THE INTEGRATED MECHANISM OF ASEAN ENVIRONMENTAL LAW ENFORCEMENT FOR SUSTAINABLE DEVELOPMENT

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Abstract— This paper focuses on what extent and how ASEAN shall establish an integrated mechanism of ASEAN environmental law enforcement for sustainable development. The enforcement of environmental laws in ASEAN Community needs an integrated mechanism of good practices on enforcement of environmental laws that were shared among all ASEAN members as an instrument to guide each other when strengthening their effective enforcement of both national environmental laws and ASEAN environmental agreements for environmental sustainability. For any environmental legislation or regulation to be effective, it requires to be adequately enforced. Both ASEAN instruments and national environmental regulations in ASEAN members do provide enforcement mechanisms and expect the responsible authorities to enforce the law. However, ASEAN members have long been experiencing weak enforcement that is rendering the national environmental laws and regulations sometimes ineffective in deterring violations. The fact that the experiences of ASEAN members on enforcing their environmental laws and regulations differ provides opportunities to learn from each other experiences. The mechanism of good practices on enforcement of environmental laws in ASEAN members shall be classified into three categories: administrative law enforcement, civil law enforcement, and criminal law enforcement, which provides three different perspectives of environmental law enforcement for sustainable development. In addition, ASEAN regional network's institutions also provide a good opportunity to continue collaborating at the regional and sub-regional levels to strengthen the mechanism of enforcement of environmental laws for sustainable development in each ASEAN members. This paper recommends therefore ASEAN Secretariat could help all ASEAN members to adopt good practices on environmental sustainability and to develop their national guidelines in order to implement an integrated mechanism of ASEAN environmental law enforcement for sustainable development.

Keywords: integrated mechanism, ASEAN environmental law, enforcement, sustainable development.

I. INTRODUCTION

The ASEAN region is endowed with rich natural resources that sustain essential life support systems both for the region and the world. Apart from providing water, food and energy, these natural resources play an important role in sustaining a wide range of economic activities and livelihoods. However, the launching of ASEAN Economic Community (AEC) in 2015 shall accelerate more free trade transactions and industrial development with increasing deterioration of environment problems [James Rush, 1991]. This paper focuses on what extent and how ASEAN shall establish integrated mechanism of ASEAN environmental law enforcement for sustainable development. The study applied a documentary research by document data management with comparative content analysis of related ASEAN legal instruments and national legislation of its member states. The research analyzes 4 perspectives of ASEAN integrated mechanism of law enforcement for good practices on environmental sustainability: administrative enforcement, civil enforcement and criminal enforcement, regional and sub-regional enforcement. The research results found that ASEAN countries have long been experiencing weak enforcement of their national environmental laws and regulations, ineffectively deterring violations. It is necessary therefore to establish an integrated mechanism of regional and sub-regional enforcement of environmental laws for sustainable development.

II. RESEARCH PROBLEMS

The environmental issues are omnipresent in ASEAN Community and Southeast Asian region as a whole. Apart from entailing tremendous environmental damages, the impact on regional security and sustainable development in Southeast Asia is noticeable [Christopher B. Johnstone, 1999]. Recently, ASEAN member states have seen rapid economic growth. However, governments are prioritizing economic growth at the expense of environment and sustainability [Amitav Acharya, 1998]. Nowadays, Southeast Asia is impacted by enormous environmental stress resulting from global warming, urban excess, deforestation, water scarcity, overfishing and pollution [UNEP, 2014]. In principle, the political arena consists of four main actors: local environmental groups, international organizations, the Association of Southeast Asian Nations (ASEAN), and nation states. Considering the transnational and multilateral impact of environmental issues, ASEAN is the sole institution in the region that can provide the necessary framework to address issues on a multilateral level.

The environmental security in Southeast Asia presents a long list of problems. In 2006, the Southeast

Asian haze had immediately negative impact on relations between Indonesia, Malaysia, Thailand, and Saipan. Vapor, mainly originating from Kalimantan, affected adjacent populations. Public institutions remained closed and people were advised to stay at home [Christopher B. Johnstone, 1999]. In the Mekong region, China controls the upper reaches of the Mekong River and the Chinese government intends to build further dams in the coming years. Construction works will result in mass relocations and residents have had to leave affected areas. Inevitably, this would lead to social unrest and even to interstate tensions. Interestingly, despite the potential conflicts that may result from environmental issues, implementation of laws has hardly been realized [Max Priebe and Felix Stenile, 2013]. Several agreements, for example the Agreement on the Conservation of Nature and Natural Resources in 1985 and the Agreement on Trans-boundary Haze Pollution in 2002, have been passed [UNEP: 2001, 2005, 2006]. But a number of factors – specifically, the fundamental principles of non – interference in domestic affairs, informality of negotiations, and non-binding plans instead of treaties – hinder the creation of effective environmental regimes and the establishment of serious environmental protection measures.

The realization of ASEAN Economic Community (AEC) will accelerate more free trade transactions and industrial development with increasing deterioration of environment problems. While ASEAN members have long been experiencing weak administrative, civil and criminal laws enforcement that is rendering the national environmental laws and regulations sometimes ineffective in deterring violations [D. Zaelke, D. Kaniaru and E. Kruzikova, 2005]. For this reason, the enforcement of environmental laws in ASEAN Community needs thus an integrated mechanism of good practices on enforcement of environmental laws that were shared among all ASEAN member countries as an instrument to guide each other when strengthening their effective enforcement of both national environmental laws and ASEAN environmental agreements for sustainable development [Adel M. Abdellatif, 2003]. The ASEAN Socio- Cultural Community (ASCC) shall play major roles in establishing and strengthening an integrated mechanism of administrative, civil and criminal national laws enforcement with regional and sub-regional enforcement of ASEAN environmental agreements.

III. RESULTS AND DISCUSSION

Regional cooperation among ASEAN member states in promoting capacity building, sharing experiences and best practices, and acting collectively to implement the MEAs have helped AMS to build confidence and synergize their efforts to contribute effectively to addressing global environmental issues. These activities are carried out under the purview of the ASEAN Working Group on Multilateral Environmental Agreements (AWGMEA). The activities of AWGMEA are guided by the ASEAN Socio-Cultural Community (ASCC) Blueprint in the ASEAN Roadmap towards an ASEAN Community, 2009 – 2015 [ASEAN Secretariat, 2009], in which its member states committed to intensify regional cooperation to enhance and strengthen national and regional capacities to address issues and commitments to relevant Multilateral Environmental Agreements (MEAs) through regional research, promoting awareness, capacity programs and informed policy choices. Moreover, ASEAN member states had to promote synergies in implementation of related MEAs through strengthening of regional cooperation to address measures related to the thematic cluster of MEAs on atmosphere issues such as climate change and ozone depleting substances, and MEAs on chemicals and chemical wastes [Joshua Kurlantzick, 2012]. To achieve this roadmap, the mechanism of good practices on enforcement of environmental laws in all ASEAN members shall be classified into three categories: administrative law enforcement, civil law enforcement, and criminal law enforcement, which provides three different perspectives of environmental law enforcement for sustainable development. In addition, ASEAN regional network's institutions also provide a good opportunity to continue collaborating at the regional and sub-regional levels to strengthen the mechanism of enforcement of environmental laws for sustainable development in each ASEAN members.

A. *National Administrative Law Enforcement*

The scope of administrative law enforcement shall be a set of actions that regulatory institutions carry out to ensure compliance with environmental regulations requirements. Certain types of sanctions may be included within administrative powers, as might be actions that are non-judicial measures. Administrative enforcement actions derive their power directly from the ASEAN members' laws for good practices of environmental sustainability [Asian Environmental Compliance and Enforcement Network, 2006] as follows:

1) Issuance of permits or consideration of Environmental Impact Assessment (EIA) reports of all commercial and industrial transactions;

2) Punishment decisions shall be made by of ce-bearers with administrative powers. A range of non-judicial and quasi-judicial measures might be ensured compliance with environmental law, such as monetary sanctions, suspension/cancellation of permits, EIA approval measures, etc.;

3) Administrative enforcement for preventive measures shall be included rewards or incentives for

Corporate Social Responsibility (CSR) for environmental governance.

B. *National Civil Law Enforcement*

The scope of civil law enforcement in ASEAN members shall be a set of actions that can help governmental and non-governmental stakeholders and individuals to use civil or alternate remedies to ensure compliance with environmental law. Different ways shall be ensure to involve non-governmental actors and civil society with environmental expertise that can supplement legal actions and sanctions by the State authorities to bring environmental wrongdoers into compliance with environmental laws of ASEAN members. Civil enforcement measures can provide important support mechanisms for administrative and criminal law enforcement to empower civil society action in general public awareness engagement in environmental sustainability [UNEP, 2007]. The Alternative dispute resolution (ADR) can be used to support criminal prosecution – and may be more effective where civil litigation is at issue, especially as costs might be reduced and ongoing relationships not damaged.

C. *National Criminal Law Enforcement*

For environmental-related prosecutions to be effective, it is essential that their procedural mechanism requirements be clear, robust, streamlined and easily understandable. Various deterrent and punitive measures of criminal law enforcement can be enhanced through appropriate general public awareness and engagement [UNEP, 2007]. At the same time, the punitive effects of a conviction in environmental criminal cases can be increased by publicity and public awareness. Standard sanctions and penalties available for criminal convictions may be included imprisonment terms, community service orders, rehabilitation or remediation orders, and withdrawal of licenses or permits. In many ASEAN members, polluting companies have treated ones as "cost of wrong doing business"

D. *Regional and Sub-regional Enforcement*

The ASEAN Socio-Cultural Community (ASCC) shall play major roles in establishing and implementing an effective mechanism of administrative, civil and criminal national laws enforcement in all ASEAN members integrated with regional and sub-regional enforcement of ASEAN environmental agreements. Eight ASEAN environmental agreements as a source of good practices for environmental sustainability and sustainable development to be implemented in the national legislations of all ASEAN members [ASEAN Secretariat, 2009] are as follows:

1) The 2002 ASEAN Agreement on Trans-boundary Haze Pollution;

2) 1985 ASEAN Agreement in Conservation of Nature and Natural Resources;

3) 2005 Agreement on the Establishment of ASEAN Center for Biodiversity;

4) The 2011 Agreement between the Governments of the Members States of ASEAN and the Republic of Korea on Forest Cooperation;

5) The 2007 ASEAN Statement on Strengthening Forest Law Enforcement and Governance (FLEG);

6) The 1983 ASEAN Ministerial Understanding on Fisheries Cooperation;

7) The 1997 MOU on ASEAN Sea Turtle Conservation and Protection;

8) 2004 ASEAN Protocol on Enhanced ASEAN Dispute Settlement Mechanism.

All ASEAN members had thus obligations to enact their national laws not only to implement the above eight ASEAN regional environmental agreements, but also multilateral international environmental agreements: Vienna Convention, Montreal Protocol, UNFCCC, Kyoto Protocol, Convention on Biological Diversity, Stockholm Convention, Cartagena Protocol, Basel Convention, Ramsar Convention, and Rotterdam Convention Multilateral Environmental Agreements, ratified or acceded by all ten ASEAN members [UNEP, 2008]. According to international law, States enter into regional and international agreements in term of which they agree to enforce certain obligations within their own national legal systems. ASEAN member states are therefore main drivers for implementing international environmental rules because international agreements must be incorporated within national legal systems if they are to have any chance to be effective.

CONCLUSION AND RECOMMENDATION

The ASEAN Community and its member states continue to be actively engaged in addressing both global and regional environmental issues in accordance with the principle of common but differentiated responsibility. Although the region is not the major source of these environmental problems, it is most vulnerable to their adverse effects particularly, the effects of climate change due to global warming, dumping of toxic and hazardous chemicals, and loss of biodiversity. This research recommends therefore as follows:

1) The ASEAN Secretariat could help all ASEAN members to adopt good practices on environmental sustainability and to develop their own national guidelines in order to implement 8 ASEAN environmental agreements under the framework of an integrated mechanism of ASEAN environmental law enforcement for sustainable development that shall be established and strengthened by ASEAN Socio-Cultural Community (ASCC).

2) The creation of ASEAN Regional Networks of Environmental Law Enforcement for Sustainable Development (ARENELESD), which focus on the prevention and resolution of trans-boundary pollution in ASEAN Community region and the promotion of good practice on enforcement of environmental laws and ASEAN environmental agreements in all ASEAN members.

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REFERENCES

[1] Abdellatif, Adel M. Good Governance and Its Relationship to Democracy and Economic Development. New York, UNDP Regional Bureau for Arab States, 2003.

[2] ASEAN Secretariat, Roadmap for an ASEAN Community 2009-2015. Jakarta, Public Affairs Office, ASEAN Secretariat, 2009.

[3] Acharya, Amitav, Demcratising Southeast Asia: Economic Crisis and Political Change. Perth, Western Australia, Murdoch University, 1998.

[4] Asian Environmental Compliance and Enforcement Network (AECEN), Principles and Practices for Improving Environmental Compliance in Asia, 2006. http://www.aecen.org/sites/defult/les/Regional_Principles_Web.pdf.

[5] Priebe, Max and Stenile, Felix, Environmental Issues in Southeast Asia. Fair Observer, February 5, 2013. www.fairobserver.com/region/.../environmental-issues-southeast-asia/

[6] Rush, James, The Last Tree: Reclaiming the Environment in Tropical Asia. New York: Asia Society, 1991.

[7] UNEP, Compendium of Summaries of Judicial Decisions in Environment-Related Cases, 2007. http://www.unep.org/dele/Portals/119UNEPCompendum SummariesJudgementsEnvironment-relatedCases.pdf.

[8] UNEP, The Environmental Crime Crisis: Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources, 2014. http://www.unep.org/publications/.

[9] UNEP, Green Customs Guide to Multilateral Environment Agreements, 2008. http.//www.greencustoms.org/reports/guide/Green_Customs_Guide_new.pdf.

[10] UNEP, Guideline on Compliance with and Enforcement of Multilateral Agreements, 2001, http.//www.unep.org/delc/Portals/119/UNEP.Guideline.MEA.pdf.

[11] UNEP, Manual on Compliance with and Enforcement of Multilateral Agreements, 2006, http.//www.unep.org/delc/Portals/119/UNEP_Manual.pdf.

[12] UNEP, Selected Texts of Legal Instruments in International Environmental Law, 2005, http://www.unep.org/delc/Portals/119/publications/UNEP_Selected_Texts_Legal_Instruments_%20International_Environmental_Law.pdf.

[13] UNEP, UNEP Yearbook 2014: emerging issues in our global environment, 2014, http://www.unep.org/publications/.

[14] Zaelke, D; Kaniaru, D. & Kruzikova, E., "Making Law Work: Environmental Compliance and Sustainable Development", Vol. I and Vol. II, 2005: Institute for Governance and Sustainable Development.

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