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The ASEAN Agreement on Trans-boundary Pollution in Relation with Indonesian Haze, Compliance in Theory and Practice

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The trans-boundary pollution has become a major issue within the Association of Southeast Asian Nations (ASEAN) when the forest fires took place in Indonesia. Indonesia's neighbouring countries had to face problems dealing with the smoke and haze that spread into their territories. ASEAN Member States' attempts to combat the smoke and haze problem depicted on Agreement on Trans-boundary Haze Pollution (Haze Agreement), which up to now Indonesia has been the only State that has not ratified the agreement. The reluctance of Indonesia to ratify the agreement becomes a problem to the enforcement. It is contrary to the argument that the ratification is believed to bring some benefits for Indonesia from transfer of knowledge and technology and also from research. While Haze Agreement requires cooperation among ASEAN Member States to reach the objectives of the agreement, the cooperation itself is not limited to the participation of the whole members at the same time, but also possible to conduct such cooperation in form of bilateral effort or other kind of accepted by the parties. With some flexibilities offered by the Haze Agreement, the effectiveness of the agreement does not rely only on the commitment shown by the ratification of ASEAN Member States to the agreement, but also relies on the level compliance that shown by their effort to combat the possibility of upcoming trans-boundary pollution matters within the region.

Keywords: *ASEAN, haze pollution, compliance, bilateral cooperation*

I. Overview

The basic environmental problem is to prevent the overuse and abuse of "environmental goods", including clean air, water, and wildlife, by controlling access and use.[1] The horror stories of destruction and degradation of air, land and water have crated widespread of apprehension of throughout the world. Many countries have responded by national measures but it has long been evident that the problems transcend national boundaries. The necessity for international action was brought to the world's consciousness first by scientist and then

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[1] Daniel H. Cole, *Pollution & Property, Comparing Ownership for Environmental Protection*, Cambridge University Press, 2002.

by intergovernmental meetings.[2] Nowadays, the necessity for regional action more importance in dealing with issues of trans-boundary pollution.

In relation to clean air, deforestation and forest degradation became some of important problems of environment due to failure in controlling of using forest as one of the important parts of the environment. The problem of large-scale forest and land fires is a serious ecological and health issue in many part of the world today.[3] In most recent decade, forest fire in Indonesia is one of the important problems concerned by most neighbor countries. Due to effect of the smoke and haze from the over burning forest in Indonesia cross the boundaries and harm some countries, such as Malaysia, Singapore and Brunei Darussalam. In those three countries, the haze has threatened health while in The Philippines and Thailand has been affected to a lesser degree.[4] Smoke also forcing some twenty million people to breathe potentially harmful air for prolonged period.

Dealing with that problem, the ten members of Association of Southeast Asian Nations (ASEAN) concluded a landmark regional Agreement on Trans-boundary Haze Pollution (Haze Agreement) that adopted on June 2002 and came into force on November, 25, 2003. Indonesia as one of ASEAN member states which has not ratified it yet (might) because Indonesia is the only ASEAN member states which still has the major problem with haze pollution.

Regarding the problem of enforcement and compliance of the Haze Agreement, particularly for Indonesian context, on one hand, some expert argue that the Haze Agreement itself is deficient in obligation materials and enforceability, so, willingness of Indonesian Government to ratify the agreement not really a problem in enforcing the agreement. Even within Indonesian itself, the barriers of enforcement of the agreement could also come from domestic problems. On the other hand, from optimist's perspective, the fact that agreement was adopted and brought into force relatively swiftly signals a new willingness among

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[2] Seminar 2, International Environmental Law and Policy, NUS Law School, 2010.

[3] Alan Khee-Jin Tan, "The ASEAN Agreement on Transboundary Haze Pollution: Prospects Compliance and Effectiveness in Post Soeharto-Indonesia", in *N.Y.U. Environmental Law Journal*, 2005.

[4] Simon C. Tay, *Indonesian, Democracy and the Haze,* Singapore Institute of International Affairs.

ASEAN member states to deal with issues of trans-boundary concern in a more formalistic manner, entailing, for the first time the rights and obligations for member states.[5]

II. Trans-boundary Pollution

Trans-boundary pollution generally defined as pollution that originates in one country but, by crossing the border through pathways of water or air, is able to cause damage to the environment in other country,[6] while the Haze Agreement defines trans-boundary haze pollution as haze pollution whose physical origin is situated wholly or in part within an area under the national jurisdiction of one Member State and which is transported into the area under the jurisdiction of another Member States.[7]

Furthermore, Schachter in his article on protecting the environment mention that, at least, four conditions appear to be necessary; the harm must result from human activity and that harm must result form a physical consequence of the causal human activity. The third condition applicable to international environmental law is that the physical effect crosses national boundaries. Lastly, the harm must be significant and substantial. It difficult to formulate the condition on what criteria the harm is significant and substantial. A proposed International Law Commission (ILC) would only define significant harm as "greater than the mere nuisance or significant which is normally tolerated"[8]

It is obviously that international law does not allow states to conduct activities within their territories, or in common spaces, without regard for the rights of other states or for the protection of the global environment. Two principles of environmental law enjoy significant support: a duty to prevent, reduce and control pollution and environmental harm, and a duty to cooperate in mitigating environmental risk and emergencies.[9]

Moreover, Principle 21 of the 1972 Stockholm Declaration on the

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[5] *Ibid.*, p.2.

[6] [...], http://stats.oecd.org/glossary/detail.asp?ID=2754

[7] *ASEAN Haze Agreement on Transboundary Pollution*, opened for signature 10 June 2002, art. 1 (13).

[8] *Lecture material of International Environmental Law*, NUS Law School, 2010.

[9] Patricia W. Birnie and Alan E. Boyle, *International Law and The Environment*, Claredon Press Oxford, 1992, p.89

Human Environment is the evidence of continued international support for the broad principle that state must control sources of harm to others or to global environment. It affirms the sovereignty rights of states to exploit their own resources pursuant to their own environmental policies on one hand, but it also affirms the responsibility of the states to ensure that activities within their territory or within its jurisdiction or control do not cause damage to the environment of other states or to areas beyond the limits of the national jurisdiction. The latter provision limits sovereignty of the states over their jurisdiction policies, particularly for the environmental policies, and put the emphatic reference to the responsibility for the damage. This principle reflecting customary international law because it was regarded by many states presented at the Conference and it also subsequently regarded by the UN General Assembly. United Nations General Assembly affirmed that in the exploration, exploitation and development of the natural resources, states must not produce significant harmful effects in zones situated outside their national jurisdiction.[10]

In this regard, the well-known case, Trail Smelter Case,[11] where the tribunal concluded that no state has the right to use or permit the use of its territory in such a manner as the cause injury by fumes in or to the territory of another, and t measures of control were necessary.[12] Trail Smelter Case is revered as the germ from the entire law of trans-boundary environmental harms sprang. It is remembered as the earliest articulation of the two core principles of international environmental law, that already mention above, state have a duty to prevent trans-boundary environmental harm, and that they have an obligation to pay compensation for the harm they cause. This case also remembered for establishing the first international pollution control regime, or at least one of the first.[13]

The second element of Principle 21 reflects the view of states that they are subject to environmental limits in the exercise of their rights under the principle of the permanent sovereignty over natural resources. Following the ICJ's 1996 Advisory Opinion on *the Legality of the Threat*

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[10] GA Res. 2995 (XXVII), 15 December 1972.

[11] "Trail Smelter Arbitral Tribunal" (1939) 33 Am. J. Int'l L. 182

[12] 35 *AJIL* (1941), 716

[13] Stepan Wood, *Transboundary Harm in International Law : Lesson Learn from Trail Smelter Arbitration*, 2006

or Use of Nuclear Weapons, there can be no question but that Principle 21 reflects a rule of customary international law, placing international legal constraints on the rights of states in respect of activities carried out within their territory or under their jurisdiction.[14]

III. The Effectiveness of the Haze Agreement, Indonesian Compliance and the Problems of Enforcement

The effectiveness of any international regime is generally reflected in a process of implementing and enforcing the obligations and rules of its regimes through state member practices or the target actors. Similar with that, the effectiveness of any treaty in addressing an identified concern depends in large part on whether the treaty secures the requisite compliance of target actors within the state parties.[15] Meanwhile, ensuring the compliance by members of international community with their international environmental obligations continues to be a matter of increasing concern.

Enforceability of an agreement must be in relations with the question of the effectiveness of it agreement. The concept of effectiveness is deceptively simple. There is a natural tendency to equate effectiveness with problem solving.[16] An environmental agreement is effective when it is successful solves the problem that led to its creation. The states who are involve in solving the problems should "create" the systems that is relevant with the provision of the agreement. But this simple formula masks an array of complications. The states should find the formula to deal with those complications. In this sense, it is should be understandable that a multilateral agreement often leave the essential issue of the agreement in "grey area" and for some reasons, it also leave a space for multi interpretation.

Furthermore, the question of the effectiveness of an agreement might also influenced by material obligation of agreement itself. There are, at least, two contrary opinions regarding this problem. Some people

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[14] Philippe Sands, *Principle of International Environmental Law,* 2nd ed., Cambridge University Press, 2003, p. 241.

[15] Alan Khee-Jin Tan, *supra* note 3, p.2.

[16] Durwood Zaelke, Donald Kaniaru and Eva Kružíková, eds., *Making Law Work, Environmental Compliance & Sustainable Development,* Vol. 1, Cameron May, 2005, p.174.

argue that it is important to maintain strong obligations in agreement as "a tool" for ensuring enforceability such agreement. Contrary to that, other argued that even an agreement lack of material obligations, it still has an opportunity to generate compliance of it state members by other ways. In regard to ASEAN, one of the most popular ways known as "ASEAN Ways" and it will be discussed at the end of this paper.

Generally, there are two critical factors explaining national compliance: the country's intention and the capacity to comply.[17] It is difficult to determine the first factor but generally it is seen from the analysis of countries' behavior. This factor is related to the interest of the countries and it is assumed that the past practice may already in line with the obligation of the agreement. Basically, the traditional stylized model of compliance assumes that countries accept international agreements only when governments regard them as being in their interest. Thus countries generally comply with obligations they have assumed. If they do not, sanctions are used to punish offenders and deter violations. But in reality is different. Mostly a country joint an agreement based on their interest, such as politic, economic, national security and many other reasons. There are many different reasons why they find them to be in their self interest and those reasons affect willingness and capacity to comply. [18]

The second factor is capacity to comply it means that instead of the necessity to comply based on it interest, the country must also have the capacity to comply with the obligation of the agreement. The capacity generally needs an effective and honest bureaucracy and economic resources as well as the public support and technical expertise.[19] These problems typically faced by most of developing countries, especially in Asia and being accommodated by some of environmental agreements that have provide an opportunity for financial and technical assistance in helping countries develops the capacity to comply.

The ASEAN Haze Agreement as one of the Multilateral Environmental Agreements (MEAs) is still facing problems on enforcement when Indonesia as one of the parties has not yet ratified the agreement. It was obvious that during negotiation and signature, Indonesia was the only member state that was struggling with haze

[17] *Ibid.*, p.175.
[18] *Ibid.*, p.189.
[19] *Ibid.*, p.176.

problems. The Agreement was specifically targeted at the haze in Indonesia, even though for general application for all ASEAN states.[20]

During 1997-1999, Indonesian haze was one of the hottest issues in the region. It was not debatable that forest fire in Indonesia produces large amount of smoke, not only harm the other neighboring countries and Indonesian people itself, but it might also contribute to the climate change in general. The worse fire on record took place on 1997, the year the Asian financial crisis began. The resulting haze affected an estimated 20-70 million people in five countries in the region. Major sector of economy were affected, as well as the safety of air and sea travel. Estimates of the economic cost include Asian Development Bank's figure US$ 6.3 billion, with the fast majority suffered by Indonesian itself.[21]

Indonesia, as one of the founding father of ASEAN, also took apart during the negotiation of the agreement and it agreement has been signed by Indonesian Government represented by Liana Bratasida, Deputy Minister for Environment Conservation State Minister of Environment. The Agreement shall entry into force sixtieth day after the deposit of the instruments of ratification, acceptance, approval or accession.[22] In the meantime, Indonesia has not ratified the Agreement yet it means the agreement is not binding for Indonesia and there is no responsibility for Indonesia to comply the Agreement.

Some experts also might argue that this case attempts to understand the international legal personality of multilateral environmental agreements (MEAs), their relationship with their organizations as the umbrella for their legal relationship with one another member state. Consequently, it is the structure and institutional organization itself that have been a major factor in leading to ineffectiveness and missed opportunities to create a coherent body of international environmental

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[20] Koh Kheng Lian, *A Breakthrough in Solving Indonesian Haze?, Shared Resources, Issues of Governance,* IUCN, 2006, p. 231.

[21] Economy and Environment Program for Southeast Asia (EEPSEA) and World Wide Fund for Nature (WWF), *The Indonesian Fire and Haze of 1997: The Economic Toll,* Research Report, 1998.

[22] According to Article 11 of the 1969 Vienna Convention, the consent of a state to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

law. ASEAN has produced many international agreements but most of those agreements are lack of enforcement. It might also be influenced by characteristic of ASEAN itself. As a regional organization, ASEAN is not a "strict" organization that use internal pressure for it state members to comply it rules or obligation.[23]

Like most global and regional environmental treaties, the Haze Agreement is a framework agreement. It provides only general principles and guidelines. The parties are obliged to develop their legislative, administrative and their financial resources.[24] There is no sanction on the Haze Agreement, as well as the other ASEAN agreements, this is lack of the material obligations. So, ASEAN as an organization cannot sanction parties if they are not complying with the agreements.

Some people could argue that the problem of enforcement of the agreement is its agreement itself. The ASEAN Agreement reveals the familiar ASEAN allergy to state accountability and strong, legally enforceable norms... the result has been the crafting of an Agreement that is largely deficient in material obligations and enforceability... even if Indonesia were to ratify the Agreement in the near future, it would make little practical difference.[25] It resulted in how most of ASEAN agreements are difficult to enforce and most state members reluctant to comply.

In contrast to that argument, legally enforceable norms, or even the punishment for the state violation of the agreement provision, are not the only way to make state comply and enforce the obligation of the agreement. Compliance is an issue that straddles various arenas and disciplinary debates. In the context of multilateral environmental agreements (MEAs), the topic of compliance has come to be synonymous with the design of non-compliance procedures and others strategies specifically geared to promoting compliance. But the main question is what its approach should be: should it be largely "soft" and facilitative or it should be include "hard", enforcement-oriented features?[26] At one level, international environmental law is often soft law, either in terms

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[23] *Material on Lectures of International Environmental Law and Policy,* National University of Singapore (NUS) Law School, 2010.

[24] Koh Kheng Lian, *supra* note 20, p.232.

[25] Alan Khee-Jin Tan, *supra* note 3.

[26] Gerd Winter, *Multilevel of Global Environmental Change, Perspective from Science, Sociology and the Law,* Cambridge University Press, 2006, p. 388.

of the formal status of norms or in term of the broad-meshed principles it furnishes. Where it is formally binding, international environmental law is rarely enforced through binding dispute settlement or sanctions.[27] For that reason, it is necessary to look at another way to make the treaty work and enforceable rather than leave it as "an agreement on the paper".

In relation to the Haze Agreement, as well as some other environmental agreements, which is provides the cooperation measures including the financial and technical assistance for the country which has the problems with environmental problems. The Agreement also provides the possibility for state members to cooperate and take the collective measure to help the country such as Indonesia dealing with the environmental problems. As long as it country has goodwill to corporate with other state members.

Regarding the goodwill of Indonesia, the Environment Minister Deputy for Environment Destruction Control and Climate Change, Arief Yuwono, said that Indonesia will ratify the ASEAN Agreement on Trans-boundary Pollution. If the agreement is ratified, a lot of benefit would be enjoyed by Indonesia such as opportunities to use human resources and equipment available in ASEAN member countries and outside ASEAN to conduct monitoring, assessment and emergency response on forest fires that caused trans-boundary haze.[28]

Before examine some reasons of Indonesia has not ratify the Haze Agreement, it is interesting to discuss what could be done to generate compliance? International legal strategies to encourage compliance may be grouped into three categories.[29] Firstly, negative incentives in the form of penalties or punishment and withdrawal of privileges. This strategy clearly is not relevant with the Haze Agreement, as well as some other MEAs, as it does not provide any of penalties or other kind of punishments. The other method is *Sunshine* methods such as monitoring, reporting, transparency and NGO participation. These kinds of methods are accommodated in the Haze Agreement, where in the preamble of the agreement state that the states affirms the willingness to coordinate

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[27] *Ibid.*

[28] http://indonesia-oslo.no/indonesia-to-ratify-asean-agreement-on-trans-boundary-haze-pollution/

[29] Durwood Zaelke, Donald Kaniaru and Eva Kružíková, eds., *supra* note 16, p.181

the national action for preventing and monitoring trans boundary haze pollution through exchange of information, consultation, research and monitoring. All those activities must be with consent of the receiving state, related to the principles of sovereignty and non interference of internal state affairs. The last strategy is positive incentives such as special fund for financial or technical assistance and access to technology or training program. The last two methods are mentioned in the Haze Agreement that put the cooperation and consultation as the basic idea of the collective measures. The incentive approach is based on the belief that many problems of compliance are problems of the lack of capacity to comply. Particularly, for developing countries which most of the countries are lack of financial resources.

Incentives are also effective in shaping the interest, and hence the intent, of a country to comply. Incentives can take the form of training materials and seminars, special funds for financial or technical assistance, access to technology or bilateral and multilateral assistance outside the framework of the convention.[30] In international environmental law, countries have relied primarily upon the sunshine and incentive approaches to secure compliance, sanctions have been rarely used. Nor have formal dispute resolution mechanisms been employed. Since international environmental issues have, from the beginning, been of public concern, since all states share a common interest in a healthy global environment, the emphasis on sunshine and incentive strategies for compliance seems understandable and appropriate. [31]

The other solutions that available under the Haze Agreement and relevant with the international environmental law is the cooperative action which call all state members to take action actively to prevent and monitor trans boundary pollution. Effective protection of the environment cannot be undertaken unilaterally, but rather requires international cooperation and international regulation. Such regulation will inevitably result in further restriction on the sovereignty of individual States, when the protection of certain components of the environment is transferred from individual states' responsibility to that of the entire State community.[32] The environmental problem such as haze pollution should

[30] *Ibid.*, p.181

[31] *Ibid.*, p.185

[32] Fred L. Morrison and Rüdiger Wolfrum, *International, Regional and National Environmental Law*, Kluwer Law International, 2000.

be addressed as an international or at least regional problem as regards to the individual state's responsibility. Collective action mechanism is treating the states as the unitary or integrated decision maker. Maybe it will face some difficulties during the process because there are many conflict of interest of personal state but the key for eliminating the problems involves modifying the incentives of individual actors, either by raising the benefits associated with the cooperative behavior of by lowering the gains to be made from adopting uncooperative strategies.[33] It was clear that the forest fire in Indonesia produced smoke which not only threatened health in the neighboring countries and the Indonesian citizen itself but also effected to the economic sectors as well as the safety of air and sea travel. According to Principles 21, it requires states to do more that make reparation for the environmental damage but the main important is recognizing the duty of the state to take suitable preventive measures to protect the environment. The relevant obligation is the duty of Indonesian government on taking the appropriate measures to handle and reduce the fire also recover the land as the short term plan, and strictly look at the forest regulation and renew the mechanism in giving the private company permission to use the land as preventive measures.

Regarding Indonesian haze there was some complains from neighboring countries, such as Malaysia, Singapore and Brunei Darussalam, but none of this countries brought any claim asking for responsibility of Indonesian Government for environmental damage that caused by forest fire within its jurisdiction, even such claim was possible to make regarding huge effect of the haze. Under international law system, the general principles of international law which are binding to all states as the international customary law, there is possibility for neighbor countries asking for responsibility of the Government of Indonesia for the damage. It could be done for reparation or even number of compensation. Those principles came from the precedent of state practices through the judgment of the International Court of Justice or the arbitration award as well as the principles develops from the Convention which acknowledge by most of the effected states. Again for many reasons, there is no such claim brought by any countries bordered with Indonesia. In fact, implementation and compliance of

[33] Robert Owen Keohane, *After Hegemony : Cooperation and Discord in the World Political Economy,* Princeton University Press, 1984.

the agreement by member states may depend on other factors, included the dynamic on relationship between states or even factors of issues that may not be related to the haze problems. It might be that all state members believe that it is difficult for Indonesia act unilaterally dealing with haze problems while they also have some domestic problems.

It is perceptible that the compliance based on internal interest is more important and strong rather than the obligations as the external pressure of normative of law. The necessity came from its own internal interest to show the willingness to solve the problems. Haze also contributes the bad effect to Indonesian domestic problem particularly for local people who live nearby the forest and fire spot. It also affected Indonesian economic and health. So, the problem of compliance is not only a matter of pressure from the agreement and other member states, but also a form of good will from the Government that they really want to do something to solve the problem. The problem arises when the government is reluctant to comply with an agreement that is clearly important for the country; then there must be some problem either its internal or external problems. At that time, Indonesia faced some complicated problems, from transitional of political power to lack of public trust to the Government, along with the global economic crisis that affected Indonesia badly. It might also be arguable that the management of a state's own domestic environment is a matter of common concern independently of any trans-boundary effects.[34] Indonesia has good environmental law and even also has the specific regulations concerning the forest management and use of land but it still face some domestic problems. Such as overlapping jurisdiction between the central and provincial agencies, with no clear separation of powers, and it is getting worse by lack of law enforcement, endemic of corruption and nepotism.

During 1997-1998, Indonesia was in transition period. It was the time when Soeharto stepped down after 32 years as president of Indonesia and it remained as the change of political situation, from *"Orde Baru"* to *"Orde Reformasi"*. This situation also gave some effect to economic stability, particularly to foreign investment which was really influenced by political stability and national security. All those complicated problems may also make environmental problems is not an important

[34] Patricia W. Birnie and Alan E. Boyle, *supra* note 9.

issues as any others. At the end, it seems to us that The Government of Indonesia has no, or at least, little political will.

IV. "ASEAN Ways" as a Win-win Solution?

As already mentioned earlier some people argue that the problems of enforcement and compliance of The Haze Agreement is lack of obligation materials, or in other extreme word, this agreement has no *"teeth"*.

The system provided under the Haze Agreement is fit to the present condition and more flexible in dealing with some internal ASEAN problems. It is well-known as "ASEAN Ways". Most ASEAN state members use consensus and encourage for cooperation as a solution to deal with problems where many states' interests, politic in particular, are involved in certain area of the agreement. It is obvious to see how many political interests are embodied in the multilateral agreement as well as the multilateral environmental agreements. The important thing is how states deal with that issue? So far, ASEAN and its member states have played a significant role in the region. The consensus reflects the nature of ASEAN and the culture of its member states, even though the issues of sovereignty and non interference of internal state affairs potentially fragile the relationship of it state members. Criticisms of the "ASEAN Ways" are not altogether justified. It had a positive role in confidence building in its formative years. Its usefulness in formulating policies, action plans, programmes and strategies across the region should not be overlooked.[35]

The Haze Agreement encourages the state members to work together in a cooperation to deal with such issues. It is clearly mentioned in Article 2 of The Haze Agreement that the objective of the Agreement is to prevent and monitor trans-boundary haze pollution as a result of land and/or forest fires which should be mitigated, through concerted national efforts and intensified regional and international cooperation. It also requires cooperation in developing and implementing the preventive measure to prevent and monitor trans-boundary haze pollution.[36]

Furthermore, when the trans-boundary haze pollution is originated

[35] Koh Kheng Lian, *supra* note 20, p.233.
[36] *Supra* note 7, art. 4.

from its territories, there is an obligation to share information or consultation with states affected by that pollution to minimize consequences of the effects.[37] This opportunity is also open for Indonesia to take part in ASEAN Center for Haze Pollution that could benefit optimally from transfer of knowledge and technology and researches to minimize forest fire, educate and promote public awareness through ASEAN cooperation and with international assistance towards prevention, mitigation and control of forest fires. Indonesia could also strengthen its management and capability in the prevention, mitigation, readiness, monitoring, and control of forest fires. In economic terms, Indonesia would be able to benefit bigger Clean Development Mechanism if no forest fires happen. It could also avoid negative campaign from Europe on the country's palm oil or wood.[38] Even though, in fact, the ASEAN Center for Haze Pollution did not work well but there was some cooperation among States to help Indonesia struggle with that problems. For example, there were financial and technical assistances from Singapore government for local citizens in Riau, one of the Indonesian provinces that had forest fire problems.[39] It means that cooperation itself does not always have to be done by all member States, but it is also possible to happen between two States or more, specifically for states which have specific interest in that area.

All of those systems are relevant with a process that develops out of a need for environmental protection and balance between economic and social development. The process laid the foundations for the current system of environmental governance, at the same time the processes and the systems themselves could be viewed as practical and aimed at strategically. For other observers the system could be viewed as progressive and, in spite of its complexities, it has become a model that pushes towards the outer reaches of organization design, emerging as international and institutional law.[40] No matter how it is viewed, as a system it is sometimes difficult to navigate and be understood but the most important is how it works. No matter how and what systems

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[37] *Ibid.*, art. 4.

[38] [...], http://indonesia-oslo.no/indonesia-to-ratify-asean-agreement-on-trans-boundary-haze-pollution/

[39] Simon C. Tay, *Seminar 2 of International Environmental Law*, NUS, 2010.

[40] W. Bradnee Chambers, *Interlinkages and The Effectiveness of Multilateral Environmental Agreement*, United Nations University Press, 2008, p.47

is used as long as it lawful and reach a good result as the aim and the objection of the agreement itself.

In conclusion, an agreement such as the Haze Agreement does not only need the obligation materials as *"teeth"* to be the only way ensuring the enforcement of the agreement. The effectiveness of an agreement depends on the level of compliance of its members, and in practice, compliance is always influenced by State's internal interest. By looking at the reasonable and necessity of the internal interest of particular State could also encourage the compliance of a State to the agreement. The need to comply based on the necessity and internal interest will be stronger rather than the external pressure from the agreement obligations which are often against the internal interest of the State. The other existing solution is ASEAN Way, which is based on consensus and cooperation between member States. It also has a relation with some similarities between ASEAN members, one of those is culture. A successful enforcement of an agreement will be impossible without locating it within it geo-socio-culture.

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