

## **Classical Liberalism and Self-Reference Approach In Dealing With Harmonisation ASEAN IPR Regulations**

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### **Abstract**

ASEAN Economic Community (AEC) regulates the Intellectual Property Rights (IPR) in its relation with their economic activities. It was stipulated in the ASEAN Framework Agreement on Intellectual Property Cooperation in 1995. As the ASEAN member states are also the member of World Trade Organization (WTO), the principles of AEC have to be in harmony with the WTO principles. This paper analyzes the compliance of ASEAN IPR laws with the principles of Trade Related to Intellectual Property Rights (TRIPs) of WTO. Second, this paper analyzes the enforcement of those regulations in the member states, finding out whether there is implementation in the region that is different with the international principles or not. It is a part of qualitative research that used secondary data to complete the explanative analysis. Classical liberalism and self-reference criterion becomes theoretical framework of analysis. Classical liberalism promotes laissez-faire economics and private property in the means of production. Meanwhile, self-reference criterion refers to an unconscious reference to one's own culture, values, knowledge, and experience as a basis for decisions. The result reveals that the ASEAN IPR regulations have different specific and special nature with the TRIPs, affected by the characteristics of the nations.

**Keywords:** *ASEAN, Intellectual Property Rights, WTO*

### **Introduction**

In the transformation of international trade agreement in 1994 from General Agreement on Tariff and Trade (GATT), which was only in the form of agreement without institution, into the World Trade Organization (WTO), the international trade agreement in the form of formal organization, there are addition in the scope regulated by this institution. In GATT, there was only regulation of trade in goods. In Marakesh, where the member states agreed the establishment of WTO, there was consensus that trade in services and intellectual property rights also included into the regulation of WTO. While regulation of trade in services is critical as there was no regulation in this area yet, the regulation in the scope of intellectual property rights was debatable as there is already institution named World Intellectual Property Organization (WIPO) that already exist and regulates the IPRs (WTO, 2019). Despite of the debates, IPRs is agreed to be regulated in WTO as Trade Related to Intellectual Property Rights (TRIPs). It is based on the

consideration that WIPO does not cover the binding regulation of IPRs related to the international trade that include WTO member states.

WTO TRIPs covers the regulation of IPRs in copyrights, trademarks, geographical indications, industrial designs, patents, protection of undisclosed information, and licenses. More specific, the regulation covered in TRIPs are enforcement of IPRs, innovation policy and the TRIPs Agreement, dispute, and cooperation with intergovernmental organization. In the first point, in TRIPs agreement there are five ways to enforce the agreement: general obligation, civil and administrative procedures and remedies, provisional measures, special requirement related to the border measures, and criminal procedures. Besides, TRIPs also regulates acquisition and maintenance of intellectual property rights and related inter-pretest procedures, and the dispute prevention and settlement. The detail regulation of those points will be elaborated in the discussion part (WTO, 1994).

ASEAN as the regionalism in South East Asia established the economic integration named ASEAN Economic Community. It was enforced in the late of 2015. With all member states are also the member of WTO, the consequence affected to this economic regionalism is that the principles and the regulation of AEC have to be in harmony with the WTO. Its main principles are reflected into four pillars: 1) Single market and production base; 2) Competitive economic region; 3) Equitable economic development; 4) Integration into the global economy. To manifest those pillars, besides regulates about the liberalization in the goods, services, finance, and labour, AEC also regulates about intellectual property protection (ASEAN Secretariat, 2008). Not only boost the creativity, innovation, and competitiveness, the regulation of IPRs protection is critical as this area is highly interconnected in the economic activities in the region.

ASEAN pays a great attention to this issue. It is showed that after the enforcement of TRIPs WTO, on December 15, 1995, seven ASEAN member states signed the ASEAN Framework Agreement on Intellectual Property Cooperation (Framework Agreement). A year after its signation, nine ASEAN states ratified the agreement. In the same year, the region established ASEAN Working Group on Intellectual Property Cooperation (AWGIPC) to monitor the implementation in the national level. Today, the mechanism of this working group is guided by ASEAN IPR Action Plan 2011-2015 and has Intellectual Property (IP) Offices of ten ASEAN Member States. Since the ratification of the framework, ASEAN has made important effort to to protect the IPR in the region by enhancing policies in the Framework and improving the institution. Despite of the endeavors, the progress of national IP laws in ASEAN states is not same. The varied level of development in the member states is due to the variation

of economic development of member states (Barizah, 2017). Therefore, it is interesting to discuss about the implementation of IPR protection in ASEAN and member states. In doing so, this paper analyzes the framework agreement and how it complies with the TRIPs.

## **Theoretical Framework**

### **1. Classical Liberalism**

Classical liberalism emerged as the support of the beginning of capitalist economy, which consisted particularly of small, independent business. The idea was grounded on the philosophy of 'laissez-faire'. It was an abbreviation of a phrase 'laissez-faire passer le monde de lui meme' which means 'do not interfere, the world will take care of itself'. This 'laissez-faire' philosophy was fruitful to encourage economic growth when free entrepreneurs were detained by government controls. It was also known as the 'invisible hand' concept. Adam Smith argued that the welfare of society depends on the individual's ability to pursue his or her interests (Siegel, 2011, p. 5). A country is most affluent in the condition of little government interference in individual's struggle of their self-interest. If the 'invisible hand' of the market performs efficiently, society can regulate itself best with minimal interference from the state.

Free market is the way how the liberal system comes into realized. It is about freeing of restrictions and laws that are related to trade, or also known as free trade (Smith, 2007, p. 241). Thomas Hobbes, John Locke and other also argued that the role of government in this free market is to protect individual's self-interest. In this perspective, liberal political theory started in the seventeenth century, which was the starting of the emerging of capitalism, and then developed until eighteenth and nineteenth century.

New face of liberalism was born in the twentieth century, when the early capitalist economy of independent businesses was being changed by a more centralized and more bureaucratized economy. 'Laissez-faire' economics became dominant view that endangered competition, whereby 'laissez-faire' did not create the condition of unlimited chance to everybody based on their business ownership and working hard. In the early twentieth century, critical actors sounded the significance of government intervention to avoid people's exploitation because of unlimited corporate power and to provide the basics of a decent life for the society, for example like public education and infrastructure. This new version of liberalism was referred to the thought that the state has the obligation to take a role in the economy to create stability and growth, and has to produce various programs to make sure that economic growth lead to the fair share of prosperity. Here,

modern liberalism still believed in personal freedom, despite its principle of more state control, it still become strong supporters of civil liberties.

## **2. Self-Reference Criterion**

On his writing asserts that culture does not act in isolation, but it is closely related to law (Varner & Varner, 2014). Culture influences law, and law influences culture. For instance, in one side, an egalitarian culture can lead to the establishment of laws that pay attention to the right of people and make sure that these rights are not violated. On the other side, laws that regulates fair rights for all gender can lead to the transformation of culture depend on their position in public. For instance, many countries regulate a certain percentage of female on company main staff. The progress of culture transformation is varied, but still, it will change.

Moreover, the complexty relation of culture and law may emerge. Argues that there is no universal legal language, but rather every legal language reflects the history out of which it comes (Varner & Varner, 2014). Based on that argument, interpretation of law concepts is very complex and can lead to severe misunderstandings (Goode, 2014). For instance, the concept of *force majeure*. This concept is French and is used to express the condition that is out of corporate's control. It can be disaster or the change of state policy (Rupert, 2011). There is no definition and standard interpretation of that terminology in the United States. To deal with this condition, states that context of certain business discourse is needed in the language teaching (Ainsworth, 2012). For instance, legal terminology study is needed for manager so that they can distinguish the terms from what used in other cultures and languages.

One that affects the relation between legal and culture is the Self-Reference Criterion. It can be defined as using the self perspective, values, and priorities to evaluate other cultures are considered as natural and logical. They become the norm against which we judge other people's behavior (Varner & Varner, 2014). People who come from a culture with a precise time orientation believe on their approach as the standard in viewing something. This concept can be found in all culture to overcome the bad stereotype of other. It means that our own priorities and partner's are both significant.

The Self-Reference Criterion also influences our view of laws (Varner & Varner, 2014). As mentioned above that culture is the product of the legal system that is derified from society's history and culture. Americans, for instance, are shaped with a very detail interpretation of legal systems, where society is pointed to a trial by jury. Judges are members of the judiciary and independent of the executive branch, enforcing the separation of power. A person can be tried for a crime only once. Lawyers of both sides

can cross-examine the accused and witnesses. A jury trial emphasizes the role of one's peers in the legal process and is rooted in individualism and equality. It is not some prince or king who decides one's fate but one's equals. In Germany and other countries that follow code law, the system works differently. Judges are civil servants and report to the Minister of Justice which in the American view violates the separation of powers. Therefore, under the influence of the Self-Reference Criterion, one may be tempted to call the other country's system unfair, but it is important to see that the laws in other country are fair in that legal system and tradition.

## **Method**

This research is descriptive qualitative research by applying the methodology of international relations. The object of research is intellectual property rights in ASEAN. Based on the scope of the discussion, this study uses the level of regional analysis. Protection of intellectual property rights in ASEAN as a unit of analysis. The multidimensional approach to the development of protection of intellectual property rights in terms of economics, politics and culture as a unit of explanation. Data sources are obtained from books, journals, newspapers, and the internet. Techniques for collecting data are document studies/text analysis both print and online. The analysis technique is carried out through several stages; data reduction, data presentation, and conclusion arrangements (Silalahi, 2009).

## **Result and Discussion**

### **1. The Compliance of SEA IPR Action Plan into TRIPs WTO**

Several months after the TRIPs WTO introduced, in 1995, 7 ASEAN countries responded by formulating the ASEAN Framework Agreement on Intellectual Property Protection (ASEAN Framework Agreement). In the period of 1995 to 1996, the Framework Agreement was signed by 9 member states and then the ASEAN Working Group on Intellectual Property Cooperation (AWGIPC) was established to support the implementation in the national level. The AWGIPC consists of 10 IP office in the ASEAN member states and works based on ASEAN IPR Action Plan 2011-2015.

The compliance of ASEAN Framework Agreement can be seen first in the third objective of the Agreement mentioned in the Article 1. The third objective of the Framework Agreement is to improve the intra-ASEAN cooperation regulation for solidarity and to enhance innovation, transfer and dissemination of technology. This objective is in harmony with the objective mentioned in Article 7 of the TRIPs WTO. It states:

“The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.” (WTO, 1994)

The compliance of the objective is also shown in the regulation of Framework Agreement that requires member states to manage consultation on formulating their national IPR laws to meet ASEAN standards and practices that are in accordance with international standard. Here, the international standard means TRIPs WTO.

Article 8 of TRIPs WTO also adopted in the same way in arranging the words by the Framework Agreement. Article 2 of the Framework Agreement states that the measures necessary to protect “public health, nutrition and the promotion of the public interests in sectors of vital importance to the socio economic and technological development by Member States are allowed as long as consistent with their international commitments”. Furthermore, the sentences under Article 66 of the TRIPs Agreement on transfer of technology is also all used in the Framework Agreement.

The area of protection in ASEAN Framework Agreement is also same with the protection in the TRIPs which are copyright and related rights, patents, trademarks, industrial designs, geographical indications, undisclosed information and lay-out designs of integrated circuits. (ASEAN Framework Agreement Article 3) In harmony with the enforcement of IPRs protection that is regulated in the TRIPs, ASEAN Member states established various cooperative activities: (1) activities for enhancing an effective IP enforcement and protection; (2) activities for strengthening administration of ASEAN IP; (3) activities for strengthening IP legislation; (4), activities for promoting development of human resources; (5) activities in promoting public awareness of IPR; (6) activities for promoting private sector cooperation in IP; and (7) exchange of information on the issues of IP.

The next compliance can be seen from the enforcement of the ASEAN Framework Agreement. The TRIPs WTO regulates the enforcement in the scope of general obligation, civil and administrative procedures and remedies, provisional measures, special requirement related to the border measures, and criminal procedures. Besides, TRIPs also regulates acquisition and maintenance of intellectual property rights and related inter-pertes procedures, and the dispute prevention and settlement. In ASEAN, enforcement of ASEAN Framework Agreement is conducted by formulating AWGIPC that consists of 10 offices of member countries. Besides, the working group on trademarks and patents created regional filing system where applicants will be able to

apply in any ASEAN office as a receiving agency and continuing the filling system to other designated country's offices.

The attempts to be in harmony with the TRIPs WTO are also shown in each member states. Singapore formulated IPRs law in the period of 1987-2000. Among all ASEAN member states, this country has the most effective enforcement of IPRs protection. This country includes Intellectual property law in the legal education. Besides, IP Academy for research and training has been established to support the program and to create advance teaching for the profession, the IP administration, and interested members of the public. Singapore is good in both harmonize the TRIPs and ASEAN Framework Agreement and implementing them (Loon, 2003). Moreover, WIPO also established the IPR office in this country to make the IPR protection standard in Asia.

Meanwhile, Malaysia, Indonesia, and Philippines have the good legislative IPR compliance in TRIPs and Framework Agreement. They also show the progress in the administration, establishing specialize IPR court, and creating public awareness. Malaysia established MyIPO which is the national office for intellectual property rights protection. Malaysia has the strong legal framework in IT protection such as Digital Signature Act, the Computer Crimes Act and the Telemedicine Act, all of 1997, the Communications and Multimedia Act of 1998, and various amendments to the Copyright Act. Besides completing new set of IPRs law to be TRIPs compliance in the period of 2000-2002, the development of decentralization system in Indonesia lead to spread the application office of IPR in the local branch office of Ministry of Justice (Lake Tee, 2001). Furthermore, Indonesia also specializes the court related to the IPRs cases in the Commercial Court. Thailand also has the special court for the case of IPRs (Antons, 2006).

Brunei is unique since the fact that this country does not put the attention to the IPR protection due to its major economic commodity is oil. However, this country is considerable excellent in both adopting the TRIPs regulation and its enforcement. Under the new Trade Marks Act in 2000, this country protects patent, copyrights, industrial design and layout-design of integrated circuits. The enforcement has been effective since 2014 because of a good coordination between stakeholders i.e. Brunei IP Office (BruIPO), Brunei Economic Development Board, the Attorney General's Chamber, and various office of IPR registration. This condition leads to the improvement of public awareness in the IPR protection. Furthermore, Brunei also conducts IPR protection modernization by cooperate with WIPO in deploying WIPO's Industrial Property Administration System (IPAS). This effort results in the improvement of quality and efficiency. Besides, it cuts the time of receiving and processing application. It also fastens the spreading the notification because of the efficiency in the BruIPO.

In the group of ASEAN four, Vietnam has the most advanced system of IPRs protection. This country introduced the new Intellectual Property Law at the end of 2005 and came into force in July 2006. Cambodia passed the complete set of intellectual property rights laws in the period of 2002-2003 (Thai Press, 2005). This enactment was the part of attempts of this country to be the member of WTO. Myanmar will introduce a comprehensive National Law on Intellectual Property Rights, for which WIPO has provided advice and technical assistance. The new law will replace the Copyright Act of 1911 and a basic registration system for trademarks under Direction 13 of the Registration Act. Laos has in place two decrees of the Prime Minister on the protection of trademarks and patents (Khine U, 2003). The stakeholders in the area of intellectual property cases in Laos are the intellectual property division of the Science, Technology and Environment Agency (STEA).

## **2. The Differences between ASEAN Framework Agreement and TRIPs**

Based on the description above, the regulation stipulated in the ASEAN Framework Agreement is already in harmony with the TRIPs WTO. The legal framework in the member states also adopts the two norms. However, despite the scope of IP protection in all legislation of ASEAN member states is same with the regulation of TRIPs, the substance of the legislation is varied in each nation because of the difference of the economic development. This condition leads to the hindrance of the harmonization of the substance and the enforcement of the IPR protection toward the TRIPs WTO. Found that the Framework Agreement that the substance is comply with the TRIPs is not considered by the member nations in formulating or amending their national legislation related to IPR protection (Barizah, 2017).

Although the legal framework already meets the Framework Agreement, Malaysia, Indonesia, and the Philippine are still lack in the law enforcement. Malaysia has the lack of the sanction for the infringement of IPR. Indonesia deals with the bad legal culture, weak governance, and corruption that become the hindrance to the realization of the IPR infrastructure. (Butt, 2008) Indonesia also deals with the high level pirated and counterfeit products in its market. Moreover, the public awareness in IPR is still low. Argue that those conditions are because of inefficient coordination of action by enforcement bodies and the insufficient sanction for piracy (Butt, 2009). It can be seen that the enforcement is violated by the easiness access of Chinese counterfeit product in Indonesian border. In addition, the infrastructure and administration problems that are also faced by the Philippines are the insufficient of expert staff, the absence of transparency in registration procedures, and limited public access to data. The Philippines



even included under the USTR special 301 Priority Watch List due to the absence of IP expertise, slow IP right registration procedures, gaps in enforcement and prosecution, lack of leadership, and lack of data and information for effective decision-making and transparency of operation. In addition, it is not easy for the right holders to get assistance from enforcement bodies in the case of infringements (Barizah, 2017).

The serious IPR infringements are also faced by Thailand. Besides, the copyright law of this country is seen as not following the fast development of the technology and the enforcement to fight digital piracy is inadequate. Furthermore, the patent office of this country is also lack of resources compared to the number of application. It leads to patent block. In Thailand, the amendment of the Copyright Act to create a better IPRs protection had consequence in the dissolution of Parliament and the calling for a new election (Barizah, 2017). After the AIDS crisis in 1990s, companies consider granting compulsory license for medicine for Thailand with this country's commitment to TRIPs as the condition. In this case, Thailand accepted protocol amending the TRIPs Agreement in 2016. It is followed by the improvement in the effort of IPR protection and its enforcement such as the creation of the National Task Force with the Prime Minister as the leader, by establishing an IPR Dialogue with the EU and by creating the "Creative Economy initiative". Thailand also adopts the Patent Cooperation Treaty in 2009 and revises its IP laws as the consequence, for example give the authority of Thai Customs to conduct enforcement actions ex-officio, which unfortunately is not effective yet.

Still refer to, the protection of IPRs and the compliance toward TRIPs in ASEAN four (Cambodia, Myanmar, Laos, and Vietnam) is not very satisfying (Barizah, 2017). Although Vietnam already revised its laws on IP and try to complete its IPR legislative framework after this country join WTO in 2006, the enforcement still deals with the complexity of the system and the lack of efficient cooperation between enforcement bodies and IPR stakeholders. There is also the problem of inadequate understanding of IPR of several enforcement officials and insufficient resources. It results in the lengthy and burdensome enforcement procedures. Meanwhile, Cambodia which joined WTO in 2004 just two years out of the stage of development regulatory framework. The transitional period to meet TRIPs obligation for Cambodia is no later than January 2017. In the period of in advance to be into full WTO compliance, the investors already get the protection in the area of invention, trademarks, industrial designs, and other creative products. At that time, the efficient procedures and the enforcement was already realized. IP protection law in Cambodia does not include certain types of inventions, such as scientific theories and mathematical formulae.

In addition, Myanmar does not consider trademarks or copyrights from other states, while infringement of IP rights can be seen everywhere. Previously, this country had to harmonize its IP legislation with TRIPs WTO on July 1, 2013, but then the WTO prolonged its due date until July 1, 2021. The unique is that although this country is in advance complying WTO TRIPs Agreement, the protection of IPR is already considered as “Constitutional Rights”, and when they are stipulated by the Union Hlutaw (Union Parliament), it will be automatically applicable. Furthermore, Laos’ IPR protection is also in the phase of early development. This country just joined WTO in February 2013. Despite this country’s law already has the considerable efficient IPRs registration system, the implementation of the new IP law will not be well-executed until the Prime Minister gives the guiding decrees on its implementation and interpretation. Up to present, those legislation is not being passed yet.

To describe the common trend of the IPRs protection in the region, classifies three main problems (Antons, 2006). First, the insufficient administrative resources in the region. This condition leads to the hindrance in realizing the effective administration of IPRs system. One of this condition’s causes is the inability of the government to compete in paying wages to the IPRs professional in IPRs stakeholder post, that those professionals prefers to work in the private sector. Besides, in the scope of university, there is an absence of knowledge about IP among practitioners and judge. This condition leads to the lack of opportunity of specialization in the court system.

Second, there is the ineffectiveness of police and other parts of the enforcement structure. In developing countries, the enforcement bodies are often overstretched. Furthermore, the Asian Crisis and the condition of poverty make people pursue money from the job without social security. People can easily pirate the music or film in very cheap way that lead to the rising level of piracy rate in the region. Because of the incapability of the enforcement agency in coping this problem, in some states, private sector organizations and foreign companies have now begun to develop self-help groups.

Third, related to the working group mentioned in the previous discussion, there is a problem in the implementation. Despite the success of working group in formulating the draft of regional filling form of trademark, the progress of using the system and harmonization has been slow. In addition, concludes that the expected cooperation in the regional free trade agreement until her article was written can not speed up the harmonization (Barizah, 2017). Argue that this case is first because the fear that the existence of IPRs office in the region will lose the influence and source of income in national IPRs office level (Antons, 2006). Second, the condition of first cause leads to the rejection from the local practitioners. Third, there is an argument that the regional system

will not create a better system compared to multilateral system such as the PCT of which part of ASEAN member states are member and the other part will be member in the following years.

### **3. ASEAN IPR Protection Based on Liberal View**

The former ASEAN IPR protection was taken in the name of ASEAN Framework Agreement on IP Cooperation. The formation of the Framework is based on the need to give a basis for economic improvement and the realizing of ASEAN Free Trade Agreement (AFTA) for prosperity of its member states. This Framework Agreement was designed to promote liberalism as mentioned in the objectives of the Framework Agreement enshrined in Article 1 which states that it aims to strengthen the cooperation in the area of IP with the perspective to support the growth of trade liberalization regionally and globally (Barizah, 2017). By enabling an IPR environment in ASEAN, innovative activities can be stimulated. Therefore, the justification for protecting IPR lays on the assumption that the free market upheld by AFTA establishes IPR to motivate innovators to create socially desirable products.

A free market perspective of ASEAN IPR protection can be traced from several points (Schultz, 2014). First, IP secures the same values as physical property. As an institution, IPR protection secures rights in what people create through their work. In this view, there is no cause or need to distinguish IP from any other forms of property. In all cases, people employ their intellect and talents to impose their plan and will on their environment to bring something new in the world. That is the essence of productive labor, the fruits of which IPR protection secures.

Second, IPR protection supports individual property and human flourishing. Property right is an essential foundation of individual liberty. Given so, by securing the value that people create through productive labor, IPR protection secures what people need to love, which is not only to survive but also to live fully, flourishing lives. In turn, ASEAN controls over the things people need to live, gives them independence that makes it possible to enjoy true liberty, not beholden to a government, king, chief, or patron.

Third, IPR protection supports economic liberty, freedom of expression, and freedom of inquiry. IP possesses the similar virtues as physical property because both institutions support individual freedom by leaving decisions to sellers and buyers. In this context, all property is both efficient and liberating. Producers and consumers get to decide for themselves what gets made and bought. Here, people with the best information and the greatest stake in the decision get the freedom to choose. IPR protection also supports liberty in unique and important ways. It secures the independence of creators

and innovators, making them beholden to the market, rather than the government or powerful actors. It also creates 'constituencies' who have an economic interest in supporting freedom of expression and inquiry. Copyright serves as the engine of free expression. The creators find independent support in the market rather than having to please the government. Therefore, free expression is not just a noble ideal to them, but it is a good business to defend their freedom to create and sell their products. While in the context of inquiry, IPR protection helps secure freedom of inquiry. Patent rights are one of the foundations of commercial Research and Development (R&D), allowing the private sector to set its own priorities with respect to technological research. Because IPR protection secures R&D, people do not have to depend on government grants to determine what research gets funded.

Fourth, IPR protection supports independent and entrepreneurship. IPR protection enables the kind of independent, entrepreneurial activities that free market advocates celebrate. Books, movies, software, and pharmaceuticals are made by real people and the creation and commercialization of these works requires entrepreneurial risk-taking. There is a lot of great free market activity here to celebrate, and free market advocates who are skeptical of IPR protection often seem to forget this fact. Inventions are not a pre-existing resource, waiting to be assigned by the government. They represent the hard work of individuals who deserve to own them. IPR protection enables them to support themselves and secure their independence.

#### **4. Self-Reference Criterion of ASEAN IPR Protection**

ASEAN Framework Agreement on IP Cooperation requires its member states to conduct consultation on developing their national IPR laws to create ASEAN standards and practices which are in line with international standards, which is the TRIPs Agreement (Barizah, 2017). Given that the ASEAN IPR protection have similarities in objectives, principles, and norms set out in the TRIPs agreement, but the enforcement of IPR law seems different. The IPR law enforcement in ASEAN is 'softer' than the TRIPs, leaving the sanctions for the infringement of IPR in Southeast Asia do not perform as strict as those in the Europe, America, and other developed countries. It is affected by several points.

First, the legal culture (Degelsegger, Remøe, & Trienes, 2016, p. 44). Basically, ASEAN member states have made significant steps to strengthen their legal framework for IPR protection, including efforts to make their national laws compliant with international standards, the TRIPs. However, the path toward harmonization is undermined by the ASEAN culture. Most of the intellectual property laws of ASEAN

member states were originally either inherited from the colonial government or adopted later as part of the desire to modernize their countries (Endeshaw, 1999). The impact of ASEAN culture on the implementation of IPR protection to comply with the TRIPs can be traced on Antons' argumentation. Apart from the problem of culture, tradition, and colonial times as stated by Antons, the above exploration indicates that expecting the same level of protection and enforcement within ASEAN member nations is unlikely to materialize for the time being.

Second, the infrastructure. The path toward IPR law enforcement needs to consider countries' infrastructure capacities (Antons, 2006, p. 7). As most ASEAN member states are still categorized as developing countries, their infrastructure would not be adequate enough to enforce IPR law as implemented in developed countries, as asserted by Antons. Lack of IP expertise, resources, technological support, data, and information effect on the slow IPR registration procedures. Sometimes the government needs to 'enlarge' their tolerance towards the infringement of IPR because many people still hang on their living on economic activities related to it. Therefore, it is reasonable that the implementation of IPR protection under the TRIPs could not be generalized between developed, developing, and less-developed countries.

Both the ASEAN legal culture and infrastructure serve as ASEAN characteristics, an identity that makes them different compared with other region. Such identity represents that ASEAN is middle income region with uniqueness created by their colonial history, by which international law would be implemented through adaptation from their local conditions. Regarding that Self-Reference Criterion is about unconscious reference to one's own cultural values, experiences, and knowledge as a basis for decisions, then ASEAN IPR protection in compared to the TRIPs shows that it was designed based on the premise that one's own culture knows best how to do things. It is about thinking how they would handle the same situation if they were in their home country. It also refers to the assumption that what is suitable for domestic country. When intended to implement IPR protection to comply with the TRIPs, ASEAN tend to react naturally on the basis of knowledge that they acquired over their life time, leaving the IPR protection modified to be in accordance with the local conditions. That knowledge is products of ASEAN culture which is based on meanings, values, symbols, norms, and behavior relevant to their own culture rather than rational thinking. Although, the ASEAN values and norms of behaviors make them enforce the IPR law differently in compared with the TRIPs.

## Conclusion

Since all the ASEAN member states are the member of WTO, the regulations in under its economic integration are also in harmony with the WTO. In the case of IPRs, ASEAN vastly responded the WTO regulation. Right after the agreement of TRIPs WTO agreed and enforced, ASEAN formed ASEAN Framework on Intellectual Property Rights. Analyzing the regulations of the ASEAN Framework, they already meet the regulation of WTO. However, the substance and the implementation both in ASEAN and each member countries is still lack from the perfection. It is due to the different level of economic development.

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