sure that the governance reform has been well institutionalized in governance relations. A multi stakeholder's forum and organisation usually established by them to promote transparency of government activities. Here the government have to commit themselves to practices the norms and opening the opportunities for civil society organisation to work with the government together to endorse access of citizen, transparency and responsive capacity of government.

They work under various strategies. Starting from campaign for getting public awareness, stimulating discourse for policy, to capacity building especially for oversight actors and affected communities surrounding the extractive field. Furthermore, they also assist the government and local government to establish multi stakeholder's forum (MSG) and regulate the transparency principles in governance affairs (see Triwibowo & Hanafi (ed.), 2014; IESR, 2014).

What interesting point is they engage within an alliance-based advocacy in their own countries as well as CSO network in Southeast Asia region. One of prominent CSO alliance concerning on the extractive industries is Publish What You Pay (PWYP). Publish What You Pay (PWYP) is a global network of civil society organizations united in their call for an open and accountable extractive sector, so that oil, gas and mining revenues improve the lives of women, men and youth in resource-rich countries. PWYP's global network is made up of more than 800 member organisations across the world, including human rights, development, environment, and faith-based organizations. In this alliance,¹¹ they not only share the information and expertise but also coordination of strategies and sharing of experience among the members.

This regional alliance also is tightened by Revenue Watch Institute (RWI)¹²-led policy advocacy to foster better governance and fair sharing for extractive industries revenue called Southeast Asia for Better Governance in Extractive Industries (SEA BGEI)¹³. SEA BGEI (South East Asia Better Governance for Extractive Industries) is a unique IKAT US partnership that aims to improve transparency in extractive industries especially in countries where the majority deals or negotiation between the state and extractive industries are mostly unfair and done in secrecy. Led by RWI (that working with Department of Politics and Government, Gadjah Mada University as co-implementer), the nine (9) sub-partners with different backgrounds work together in three different levels; regional, national and sub-national; Regional-led by IESR responsible for partner's capacity building; National-with support from Inter Parliamentary Centre (IPC) for increasing awareness at national level; Subnational-with support from Article 33 for replicating success cases and conducting action research on feasible and success cases especially in Conpostella Valley, Philippines and Vietnam (Hidayat, 2013: 23).¹⁴

¹¹ <http://www.publishwhatyoupay.org/about>. Accessed August 23 2014.

¹² Since 2014, Revenue Watch Institute has merged with Natural Resource Charter and renamed they organization into Natural Resource Governance Institute (NRGI).

¹³ This activity is funded by USAID under the IKAT-US project. IKAT-US project is designed to promote partnerships among Indonesian, US and third-country or regional CSOs to expand and deepen the sharing of Indonesia's experiences and expertise in the region. The approach of IKAT-US program is by facilitating the strengthening of the Indonesian CSOs to utilize their expertise and experiences outside Indonesia, cooperate with and learn from their counterparts from other Southeast Asian countries aiming to contribute to the enhancement of democratic development, better governance, and heightened respect for human rights in the region. The long-term goal is sustained South-South partnerships between Indonesian CSOs and their counterparts throughout the region to advance human rights and democracy. See <http://www.ikat-us.org/file-download/ikat-us>. accessed September 8, 2014.

¹⁴ <http://archive.ikat-us.org/component/better-governance-extractive-industries>. Accessed August 23, 2014.

As mentioned above, this alliance also put strong concern to develop ASEAN regional framework in extractive industry. This framework should not only be basic guide of resource governance in the region but also “top-down” instrument to enhance better governance of extractive industry in each ASEAN member country. However the process is still on going and really depends on consensus among the countries.

Furthermore, the fact also shows that varying political system of ASEAN member countries also coloured the advocacy strategies taken by CSO and its effectiveness. State-civil society relations, the commitment for reforms, strategies, types of CSO and so forth do not work in “empty space”. In short, political structure does matter (See the table below).

Political opportunity structures and civil society strategies in some ASEAN member countries

	Philippines	Cambodia	Vietnam
Political system	Full fledged democracy	Pseudo-democracy	One-party control
State-civil society relation	Mediated relationship	Tacit understanding	Tacit understanding
State commitment towards norm	Strong	Weak	Moderate
Decentralisation	Big-bang	Cautious	Incremental
Civil society alliance	Broad-base	Narrow, NGOs only	Hybrid, involvement of GONGOs
Civil society strategy	Direct advocacy, bad cop-good cop role	Persuasion	Collaboration
Perception towards ASEAN	Effective but not a priority	Ineffective	Effective
Influencing factors	Game-changer	Regime change	Fence breaker
Projected trajectory	Flat track	Steep climbing	Winding road

Source: Triwibowo& Hanafi, 2014:8

From Scaling Up to Horizontal Learning:

A Lesson Learned

Southeast Asia CSO experience shows they have transform from inward looking advocacy to regional-based advocacy by scaling up their alliances, strategies and area of advocacy. Broadening the alliance by not only between CSOs but also inviting more stakeholders with various backgrounds really gives more benefit since the extractive industry is really complex sectors. Tightening the alliance with other CSO in the region also increase not only their knowledge but also possibly their bargaining position in policy reforms either in their own country or in the region.

Bringing regional-oriented advocacy in their works also open the opportunity for enhance horizontal learning among the countries in promoting governance reforms, including in resource governance. The experience of SEA BGEL, especially in case of Bojonegoro (Indonesia) and Compostella Valley (Philippine) shows that horizontal communication and knowledge sharing either among government or other stakeholders also accelerate the commitment to reform.

However, the advocacy for better governance in ASEAN region needs to bring between technocratic and political strategies together. It should be noted that transparency and accountability of governance really depend on, in one hand, extent of democratic spaces, the presence of committed agents and strong state capacity, and other hands, the strong and capable civil society organisation. In addition, strong and active citizens also needed. By these efforts, the technocratic strategies, such as implementing EITI template, initiating multi stakeholders forum, enhancing various capacity building of technical skill, and so forth will be meaningful and matter (cf. Bria, 2014:92).

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TRANSNATIONAL CIVIC ENGAGEMENT AND CAMPAIGN FOR EITI IN SOUTH EAST ASIA COUNTRIES: Opportunities and Challenges¹

Tapisheru Joash, Elisha Stephen, M² and Primi Suharmadhi Putri, S. IP³

Abstract

This paper focuses on the role and potential of the transnational civic-engagement in promoting and advocating common issues at regional level, in this case ASEAN. Using theories of discourse analysis, knowledge management, and policy-networks analysis in this paper elaborates and reflect on the experience of advocacy of EITI framework among the ASEAN member states and at regional level to identify the potential of this transnational civic engagement that could be useful to further develop governance process both at the domestic level of each ASEAN member states and at ASEAN level as regional community. The existence of this transnational civic engagement at ASEAN level is crucial especially in anticipating the coming soon AEC in the 2015, as it contribute greatly and will give greater contribution in forging various nations within the ASEAN into a single community



Key words: knowledge, knowledge exchange, learning

A. Introduction: Concerted Action Implies a Working Commonly Shared Knowledge

Through the work of these transnational networks some SEA countries like Timor Leste, Indonesia, the Philippines, and Myanmar, have been encouraged to adopt and comply with the global new norms of Open Government Partnership-OGP and Extractive Industries Transparency Initiative-EITI in extractive industry sector. Consequently, establishment of multiple stakeholders group in these countries grow rapidly. They believe that transparency in the extractive industry sector is a solution to the problems of rent seeking and oligarchy that has been plaguing this sector.

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One interesting point is that the extractive industry sector does not exist in a vacuum. In each country this sector must be structured by the interplay of factors so-called social, political, economic, and cultural context. However, despite broadly varying permutations of these factors in each country, interestingly some of the proponent of adoption of transparency in these sectors in some SEA countries manage to push their respective government to adopt the transparency initiative in their extractive industry sector. More interestingly, these networks of CSOs, not only engage advocacy of transparency of extractive industry sector in their own country, but also advocate framework at regional level.

The fact that despite the differences the proponents of transparent governance, especially in the extractive industry sector, have been able to conduct some sort of concerted action is an interesting phenomenon to look upon. This concerted action among some civil society elements in SEA countries, especially on the extractive industry sector, implies the existence of a commonly shared knowledge among the involved parties. This commonly shared knowledge serves as some sort of broad guidance and framework, supposed to be continuously reexamine and adjusted based on the experience of its application in the respective country of the involved parties.

This paper focuses on the process how certain kind of knowledge circulated, examined, and thus accepted as a common platform in the case of adoption of EITI among SEA countries. In its discussion, this paper specify its observation on the role of transnational civic-engagement through various fora in that process of knowledge sharing and learning. While for those who have been engaging in the advocacy activities the topic of this paper might be something they almost routinely do in various forms, this paper might serve to make explicit the importance of knowledge and knowledge management in the field of advocacy.

B. CSOs in South East Asian Countries

Before we go further, it is necessary to briefly highlight the commonly shared feature of SEA countries. This is a vital factor that, simultaneously with other factors, shapes the general nature of CSOs in this region. Most countries in this region are or have at some point of their history ruled by a regime that put the state in dominant position. Wave of democratization and paradigmatic shift of governance that swept this region in the 80s and 90s catapulted civil society as important elements (Schmidt). The idea that people should participate in state decision-making processes had emerged since 1980s among the elite figures of SEA countries, as what one of the ASEAN founding father, Adam Malik, stated “the shaping of a future of peace, friendship, and cooperation is far too important to be left to government and government officials [as such, there is a need for] ever-expanding involvement and participation of the people”. Unfortunately, Malik’s idea did not followed by action or even way of accommodating the non-state actors participation both in country’s policy making and SEA regional level track of diplomacy. Until the ASEAN Institutes for Strategic and International Studies (ASEAN-ISIS) established in 1988 and then actualized idea of having “an assembly of the people of ASEAN” in 1995 which became embryo of the first ASEAN People’s Assembly (APA) in 2000, since then the participation of the civil society (as people) finally recognized by ASEAN and its fellow members (Chandra)

It was after the 1997 crisis were limited existence of civil society in SEA countries finally over, washed by democratization that hit the region and CSOs had mushroomed. But we not there yet, one of important matters that need to be underlined is that each SEA countries carries different type of political systems. The countries' political context then draw map of CSOs political opportunity, which of course lead to their role and affect the nation. Responding to the countries' political context, Chong and Elies have mapped three types of relationship between civil society and the state in Southeast Asia; (1) 'tacit understanding' where is there convergence of interest between CSO and the state, especially in the area of public service delivery; (2) 'advocacy-oriented and potentially conflictive' relationship when the CSO take action against government's policy and intervention; (3) a 'mediated' relationship where civil society organizations enjoy same autonomy but operate largely under the political and legal condition set by the state (Chong and Ellies). these three types of CSO by not any means generalizing CSOs in one particular country, by the high number of CSOs growing up every year, each country could have all the three types of CSO, even though the majority type will be affected by the political situation within the country and/or frankly speaking, by the sponsor grantor and donor.

In Indonesia, the era of CSOs started after the step down of Suharto as the New Order regime fell. CSOs sprout responding to the people's disappointment on the New Order's reputation on corruption and its centralist-authoritarian mode of governance. Democratization along with its decentralization then take Indonesia into the whole new level of transparency discourse. This correspond with the demands of CSOs for broader recognition on their rights to involve and participate in the country's policy process, both as decision maker and watch dog, or in any other forms of engagement.

In the Philippines, as country that has most similarities in term of political context and movement with Indonesia among other SEA countries, CSOs and civic movements have a long tradition. Experiencing decentralization within the country after the change of government 1986, Philippine's CSOs have been experimenting with new forms of civil society engagement as government's partner in development and democratization both in national and local level (Fabros).

In Timor Leste, the youngest nation-state in the region, the growth of civil society also become the Timorese national development. The CSOs' activism provide the mechanism to contribute in the mainstream of nation-building process (Wigglesworth), not to forget that many Timorese CSOs 'enjoying' help from western government. Myanmar, as the country now in transition process from an authoritarian to a formally more democratic regime after its 2010 election, CSOs are also in transition to be more politically equipped. Seemingly that the CSOs are focused to influence more in term of democracy and good governance (Sang).

CSOs' condition in Southeast Asia are influenced by many factors, one among them as a respond to their country's political context and transformation. Realizing that political context and transformation also derived by other aspects, such as government type and political issues, like it or not those aspects also drive the CSOs ideology and its daily focus. The wide range of issues that taking care by numerous number of CSOs would push CSO in managing collaboration in order to exchange knowledge among them, one of the way by creating the collaboration and or regional network.

C. Emergence and Spread of EITI Discourse in SEA

Prior the 1997 crisis in Southeast Asia, the CSOs involvement has been limited to the state and business communities. As the change of political landscape in SEA region after the 1997 crisis, the participation of NGOs and other civil society organizations (CSOs) became more flexible and is occasioned partly by their work at the grassroots and reflects immediate response to public need. CSOs in general are also “naturally issue oriented or even issue specific” (Chandra).

Transparency has been one major issue in this region, especially after the discourse of “Good Governance” gained prominence. Related to this issue, we believe that each country in the SEA region faces the similar problem on the issues of financial report and budget distributions, considering the similarity of the centralized and state-centric regimes in these countries. High demand on oil and gas product in the region as well as worldwide leads the SEA countries heavily dependent on the oil and gas industries as their biggest revenue, then bring the countries experiencing the ‘resource curse’.

High number of oil and gas upstream activities then bring crucial issues to the government to take care of, which not only in a matter of business, income and wealth of the nation; tax, budgetary, national and local revenue sharing, as well as non-economic issues such as social and environmental impacts, land ownership, local/indigenous people rights violation, and so forth, as what Gillies (2010) said that extractive industries operations are ‘directly related to the wider issues of democracy, conflict and social justice which characterize their mandate’ (Gillies) Such problems also become put on a highlight since the industries are (legally) run by big multinational company and/or the state-owned company, this system is high on the relationship between government and companies’ that it is become a toll-road to the rent-seeking.

The transparency issue was part of the freedom of information, and initially pushed by CSOs and its coalition in the area of extractive industries, which many among them building international coalition, such as the Transparency International and Publish What You Pay (PWYP) coalition, in order to give themselves ‘bigger’ power to push the government open its financial report and familiarize the non-state actors with the value of ‘transparency is minimizing corruption’. People are becoming more aware of corruption and rent-seeking practices in EI sector within their area, this also bring companies to follow what people wants by supporting the transparency initiative, winning support from international donor, as we know that they are also recommending the implementation of good governance in most of developing countries, many transparency measurement then created.

In the sector of extractive industries, the Extractive Industry Transparency Initiative (EITI) becomes the primary institutional tool for the promotion of extractive industry transparency as an international norm (Gillies). Supported by the state government, companies and donors, its multi-stakeholder involvement also required the CSOs representation to sit on the chair to serve a forum of dialogue among playing actors in the industries to implement the country’s and company’s transparency based on the EITI principles, as it is implemented at the national level, but supported internationally through the EITI network and coalition.

Launched in 2002 by the UK Prime Minister, at the World Summit on sustainable development in Johannesburg as international standard in assessing oil, gas and mining resource rich countries. EITI works is quite simple, it is based on voluntary participation from the resource-rich countries

government to publish information on their revenues from the extractive industries in comparison to its payments (taxes, royalties, duties, etc) that companies made to the government. This activities of reporting is overseen by multi-stakeholder group (MSG) of government officials, representatives from the companies and CSOs, the EITI report then found any gaps on the payments and revenues, the MSG then make it published to attracts debates and allow on the government accountability (Ölcer).

As it stated before, the implementation of EITI as transparency measurement of a resource rich countries is much count on active involvement of the in-country CSOs in holding its country's transparency in all local, national, regional and international level, as watch dog. Realizing that the matters not only regarding the revenues in numbers, collaboration and coalition of multiple CSOs who focused on wide range of issues that could occur in EI sector, will lead them to the knowledge exchange as a power in building stronger coalition for the transparency in EI governance. CSOs of some SEA countries, with support from international donors and think-tank on EI sector, start their fora of knowledge exchange in coalition. The Revenue Watch (changed to Natural Resource Governance institute) IKAT-US project is a partnership with three Indonesian non-governmental organizations—Institute for Essential Services Reform (IESR), Indonesian Parliamentary Center (IPC), Article 33 (previously Pattiro Institute)—and civil society counterparts from Southeast Asia: Bantay Kita in the Philippines, Luta Hamutuk in Timor Leste, Cambodians for Resource Revenue Transparency (CRRT), Pan Nature and CODE in Vietnam and Research For Social Advancement (REFSA) in Malaysia. Partners work together to promote effective transparency and accountability campaigns focused on the oil, gas and mining industries, and targeting regional, national and subnational authorities (About the Revenue Watch IKAT-US Project).

The unique form of EITI which consist of the state government, companies and civil society has been mesmerized the resource rich nation to implement this international form in order to what so-called fighting the corruption within their government and avoid the resource curse. This new form of concern then bring some policy trend among the resource rich nation's government on the revenue management, especially to improve its allocation to the national budget that affect the development all across the country, by this means that the country's income on the extractive industries on a specific resource rich area will be enjoyed by all the people. But the great potential this holds for accelerated economic and social development can only be realized if countries can resolve the special macroeconomic and governance challenges that are associated with an abundance of natural resources (Kato).

In country that implement decentralization that also cede some of its financial management to the local government, EITI form need to be adapted on some different system implemented within the country. Indonesia, as such a wide nation that implement the decentralization on its subnational government, where it is also implement such policy revenue on the subnational level, especially on mineral revenue; mineral mining revenues which fully under the local government, while oil and gas revenues are collected at national level and then assigned to sub national level. Therefore, by expanding the scope and outreach of the EITI to the local level with a significant resource-revenue-sharing system, will provides the SEA countries a clear opportunity to address governance and lack of trust issues in their key producing regions (Fabros).

Yet, the extractive industries in the local level is not merely about transparency that publish by the company to the people, digging up someone's land and extract what is in it requiring more matter to be taking care of. Budget's earmarking to certain issues on the local matters could be more conflicting, if what people get is not as sufficient enough as what they loss. This high trend of conflicts on the EI producing area bring another concern to several CSOs and movement to draw their attention on the subnational transparency, other than the earmarking, access to revenue resources through direct payments from the operating companies need to be overseen by the CSOs, both who involved in the EITI MSGs chair, and those of who act as the watchdog. Fortunately, The establishment of Local and national CSOs along its regional coalition on extractive industries issues, such as Bantay Kita of The Philippines with Article 33 of Indonesia who focus on sub national issues on EI put the transparency matter as not the only important thing on the subnational EI activities, social and community resilience, environmental degradation, as well as the important role of local content through FPIC, which will be discussed later during the next chapter, on EI are also need to be put on a highlight within the industries.

In other hand, EITI as form of transparency measurement plays another action in distributing the knowledge and information, since The citizens of many resource-rich countries are poorly informed about their government's revenues from the extractive industries as well as the actual value of the resources (Macartan Humphreys), at least the country's willingness to participate in the EITI reporting could be the first step towards people's capacity building on public awareness of the country's revenues from EI sectors.

D. Advocacy, Knowledge Exchange, and Learning Among CSOs in SEA

1. Impacts of Transnational Civic-engagement: Policy Community

Knowledge and knowledge management has been becoming more prominence among the CSOs circles and policy circles in general. In the case of EITI, its emergence as a mainstream policy discourse in extractive industry sector in SEA could be contributed to its appeal, namely broadening the access on extractive industries, so for denied to most of the stakeholders. For the state and private actors involved in this sector, more knowledge means more efficiency. For the civil society it means more control over public matters. Thus, despite the fact that not all of SEA countries are ruled by democratic regimes, most of them show relatively high interest to adopt EITI.

Among the CSOs circles, as a discourse EITI serves as a framework that becomes common reference among the participants. Discussions evolved around the value chain introduced in this framework of EITI. Two other discourses emerge as part of the discussions on this EITI framework, namely participation and making good-investment. Active engagement of multiple-stakeholders group in policy process related to extractive industry sector as manifestation of participatory principle often becomes main topic in discussions related to EITI. So does investment made using the revenue gained from the extractive industries.

These topics, alongside with the topics of ensuring transparency in extractive industry sector, becomes the nodal points in the discourse developed related to EITI. CSOs involved in the transnational for a, especially at regional level, make use of the knowledge gained from their foreign counterparts and adapt it with their experience and the situation in their respective home-country. In country where the ruling regime is less willing to comply with participatory principle, the idea that transparency would enhance efficiency could be used to soften their stance and cite their interest in adopting EITI. Anchoring their engagements on the discourse of EITI, transnational civic engagement where these CSOs in SEA countries get involved enables them to share knowledge, adjusting and experimenting with strategies and tactics in advocacy.

The Philippines' case, shows how engagement of local CSOs in regional fora enable them to push "siege" the government and force it to adopt and implement EITI principles and standard. Simultaneously using their networks at grass-root level and within the government itself alongside international pressure, local CSOs are able to ensure the compliance of its government with EITI standard, not only on the issue of transparency but also on the issue of participatory policy process, including prior-and-informed-consent principle (Besmanos)

In other case in different country, with totally different context, such as Malaysia transnational civic-engagement serves as sources from where their activists tapping knowledge and experience from their foreign counterparts on how they should make deal with the government and the corporations in their home-country. Besides, their continuous engagement in such fora also serve to maintain potential back-up of international pressure in time of needs (Yeoh).

Other important beneficial impact of their involvement in the transnational fora, one of the activist said, is rejuvenation of the spirit to keep advocating the issue they concern. Through this fora, CSOs activists from various SEA countries form a community with a set of commonly shared values and through it various ideas are shared, discussed, learned, adjusted, and implemented in continuous cycle.

By doing so, the CSOs may gain leverage for their bargaining position before their respective government and corporations involved in the extractive industry sector. This leverage comes from two sources. *First*, the more the knowledge shared through the trans-national fora, the more the CSOs have the potential to come with clear-cut, well-articulated alternative framework. In short, it increases their expertise in this sector of EI, thus they can face both their respective government and the corporations in more equal term.

Second, as aforementioned, their involvement in the transnational fora gives the CSOs huge potential ally that will support their advocacy through what the so-called international pressure. When their respective government and the corporates realize this, they will be more willingly to give their ears to what the CSOs say and adopt their agendas.

In the SEA region, this community has moved even further. It has been working on a draft, based on the EITI framework that they plan to offer as a regional framework. This measure greatly signifies the existence of this transnational for a as a policy community or at least it is looking forward to be one.

2. The Nodal Point: EITI

The existence of EITI framework is vital for the formation of the policy community discussed in the previous section. As a common reference, it provides operable yet flexible framework. These two features are important due to the necessity of the CSO communities in this region for equally operable alternative framework to the existing framework and the varying specific context of each country in SEA region.

The EITI framework also sounds “politically neutral” both for the government and the corporations. This is of course relative to the broader field of discursivity of extractive industry sector. However, bearing in mind that radical discourses that stand against mining activities are not something uncommon nowadays, EITI offer much more moderate alternative.

In this situation, EITI creates broader space for maneuver. It halts the total division of the field of discursivity of extractive industry into two diametrically opposing camps of Pro-mining against Anti-mining. By doing so, it enables negotiation to take place on how this framework could be adopted in a specific country’s policy on extractive industry sector. It is in this room for maneuver knowledge exchange and learning take place as many ideas, experience, and practices are continuously put forward and tested before the empirical reality of extractive industry and the policy process that surrounds it.

As an initiative, EITI has been rolling like a snowball, at least in the SEA region. The space it creates will ensure the flow of new ideas and practices related to extractive industry as long as it can maintain its flexibility yet without compromising its practicality. This factor also crucially affects the sustainability of the policy community. Once it is frozen and turn into an orthodoxy, it will lose its vitality and entering the decaying phase.

One way to sustain the vitality that EITI has generated is to start producing strategic ideas regarding the extractive industry. EITI does enable the stakeholders of the extractive industry sector to come into more opened space for negotiation and provide common reference among the stakeholders to come up with new ideas and experience. However, as any other discourse, EITI implies dislocation of other aspects that might be related to extractive industries.

One dominant feature of EITI is its focus on the issue of “Revenue Management”. Other issues such participatory policy process and investing the revenue toward more sustainable sector are incorporated in the EITI’s value chain. However, the ‘revenue management’ aspect has been the more appealing aspect of this framework. This tendency reduces interpretation of transparency in extractive industry sector to refer merely to transparency revenue management. Thus, as it enables more stakeholders to participate in the policy process related to extractive industry sector, EITI also set constraints upon what extractive industry should mean.

Awareness of this tendency as a challenge for reform in extractive industry governance is crucial. It is noteworthy that extractive industry does not mean merely revenue from mining commodities. Many of these commodities are also strategic goods, especially those which are widely used as energy sources such as oil, natural gas, and coal. The strategic value of these goods distinguishes them from the rest of mining goods and therefore they should not be treated merely as mining commodities.

This does not mean that transparency in extractive industry sector, more specifically in the revenue management aspect, is unnecessary. The transnational policy communities from among the civil society on extractive industry sector in SEA region are taking its form, thanks to EITI. However, beyond the relative initial success in mainstreaming the discourse of transparent extractive industry governance lays bigger challenge of ensuring that policies taken in this sector lead to more sustainable development in the future. What this paper is trying to argue is that it is necessary to broaden the discourse related to extractive industry sector that EITI has initiated by making use the policy community in the SEA region to venture into more strategic framework beyond revenue management.⁴

3. Transnational Civic Engagement as Channel for Multiple Track Diplomacy: Underdeveloped Potential

The policy communities formed through the process of mainstreaming EITI in the SEA region connect many people with various nationalities. The topic of discussions focuses on something that often become source of inter-states disputes and conflicts, namely natural resources. This pattern is not uncommon among SEA region either. However, the transnational civic engagement conducted by the CSOs activists from SEA countries shows that this issue can be discussed openly, in totally different way than just merely claim over possession of natural resources. This phenomenon shows us other opportunities offered by such transnational fora as an alternative channel for diplomacy.

This potential is correlated with the growing discourse of multiple-track diplomacy. However, in order to realize this potential, there are many preconditions that have to be met. *First*, it is necessary to ensure the ability of the CSOs to perform their in carrying their function as representatives of diverse interests of the elements of the civil society well. Thus, their claim to represent the interests of the civil society in their respective country is justifiable. *Second*, this ability is equally shared among the CSOs in the countries involved (Besmanos).

Thus, the moment promises great opportunity to make transnational civic engagement more firmly institutionalized. The existing governance scheme favors more active engagement among the civil society, not only at the sub-national and national, but also at transnational levels. However as aforementioned above, there are necessary preconditions that have to be met before the projected image of this transnational civic engagement can maximally function as alternative channel for diplomacy.

Related to the other paper in this panel, regarding the further transformation of the policy community into a political coalition addressing specific issues, the idea of transnational civic engagement inspires us to envision networks of such coalition to address broader and more diverse issues. These networks work collaboratively with other governance actors at both at domestic and regional levels not only to address issues emerging in the engagement of ASEAN as a single entity with other actors of global governance but also within each of the ASEAN member states.

⁴ Other paper in this panel, presented by Poppy S. Winanti and Hasrul Hanif elaborates the formation of this policy community and its transformation into political coalition .

There are various domestic issues which are equally demand immediate response both from within the related member state and from regional level. Such as the issues of democracy in Myanmar, political crisis in Thailand, justice process for Khmer Rogues war crime in Cambodia, settlement of human rights violations in Indonesia and many others. In order to properly address these issues, collaboration between elements of civil society in the respective country with their counterparts from other ASEAN member states is necessary. It is possible to further develop the existing networks and policy community into political coalition to address those issues.

As we know, however, one of major challenges in forging the collaboration of various elements of ASEAN has been the diversity and discrepancy among its member states regarding the capacity of the civil society, the political regime and legal framework, and comparative advantages relative to each other ASEAN member states. The transnational civic engagements that already took place during the discussion of EITI and policy community produced at regional level have provided as with basic general knowledge about each other issues of concern; especially other than extractive industries, domestic situation, and networks.

These basic knowledge and linkages are valuable potential to be further developed into civil society coalitions that serves bring and linked crucial issues either at domestic or regional level with other stakeholders within the ASEAN community. Such arrangement would be strategic since we already know that ASEAN as an institution has been largely dominated by state actors, and now corporate or business actors. With them as dominant actors, there are number of issues that very less likely to be addressed through the formal policy agenda, either at the ASEAN or domestic level. This is especially true as ASEAN works based on the principles of consensus and non-intervention.

Government to government engagements within the ASEAN are bound by these principles. Thus, there are certain issues that are very less likely to enter intergovernmental discussion agendas. The civil society elements are relatively less bound by these principles, thus discussions for addressing those critical issues can take place and advocacy strategies can be formulated and coordinated at regional level.

The transnational civil society networks can also be useful as part of the advocacy strategies. Linkage of advocacy measures at the domestic level with broader networks at regional level will produce the so-called boomerang effect that will further enhance the pressure to the related state's government to properly address the advocated issues.

Simultaneous with the trend of steady, though relatively slow, growth of civil society involvement in the policy process at ASEAN level, the elements of the civil society should also start to consolidate themselves in regional wide networks to match the networks of the governments and business entities (Lopa). By doing so, transnational civil society elements can present themselves as equal partner and stakeholder in the governance at ASEAN level.

While the trans-national civil society networks at ASEAN level promises huge potentials for further development, there are certain pre-conditions that have to be met in order to materialize these potentials. *First*, the networks should be able to think strategically beyond the issues at hand. As presented in the case of dealing with EITI discourse, the stakeholders should be able to think beyond the EITI framework in order to explore other alternatives that might further enhance the role and capacity of the civil society and effectiveness of the governance process as a whole.

Second, shared knowledge and experience produced through various transnational civic engagement fora should be well managed. This will facilitate the process of knowledge processing and retrieval when needed. Over time, this process will further facilitate the construction of common-understanding among the transnational civil society elements on each other's situations, concerns, and knowledge. In short this process is crucial to institutionalize the knowledge scattered among the particular stakeholders and transform them into collective endowment.

Third, crucial for meeting the second point mentioned above, is the horizontal learning among the involved stakeholders. This is also to address the challenge of discrepancy of capacity among the elements of civil societies among the ASEAN member states. Over time, this horizontal learning will equalize the capacities among elements of the civil society in Southeast Asia countries. Simultaneous with the second point above, this horizontal learning process will contribute to forge the sense of community among the elements of the civil society in ASEAN countries.

Fourth, it is necessary to further decrease the gap between the state and business or corporate actors and the civil society. As noted in Lopa's work, the relations among these governance stakeholders in ASEAN environment have been dominated with suspicion to each other (Lopa). The current situation where the engagements among them have been intensified should be put into good use to further solidify the relations and consolidate the next steps anticipating the coming AEC and interplay with other governance actors at the global level.

E. Conclusions

The transnational civic engagement related to advocacy of EITI both at regional and domestic level have produce networks of civil society element bound together by common vision and political goals. Along with the general trend in ASEAN and its member states that give more explicit recognition on the roles and existence of civil society as partner in governance process, the emergence of these transnational policy networks on the issue of extractive industry opens new horizon of further develop these networks to include more elements among the civil society in order to cover broader issues. Materializing this potential, however, is easier to say than to do. There are preconditions that have to be met before the various elements of civil society in ASEAN countries come up as equal and active governance actors at regional level, alongside the states and the corporate entities.

Sustaining the transnational civic engagement, however, is vital to keep the elements of civil society in ASEAN to be linked to each other, thus keeping the opportunity open. The networks formed with the knowledge and experience shared, developed and accumulated through these engagements will serve as important base for further development of formation of civil society community in ASEAN and, on its turn, greatly contribute to the envisioned ASEAN community.

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Equipping the Marginalized Groups for Just Social Benefit of Extractive Industries in ASEAN: Free, Prior, Informed Consent (FPIC)¹

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A. Introduction

Generating natural resources revenues in almost part of the world, including in ASEAN countries, are taking place in indigenous peoples' territories, which is richly endowed with timbers, minerals, oil and gas. This endowment has attracted extractive industry companies to start and continue exploitation of indigenous people's territories. These activities have displaced and destroyed indigenous people's communities along with violating indigenous peoples' rights and leading to environmental degradation. In this point, natural resources endowment does not bring welfare but curse to indigenous peoples' community.

The emerging of civil rights movement has brought international attention to indigenous peoples' rights in terms of civil, political, and cultural rights. Started with the Convention on the Elimination of all Forms of Racial Discrimination (CERD) in 1965 then followed by the International Covenant on Economic, Social, and Cultural Rights in 1966, and the International Covenant on Civil and Political Rights (ICCPR) in 1976, indigenous peoples' rights became an international discourse even without particular discussion on indigenous peoples' right in extractive industries.

More than a decade struggling, the transnational advocacy, namely the World Council of Churches, "Mining and Indigenous Peoples Consultation" was held in London in May 1996 stated international commitment on indigenous people's right to be empowered to make decisions on whether mining should take place in their communities or not. In Southeast Asia, Philippines is the first country that express their commitment of its transnational advocacy and put it into legal basis by declaring indigenous peoples' rights in a law so called "Indigenous Peoples Rights Acts" in 1997, as a result of multi-stakeholders advocacy by churches, non-government organizations, and

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government. In the following years, a new approach “Free, Prior and Informed Consent” has been endorsed to be implemented in the whole process of natural resources related to indigenous peoples’ territories as well as communities.

It can be concluded that *first*, transnational advocacy has played a key role in advocating indigenous peoples’ rights and has shaped it into particular issue such as in indigenous peoples’ rights in extractive industries; *second*, this issue has emerged from local into international concern; *third*, the emerging issues on indigenous peoples in extractive industries due to massive shared experience in a regional basis and beyond the border.

This paper will discuss on how free, prior and informed consent is implemented and equips indigenous peoples in order to struggle and maintain their properties by advocating in a regional basis. An optimistic thinking over FPIC approach across Southeast Asia is quite high because FPIC stands under democracy and open governance umbrellas which massively implemented in ASEAN Countries.

B. The Emergence of FPIC: International and Domestic Legal Framework on Indigenous People

1. International Laws Related to Indigenous People

Almost every history about natural resources exploitation closely related to indigenous peoples. Unfortunately, the interaction between resources extraction companies with indigenous peoples tends to be antagonistic in nature (Lertzman and Vredenburg, 2005:239). It is because all this time the experience of extractive industry has made the condition of indigenous peoples in different parts of the world very apprehensive, especially in the rural area. It is common to find in many countries that indigenous people are marginalized from their own resources and lands, also from the process of development. It is not very surprising if latter Lertzman and Vredenburg (2005) said that extractive industries are among the worst of the worst in terms of their impact on the rights of indigenous peoples to self-determination, land rights, and economic development.

In one side, indigenous peoples do not have political power and bargaining position toward development process conducted by Government (and corporation). As the result, when international institutions, government and private investors make decisions about the resources in their regions, indigenous peoples’ interest is not considered, although they have a strong right over the resources. As the consequence, the rights of the people are marginalized for the sake of development.

Government’s position that does not respect the peoples’ right brings out public demand for legal warranty for indigenous peoples along with all lands and resources. In addition to people’s demand toward the Government, marginalization on indigenous peoples has brought out public’s demand to develop ethical performance of resource industries (Lertzman and Vredenburg, 2005). It means, corporation is also expected to give priority to ethics in its interaction with indigenous peoples. The spirit expects the development on approach of ethical model of organization and integration between IP with corporation.

Therefore, in 2007, United Nation stipulated an international declaration which is specific about the protection of indigenous peoples' rights known as UN Declaration on the Rights of Indigenous People (UNDRIP), on September 13, 2007. However, before UNDRIP, international law reference toward indigenous peoples had been avowed through some international law such as International Labor Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, Convention on the Elimination of All Forms of Racial Discrimination (CERD), International Covenant on Economic, Social and Cultural Rights (CESCR), dan International Covenant on Civil and Political Rights (ICCPR) (see table 1).

Among the international law instruments, UNDRIP and ILO Convention No. 169 are two primary source of law that latter emerge the concept of Indigenous Peoples' Free Prior and Informed Consent (FPIC). It means, FPIC is the rights of indigenous peoples. To respect the rights on FPIC is valid for every policy or project that affects the life of related indigenous peoples. In short, the contemporary requirement for indigenous peoples' Free Prior and Informed Consent (FPIC) is derived from the rights of indigenous peoples which are recognized under international and regional human rights treaties and declarations.

Table 1: International Laws Related to Indigenous Peoples

International Law/Instrument	Date of Ratification	Article
Convention on the Elimination of All Forms of Racial Discrimination (CERD)	January 4, 1969	
International Covenant on Economic, Social and Cultural Rights (CESCR)	January 3, 1976	Article 15:
International Covenant on Civil and Political Rights (ICCPR)	March 23, 1976	Article 27:
International Labor Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries	April 2, 1993	Article 7 (1): "The people concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development."
Convention on Biological Diversity (CBD)	August 26, 1994	
UN Declaration on the Rights of Indigenous Peoples (UNDRIP)	September 13, 2007	Article 10: "No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned ..." Article 28: "Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent."

International Law/Instrument	Date of Ratification	Article
		<p>Article 29: "States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent."</p> <p>Article 32: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."</p>

From the side of the private sector, in 2012, the International Finance Corporation (the private-sector lending arm of the World Bank Group) endorsed FPIC as best practice when it issued a new FPIC requirement for clients with projects that stand to impact indigenous peoples under certain circumstances. Then, the concept of FPIC is gaining momentum as its inclusion in the revised Performance Standard #7 (see table 2) of the International Finance Corporation's Sustainability Framework, which was released in August 2011 and will come into effect in January 2012. The new Performance Standard requires IFC clients to obtain the FPIC of indigenous communities under "special circumstances," including mineral resource development projects involving adverse impacts. As a result of this revision, FPIC will also become part of the policy of the more than 70 banks that are signatories to the Equator Principles (EP) (Sosa, 2011).

Table 2. Performance Standard of the International Finance Corporation

Performance Standard #7 of the International Finance Corporation: The recently revised Performance Standard #7 will come into effect in January 2012. Its terms include:

- "Circumstances Requiring Free, Prior, and Informed Consent ...If the client proposes to locate a project on, or commercially develop natural resources on lands traditionally owned by, or under the customary use of, Indigenous Peoples, and adverse impacts can be expected...
- Relocation of Indigenous Peoples from Lands and Natural Resources Subject to Traditional Ownership or Under Customary Use
- Where significant project impacts on critical cultural heritage are unavoidable, the client will obtain the FPIC of the Affected Communities of Indigenous Peoples...."

2. Domestic Laws Related to Indigenous People (Free, Prior, and Informed Consent)

In the domestic level, there are some countries who have already adopted FPIC in their national law, i.e. Philippine, Canada, Australia, and certain countries in Latin America. The Philippines has legislation requiring FPIC for mining projects and regulations dictating the procedures to record consent, although these regulations have been criticized for turning FPIC into a formality that is "no

longer based on customary laws.” In Canada, the *Yukon Oil and Gas Act (2002)* requires the government to obtain the consent of First Nations before issuing licences authorizing any oil and gas activity in their traditional territory. The *Australian Aboriginal Land Rights (Northern Territory) Act (1976)* gives aboriginal land owners the right to consent to or veto explorations on their land, as well as the right to negotiate agreements and time frames for such exploration.

For Indonesian context, the adoption of FPIC is not attached in a specific regulation. However, the elements of FPIC are actually already in some Laws related to the indigenous people (see table 3). Moreover, two years ago National Court Decree No. X2012 No.35 PUU was stipulated. It declares that customary forest is no longer state forest. Although the decision had brought some fresh air to the struggle on indigenous peoples’ rights, however the draft of Law about the Protection of Indigenous Peoples is not yet stipulated.

Table 3: National Laws Related to Indigenous People

Indonesia Law/Instrument	Elements that Strengthen the Rights of Indigenous People
Law No. 5/1994	Ratification toward the Convention on the Biological Diversity
Law No. 29/1999	Ratification toward the Convention on the Abolition of all Kinds of Racial Discrimination
Law No. 39/1999 About Human Rights	Acknowledge Personal and Collective Rights of Indigenous Peoples
Law No. 12/2005	Ratification toward the International Covenant on Civil and Political Rights
Law No. 11/ 2005	Ratification toward the International Covenant on Economic, Social, and Cultural Rights
Law No. 32 / 2004 about Regional Government	Regional regulations must respect and acknowledge the rural original rights also custom and tradition, however it also becomes one of the knots in the administration of the acknowledgement of indigenous peoples existence. Based on the law principles a number of district legislative councils have issued regional regulation that acknowledge customary regions, institutions, and regulations.
Law No. 5 /1960 about Subjects of Agrarian Affairs	Acknowledge the rights and existence of indigenous peoples on land
Law No. 41/ 1999 About Forestry	There is a special chapter that regulate about the role of people. The certified rights among others are the right to utilize forest and forest products; the right to obtain information or to know the forest allotment plan, product utilization, and forestry information; giving information, suggestions, also consideration in forest development; and the right to conduct monitoring toward the implementation of forestry development, directly as well as indirectly.
Law No. 23 /1997 about the Management of Living Environment and all regulations stand underneath it especially related to Environmental Impact Analysis	Requires to do social study (to analyze social impact) for the executor of projects/corporation and including the involvement of peoples’ representatives in committee of Environmental Impact Analysis assessors in district and provincial level. The Laws and regulations occur for all project activity in forestry, plantation as well as mining sectors. In this matter the Right to get information, the Right to propose objections, and the Right to participate in the environmental management are certified in this Law.

Indonesia Law/Instrument	Elements that Strengthen the Rights of Indigenous People
Law No. 26/2007 about Spatial Planning	Certify peoples' rights to get information about spatial planning, the right to propose objection, suggestion, and opinion also to participate in the formulation of spatial planning, spatial utilization , and spatial utilization control.
Law No. 7 / 2004 about Water Resource	Certify and acknowledge the customary rights of local indigenous peoples
Law No. 10/1992 Population and Family Welfare	Certify the rights on inheritance utilization
Law No. 27 / 2007 about the Management of Coastal Territory and Small Islands	Emphasizing the importance of tribute to indigenous peoples' rights
Law No. 40/ 2008 about the Abolition of Racial and Ethnical Discrimination	

Source:(Document of "Free Prior Informed Consent, A Guideline for Activists", Partnership among Forest Peoples Programme, AMAN, and JKPP, 2006)

From the data above, the ratification conducted by the government of Indonesia toward some international law instruments, the adopting of Universal Declaration of Human Rights, the signing of UN Declaration about the Rights of Indigenous Peoples, also various legislations related to indigenous people that have been issued by Indonesian government have actually given a way for the principles of FPIC to be respected in Indonesia. The existing legislations do not explicitly mention FPIC, however there are a lot of legal instruments related to human rights, the right to information, the Environmental Impact Assessment (EIA), and other, which implies the need to respect people's right to FPIC.

Although national legislation do not explicitly stated about FPIC, however in local level, there are some regions that adopt FPIC as the instruments for the protection of indigenous peoples' rights (see table 4).

Table 4: Indonesian Local Laws Related to FPIC

Region	Local Law/Instrument	FPIC Article
Central Sulawesi Province	The Central Sulawesi Governor Regulation No. 37/2012 about the GENERAL MANUAL TO FREE, PRIOR AND INFORMED CONSENT ON REDUCING EMISSION FROM DEFORESTATION AND FOREST DEGRADATION PLUS OF CENTRAL SULAWESI PROVINCE	Governor Regulation that especially regulates about FPIC in REDD+ program
Bengkayang Regency of West Kalimantan Province	Regional Regulation No. 14 /2002 about the Management of Community Based Integrated Coastal Territory Resources in Bengkayang Regency	Article 24 paragraph (3), that states "Local Community have the right to know and to give consent for every effort or activity that is conducted by other parties before the licensing from regional government"
Minahasa Regency of North Sulawesi Province	Regional Regulation No. 02/2002 about the Management of Community Based Integrated Territory Resources	

Region	Local Law/Instrument	FPIC Article
Lebak Regency	Regional Regulation of Lebak Regency No. 32/2001 about the Protection on Customary Rights of Baduy People	There is an article that gives the management authority of customary region entirely to the Indigenous Peoples of Baduy. The 4 th article of the regional regulation states that: "Any land allotment on Baduy people's customary rights is entirely given to the People of Baduy". The article can be considered as the veto right of Baduy People on their region. This authority is even reemphasized through the criminal provision on article 6 paragraph (1) that states : "Any people outside the Baduy who conduct any activity which is interfering, damaging, and using the customary rights of Baduy People is threaten with jail detention for as long as 6 (six) months or fine as much as Rp 5,000,000,- (five million rupiah)"

Source: (Steny, 2005)

Local legislation, as it is stated above, describes that on the existing regulation in Minahasa and Bengkayang Regency, the element of Free is not clearly mentioned. While on regulation in Central Sulawesi, the element of Free is already accommodated.

FPIC Countries Implementor in Southeast ASIA

Map of Country FPIC Implementor in ASEAN



There are four of ten states members; Indonesia, Cambodia, Vietnam and Philippine, in ASEAN who implement the FPIC and three of them implement it as an international mandate of the climate change mitigation scheme, Reducing Emissions from Deforestation and Forest Degradation (REDD) programme through transnational advocacies.

Table 5: FPIC activities in Indonesia, Cambodia, Vietnam, and Philippine

Country	FPIC REDD+ Activities
Indonesia	<ul style="list-style-type: none"> ● Indonesia has no national FPIC guidelines. ● The guidelines prepared by UN –REDD programme with the National Forestry Council, and followed by Provincial REDD+ Working Group. ● The guidelines tested in two villages in Central Sulawesi, Lembah Mukti and Talaga
Cambodia	<ul style="list-style-type: none"> ● Cambodia has no FPIC guidelines both in national and sub-national level. ● In order to established the guidelines, Seima REDD+ Demonstration Project working on the guidelines supported by the Wildlife Conservation Society
Vietnam	<ul style="list-style-type: none"> ● Vietnam has no national FPIC guidelines but has the most experience in conducting FPIC because the country served as a pilot project in 2010 in two district, Lam Ha and Di Linh withing Lam Dong Province.
Philippines	<ul style="list-style-type: none"> ● FPIC has already established under IPRA (national level), the detailed process of FPIC is set out by Administrative Orders (in subnational level).

Source: (Tan, et al. 2010) (FAO, UNDP, UNEP 2012)

Unfortunately, the FPIC implementation through REDD programme in three states; Indonesia, Cambodia and Vietnam, has given the same messages; lack of grievance and review mechanism made by local people, lack of time for internal discussion in the village, and there was some information that was not able to be provided to local people. Based on these findings, the ASEAN community 2015 will have opportunity to reduce the weakness of the early FPIC implementation and dismiss it in the future.

Dealing with indigenous people issues, the ASEAN community has five common local issues to endorse the FPIC to be regional concern. *First, non-recognition as Indigenous Peoples* as some of the countries rejected UNDRIP declaration because all its citizen are equally indigenous. None of the ASEAN countries has explicit assimilation policy anymore, but many government programs powerfully forces the lead to the loss of the culture and identity and the assimilation into mainstream society. *Second, Violation to indigenous peoples’s right to indigenous land, territories and resources* such as development aggressor. *Third, Non-recognition of indigenous traditional livelihood practices* such as migration and forced resettlement. *Fourth, violations to the rights of indigenous women.* *Fifth, Threats and violence against indigenous humans rights defenders* (AIPP, IWGIA, Forum-ASIA 2010). All of these local commons becomes a “normal” pattern that actually happen in ASEAN countries at any level.

Related to ASEAN Community, these local commons should become one of the ASEAN priorities. Through horizontal learning in a regional level, these local commons urgently need to be scale up and become regional concerns. Sharing values and sharing experiences will be beneficial for all the states, and the most important thing is strengthening ASEAN Countries on indigenous people issues which will expose ASEAN profile in international level.

C. Free, Prior and Informed Consent: A Strategic Tools to Empower and Equip Indigenous People

Free, Prior and Informed Consent (FPIC): As a Citizen-Led Approach

Theoretically, FPIC must be seen as the unity of these four elements: free, prior, informed, and consent. If one single element does not exist, then FPIC is defect. **Free** implies that there is no coercion, intimidation or manipulation. **Prior** implies that consent is to be sought sufficiently in advance of any authorization or commencement of activities and respect is shown to time requirements of indigenous. **Informed** implies that information is provided that covers a range of aspects, including the nature, size, pace, reversibility and scope of any proposed project or activity; the purpose of the project as well as its duration; locality and areas affected; a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks; personnel likely to be involved in the execution of the project; and procedures the project may entail. This process may include the option of withholding consent. **Consent** refers that consultation and participation are crucial components of a consent process.

FREE	Consent is given without coercion, intimidation, or manipulation
PRIOR	Consent is sought before every significant stage of project development
INFORMED	All parties share information, have access to information in a form that is understandable, and have enough information and capacity to make informed decisions.
CONSENT	The option of supporting or rejecting development that has significant impacts on indigenous people lands or culture

Therefore, the character of FPIC is 'the consent that continues to live' that needs continuous monitoring, maintaining, and reemphasizing in all stages of a project (Patrick Anderson, 2011: 18). In this context, FPIC is understood as the approach that emphasizes on the citizenship, which actively involves in every process of ongoing development. This matter starts out from the development experience that often marginalizes indigenous peoples. In the development process, indigenous peoples's properties and rights has been violenced for many years by the state and the companies. They have been fought for recognition and rights to have control for their properties to the subnational and national governments; subnational, national and international communities, as well as companies for the project development on and within their lands. Moreover, the indigenous people are often neglected in the process of planning and decision making of the project development and the worst is forced by certain policy like resettlement policy. The result of the state-centered approach is damaging indigenous people by constantly abusing and causing permanent loss of their properties, culture, and their livelihoods.

This state-centered approach which neglected indigenous peoples' right has been challenged by a people-centered approach and right-based approach with its name Free, Prior and Informed

Consent (FPIC). While state-centered approach is implementing top-bottom policy, a people-centered and right-based approach is scaling up the bottom to the top structured. In terms of indigenous people, a people-centered approach and right-based approach become the basis of implementation of FPIC.

Sets out from the experience of state centered approach that marginalizes local people, therefore the logic of FPIC really stress on the role of the state as the protector of indigenous peoples' rights, including any resources that cling on the people. It has been accommodated in the document of UNDRIP, that states that there are some situational condition where the states have the obligation to protect indigenous people (UN-REDD Program, 2013:24-25), yaitu: (1) Relocating an IP from their lands; (2) Taking "cultural, intellectual, religious, and spiritual property"; (3) Causing "damages, takings, occupation, confiscation and uses of their lands, territories, and resources"; (4) "adopting and implementing legislative or administrative measure"; and (5) Approving "any project affecting their lands or territories and other resources, particularly in connection with development, utilization or exploitation of mineral, water, and other resources".

To implement FPIC, the main prerequisite is that the related state holds on to the principles of democracy governance. Why? Because implementing democracy governance as a system of government or regimes is required to carry out a people-centre approach of FPIC in order to challenge state-centered approach. As a governing system, democracies represent the will of the people and contrain the power of the state (MacFaul 2010). On the other hand, democracy makes political leaders accountable to people and drives strong state to have a concern on peoples' welfare (Norris 2012). The condition become a constraint to implement and comply FPIC in a non-democratic countries.

Free, Prior and Informed Consent (FPIC): As a Social License

FPIC is understood as strategic tools to empower and equip indigenous people since FPIC is social license from indigenous people. To be able to give the social license, therefore FPIC should be seen as indigenous peoples' rights; FPIC as a process; and FPIC as a principle. When states have admitted FPIC as the rights of indigenous people, therefore the operationalizing of FPIC must be reflected in every process of FPIC through participative stages. And in every stage to FPIC, it is based on the principles of FPIC. This is the meaning of FPIC as social license

FPIC has been defined as anindigenous people's right, based on their collective right of self-determination. FPIC means respect for the right of self-determination, part of which is the right to collective decision making (Cathal Doyle and Jill Cariño, 2013:17).Therefore, it is the collective right of indigenous people to give or not to give their consent to the development that affects their regions. However, it needs to be noted that FPIC is not a linear process that ends up with the signing of an agreement with the community (Anderson, 2011:11). FPIC needs to be understood as a right of people that requires the project developer to conduct continuous communication with the community, and obtain the consent to every key stage of the process.

As a process, FPIC has been viewed as part of a process of operationalizing the right of self-determination by guaranteeing respect for their decision-making processes and their associated right

to accept or reject a project that will affect them (Cathal Doyle and Jill Cariño, 2013:17). FPIC is interviewed as a principle of negotiating in good faith on the basis of mutual respect and equality. Meaningful negotiations require consultations free from intimidation, coercion, bribery or undue influence, and an acceptance of the outcome of those negotiations. (Cathal Doyle and Jill Cariño, 2013:17). While as the principle, elements of FPIC are placed as the base for the whole activity that is related with resource owned by indigenous people. The principle becomes the spirit in the management of indigenous peoples' resources.

It can be concluded that FPIC should be seen as the principal determinant of whether there is a 'social license to operate' and hence is a major tool for deciding whether to support an operation. It specifies that FPIC is an internationally guaranteed right for indigenous peoples and part of "obtaining social license and demonstrable public acceptance for the project" in the case of (non-indigenous) local communities (MacKay, 2004:6).

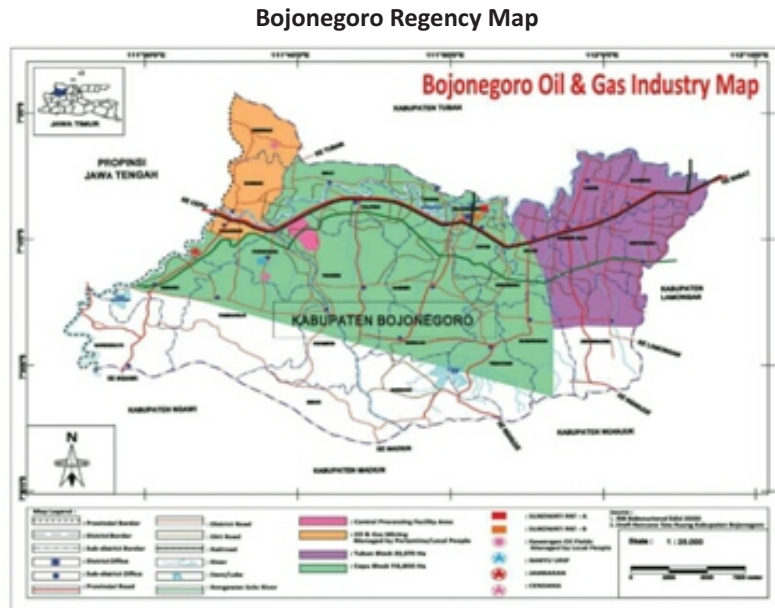
D. FPIC in Practices: Case Study in Indonesia

From the population aspect of the indigenous peoples in Indonesia, there is hardly any definite quantitative data about the number of the population. Government and also non-governmental organization or NGOs of indigenous peoples' observers such as AMAN (Aliansi Masyarakat Adat Nusantara- Alliance of Archipelagic Indigenous Peoples) have different estimation for the population number. Government through the office of General Directorate of Remote Indigenous Community (RIC) officially acknowledges 365 ethnic and sub-ethnic groups with population number of 1,192,164 lives. According to the Social Department, up to year of 2000 the Remote Indigenous Community groups is recorded as many as 242,514 families or 1,212,575 lives that is scattered about 18 provinces. The most population is in Irian Jaya (Papua), Kalimantan, Sumatra and Sulawesi.

IN 2006, Social Department conducted another mapping and then updated again in 2008 that resulting the number of RIC population is 229,479 families. While AMAN estimates there are 50-70million lives that can be categorized as indigenous people. The absence of valid data on the number of indigenous peoples' population has encourage AMAN through Badan Registrasi wilayah Adat - Registration Body for Customary Regions (BRWA-RBCR) that collaborate with Forest Watch Indonesia (FWI) and Jaringan Kerja Pemetaan Partisipatif- Participative Mapping Network (JKPP-PMN), have program that aims to accommodate the data of indigenous people that during this time are not yet well consolidated and well managed. One of the BRWA's aims is to affirm the rights on land (resources) of indigenous peoples

The Implementation of FPIC in Indonesia

1. FPIC in Oil and Gas: Bojonegoro Regency.



(Suryana dan Bachriadi 2012)

Bojonegoro Regency is located in East Java Province, about 110 km west of Surabaya, the capital city of East Java Province, with an area 230,706 ha, and 40.15% of the area is a national forest, 32.58% is an agriculture area while the 19.42% is a dry-land. Those areas is populated by 1,209,073 people with a very low growth around 0.38 in each year since 2000 (Bojonegoro Regional Statistic Office 2014)

The regency who is governed by Suyoto as a regent from 2008 then re-elected until 2018, is widely-known as a resource rich region in Indonesia that became a pilot project of Pattiro in collaboration with Revenue Watch Institute (now is Natural Resource Governance Institute), Open Society Institute's Local Government and Public Service Reform Initiative (LGI) to overcome and combat resource curse at the sub-national level (World Bank 2013). The regency also became a part of Open Government Patnership meeting in Bali at 6-7 May 2014.

The regency has mostly cited as a Stock of National Energy with almost 20% of national energy comes from this region. With oil reserves in around 1.200 MMBOE and gas reserve up to 6 billion cubic feet in only one oil field, Banyu Urip, sub-district Ngasem, Bojonegoro has contributed Rp 1,000 billion to the State with assumption of oil price in around \$90. This prediction can be higher in a peak production which can reach up to 165 thousand barrels in each day. Beside Banyu Urip oil field, there are also oil and gas field in Kedung Keris, Alas Tuo Timur and Tiung Biru.

Oil Field Map



(Suryana dan Bachriadi 2012)

Beyond fascinating stories about the implementation of open governance principles and being a part in transnational advocacy on transparency, accountability, there is a dark story on the lack of implementation of free, prior and informed consent (FPIC) during the projects. The research conducted by Erwin Suryana and Dianto Bachriadi has found that a massive and structured land-grabbing exist along with oil and gas development in Bojonegoro.

The discovery of Banyu Urip oil field has required 977 Ha in order to build Central Processing Facility (CPF) and new wells at the Alas Tua Barat, Alas Tua Timur, and Kedung Keris. The land acquisition policy has endorsed to agricultural lands belonged to the citizens, the lands controlled by the village, and the forestry lands possessed by the Forestry Department (Suryana dan Bachriadi 2012: 9).

The process was enforced without having a proper dialogue and neglecting democracy's participatory principles to the citizen, without preparation process for instance by helping the citizen to have a legal land certification. As many others Indonesian citizen, Bojonegoro's citizen has a lack of knowledge and awareness to legalize their land due to long administration and a cultural habit to postpone things. People ownerships were only proven by land Tax Payment Letter (SPPT) or commonly called *Petok D* which changed by the local BPN (Bojonegoro Land Office) as the land usage rights and it is totally disadvantage the people. The impact of the acquisition was the decreasing number of paddy field area which almost reached a half from the previous year, from 147,464 Ha to 67,274. (Bojonegoro Local Government, 2014: 40-47). Meanwhile, the land still owned by the citizen surrounding the oil field produces worst quality of agriculture productions (Staff 2014).

The land controlled by the village, namely *Tanah Bengkok*, used by the MCL are located in 27 villages by using long term rent agreement. By renting the *Tanah Bengkok*, MCL has a duty to replace with land in another location which commonly known as *tukar guling* (Suryana dan Bachriadi 2012:10). The policy has been implemented until now even some village leaders refused to explain it further (Village Leaders 2014) (NGO activist 2014).

The third source land comes from forestry land under the management of Perhutani which is supported by Central Government. It can be clearly concluded from the statement of Minister Purnomo Yusgiantoro that the Minister will look for an alternative to utilize the Forestry Department Land (Detik Surabaya 2008)

Until now, land grabbing has become important issue in Bojonegoro. To accelerate the process, the local government institutionalize it by establishing technical company namely PT. Bangkit Bangun Sarana (BBS), one of a local state-owned enterprise (BUMD) that work on infrastructure development and support projects facilities of MCL.

From the experience of Bojonegoro, what can be learned? Bojonegoro has already made a great improvement in focusing on natural resource management by establishing and implementing the principles of oper governances like transparency, accountability, and participatory. Unfortunately, the government mostly concern on the revenue management and less on the social management including FPIC development.

The lack of FPIC in Bojonegoro is not only the fault of the local government but also the national government that becomes dominant in oil and gas business, the company tends to underestimate the importance of the process in the local region.

2. The Experience of Mining Exploitation in Manggarai, Flores: Without FPIC

The mining activity in Manggarai has been started since 30 years ago. It includes general investigation, exploration, and exploitation. Mining is a process that is composed of three major, logical, interrelated, and sequential phases: exploration, development, and production (Goday 1985:199). The first investment that joined the mining activity in Manggarai was PT Aneka Tambang, Pt Flores Barat Mining and PT Flores Indah Mining that conducted general investigation all over Manggari. The first location that became the target of general investigation was Nggorang, Bajak village, Reok and Lingko Lolok sub-district, Satar Punda Village, Lambaleda sub-district. Later in 1981, PT Aneka Tambang increased its activities by doing exploration in Lingko Lolok (Jebadu et al, 2009:278). Since then on Manggarai was invaded by both local and foreign investors.

Since the first time investors came, there has been 50 licenses of Mining Authority issued by regional government in the three regencies of Manggarai region. The licenses are given to 20 companies: General Investigation Licenses (19), Exploration License (21), Exploitation License (5), and Mining Work License (4) (Jebadu et al, 2009:282-286).

For more or less 30 years of foreign investment in Manggarai mining, there are some emerging problems related to the mining investment (Jebadu et al, 2009:286-292). **First**, the location of mining work that is mostly located in customary forest area. **Second**, the entering process of mining investors especially in citizen's agriculture and plantation area, most of them are not detected by the people, so it often causes conflict between the citizens and company or citizen and government. **Third**, local government never conduct socialization about mining industry and all of the impacts to the community, moreover government tends to take side more on the company's side (example: the case in Bajak, Watu Tango Village, Reok sub-district).

Forth, the exploitation of manganese mineral by PT Sumber Jaya Asia (PT SJA) has entered the area of conservation forest (Nggalak Rego) RTK 103 (Kendidi Forest), without loan use license of forest area from Ministry of Forestry. Moreover the mining activity uses open mining method that makes citizens frightened since it involves dynamite explosions. **Fifth**, there is an indication of the extinction of rare animals and plants also ancient sites in the peak of exploitation area. Torong Besi area has been stipulated as a tourist object by the district government of Manggarai through Manggarai Regional Regulation No.2/2001 and Regent Decree No. 4/2004. It means mining has seized tourist area.

Sixth, mining industry has violated human rights of the people (on land/resources, cultural rights has been violated, since some part of the investment area is customary land known as linko, closely related to the festivities of the community's life as agricultural community. The investment has damaged the relationship between people and nature with the culture of Manggarai community known as gendang one, lingkon peang; peoples' economic rights, labor exploitation by the company. **Seventh**, exploitation license is given without consultation with community and also without sufficient study on Environmental Impact Analysis. **Eighth**, the threat for living environment, especially with the open mining system.

Various problems above describe the absence of customary community involvement in every process of development (read: Mining) with the impact closely related to them. It means Mining in Manggarai does not through FPIC. FPIC is still a matter of vocabulary that is not well known by government as well as civil society in Manggarai (read: Catholic Churches). Therefore, state protection toward indigeneous peoples in Manggarai is still very weak. The local regulation in Manggarai does not accommodate the FPIC elements in the management of natural resources that are related to the indigenous rights.

Mining becomes problematic since it crushes their customary lands (lingko). Mining enters customary forest area. Government that is expected to protect community, in the other hand take side on corporation with an excuse that mining is assumed by government as a fast strategy to increase Regional Income. Economic Political logic of the government has dictated the government so community becomes the victim.

Meanwhile, if we talk about civil society power for Manggarai context, then it cannot be part from the role of Catholic Church. However, civil society power in Manggarai tends to be cooped with the interest of corporation and government ambition on Regional Income. Church is often criticized since Catholic Church does not take side on the indigenous peoples whereas the Church approves the ambition of corporation and State to increase Regional Income. What happen is affairs among capital, state and church that is often called as "unholy trinity" (Aditjondro, 2009).

Although there are a lot of criticisms toward the Church, however the Church through JPIC SVD conducts advocacy to indigenous people that struggle against mining. Unfortunately, the advocacy of mining refusal conducted by JPIC is still "reactive" by nature. The advocacy strategy is only based on the people's report on cases. It means, when there are big problems and victims fall, then the advocacy is conducted. The church must change the diaconal orientation, from "red cross diaconal" that awaits fallen victims becomes "doorstop diaconal" that avoid the fallen victims (Aditjondro, 2009) through educational activities for the church community about the socio ecologic impact of mining works from exploration stage to production.

Here, the Church needs to change the advocacy strategy from curative to preventive.. To change that, it takes the complete partiality on indigenous peoples so that Catholic Church against mining becomes the new spirit in the Catholic Church's mission in the future. With complete partiality, the Catholic Church can optimize the whole mission all over Indonesia and world to support the works of advocacy of indigenous people against mining.

The weakness of FPIC Practices in Mining

From the mining experience in Indonesia that sets out from cases in Bojonegoro and Manggarai, it can be concluded that there are some weaknesses in FPIC practice in mining sector. *First, there is a strong economic and political interest of the State.* As the consequence FPIC can be considered does not support the fundraising effort of regional government through resources exploitation. Therefore, permitting the FPIC article means opening the long procedure to achieve consensus with society that is not efficient for business activity.

Second, the absence of reference for FPIC implementation, there is no explicit experience from national legislations that specifically include the article, complicate a lot of parties to find juridical reference in implementing FPIC. Meanwhile implementation mechanism that is not yet considered in detail also becomes problems especially when some people that seems to enjoy benefits from the article diverting it for personal interest (Steny, 2005:25).

Third, the information about mining that is given to society is manipulative in nature. The outside pressure (read: market and profit) to exploit resources is conducted by giving false or misleads information to local society, in purpose as well as not in purpose. Socialization conducted by corporation and state only inform about the positive impact that economically beneficial for the local society. Meanwhile, the negative impacts of natural resources exploitation are rarely informed to the indigenous peoples.

Forth, the weak advocacy of civil society toward indigenous peoples who refuse mining. When indigenous peoples want them to stop the mining exploitation, there is no support from non-governmental organization for them. Advocacy toward indigenous peoples who refuse mining is still in the reactive level and do not answer the root of the real problems.

E. The Implementation of FPIC in Philippine

As a part of ASEAN communities, Philippines is one of the country we should proud of due to its acknowledge to indigenous peoples' rights in extractive industries not only by Philippine Constitution of 1987 but also a particular act on indigenous peoples right. While in another ASEAN countries, indigenous peoples right was struggling to defense their rights, the Philippine constitution has already protected and guaranteed indigenous peoples right to their ancestral domains and land. Through six articles which state clearly on how the state recognizes, respects, and protects the rights of indigenous cultural communities and measuring sustainable development for its communities. The acknowledgment of indigenous peoples' rights can be seen on Section 22 of article II, Section 17 of Article XIV, and Section 6 of Article XIII. Meanwhile, the political rights of indigenous peoples are stated on Section 5 of Article VI which allocated seats of a representative of indigenous peoples in the congress in order to express and represent indigenous people interest both in local and national context.

For about a decade, The Philippine Constitution has been accommodating the rights of indigenous peoples until Former President Fidel V. Ramos decided the needs to institutionalized indigenous rights through certain acts and government agents in order to protect and empower them. By doing sharing experience and horizontal learning through consensus building and consultative collaboration process between government and civil society, Fidel V. Ramos established certain acts to enhance democratic

process in Philippine in a programme so called Social Reform Agenda (SRA). The programme was actually a strategy to protect democracy process in Phillipine by citizen-led assessment due to uncertainty political process in regional level. By 1997, Fidel V. Ramos enacted the Indigenous Peoples' Right Act of 1997 or IPRA with a strong spirit of participatory democracy and a high political confidency to implement FPIC. Along with IPRA, Fidel V. Ramos also established a National Commision on Indigenous People (NCIP), and agency under the president, who has a mission to protect and promote the interest and well being of the indigenous people due regards to their beliefs, customs, traditions, and institutions.

Related to indigenous peoples' properties, IPRA has introduced two key concepts which are called ancestral domain and ancestral lands. Ancestral domains refers to all areas generally belonging to ICC or IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/Ips. While ancestral lands refer to land occupied, possessed and utilized by individual, families, and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership. Through IPRA, indigenoues peoples in Philippines also have a right to redemption in cases where land/property rights have been transferred without their consent.

In detailed, Free, Prior and Informed Consent in IPRA is understood as a consensus of all members of indigenous people to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference, and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community. In a simple way, indigenous people have a power in deciding to extract and making a good deal to their properties and communities as well as has a freedom from any constraint. Prill-Brett (2007) stated that IPRA actually becomes a challenge toward the notion that the state has a monopoly on the exercise of the law, and abandoned the perception that indigenous peoples caused the degradation of forest—a perception which still can be addressed to indigenous people in several countries in ASEAN such as Indonesia—. The IPRA has given a legitimate policy for artisanal miners which already operated by indigenous people for centuries. For example, artisanal miners in Benguet which is operated by indigenous Ibaloi people (Whitmore 2012, 21).

The Free, Prior and Informed Consent (FPIC) in Philippines: Challenge and Reality

A strong state, rule of law and institutionalized system to support and secure FPIC implementation become important factors to limit manipulation and sustain FPIC policy. The challenge of IPRA implementation is not only coming from companies, but also coming from government and the state itself. After being acted, IPRA had an open filed by retired Supreme Court Justice, Isagani Cruz and lawyer Cesar Europe questioning about the constitutionality of the new law and claimed that it's violating state's rights for having control over natural resources. The Chamber of Mining of the Philippines had also addressed the same issue, violating the constitution and stressed over IPRA flawed. A side from the government, the Mining and Geosciences Bureau representatives stated that the state is surrendering its control by giving indigenous people a right over mineral resources on their land (OXFAM America 2013). The state is taking indigenous people interest beyond the national and development framework.

The flaws-claimed over IPRA was answered by the Secretary of Environment and Natural Resources and the Supreme Court of the Philippines which made a clear stand point of IPRA as a non-violating act due to an acknowledge on ancestral domain as a private lands and there is no right for the State to make any interest on and within the land. This decision was an open air for indigenous people to be free from being displaced and raised their trust to the state.

Unfortunately, the indigenous peoples' trust has been degraded along with political changes in Philippines and elected Gloria Macapagal-Arroyo (2001-2010) as Philippines' president. The indigenous peoples had been betrayed by national development framework since then systemic manipulation had begun. For gaining national revenue and searching for a better of macroeconomics, Arroyo promoted mining as a national development source, and transferred the National Commission on Indigenous Peoples (NCIP) from an agency under the President to Department of Agrarian Reform. Arroyo revoked NCIP's authority to develop and implement policies and program to protect and promote indigenous peoples rights.

Arroyo's mining development platform became serious and systemic threats in a certain level after NCIP moved under the control of the Department of Environment and Natural Resources. NCIP as a institution for issuing certificates of ancestral domain titles and certification as a pre-condition to the award of any permits, leases, or grants (to companies, government, or any other entity) for use of any portion of an ancestral domain was under the controlled of the Department who has responsibility to issue mining concessions. It was clearly created an over layered conflict of interest, and a way to dismiss NCIP authority at the same time. In more structured way, Arroyo gave indigenous peoples a message that their rights no longer became presidential concern.

The most appealing fact on structured political decay on indigenous peoples' right is how a bonded collective action by indigenous people, in collaborated with nongovernmental advocacy, are able to fight back for their rights and postponed drilling process in their ancestral domain. One of the case is in Baay-Licuan in Abra province in the Cordillera region of the Philippines which involves the Binongan indigenous peoples. The Binongan indigenous people is successfully struggling and continuing resistant over the Canadian mining company, Olympus Pacific Minerals and the State through horizontal learning, consensus building, education, advocacy, decision making and struggle (Whitmore 2012, 118).

It began in 1998 when two Mineral Product Sharing Agreements issued on the Binongan's ancestral domain without FPIC. In 2006, two local companies; Jabel and AMIC collaborated with Canadian Olympus Pacific Minerals entered Memorandum of Agreement to drill in the 4,300 hectare of the Binongan's ancestral domain. The Binongan indigenous communities began by making petition against Olympus and prompting it to the NCIP to comply with legal requisite of acquiring the FPIC. The community continued its protest by doing horizontal learning process in 11 barangays, except in two barangays who accept the exploration; Nalbuan and Bunglo, doing a ritual to symbolize the ownership of the land, organizing Cordillera Peoples Alliance (CPA), and endorsing NCIP to protect their rights.

In 2007, NCIP and the Olympus implemented FPIC process after the company drilled for a month then process was rejected by the community due its manipulation to undergo drilling process on the ancestral domain. The rejection followed by militarism action and labelled Cordillera Peoples Alliance

as “terrorist fronts”. By this oppression, the CPA is continuing to educate indigenous people on human rights, advocating them including sending a protest to the head of Olympus in Canada and the president as well, strengthening the community, and sustaining horizontal learning amongst indigenous peoples.

Lessons Learnt

Based on the experiences of the Philippines, implementing FPIC requires supporting instruments and factors to achieve certain goals. *First*, a strong state that committed to protect indigenous people rights. *Second*, an institutionalized system that has a stand point to respect, and protect indigenous people rights. *Third*, strong society and non-governmental organizations who becomes a watchdog and advocacy institution in terms of advocating and educating indigenous people. *Fourth*, rule of law to protect political uncertainty. *Fifth*, democratic governance that becomes a fundamental instruments to implement a participatory spirit in FPIC and maintaining citizen-led assessment. *Six*, open governance as a global intervention to push the government to be attached to the citizen by disclosing information, implementing accountability and transparency, and to prevent state-centered approach on managing natural resources. Started from 2011, Philippine has become one of the founding fathers of Open Government Partnership which bring consequences to implement open government plans such EITI, and promotes deepened citizen participation which can strengthen the FPIC implementation.

Oxfam (2013, 9) has noted several flaws of FPIC process such as required once at the commencement of a project, no procedure for impugning consent once given or for suspending a project which has not complied with the rules for securing FPIC, only consent from indigenous people required even when the project can affect non-indigenous populations, non monitoring mechanisms on violations committed during FPIC process, and signing MoA outside the communities can contribute to mistrust by communities of their leaders/designated signatories. Based on field research doing by Aspac Hub on December in Compostella Valley Province, Philippines, the flaws also related to knowledge gap between indigenous people, the government, and the company.

In order to tackle the flaws, FPIC required three factors to strengthening and achieving a good deal for indigenous people. *First*, sustaining horizontal-learning amongst marginalised communities who dealing with the impact of extractive industries. *Second*, sharing values and experience amongst stakeholders in order to shaped marginalised communities in extractive issues into certain issues as well as educating them to manage knowledge gap between indigenous people, the state, and the company. Non-governmental organization has stepped a head on this matter with educating indigenous people into grassroots level. *Third*, transnational advocacy to scale up local issues into regional issues to become a regional concerns.

F. Concluding Remarks

In short, the way for implementing FPIC in extractive industry in Indonesia is presented in the chart below.



Learning from the experience of FPIC implementation in Indonesia and Philippine, we can draw some important notes. **First, FPIC is the political power of indigenous peoples.** It is said so because: (1) social license for operating development program/project is in the hand of indigenous peoples; (2) FPIC has potential power to transform oppressive conditions by introducing processes that require negotiated agreements between indigenous peoples and the broader society. While we must muster all of the economic, developmental, environmental, and technical arguments in support of FPIC, ultimately it will require a political process that prioritizes cultural and natural diversity as core values in our lives and our survival.

Second, FPIC needs prerequisite of democratic political context (democratic governance and open governance). FPIC really expects active participation from society. Therefore, the participative room should be open first by the government and it is possible to happen in a democratic political system. In addition to democratic political context and open governance, it takes solidity from the society groups that are affected by natural resource exploitation to keep on solid in fighting the exploitation that violate their rights. The experience in Philippines also teaches the importance of education to marginal groups that are affected by resources exploitation, by the power of civil society.

Third, the necessity of transnational advocacy to scaling up local issues into regional issues to become a regional concerns. To secure FPIC implementation in mining sector, it needs solidity of civil society in the advocacy in regional level or trans-national in nature (read: ASEAN). The advocacy network in regional level is needed so that there is vertical pressure from trans-national institution to guard the rights of indigenous peoples that is violated by the process of development.

The pressure that only comes from lower level (pressures from local level conducted by civil society groups) is not enough to be political power to fight the interest of the capitalist that collaborated by the State. It needs pressure from higher level (international pressure) so that FPIC can be implemented.

The experience of FPIC implementation in forestry sector through REDD program plus shows that there is external intervention that are international in nature which then forces corporations and States to implement FPIC. The same thing is also needed to be applied on mining also oil and gas sector. The international advocacy can be conducted by making regional as well as international forum that consistently guards FPIC in mining also oil and gas.

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RISK SENSITIVE INVESTMENT IN ASEAN : Problems and Options¹

Dian Lestariningsih² & Hening Kartika Nudya³

Abstract

The Asia Pacific region has the potential sources of oil, gas mineral and coal. Indonesia is the largest coal exporter in the world, while Malaysia is the largest producer of tin and the Philippines is 5th largest mineral resource in the world. Currently the oil, gas and minerals sector has contributed significantly to state revenues, such as in Indonesia, mining, oil and gas sector contributed 23% of total national revenue in 2013.

Nowadays, Southeast Asia become a spotlight ahead of the enactment of the ASEAN Economic Community on 2015. In 2013, ASEAN countries member Gross Domestic Production reach 5,1% and become market target with total population around 617.165 million, in other hand, indeed growth of population will raise energy consumption in ASEAN.

On this paper, we using Risk Reduction Formulato examine existence of Extractive Industries in ASEAN. Twigg (2007), describes the framework; $R = H \times V / C$; R is Risk, H is a Hazard, V is Vulnerability, and C is Capacity. Risk is defined as the frequency of an event happening and its impact, A Hazard is a physical or human-made event that can potentially trigger a disaster, Vulnerability is 'Susceptibility to harm' of those at risk, Capacities are the qualities & resources of community (or individual) to anticipate, cope with, resist and recover from the impact of hazards.



Key Words : Risk, Risk Reduction, Extractive Industries

A. Brief of Extractive Industries in ASEAN : Contributions and Impacts

One of the most attracting international attention from South East Asia (SEA) is the existence of the abundant natural resource like oil, gas, and mineral. United State's Geologist Survey on 2010 predicted that Southeast Asia regional has 26,1 million barrel oil reserve and 299 trillion meter square of natural gas. In addition there are another mineral resources, such as, copper, platinum, gold, nickel, posphor, and pewter (USGS, 8-15).

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International investment in Association of South East Asia Nation (ASEAN) on mining sector is increasing, according to World Bank (2012), Foreign Direct Investment (FDI) reach 28% until 63% of total foreign investment in ASEAN. The ASEAN secretariat's data mentions, FDI in 2013 amounts to 119.755,6 million US\$, increasing from 114.082,2 million US\$ and 2011 amounts to 97.536,9 US\$. In the period of 2010-2012 recorded that 7 out of 29 mega deal merger and acquisition over US\$ 500 million was from mining and crude oil sector. Merger and acquisition transaction in these two sectors accounted for 23% of the total transaction.

In Indonesia, the number of foreign investment project in 2010 is 227 worth around 2.200,5 million US\$ increased to 820 project worth 4.816,4 million US\$ in 2013 specific to mining sector. Myanmar is exploring 17 oil block, 5 onshore gas block, and 2 offshore gas block. In 2011, Myanmar has signed a contract with foreign company and offering another 23 block. Mining sub sector investment in Malaysia reach 28,7% of 12.297,4 million US\$ and targeting to be oil and gas industry hub in 2017. Whereas, Singapore wanted to retain the title as the largest oil storage service providers (UNESCAP, 63-69).

Extractive industries (EI) played an important role in the economy of SEA, such as the oil and gas contribution have accounted for up to 30% for annual budget of Indonesia, in Malaysia it has accounted 50% for annual budget and 80 % for annual budget in Brunei Darussalam. Meanwhile the utilization of mineral resource has become the main income for other country such as Laos, Vietnam, and Cambodia.

EI presence in the local level context usually will following with an infrastructures development like roads, bridges, public services, open job opportunities and Corporates Social Responsibility (CSR) program implementation to improve welfare on surrounding area.

The presence of EI in SEA also giving opportunities for some countries such as Myanmar, Philippines, Indonesia, Cambodia and Timor Leste to promotes a transparency initiatives, better governance at national and regional context also an opportunities for CSO to get capacity building on EI issues (Triwibowo & Ahmad, 4-10). Extractive Industries Transparency Initiatives (EITI) became a fora for fostering multi-stake holder engagement to deliberate area of concern from each perspective.

Looking closely at data above, ASEAN economic development sustained by the extractive resource exploitation that serves as a source of country income. This is definitely a positive thing for all country when they can utilize extractive resources as a main income resource for the country. But, to be noted that the increasing of extractive sector industrialization, will be followed by the potential of negative impact. The negative impact that appears in the middle of industrial activity commonly called as negative externalities. The form of negative externalities can be seen in the presence of environmental degradation for examples; pollution, action arbitrariness, air pollution, radiation, and so forth. Negative externalities ultimately lead to social problems such as the emergence of conflicts between people, society and the state, community and private sector, or all three conflicts.

Negative externalities that arise from the activities of extractive industries can be seen in almost all countries that doing extractive industry activities. For examples, one of the copper mine in Myanmar commonly called the Monywa Project, considered the most destructive mining activities for polluting the soil and water with high level of sulfuric acid which cause the people are no longer able to cultivate the farm. Still in Myanmar, in other areas, there is a gas pipeline project (Shwe Pipeline Project)

which transport the gas to China. Activities around the gas pipe disturbing activities of farmers and fishermen because the pipes has been buried under agricultural land and the sea. In Indonesia, open pit mining conducted by PT Newmont Nusa Tenggara produce waste that disrupt agricultural and fishing activities (the number of fish production was declining due to polluted water by trailing). Those problems cause public discontent and reduce public trust towards the company, so in the end, it will be a conflict. Based on the short story of the cases above, the negative externalities could be the trigger of a disaster.

The data above shown us, the existence of extractive industries giving significant contribution on national revenue and improving governance in EI, furthermore EI and its impact potentially raising a risk.

B. Industrial Disaster in ASEAN and Surrounding Area

This section will discuss some of the industrial activity in the region and its surroundings which have become industrial disasters and potentially cause cross-border industrial disaster. The first case is the case of the Montara Oil Spill in the Timor Sea which impact spread to parts of Indonesia, then, the case of industrial disasters that could potentially lead to be cross-border industrial disaster, Gas Pipeline Project Shwe is Myanmar.

1. Montara Oil Spill

Montara oil spill happen on **21 August 2009**. More than **2 million** crude oil spewed into the Timor Sea for over two months. It was an offshore oil platform in the Australian Montara oil field. The oil platform is owned by a Thai-based company PTTEP Australasia. The cause of the leak is unknown but is believed occurred in wells up to **3500 metres** below the rig. The oil spill forming **2000 square kilometre** slick, The Australian Maritime Safety Authority (AMSA) mobilised aircraft to try to break up growing oil slick and to stop the oil from contaminating shoreline habitats. It was one of the worst oil spills in Australia (Li, 2010).

The oil spill that occurred in the northern coast of Western Australia raises serious environmental impact. Some areas near Indonesia in the Timor Sea experienced the impact of the oil spill. Direction of the wind carrying the oil spill towards Indonesian waters. An area of **70341.76 kilometers square** of the Timor Sea which borders the province of NTT, contaminated by **40 million liters** of crude oil. Oil spill was contaminating the traditional fishing waters that relied on by thousand of coastal residents. Thousands of fish found dead in the Timor Sea near the Oesapa, Kupang, East Nusa Tenggara. The leaking Montara well that occurred during the **70 days**, reduced fish stocks in the territory of Indonesia. It disrupted the economic activities of the community particularly fishermen.

To solve these problems the Indonesian government established a National Team for Emergency Mitigation of Spill in Sea. The team negotiate with Thailand's PTTEP Australasia regarding compensation for the incident. The Government of Indonesia requested compensation of **\$ 2.4 billion** after taking into account any direct or indirect loss suffered, such as, the fishermen losses, the general economic losses, damage coral reefs But the demand is not directly addressed by PTTEP Australasia. The signing of the MoU on compensation has been delayed until the Thai government

completed the election process and overcome the flood disaster in the country. Earlier the MoU had been scheduled to be signed in Jakarta on 3 August 2011 than delayed until late August 2011, later it was delayed again to 6 September 2011. Signing of MoU compensation continues to be delayed again since there was a change in the Australian energy and mineral resources minister's post (Fardah, 2011).

After a delay of many times, the amount of compensation to be paid was agreed, but it was not accordance with Indonesian government request. After some time carried on negotiations, PTTEP agreed to provide compensation of 5 million dollars, much less than that requested by the Indonesian government, 2.4 billion dollars. The amount received by the government and given to the fishermen 3000 as compensation. Although it was too little, fishermen continue received it and not to sue the company. Known on 31 August 2012, PTTEP Australasia accepted fines totaling A \$ 510,000 (USD \$ 536,010) handed down by the Darwin Magistrates Court for its responsibility in the 2009 Montara incident (The Jakarta Post, 2013).

2. The Shwe Oil and Gas Pipeline Project

The Shwe Oil and Gas Pipeline Project is an consortium of four state owned company and private company from India and South Korea. Daewoo International (South Korea) is the largest consortium stakeholder with a 60 % share, others stakeholder are; Korean state-owned company holds a 10% share, The oil and Natural Gas Corporation (ONGC) from India holds 20% share, and the 10% remaining share is held by The Gas Authority of India Ltd. The consortium lead by Daewoo International comprise project offshore production platform or an underwater pipeline and an onshore gas terminal in Kyauk Phyu Township on the Arakan Coast. The pipeline will transport the gas from Myanmar to southwest China through 2800 km pipe gas which will developed by China National Petroleum Corporation (CNPC).

CNPC also plans to build a sister oil pipeline alongside the gas pipeline. It will allow CNPC to ship oil from Africa and the Middle East to China bypassing a slower shipping route through the Malacca Strait (Bank Track, 2014). The 771 km-long oil pipeline may transport up to port 22 million tons of oil per year to China's southwest Yunnan Province. CNPC also plans to build a sister oil pipeline alongside the gas pipeline. It will allow CNPC to ship oil from Africa and the Middle East to China by passing a slower shipping route through the Strait of Malacca. From the project, CNPC holds a 50.9% stake in the pipeline project, Myanmar's military regime's Oil and Gas Enterprise (MOGE) holding 49.1%. This large-scale project provides great benefits for all parties involved, but the negative impact of the project activity arises from either a social or environmental. Negative impact on the social life of the community can be seen from the occurrence of forced relocation. Thousands villagers were relocated to make room for the pipelines. In addition, there is no guarantee for the public to obtain compensation from the project, there are no any reports plans to drain some of the funds from the project to key sectors for the community, such as health, education, and social development.

A villager from Katha Pyay, sent a letter to the Paramey company headquarters in late 2011 demanding return of the land. After 5 months they did not receive the reply, then he appealed to the Districts and Township authorities with two new letters- one demanding restoration of the land and another on behalf of the entire population of the two villagers tracts affected, demanding return and

use of the land (Shwe Gas Movement, 2013), but they still did not receive any reply or compensation. A group of farmers representing the Northern Shan Farmers Committee also did similarly act, they submitted a letter to the office of Shan State Chief Minister. They demanded full immediate payment for all lost land, repairment of broken parts of the pipeline, and jobs for people from northern Shan State, but they never received any kind of confirmation from the company (Shwe Gas Movement, 2013).

In addition to the social impact, pipeline installation activities under water damaging the marine ecosystem due to clear the pipeline route, they dynamiting coral reefs. Forest ecosystems are also disturbed because of the activities of this project. Construction of the pipeline corridor destroyed habitats, increase of wildlife poaching, segment ecologically sensitive areas and animal passageways, also Increased Deforestation and soil erosion. The company is not disclosing assessment or preparation for the worst case scenario of the project such as the destruction of the rig, which could cause an explosion or spills of oil or gas under the sea. Whereas, if that happens the impact can be widespread and become a common problem, not only for Myanmar and the countries that are part of stakeholders, but also the neighboring countries.

Moreover, there are big plans in the future related to extractive industry activities among ASEAN members are outlined in the ASEAN Economic Blueprint Community to accelerate the development of the ASEAN Power Grid and the Trans-ASEAN Gas Pipeline which makes 11 bilateral connection with a 3020 km pipeline connection.

The case studies give an examples how EI caused economic losses, environmental degradation and social impact. Referring to the UNISDR terminology, described the disaster as a serious disruption of the functioning of a community or a society involving widespread human, material, economic or environmental losses and impacts, the which exceeds the ability of the affected community or society to cope using its own resources.

During this time, when talk about disasters, what immediately arises is natural disasters, such as floods, earthquakes, tsunamis, landslides, and so forth. In fact, looking at the data, the increasing of investment in the extractive industries sector also followed by increasing of the chances for increasing risk, considering the nature of the industries is could be the trigger of a human made or man made disasters.

C. Brief Review of Economic, Social, Political Cooperation Framework and Disaster Management Framework in ASEAN

This section will discuss a brief review of the economic cooperation framework and the framework of disaster to see how far the issue of extractive industries and potential disasters that may result discussed in these frameworks. Here are some documents that will be discussed:

1. 2005 Ministerial Understanding on ASEAN Cooperation in Minerals

The objectives of this document are to develop the minerals sector to be the engine for greater economic growth and social progress in the ASEAN region; Enhance trade and investment in the ASEAN minerals sector; and promote environmentally sound and socially responsible mineral development practices in the sustainable management and optimum utilization of minerals resources. Each member state that signed the document agreeing to promoting environmentally sound and socially responsible mineral resources management and development.

2. Declaration on The ASEAN Political-Security Community Blueprint

The APSC main objectives are to bring ASEAN's political and security cooperation to a higher plane and to ensure that the peoples and Member States of ASEAN live in peace with another and with the world at large in a just, democratic and harmonious environment. In order to achieve these objectives, in the document there are various efforts to strengthen cooperation among the member countries. Strengthening cooperation in disaster management to be one of the existing efforts. Some of the action plans that have been applied are activate the ASEAN disaster management arrangements to assist affected countries in the event of a major disaster; enhancing civilian-military coordination in providing effective and timely response to major natural disasters; finalize the SOPs for the regional standby arrangements and coordination of joint disaster relief and emergency response operation for establishing a joint operations in providing relief to disaster affected areas said of Members States in line with the ASEAN Agreement on Disaster Management and Emergency Response (AADMER).

3. Declaration on The ASEAN Economic Community Blueprint

Declaration on the ASEAN Economic Community Blueprint made to Achieve higher levels of economic Dynamism, prosperity sustained, inclusive growth and integrated development of ASEAN. A description about the economic cooperation in the extractive sector, contained at points 54 and 56. Points 54 stated about the development of the ASEAN Power Grid (APG) and the Trans-ASEAN Gas Pipeline (TAGP), while the points 56 stated about cooperation in mining sector. Only in points 56 expressly said that the need for action to promote environmentally and socially sustainable mineral development.

4. Declaration on The ASEAN Socio-Cultural Community Blueprint

The ASEAN Socio-Cultural Community Blueprint has purpose to contribute to realising an ASEAN Community that is people-centered and socially responsible with a view to achieving enduring solidarity and unity among the nations and peoples of ASEAN by forging a common identity and building a caring and sharing society which is inclusive and harmonious where the well-being, livelihood, and welfare of the people are enhanced. On this document define clearly about Corporate Social Responsibility. This document ensure that Corporate Social Responsibility is incorporated in the corporate agenda and to contribute towards sustainable socio-economic development in ASEAN.

The action of these objective is to make reference on Corporate Social Responsibility for Member States with international standard such as ISO 26000 “Guidance on Social Responsibility”.

5. The ASEAN Comprehensive Investment Agreement (ACIA)

The main objectives of this document is to support a free, open, transparent, and integrated investment regime in the Association of Southeast Asian Nations (ASEAN) region in line with the goal of achieving an ASEAN Economic Community by 2015. This document focus on howto create “a liberal, facilitative, transparent, and competitive investment environment in ASEAN”.

6. ASEAN Minerals Cooperation Action Plan

Aiming to create a vibrant ASEAN minerals sector by enhancing trade and investment and strengthening cooperation and capacity for sustainable mineral development in the region. To achieve the goal,AMCAP using 3 strategies: facilitating and enhancing trade and investment in minerals; promoting environmentally and socially sustainable mineral developmet; strengthening institutional and human capacities in the ASEAN minerals sector.

7. ASEAN's Response Strategy in Addressing Transboundary Haze Pollution

Established on 2002, this is a very specific agreement that will address policy and technical measures with regard to monitoring, assessment, and prevention, technical cooperation and scientific research, mechanism for coordination, lines of communication, simplified customs and immigration procedures for immediate deployment of people and good across borders in the event of transboundary haze pollution.

8. ASEAN Agreement on Disaster Management and Emergency Response

ASEAN Agreement on Disaster Management and Disaster Response (ASEAN Agreement on Disaster Management and Emergency Response (AADMER)). This agreement is a regional policy that legally binding for cooperation, coordination, technical assistance, and resource mobilization in all aspects of disaster management in the 10 Member States of ASEAN.

Here is the mapping content of these documents:

Document	Objective	Signed	Implementation
2005 Ministerial Understanding on ASEAN Cooperation in Minerals	<p>The objectives of Ministerial Understanding on ASEAN Cooperation in Minerals are to:</p> <ol style="list-style-type: none"> 1. Develop the minerals sector to be an engine for greater economic growth and social progress in the ASEAN region; 2. Enhance trade and investment in the ASEAN minerals sector; and 3. Promote environmentally sound and socially responsible mineral development practices in the sustainable management and optimum utilisation of minerals resources. 	Kuching, Sarawak, Malaysia, 4 August 2005,	To the extent permitted by their respective national laws, rules, regulations and policies, Member Countries shall undertake cooperation in information exchange and development of the ASEAN Mineral Database; Promotion and facilitation of intra-and inter-ASEAN trade and investment; Promotion of environmentally and socially responsible mineral resources management and development; intensifying private sector participation and public private sector collaboration in ASEAN mineral cooperation programmes, projects and activities; fostering cooperation with ASEAN dialogue partner countries and relevant international and regional organisations in the promotion of scientific and technological research and development in mineral resources development and geosciences, as well as cooperative programmes on technology transfer; coordination of development policies and programmes on mineral resources; exchange of technical information, experience and best practices; strengthening cooperation and joint approaches in addressing international and regional issues and concerns of common interest; all other areas of cooperation as may be deemed necessary.
Declaration on The ASEAN Political-Security Community Blueprint	<p>APSC will bring ASEAN's political and security cooperation to a higher plane. The APSC will ensure that the peoples and Member States of ASEAN live in peace with another and with the world at large in a just, democratic and harmonious environment. The APSC shall promote political development in adherence to the principles of democracy.</p>	Singapore, 20 November 2007	<p>Strengthen ASEAN Cooperation on Disaster Management and Emergency Response</p> <p>Action:</p> <ol style="list-style-type: none"> a. Enhance joint effective and early response at the political and operational levels in activating the ASEAN disaster management arrangements to assist affected countries in the event of major disasters; b. Enhance civilian-military coordination in providing effective and timely response to major natural disasters;

	<p>the rule of law and good governance, respect for and promotion and protection of human rights and fundamental freedom as inscribed in the ASEAN Charter.</p>		<p>c. Finalise the SOP for Regional Standby Arrangements and Coordination of Joint Disaster Relief and Emergency Response Operations for establishing joint operations in providing relief aid to disaster affected areas of Member States in line with the ASEAN Agreement on Disaster Management and Emergency Response (AADMER);</p> <p>d. Work towards effective interface on disaster management between ASEAN and other ASEAN-related bodies such as the ASEAN Regional Forum (ARF), ASEAN Plus Three and East Asia Summit (EAS) in a manner that will enhance ASEAN's disaster management capacities; and</p> <p>e. Develop ARF strategic guidelines for humanitarian assistance and disaster relief cooperation.</p>
<p>Declaration on The ASEAN Economic Community Blueprint</p>	<p>To achieve higher levels of economic dynamism, sustained prosperity, inclusive growth and integrated development of ASEAN.</p> <p>To transform ASEAN into a region with free movement of goods, services, investment, skilled labour, and freer flow of capital.</p>	<p>Singapore, 20 November 2007</p>	<p>Mining cooperation. Enhance trade and investment and strengthen cooperation and capacity in geological and mineral sector for sustainable mineral development in the ASEAN region.</p> <p>Actions:</p> <ol style="list-style-type: none"> Facilitate and enhance trade and investment in minerals; Intensify institutional and human capacity building in ASEAN geological and mineral sector; Promote environmentally and socially sustainable mineral development; and Encourage the participation of the private sector in mineral development.

<p>Declaration on The ASEAN Socio-Cultural Community Blueprint</p>	<p>To contribute to realising an ASEAN Community that is people-centered and socially responsible with a view to achieving enduring solidarity and unity among the nations and peoples of ASEAN by forging a common identity and building a caring and sharing society which is inclusive and harmonious where the well-being, livelihood, and welfare of the people are enhanced.</p>	<p>Singapore, 20 November 2007</p>	<p>Promoting Corporate Social Responsibility (CSR) Strategic objective: Ensure that Corporate Social Responsibility (CSR) is incorporated in the corporate agenda and to contribute towards sustainable socio-economic development in ASEAN Member States. Actions: a. Develop a model public policy on Corporate Social Responsibility or legal instrument for reference of ASEAN Member States by 2010. Reference may be made to the relevant international standards and guides such as ISO 26000 titled "Guidance on Social Responsibility"; b. Engage the private sector to support the activities of sectoral bodies and the ASEAN Foundation, in the field of corporate social responsibility; c. Encourage adoption and implementation of international standards on social responsibility; and d. Increase awareness of Corporate Social Responsibility in ASEAN towards sustainable relations between commercial activities and communities where they are located, in particular supporting community based development.</p>
<p>The ASEAN Comprehensive Investment Agreement (ACIA)</p>	<p>To support a free, open, transparent, and integrated investment regime in the Association of Southeast Asian Nations (ASEAN) region in line with the goal of achieving an ASEAN Economic Community by 2015. And to create "a</p>	<p>Cha-am, Thailand, 26 February 2009</p>	<p>This agreement shall create a liberal, facilitative, transparent and competitive investment environment in ASEAN by adhering to the following principles: Provide for investment liberalisation protection, investment promotion and facilitation; progressive liberalisation of investment with a view towards achieving a free and open investment based in ASEAN;</p>

	liberal, facilitative, transparent, and competitive investment environment in ASEAN”		maintain and accord preferential treatment among Member States; no back-tracking of commitments made under the AIA Agreement and the ASEAN IGA; grant special and differential treatment and other flexibilities to Member States depending on their level of development and sectoral sensitivities; reciprocal treatment in the enjoyment of concession among Member States , where appropriate; and accommodate expansion of scope of this Agreement to cover other sectors in the future.
ASEAN Minerals Cooperation Action Plan	To create a vibrant ASEAN minerals sector by enhancing trade and investment and strengthening cooperation and capacity for sustainable mineral development in the region.	Malaysia, 4 August 2005	AMCAP Strategies: 1. Facilitating and Enhancing Trade and Investment in Minerals 2. Promoting Environmentally and Socially Sustainable Mineral Development 3. Strengthening Institutional and Human Capacities in the ASEAN Minerals Sector
ASEAN's Response Strategy in Addressing Transboundary Haze Pollution	Guiding the process of strengthening the region's capacity to address its transboundary haze pollution problem. The primary objectives are to: ● prevent land and forest fire through better management policies and enforcement; ● Establish operational mechanism to monitor land and forest fires; ● strengthen regional land and forest fire-fighting capability with other mitigation measures.	Malaysia, 10 June 2002	The agreement will address policy and technical measures with regard to monitoring, assessment, and prevention, technical cooperation and scientific research, mechanism for coordination, lines of communication, simplified customs and immigration procedures for immediate deployment of people and good access borders in the event of transboundary haze pollution. The agreement commits AMCs to take specific action to prevent and monitor land and forest fires and to resulting haze on a sustained basis. It also intensifies the current regional and sub-regional arrangement through provisions of technical cooperation and procedures for joint emergency response.

<p>ASEAN Agreement on Disaster Management and Emergency Response</p>	<p>The objective of this Agreement is to provide effective mechanisms to achieve substantial reduction of disaster losses in lives and in the social, economic, and environmental assets of the Parties, and jointly respond to disaster emergencies through concerted national efforts and intensified regional and international cooperation. This should be pursued in the overall context of sustainable development and in accordance with the provisions of this Agreement.</p>	<p>Vientiane, 26 July 2005</p>	<p>In pursuing the objective of this Agreement, the Parties shall:</p> <ol style="list-style-type: none"> a. co-operate in developing and implementing measures to reduce disaster losses including identification of disaster risk, development of monitoring, assessment and early warning systems, standby arrangements for disaster relief and emergency response, exchange of information and technology, and the provision of mutual assistance; b. immediately respond to a disaster occurring within their territory. When the said disaster is likely to cause possible impacts on other Member States, respond promptly to a request for relevant information sought by a Member State or States that are or may be affected by such disasters, with a view to minimising the consequences; c. promptly respond to a request for assistance from an affected Party; and d. take legislative, administrative and other measures as necessary to implement their obligations under this Agreement. Each Party shall take appropriate measures to identify disaster risks in its respective territories covering, among others, the following aspects: <ol style="list-style-type: none"> i. natural and human-induced hazards; ii. risk assessment; iii. monitoring of vulnerabilities; and iv. disaster management capacities.
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From the brief review of those documents, in general showed that ASEAN has efforts to balance the investment growth, especially in the extractive industries sector to sustainable development. But none of them specifically discusses about how to response the emergence of transboundary industrial disasters rise by the existence of EI in ASEAN. Considering the broad impact of transboundary industrial disaster that potentially happen, ASEAN EI framework to response it should be considered.

We also must considered ASEAN principles on Consensus and No Intervention, means establishing a regional framework will not guarantee its implementation. Each nation will remain to practice 'local wisdom' and contextualization based. We must realize ASEAN consist from mid-developed country like Singapore to 'newly open' government like Myanmar.

D. Building a Culture of "Risk Sensitive"

Countries in the ASEAN region has constantly suffered disasters caused by floods, hurricanes / typhoons, earthquakes, tsunamis and others. In the case of large-scale natural disasters, every enterprise has its limitations and they are struggling to resume their business, primarily due to malfunctioning of the basic infrastructure for distribution, lack of basic needs such as electricity, water and information, and disrupt the supply chain. Specifically in 2011 some disaster occurred that opens private businesses eyes. The Great East Japan Earthquake resulting unpredictable disaster in the Tohoku region, Japan. Many private companies suffered heavily and was forced to cease operations or to lower operating rates because of supply shortages or other reasons. Flooding from the Chao Phraya River in Thailand caused direct damage to industrial enterprises and a large negative impact on the national economy of Thailand and have an impact in the region. From the above two examples remind us of the high risk of termination of business, as well as natural disasters that can cause blow national, regional and world economy.

Since the 2004 Indian Ocean tsunami, the Asia Pacific region experienced a metamorphosis of paradigm in disaster management, from crisis reactive approach to disaster risk reduction approach. The government and the public also realizes that the factors that affect the level of impact is not purely natural.

So far, the development work has focused on efforts to reduce poverty and alleviate the marginalized groups to achieve minimum welfare. Development approach with mainstreaming disaster risk reduction not yet massive implemented, even deliberation on damages and losses raise tripled in three decades and impacted to development has started (GAR, 7-12).

Wheels of development are characterized by the increasing amount of investment, particularly in the extractive industries sector has the potential to increase the risk of disaster. Exploitative practices of extractive industries generally will give emphasis on the environment, both natural and occupants. The exploitation process will significantly change the shape of the topography of the land, whether of land that becomes hilly and flat shape and large hole in the ground surface is particularly true of the type of surface mining. On the other hand, the interaction with the extractive industry is also to be noted that the community cannot be separated; community livelihoods in the transition area where industry, extractive, special land conversion from agriculture to other sectors, changes in the social order, the intersection of policy makers with domestic and foreign investors, high level of corruption, the inability of government revenue management, or a clash of cultures. Social interaction can lead to social conflict, inequality of access and negligence on the fulfillment of rights.

International Federation of Red Cross (2009) define, Vulnerability in this context can be defined as the diminished capacity of an individual or group to anticipate, cope with, resist and recover from the impact of a natural or man-made hazard. The concept is relative and dynamic. Vulnerability is most often associated with poverty, but it can also arise when people are isolated, insecure and defenceless in the face of risk, shock or stress. People differ in their exposure to risk as a result of their social group, gender, ethnic or other identity, age and other factors.

Wisner (2006) emphasize that the vulnerability is strongly influenced by economic, social and political. Economic aspects can be seen on livelihood security, diversity of revenue opportunities, access to land and resources, a stable market, etc. The social aspect can be seen in a wide ekistensi and social networking, membership in associations that provide mutual assistance in situations of crisis, family networks, which provide local knowledge of self or community protection, etc. Seen political aspects of access to information, participation in decision-making, access to local government services, infrastructure and assistance in times of crisis.

It is clear that the efforts to build governance has also become one of the pillars to ensure risk sensitive investment. Governance expected to build capacity at the national level to translate the basic principles that have been agreed at the ASEAN level with specific contextualization in each country. Also very important to build a knowledge-based governance that are currently in practice provide opportunities for both the cross-border sharing of experience, information and knowledge. An example, the initiation of the program provides an opportunity exposure IKAT US civil society in Indonesia, Philippines, Cambodia, Vietnam, Myanmar, Malaysia and Timor Leste to share and advocate at the regional level (Hidayat, 22-23).

On July 26, 2006, there was a consensus AADMER aims to provide an effective mechanism for the realization of the reduction of casualties and loss of assets of social, economic and environmental, and to jointly emergency response through national efforts are integrated and regional and international cooperation enhanced. Referring to the ASEAN Minerals Cooperation Action Plan 2011-2015, there is an agreement to promote the Development of environmentally and socially sustainable as well as strengthening institutional and human resource capacity. In the Joint Press Statement The 4th ASEAN Ministerial Meeting on Minerals (AMMin), stated that in order to achieve measurable success in efforts to sustainable mineral development, ASEAN to facilitate the private sector as the main source of investment and encourage the private sector to engage in the process of drafting regulations discussion and berparticipasi in decision making.

All three of the above, indicating the commitment of ASEAN to ensure there is synergy between the development of the extractive industry sector with the realization of sustainable development. However, very important in order to establish the ASEAN Economic Community by 2015, ASEAN prepare a joint framework to measure the commitment, build knowledge-based governance to ensure the sharing of information, knowledge and experience in EI to foster solidarity and enhancement of governance; defining the role of government, community and private sector as well as each contributes for control function. These things are in order to build a culture of risk-sensitive investments to support mainstreaming of disaster risk in development planning in particular, the presence of extractive industries in ASEAN.

The combination of all the strengths, attributes and resources available within a community, society or organization that can be used to achieve agreed goals. Capacity may include infrastructure and physical means, institutions, societal coping abilities, as well as human knowledge, skills and collective attributes such as social relationships, leadership and management (UNISDR, 1).

E. Conclusion

Development work may increase the potential threat and could lead to disaster if not addressed vulnerability and capacity was increased. This reality then growing acceptance of the concept that is based on the analysis that as a consequence of natural disasters or social danger and is a human action. Disasters only occur when certain individuals and groups are not able to cope with the threat of the events in this case the presence of extractive industries.

Here the we look at the opportunities the importance of ASEAN formulate a regional EI Framework to ensure the basic principles with the value and character of ASEAN investment in the sector to respond to the Extractive Industries. This framework can be developed to become a benchmark of accountability of the existence of the Extractive Industries and processes that enveloped him. However, the existence of ASEAN EI framework will not ensure accountability in EI because the basic principle of ASEAN cooperation is Consensus and No Intervention.

Governance Reform became one of necessity. The main actors, governments, private sector and the public should be able to define the role and willing to participate. So it will awaken control over the relationships between the actors. And a commitment to build the Knowledge-based governance becomes very relevant.

Looking at the context of ASEAN, the respon to a industrial disaster, either mitigation or post-disaster management seems to not be a major concern both at the domestic level and the regional level of ASEAN, whereas the impact of industrial disasters can extend across borders. ASEAN framework in Extractive Industries is urgently needed to respond industrial disasters considering the start of the ASEAN Economic Community in 2015.

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