

ผลกระทบของประชาคมอาเซียน ที่มีต่อการปฏิบัติงานของกระทรวงยุติธรรม

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บทคัดย่อ

บทความนี้มุ่งเน้นศึกษาผลกระทบของประชาคมอาเซียนที่มีต่อการปฏิบัติงานของกระทรวงยุติธรรม โดยใช้เทคนิคของการวาดภาพอนาคตที่ประกอบด้วย การติดตามการเปลี่ยนแปลงและสัญญาณของอุปสรรคและโอกาสในอนาคต การวิเคราะห์ผลลัพธ์ที่จะเกิดขึ้นในอนาคตรวมถึงสร้างภาพอนาคต การจินตนาการถึงความเป็นไปได้ที่จะเกิดขึ้นและสิ่งที่ปรารถนาจะให้เกิด การตัดสินใจเลือกยุทธศาสตร์ที่จะบรรลุความสำเร็จ และการลงมือปฏิบัติ (การลงมือปฏิบัติเป็นประเด็นที่อยู่นอกขอบเขตการวิจัยครั้งนี้) การวิจัยใช้วิธีเก็บข้อมูลโดยการสัมภาษณ์เชิงลึกและสนทนากลุ่ม ผลการศึกษาพบว่า เศรษฐกิจไทยภายใต้ประชาคมอาเซียนจะเติบโตแต่ไม่กระจายผลประโยชน์ มีความเป็นสังคมพหุวัฒนธรรมจากการเคลื่อนย้ายแรงงานจากประเทศเพื่อนบ้าน และปัญหาสังคมจะรุนแรงและซับซ้อนยิ่งขึ้น โดยมีการเสนอภาพอนาคตที่ต้องการ 4 ประเด็น คือ การทบทวนและปฏิรูปกฎหมาย การพัฒนาการบริหารของกระทรวงยุติธรรม การมียุทธศาสตร์ที่ดีและนำไปปฏิบัติอย่างมืออาชีพ และการทำงานแบบเครือข่ายในระดับประเทศและระหว่างประเทศ

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Potential Impact of the ASEAN Community on the Ministry of Justice's Operation

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Abstract

This research focuses on the potential impacts of the ASEAN Community on the Ministry of Justice (MOJ)'s operations. By using the scenario technique TAIDA – standing for tracking, analyzing, imaging, deciding and acting (the scope of this research does not cover the phase of acting) – and qualitative research methods like in-depth interview and focus group, the research found that the ASEAN Community will have both constructive and harmful impacts on the operations of nine departments supervised by the Permanent Secretary of the Ministry of Justice. Two surrounding environments of the Justice Ministry's operations in the ASEAN Community are: the economic growth without fair distribution the multicultural society in Thailand; and the possibility of more social problems with complexity. There are four desired changes preparing for the arrival of the ASEAN Community: revised and reformed relevant laws and regulations; development of administration; good strategies with professional strategic implementation; and networks at both domestic and international levels.

Keywords: ASEAN Community, Ministry of Justices, Scenario Techniques

1. Introduction

In October 2003, leaders of the Association of Southeast Asian Nations (ASEAN) agreed to form the Southeast Asian region as the ASEAN Community by 2020. It is popularly known as the Bali Concord II. However, at the 12th ASEAN Summit in Cebu in 2006, ASEAN leaders decided to accelerate the timeframe for realizing the goals of the ASEAN Community by 2015. Three pillars for ASEAN Community building were created.

The first pillar is the ASEAN Political and Security Community (APSC), which aims at bringing ASEAN political and security cooperation to a higher level in order to ensure that the people and member states of ASEAN live in peace with one another and with the world at large in a just, democratic, and harmonious environment (ASEAN Secretariat, 2009a: 1).

Second, ASEAN Economic Community (AEC) is the realization of the end-goal of economic integration as outlined in the ASEAN Vision 2020, to create a stable, prosperous and highly competitive ASEAN economic region in which there is a free flow of goods, services, investment and a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities in year 2020 (ASEAN Secretariat, 2008).

The third pillar is ASEAN Socio-Cultural Community (ASCC). The primary goal of ASCC is to contribute to realizing an ASEAN Community that is people-centered and socially responsible with a view to achieve enduring solidarity and unity among the nations and people 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 (ASEAN Secretariat, 2009b: 1).

The full enforcement of the ASEAN Community in 2015 would certainly make changes at both domestic and international levels to the member states of ASEAN. Certainly, the creators of the ASEAN Community would expect constructive impacts from the integration such as higher volumes of international trade and investment among member states, increased and closer cooperation to solve regional problems, and the making of regional unity and identity. However, by the same token, harmful impacts resulting from the ASEAN Community are not impossible. These include, for examples, the loss of competitiveness in some countries which are not able to fine-tune in accordance with the AEC and the possibility of more transnational crimes due to the freer flow of labor and tourists within the region. Therefore, with the purpose of high competitiveness in the ASEAN Community in an endlessly changing world, ASEAN countries must apply all

mechanisms to prepare themselves for the future situation in the ASEAN Community, and to search for policy and strategy to cope with changes.

As a member and a founder of ASEAN, Thailand had to prepare in advance not only for taking advantage from the advent of ASEAN Community, but also for coping with any problems deriving from the regional community. Hence, on 24 August 2010, the Thai government decided to establish the National ASEAN Committee chaired by the Minister of Foreign Affairs. This committee is the national mechanism to prepare the country to enter the ASEAN Community in 2015, including the policy coordination and plan integration among state agencies (Policy and Strategy Office, the Office of the Permanent Secretary of Justice Ministry, 2012). Furthermore, in 2011, the government ordered all state organizations to set action plans for preparing themselves for membership of the ASEAN Community. However, the advent of the National Council for Peace and Order or NCPO following the coup in May 2014 has made change to the National ASEAN Committee, which was replaced by the Directorate Center to Prepare Thailand for the Arrival of ASEAN Community in 2015. The NCPO also formed a committee to take charge of the operations of the center. The committee, chaired by the Deputy Head of the NCPO and Security Chief, is responsible for setting policies, guidelines, and Thailand's position in the cooperative frameworks of ASEAN. NCPO intends to integrate the work of all relevant agencies in preparation for the ASEAN Community for all three pillars – APSC, AEC and ASCC (Government Public Relation Department, 2014).

Thailand's Ministry of Justice (MOJ), as the core unit in the justice process obligated to develop laws and the justice administration system in the country, is assigned to move directly towards preparing the country for the arrival of the ASEAN Community, particularly in relation to the two pillars APSC and ASCC. However, it does not mean that the MOJ would not prepare for the AEC. Parts of the MOJ's obligations also involve the AEC, particularly the mission of the Legal Execution Department (LED) which is perceived as a mechanism for stimulating national economics by transforming frozen assets into operative assets. The MOJ is also assigned to improve the civil laws in accordance with the ASEAN commitments, obligations and agreements. Other than those assigned responsibilities, the MOJ focuses on the potential impacts of the ASEAN Community on its own operations. With the intention of preparing the organization to cope with the advent of the ASEAN Community, the MOJ needs to learn about its own readiness, to foresee the future operating environment of the MOJ, and to search for essential policies, strategies and plans that could help the ministry to operate successfully in the context of the ASEAN Community.

2. Objectives of the Study

- (1) To build scenario contrasting picture of the future operating environment in the ASEAN Community for the MOJ;
- (2) To examine the potential impacts of ASEAN Community on the MOJ's operations;
- (3) To search for the factors leading to the achievements of the MOJ in the ASEAN Community;

3. Scope of the Study

This research focuses on the potential impacts of ASEAN Community on the MOJ's operations, and the factors affecting the achievements of the MOJ to cope with the ASEAN Community. However, this research does not cover all departments in the MOJ. MOJ's agencies that are not supervised by the Permanent Secretary of the ministry, but directly supervised by the Minister of Justices such as the Office of Narcotic Control Board, the Office of Public Sector Anti-Corruption Commission and the Anti-Money Laundering Office are not targets of the study. Hence, the study focuses on the operations of nine departments in the MOJ which are supervised by the Permanent Secretary of the MOJ. The first two departments are directly supervised by the Permanent Secretary of the MOJ – the so-called supporting cluster. These are the Office of the Permanent Secretary of the MOJ, and the Office of Justice Affairs (OJA). The other seven departments can be divided into three clusters: (1) the Justice Administration Cluster such as the Legal Execution Department and the Department of Rights and Liberties Protection (DRLP); (2) the Justice Promotion Cluster comprising of the Department of Special Investigation (DSI) and the Central Institute of Forensic Science (CIFS); (3) the Rehabilitation Cluster encompassing the Department of Probation (DOP), the Department of Juvenile Observation and Protection (DJOP), and the Department of Corrections (DC).

4. Research Methodology

This research on the potential impacts of ASEAN Community on the Ministry of Justice's Operations is based on the phenomenological perspective of qualitative research methods. The research produces descriptive data from the people's own written or spoken testimonies (Taylor and Bogdan, 1984). This research approach employs interviewing and

focus groups as qualitative methods. Qualitative interviewing – the so-called in-depth interviewing – is referred to as non-directive, unstructured, non-standardized and open-ended. Ten key MOJ administrators, including the Permanent Secretary of the Ministry, several of the director-generals of departments or their deputies, and other high level officials who are responsible for ASEAN Community issues in their departments were interviewed. The interviews were unstructured and featured open-ended questions for learning about the informants' ideas, obligations, interests, and experiences, and scenarios regarding their operations in the coming ASEAN Community. A focus group is another method of qualitative research adopted in this research. It is used to listen to and gather information, and to understand how people feel or think about an issue without pressuring participants to vote or reach consensus (Krueger and Casey, 2000: 4). Major participants in the focus group were government officers at the operational level whose jobs might be affected by the advent of the ASEAN Community.

Moreover, with the intention to learn about the future operating environment in the ASEAN Community for the MOJ, the research applies some parts of the scenario technique. Lusk and Briks (2014: 138) explain that scenario technique could be useful for the following circumstances in an organization: (1) there is a need to understand imaginable futures; (2) we are in an environment of uncertainty or dealing with complexity or both; (3) an organization needs information for a new strategy or a strategic direction; (4) there is a need to prioritize actions; and (5) an organization would like to stimulate creativity or to uncover thinking. Therefore, the research applies parts of a scenario framework called TAIDA for analyzing and foreseeing the MOJ's future operational environment in the ASEAN Community. TAIDA stands for: Tracking (T) changes and signs of threats and opportunities; Analyzing (A) consequences and generate scenarios; Imaging (I) what are possibilities and what is desired; Deciding (D) what should be choices and strategies for achievement; and Acting (A) through setting up short-term goals, and taking first steps and follow up actions (Lindgren and Bandhold, 2003: 38).

In this study TAIDA's scenario techniques (Lindgren and Bandhold, 2003: 47) started with tracing and describing changes (Tracking – T) in the surrounding environment, particularly the Southeast Asian region, which might have an impact on the MOJ. Then participants were asked to analyze (A) changes and potential impacts of the ASEAN Community on the operations of MOJ. Then, participants imaged (I) plausible futures and their desires for the MOJ in the era of the ASEAN Community in 2015. Next step was to decide (D) individually strategies to meet threats and factors leading to achievement in

the ASEAN Community. However, the research did not go through the phase of acting (i.e. implementing and following up the scenario plan (A)) in TAIDA's scenario technique because the scope of the research is limited to only finding out what are the potential impacts of the ASEAN Community on the MOJ's operations and what should be policies or strategies of the ministry to cope with the future conditions.

Data analysis in this research was essentially about discovery and the tasks of defining, categorizing, explaining, and exploring, which are fundamental to the researcher's role. The methods used for qualitative analysis therefore needed to facilitate such detection, and to be conducted in such a way as to allow certain functions to be performed (Ritchie and Spencer in Bryman and Burgess, eds., 1994: 176). The informants' perspectives on the future operational environment in the ASEAN Community and its potential impact on the MOJ's operations were categorized, and analyzed by linking them with the relevant data derived from documentary research. The analysis would ultimately lead to an understanding on the potential impact of the ASEAN Community on the MOJ's operations, and recommendation on policy and strategy alternatives for dealing with any impacts deriving from the community.

Still, no researcher should be confident that all the data gathered from interviews represents the truth. Methodological triangulation was employed. Triangulation means the combination of methods or sources of data in a single study (Denzin, 1978; Patton, 1980 quoted in Taylor and Bogdan, 1984: 68). Triangulation is often thought of as a way of guarding against researcher bias and checking out accounts from different informants. By drawing on other types and sources of data, an observer (or a researcher) also gains a deeper and clearer understanding of the settings and the people being studied (Taylor and Bogdan, 1984: 68). It is a way to assure validity and reliability of the research by verifying the statement of one informant against the other sources of information and assessing the probability that the statement given by the informant was correct.

5. Review of Literature

5.1 International Cooperation

Governments around the world are generally obligated in some way or other to develop the welfare interests of their citizens. Only few societies are endowed sufficiently to meet public aspirations through their own devices. Few societies are self-reliant. They cannot generate goods, services, and protection (security) which their populations

demand and expect without the assistance of other countries (Holsti, 1995: 362). Hence, international cooperation is a must, particularly, in the globalized world where there are rapid growth of complex interconnections and interrelations between state and societies that challenge the sovereignty of the state (Makinda, 1998: 5). Cooperation also stems from common threats or problems like pollution, resource exhaustion, and other environmental problems. Key objectives of cooperation among governments are reducing costs and increasing efficiency. Governments also cooperate in order to reduce the negative costs their individual actions may have on others (Holsti, 1995: 362).

Cooperation can be conceived as a process of exchange, while cooperation among nations is a specific type of exchange that involves the adjustment of one state's policies in return for, or anticipation of, the adjustment of another state's policies so that both end up better off (Milner, 1997:7-8). Keohane (1984, quoted in Little and Smith, eds., 1991: 105) explains that international cooperation will exist if actors' policies and behavior are adapted to cope with expected preferences of others through a process of policy coordination. Coordination implies mutual policy adjustment among countries intended to reduce the negative (or enhance the positive) effects of one country's policy choices on the others. In the absence of coordination, countries' policies may have been different (Putnam and Bayne, 1987: 2; Webb, 1991: 311-312, quoted in Milner, 1997: 7-8).

Putnam and Bayne (1988: 260 quoted in Milner, 1997: 9) discuss four different forms of coordination: (1) mutual enlightenment involves the exchange of information about countries' policy intentions, so that their policy choices are affected; (2) mutual reinforcement entails obtaining international support for one's policies, usually so they can be implemented in the face of domestic opposition; (3) mutual adjustment means reshaping policies so they conflict less; and (4) mutual concession implies a package deal where policy-makers condition their choices on the behavior of other states. Moreover, Fischer (1988: 35 – 38 quoted in Milner, 1997: 9) presents a more systematic analysis of the different forms of cooperative policies. Four dissimilar steps of policy coordination are distinguished, each indicating greater levels of political commitment: (1) the exchange of information to facilitate tacit policy coordination; (2) the negotiation of specific policy deals on a one-time basis; (3) the establishment of a set of rules guiding policy choice; and (4) the surrender of national policy instruments often to form a larger policy community. Within this scheme, the final level (e.g. a monetary union with a single currency and central bank, or in trade a custom union that entails a single market,

or in the security area a pooling of national military units into a single international one) characterizes the most extreme form of international cooperation (Milner, 1997: 9).

5.2 Regionalism

The 1960s and 1970s saw a first wave of analysis, focused particularly by the regional impact of the Cold War and by the emergence of regional institutions both in Europe and in the Third World. During the 1990s, there has been renewed interest because of what has been termed “the new regionalism” of the post-Cold War era, and this led to further attempts at definition. Hettne and Inotia (1994: 1-2) explain the differences between the first and the second waves regionalism in the following respects: (1) the first wave regionalism was found in a bipolar Cold War context, while the new regionalism is taking shape in a more multi-polar world order; (2) whereas the old regionalism was created from outside and from above (i.e. by the superpowers) the new is a more spontaneous process from within and from below (in the sense that the constituent states themselves are the main actors); and (3) the first wave regionalism was specific with regard to objectives while the new is a more comprehensive, multidimensional process.

Bowles (1997: 224-225) regards the new regionalism as an open regionalism that is premised on countries’ continuing participation in the international trading system. The preferential regional trading arrangements in the 1960s and 1970s, which occurred in the first wave regionalism period, aimed at strengthening the developing countries to be more independent of the global economy or to reduce North-South economic linkages. It was based on the belief that the developing countries’ opening their economies to trade with, and obtaining investment from, developed countries would bring about underdevelopment rather than development (Frank, 1969, quoted in Nafziger, 1997: 107). Trade between developed and developing countries would result in peripheral capitalism (i.e. capitalism unable to generate innovations and dependent for transformation upon decisions from outside). In addition, the periphery countries of Asia, Africa, and Latin America specialized in primary products in an enclave controlled by foreigners while importing consumer goods that were the fruits of technical progress in the central countries of the west (Futado, 1970, quoted in Nafziger, 1997: 106). The new regionalism in the 1990s, however, is rather seen as a measure to ensure that developing countries would not be excluded from the global economy. The new

regionalism has two main characteristics: North-South regionalism and multiple regionalism (Bowles, 1997: 225). The North-South regionalism is the regional trading bloc that has member countries with different levels of Gross National Product (GNP) or the member countries from both developed and developing countries. The new regionalism is viewed as multiple regionalism because countries belong to different regional groupings and organizations.

5.3 The Ministry of Justice (MOJ)

The Ministry of Justice (MOJ) was founded in 1891 by the King Rama V. The foremost objective of the MOJ's establishment was to centralize all courts, which were under the supervision of numerous ministries and organizations, to be under the same authority. In 1912, the Regulation on the Justice Administration was announced to divide justice affairs into two main bodies. The MOJ was obligated to administer secretarial works of the ministry, while the Court of Justice was in charge for judiciary affairs. The Act on Improvement of Government Organization (1991) stated in relation to the administration of the MOJ that all justice affairs, except the judicial proceeding and adjudication, would be supervised by the MOJ. However, it was not until August 2000 that the modern MOJ was reformed by separating the Court of Justice from the MOJ. This reorganization was in accordance with the Constitution of Thailand (1997) that intended to foster and protect the people's rights and liberty. The Constitution indicated that the administration of the Court of Justice shall be independent, which meant the MOJ would be no longer the general affair unit of the Court of Justice. The MOJ today comprises of nine organizations under the supervision of the permanent secretary of the ministry, and three agencies (the Anti-Money Laundering Office, the Office of Narcotic Control Board, and the Office of Public Sector Anti-Corruption Commission) directly under the supervision of the Minister of Justice. These offices under the supervision of the permanent secretary of the ministry are as follows (Ministry of Justice, 2012):

5.3.1 The Supporting Cluster

Office of the Permanent Secretary is obligated to formulate and implement the Ministry's policies and strategies and serve as the center for coordination among its agencies.

Office of Justice Affairs (OJA) is responsible for policies and justice system development through the study and evaluation of law enforcement and the promotion of

collaboration on technical and justice issues between both domestic and international agencies.

5.3.2 The Justice Administration Cluster

Legal Execution Department (LED) is obligated to implement the legal execution of civil and bankruptcy cases, deal with business reorganization, liquidation and the deposit of assets in accordance with the court's order; settle disputes in legal execution and enhance collaboration and participation of government and private sectors in legal execution.

Department of Rights and Liberties Protection (DRLP) is assigned to take care of the people's rights and liberties as recognized by law; develop administration systems for the promotion and protection of the people's rights and liberties.

5.3.3 The Justice Promotion Cluster

Department of Special Investigation (DSI) is assigned to prevent, suppress and control special crimes which seriously affect national economy, society, security and international relations through monitoring, fact finding, investigation, inquiry, bringing charges against offenders and rendering justice to the people to instill public confidence in justice.

Central Institute of Forensic Science (CIFS) is authorized to create and develop the data-base; support the prevention and suppression of special crimes; manage the crime scene evidence; establish integrated network at both domestic and international levels; set the central standard of evidence examination that meets the international standard; propose the amendment and development of laws and regulations relating to forensic practices;

5.3.4 The Rehabilitation Cluster

Department of Probation (DP) has two major missions. First is to provide supervision and rehabilitation for offenders in the community, conduct compulsory drug rehabilitation programs for drug addicts, and provide aftercare services to ensure that they will be productive members of society. Secondly, the department promotes involvement of family, community, and network agencies in providing care, treatment, and rehabilitation services to offenders.

Department of Juvenile Observation and Protection (DJOP) has duties to promote the protection of juvenile's rights and liberties; strengthen family and community ties; take legal proceedings in criminal and family cases;

Department of Corrections (DC) is obligated to detain and provide treatment to offenders according to the court's order under the principles of criminology, penology and in compliance with the UN Standard Minimum Rules for the Treatment of Prisoners by providing them with education, vocational training, mental development and welfare for rehabilitating and helping them to be decent, law-abiding citizens.

6. Tracking: Operational Environment of the MOJ in the ASEAN Community

Referring to the in-depth-interview and focus groups, which utilized scenario techniques for gaining participants' views about the MOJ's future operational environment in ASEAN Community, it was found that the geographical position of Thailand, locating in the center of the mainland Southeast Asian region, would create economic advantages for the country. In particular, Thailand geographically connects with emerging economies such as Cambodia, Laos, and Myanmar, and countries with high economic growing potential such as Vietnam and China. This geographical location presents an opportunity for the country not only in trading with ASEAN countries, but also as an economic linkage between ASEAN countries and China. Hence, it is anticipated that the advent of ASEAN Community will benefit the country's economy, particularly the growth of foreign direct investment, international trade, and the tourist industry.

But by the same token, a question on the equitable distribution of development benefits is raised. In other words, who will be the major beneficiaries of the ASEAN Community? The country's rapid economic growth deriving from the arrival of the ASEAN Community may not provide economic advantage to all citizens. People with dissimilar potentials, capability, wisdoms and resources will be differently benefited from the ASEAN Community. As a result, the economic disparity between the rich and the poor might be more problematic. Of more concern is the exploitation of underprivileged groups for economic and social gains. For that reason, the first scenario of the surrounding environment of the MOJ's operation is the possibility of the country's economic growth without the equitable distribution of development benefits.

Second, with the arrival of ASEAN Community the number of foreigners, particularly ASEAN people, staying, working, and travelling in the country is likely to be increased. That situation is likely to make Thailand a multicultural society. A multicultural society is characterized as a society with many different ethnic or national cultures mingling freely. It can also refer to political or social policies which support or encourage such coexistence.

Important in this is the idea that cultural practices, no matter how unusual, should be tolerated as a measure of respect (Boundless, 2016). Within the ASEAN Community, there is an expectation that the exchange of cultures, way of life, wisdoms, and technologies for development between ASEAN citizens in Thai society will occur. Thai people will learn how to tolerate the ethnic differences, and learn from each other through the process of cultural contact. They will understand the differences, and show respect to other cultures (Kulwadee Charoensri, 2008). These circumstances would help the ASEAN Community achieve its objective of “Unity in Cultural Diversity” by strengthening the ASCC’s goal of being 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 peoples are enhanced (ASEAN, 2011).

Third, social problems of the country are likely to be increased and become more complex because of increased numbers of migrants, especially unskilled foreign workers. Between 2009 and 2012, the average labor flow in the ASEAN region was about 3.0% annually, but Thailand was the country with the highest foreign labor flow into the country at about 4.8% annually (United Nations, 2013, quoted in Danupon Ariyasatchakorn and Sompawin Manpasert, 2015: 7). Moreover, statistics from the Office of National Economic and Social Development Board (2013) stated that in 2010 the number of non-Thai citizens staying in Thailand was about 2,131,546. This figure will be doubled if the country accepts more foreign workers. Potential social problems are: transnational crimes, unregistered half-caste, human trafficking, narcotics, illegal migrants, and orphans with various ASEAN nationalities. In the meantime, skilled Thai workers will be likely to move to work in countries with stronger economic conditions, particularly in the service sector.

Different justice systems among the ASEAN countries might bring about more crime in the country. For example, the probation system, for instance, is not used in every ASEAN country. Only Thailand and Philippines separate the probation system from other justice systems and view it as a rehabilitation program rather than a correction system. In this circumstance, ASEAN wrongdoers, particularly drug addicts, might not fear being arrested in Thailand because they will not get harsh punishment. So, there is the likelihood that more ASEAN people, particularly from Cambodia, Laos and Myanmar, will be arrested for burglary, quarrelling, violent actions, and drug addiction.

7. Analysis of Changes: Constructive and Harmful Impacts

After the operational environment of the MOJ is tracked through the views of MOJ's officers, patterns, trends, threats and opportunities of change are discovered. Questions are raised such as what will happen if these trends are likely to occur; and what will the consequences? Hence, an analysis of change is needed for discovering future consequences of changes in the present and the interplay between trends and tendencies (Lindgren and Bandhold, 2003: 39). The analysis also aims to investigate further creative and intuitively produced scenarios about both constructive and harmful impacts of the ASEAN Community on the MOJ's operations.

7.1 Constructive Impacts of ASEAN Community

First, constructive impacts of the ASEAN Community on the MOJ's operations concern the opportunity for accelerating existing organizational developments. In a normal situation, the process of organizational development moves slowly. However, with the initiation of the ASEAN Community pressures derived from limited time for preparation, and the government's enthusiasm about the ASEAN Community are likely to accelerate developments. The ASEAN Community may be viewed as an engine or a wakeup call for changes or reforms of organizations needed to cope with the new social situation in the ASEAN Community. This organizational development includes building the capacity of both the working systems and the human resources of the MOJ as well as the reform of relevant laws.

A case in this point relates to the LED's operation. As stated earlier, the ASEAN Community will present an opportunity for economic development of the region and Thailand needs to prepare to exploit the economic advantages. A key factor for economic development of the country is foreign direct investment (FDI). The country needs to motivate foreign investors. A magnet for motivating foreign investors to Thailand is the legal execution process. If the legal execution process, including civil case and bankruptcy case executions, is rapid and just then this will help both creditors and debtors quickly return to normal business conditions. Once these properties are activated, there will be more funds injected into the market, and that will help to promote the country's economy. Therefore, the advent of the ASEAN Community has become a stimulus for the LED to accelerate its organizational reforms, including the consideration of how to decrease legal execution steps,

how to limit the timeframe of the legal execution, and how to standardize the legal execution procedures to be accepted regionally and internationally.

Secondly, there is a prospect for closer cooperation between the MOJ and relevant ASEAN countries' agencies. The cooperation would bring about integration of the regional justice system, and the regional networks. The international cooperation among ASEAN countries on justice affairs would help facilitate the existing operations of the MOJ. A case in point is the operation of the LED which is now facing the limited jurisdiction of Thai courts. Generally, the LED's legal execution will be based on the court's order. But if debtors fled from the country or their assets are located abroad or being taken away from the country, such cases could not be accomplished because it is beyond the Thai authority. Then, the ASEAN Community would be a window of opportunity for the LED to open discussion on the matter with counterpart countries in ASEAN. The LED need multilateral agreements or bilateral agreements on procedures for certifying official documents including the orders of the Thai Court of Justice. Such agreements would help improve the operation of the LED. Another organization wishing for closer cooperation with other ASEAN countries is the Department of Correction (DC). The DC seeks agreements on ASEAN inmate transfer because it will help the DC reducing its budgetary burden. Moreover, the DC expects that the exchanging of information about inmates and the building of an inmate database linkage among ASEAN countries will support the correction departments in ASEAN to monitor their foreign inmates' profiles and treatment.

Third, the MOJ would take this opportunity not only to promote the country's justice system and standard, but also to standardize the ASEAN justice system to become international. This is concerned with the image-making of the country's justice process. Foreign confidence in the national justice process would help facilitate economic growth because foreign investors, traders, and tourists would be comfortable to work or travel in a country with an international standardized justice process. For example, a milestone creation of Thailand's justice standard which ultimately became an international standard is the Bangkok Rules. It began in 2009 when the Thai government represented by Her Royal Highness Princess Bajrakitiyabha submitted a resolution to the Commission on Crime Prevention and Criminal Justice (CCPCJ) that recognized the vulnerability of women incarcerated in a system built principally for men. The assembly led to the creation of the Project on Enhancing Lives of Female Inmates or ELFI in Thailand initiated by Princess Bajrakitiyabha. During the period through

December 2010, the resolution set in motion a series of meetings that culminated in the UN General Assembly's December 2010 adoption of the body's first set of rules focused on women prisoners: Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, or the Bangkok Rules. The Bangkok Rules is the first set of rules geared towards the treatment of women prisoners. It supplements the existing international standards on the treatment of prisoners, particularly the Standard Minimum Rules for the Treatment of Prisoners, which applies to all prisoners regardless of gender (Wikipedia, 2016).

7.2 Harmful Impacts

Globalization, open economies and markets, modernization especially advances in internet and communication technology, increasing mobility of people and borderless inter-cultural exchange, provide a facilitative landscape for criminal networks to operate. Developing and underdeveloped countries, with their current volatile socio-economic conditions, tend to provide an environment for criminal elements to victimize and co-opt many of their poor (Office of the Special Envoy on Transnational Crime, 2017). By the same token, ASEAN's integration and community-building over the past years have created conducive conditions for rapid economic growth and development with great benefits to ASEAN and countries around the region. Yet criminals have exploited the same forces that made possible today's rapid trade and advancement to extend their criminal activities and influence across countries (Un Sovannasam, 2011: 77)

Such a condition is also a concern of several MOJ officials. They are afraid that the ASEAN Community with a free flow of goods, services and skilled labor, a freer flow of capital, and with more convenient transportation and traveling in the Southeast Asian region would lead to more complicated criminal cases in the country, particularly case related to transnational crimes. That is the first potential harmful impact of the ASEAN Community on the MOJ operation.

Transnational crimes are violations of law that involve more than one country in their planning, execution, or impact. Transnational crimes can be grouped into three broad categories involving provision of illicit goods (drug trafficking, trafficking in stolen property, weapons trafficking, and counterfeiting), illicit services (commercial sex and human trafficking), and infiltration of business and government (fraud, racketeering, money laundering, and corruption affecting multiple countries). Transnational crimes are distinct

from international crime, which involves crimes against humanity that may or may not involve multiple countries (Albanese, 2009).

Other than the effect of globalization and open economies and markets in Southeast Asian region, the geographical location of the country is likely to lead to more complex crimes, especially transnational crimes. Thailand is placed not only at the center of the Southeast Asian region, but also connected with CLMV countries (Cambodia, Laos, Myanmar and Vietnam), and close to two countries with high numbers of population (China and India). This geographical location is exploited as a route for human trafficking, narcotics trafficking from CLMV countries to third countries, and other illegal trade. The country's 8,167 kilometers of land boundaries and coastline is likely to pave the way for illegal immigration and other unlawful practices (Pornthep Channik, 2014: 61).

For the example, because of no standardized approach to juveniles among ASEAN countries a country without special recognition of juveniles and juvenile protection systems might be viewed by criminals as a place for criminal juvenile activities. According to the DJOP report on the treatment of juveniles in ASEAN (2013), it is found that there are three groups of countries based on the methods of treating juveniles: (1) countries focusing on juvenile rights with its observation and protection based on international standards, i.e. Brunei, Malaysia, Laos, Singapore and Thailand; (2) countries with special laws on the treatment of juveniles but still have incidents on juvenile rights violations, i.e. Philippines and Indonesia; (3) countries without special laws or courts for considering juvenile cases, countries detaining juveniles and adult offenders in the same prison, and countries where children's rights violations still exists, i.e. Cambodia, Myanmar and Vietnam. Because there is no harsh punishment for juveniles in Thailand, it sparks a fear of juvenile exploitation by criminal gangs. Instead of committing a crime themselves, such as drug trafficking, criminal gangs might use juveniles for criminal activities. Such cases might be increased within the ASEAN Community. Some MOJ officials discussed the worse scenario where if the responsible government agencies are not able to catch up with transnational criminal activities then Thailand might become the hub for transnational crimes in the region.

A second harmful impact of the ASEAN Community on the operations of the MOJ is the fear among MOJ officers that their organization will be viewed as inefficient in the ASEAN Community. The free flow of skilled labor, capital, investment and the liberalized rules of cross-bordering is likely to signify major population shifts, as people move from poorer countries to richer ones and of shortcomings in customs and border

control procedures (Corben, 2015). Overloaded work with limited resources is unlikely to make for an efficient MOJ.

For example, the LAD officials fear of double workload under the ASEAN Community due to the open economic, market and foreign direct investment. Today, even though the ASEAN Community has not begun fully, the LED is full of unfinished tasks. According to the LED's statistics on civil case executions in the budgetary year of 2013-2014, about 237,527 civil cases were transferred from the budgetary year of 2013, while the new civil cases for the budgetary year of 2014 were 136,285 cases. But the LED could complete only 150,613 cases or about 58.9 percent. The remaining 223,199 civil cases have been transferred to the operation in 2015. Moreover, if the multilateral agreement on cross-bordering legal execution is not made then introducing liberalized rules for cross-border transport will cause difficulty for LAD officials to hunt for cross-bordering debtors and movable assets. The problem is that the LED jurisdiction is only in Thai territory.

In addition, an open economy and market which pave way for more transnational crime might mean an increase in the number of foreign inmates in Thai prisons. At least four problems are likely to occur if there are more foreign inmates. First, due to overcrowding a spread of infection and more mental illness are likely to exist. Secondly, because of a variety of cultures and languages in prisons, inappropriate interactions, conflicts, and violations might occur. Thirdly, petitions about human rights violation in prison are likely to be increased although correction officials are trying very hard to prevent this. Increased numbers of inmates in the prisons with limited resources and numbers of correction officers, and limited space for detaining inmates makes it more difficult for correction officials to monitor and control situations. Finally, the imprisonment of foreign criminals, particularly from the Southeast Asian region, might lead to the creation of organized crime networks. Exchanges of criminal experiences and expertise among inmates from several countries might be the result. Ultimately, there may be an increase in recidivism among inmates.

Insufficient budget is also a concern of the Department of Rights and Liberty Protection (DRLP) which may cause it to be seen as an inefficient agency. According to the Compensation and Expense for Injured Person and the Accused Act B.E. (2001), innocent injured persons and victims (both Thai and foreigner) in criminal cases have the rights to claim financial compensation from the government. For example, in case of compensation for death, the heir of the demised person may receive about 100,000 Baht. Hence, the advent of the ASEAN Community generates alarm of inefficient budget for the DRLP to compensate innocent injured persons and criminal case victims. However,

it does not mean that the department would not compensate them but the process for compensation might be prolonged due to limited budget. For example, if the budget for this year is not enough, it means that innocent injured persons and victims in criminal cases have to wait for the next annual budget. As a result, complaints about inefficient work of the DRLP are likely to occur.

8. Imaging Desired Changes and Deciding Strategies for Achievement

After gathering insights about plausible futures, it is time to create images of what is desired by creating visions (Lindgren and Bandhold, 2003: 47). Vision is the foresight of a desired result. It creates meaning and gives identity, belief, guidance and inspiration. At the same time, it is a focused target with clear expectations that hopefully lead to commitment (Lindgren and Bandhold, 2003: 66). As soon as imaging desired changes (I) has been done, the next consideration is to decide on strategies for achievement (D). That is the process of classifying development areas and strategies to cope with threats, and reach visions and goals. Deciding is the phase where everything is put together. The future environment is tracked and analyzed, and the vision is in place. Deciding is to search for an answer to the question: what can be done to go in the direction of the vision, taking advantage of opportunities and avoiding the threats of the future environment? (Lindgren and Bandhold, 2003: 81). In this research, key informants from both in-depth interviews and the focus group provided their visions on what are desired characteristics of MOJ operations in the ASEAN Community. Then, several strategies for achieving those needs were raised.

First, with the intention of achieving MOJ operation in the ASEAN Community laws related to their operations should be up-to-date, and able to cope with changes and future threats. Hence, legal revision and reform is a must. This should probably be the first task of the MOJ in preparing for the advent of the ASEAN Community. Various researches related to legal reform should be made, including the reviews of civil, criminal and administrative laws, and justice processes. Moreover, legal mechanisms leading to successful justice cooperation and coordination in ASEAN should be created. However, these legal mechanisms which would help facilitating ASEAN cooperation through policy adjustments should be established based on negotiations and agreements among ASEAN countries. Accordingly, there will be adjustment of one state's policies in return for, and anticipation of, the adjustment of other states' policies so that all end up being better off.

Secondly, the MOJ administration must be developed and modernized. Administrative development is the improvement of administrative mechanisms for rapidly and efficiently achieving the development goal. These mechanisms include human resource, financial resource, and material and management systems. For the human resources, MOJ officials' capacities should be increased through education and training. This includes increased capability in foreign language communication especially the English language and languages using in ASEAN Countries as well as the strengthening of their professional and administrative skills. In addition, MOJ officials must understand changes and future threats and opportunities deriving from the ASEAN Community so that they will be enthusiastic about preparing themselves for the advent of the ASEAN Community.

Budget for the MOJ's operations related to the ASEAN Community should be sufficient for efficient operations. Also, a transparent, accountable and flexible financial system is a must. For the material dimension of administrative development, materials for working should be modernized, efficient, and suited to the context of the MOJ's work. In relation to the management system, at least two matters should be addressed: (1) the administrative structure of the MOJ should be well defined including decentralization or centralization of administrative power, unity of command, and unity of direction; (2) operational units of the MOJ should have well planned and well-defined goals, working standards, and clear operation procedures including control and coordination systems. However, all of these factors will not improve the achievements of the MOJ if its administrative systems are not transparent and accountable to the public. The transmitting of justices to the people is not just about working in line with the laws and regulations but it is about making the public confident in the MOJ's operations.

Third, the MOJ must have sound and suitable strategies in preparing for the advent of the ASEAN Community. In 2013, the MOJ drafted strategies for the introduction of the ASEAN Community. These are: (1) the strategy to drive legal development processes for building national competitiveness; (2) the strategy to develop cooperation among justice process agencies to cope with the negative impact of the ASEAN Community; (3) the strategy for the development of administrative systems and justice administrative systems to deal with the ASEAN Community; (4) the public communication strategy for building public confidence in the MOJ and the country's justice systems; and (5) the strategy to advance the capacity of the MOJ's officials to be ready for the ASEAN Community. These strategies could not be achieved without the professional intentions of MOJ's officials to

drive and implement strategies. Therefore, action plans are needed for driving and implementing these strategies.

Finally, the MOJ alone is not able to achieve its operations in the ASEAN Community. Consequently, the development of networks with other agencies at both domestic and international levels is a must. At the domestic level, necessary mechanisms for cooperation, coordination, and collaboration among agencies should be made. At the ASEAN level, it includes the exchange of knowledge and information, the creation of bilateral or multilateral agreements on issues related to justice processes, and the removal of obstacles to ASEAN cooperation.

9. Conclusion and Recommendation

The advent of the ASEAN Community in 2015 is expected to make changes to Thai society, including social and economic changes. To address challenges from, and to be ready for the arrival of the ASEAN Community, the MOJ must understand the future operational environment, the constructive and harmful impacts on its operations, and conditions leading to its achievement in the regional community (see figure 1 below). Hence, TAIDA as a scenario technique was utilized for gaining views on the future operation of the MOJ. From tracking the environment of the MOJ in the ASEAN Community, three characteristics were found: (1) the possibility of the country's economic growth without equitable distribution of development benefits; (2) a likely multicultural society in Thailand; and (3) increased social problems with more complexity. After that, the analysis of change resulted in three constructive impacts and two harmful impacts of the ASEAN Community on the MOJ's operations. The three constructive impacts are: (1) the opportunity for accelerating organizational development; (2) the possibility of closer cooperation between the MOJ and relevant ASEAN countries' agencies; and (3) a prospect not only to promote the country's justice system and standard, but also to standardize the ASEAN justice system to become international. Two harmful impacts are: (1) the possible of more complicated crimes, particularly transnational crimes; and (2) a fear among MOJ officials that their organizations are likely to be viewed as inefficient due to more work but limited budget and resources.

In imagining desired changes and strategies for their achievement in the ASEAN Community, MOJ officials agreed on the likelihood of at least four desired changes with several strategies. First is the modernization of relevant laws to cope with future challenges.

This could be done through revised and reformed laws and regulations, including criminal law, civil law and administrative law. Second is the development of the MOJ’s administration. Four issues should be developed as strategy for achieving administrative development of the MOJ: human resource, financial resource, and material and management systems. The third achievement factor is sound and appropriate strategies preparing for the advent of the ASEAN Community. These strategies should be accompanied with professional strategic implementation. The final condition leading to the desired change is the development of networks with other agencies at both domestic and international levels.

Finally, so as to full fill this research, the further studies on the impact of ASEAN Community on the operations of other departments not supervised by the Permanent Secretary of the Justice Ministry – like the Office of Narcotic Control Board, the Office of Public Sector Anti-Corruption Commission and the Office of Anti-Money Laundering – should be done. In addition, after five years of ASEAN Community, there should be again the studies of impact of the ASEAN Community on the operation of the MOJ’s operations.

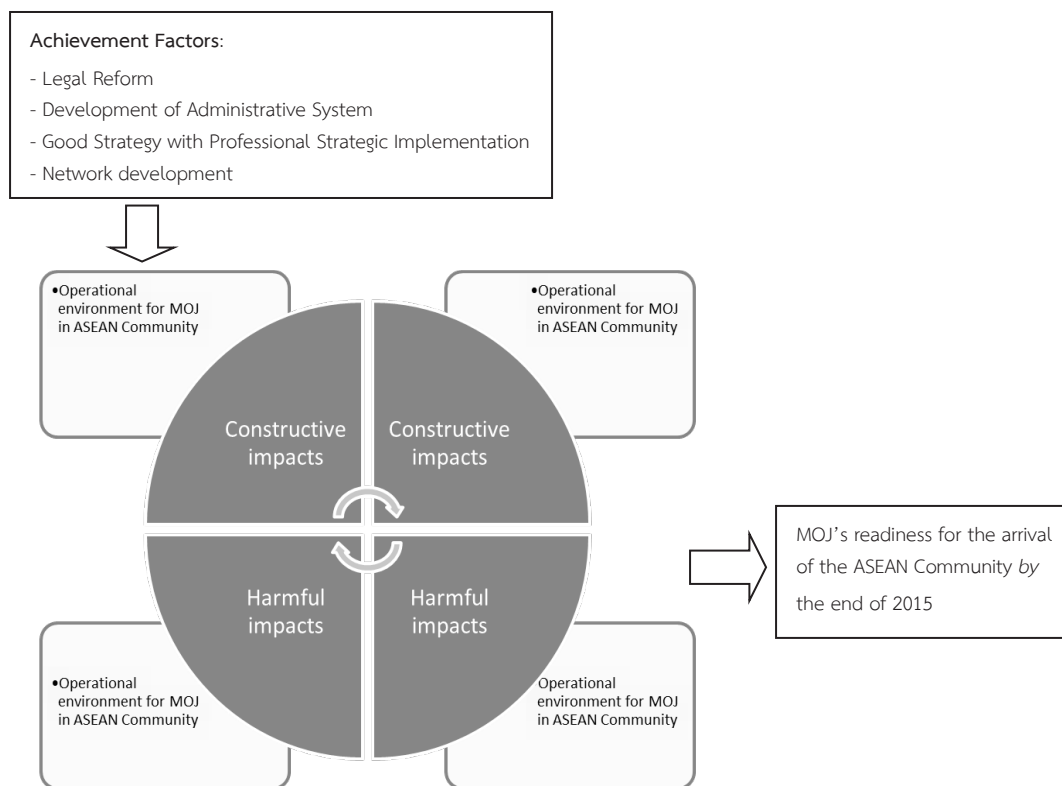


Figure 1: The preparation of MOJ for the arrival of the ASEAN Community

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