
Role of the Energy-competition Law in Accelerating the ASEAN Energy Sustainability 2025

PhD Workshop “Challenges & Opportunities for Sustainability:
International Perspectives” Spring Campus, April 11-15, 2016

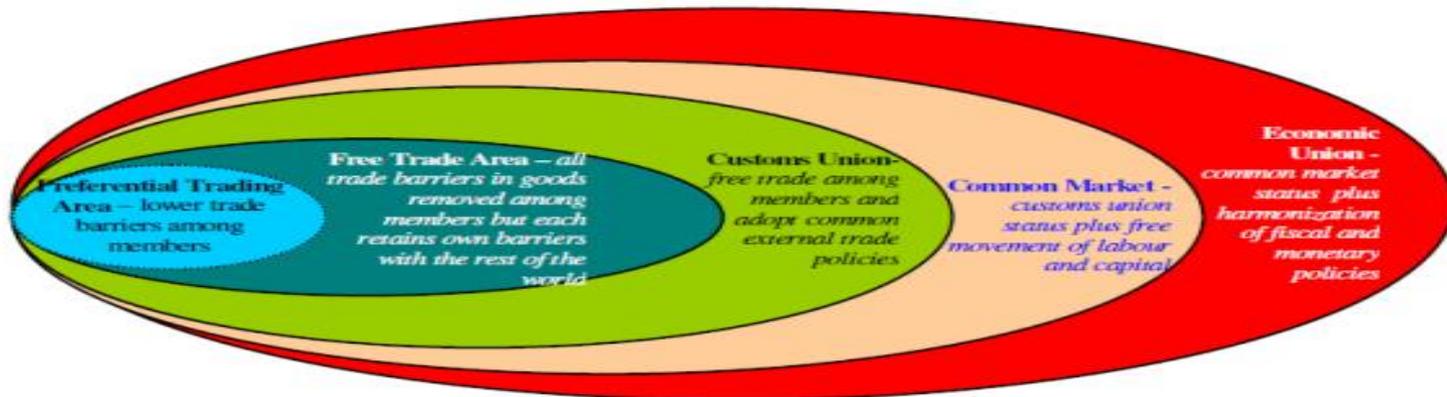
Dian Parluhutan

dian.parluhutan@gmail.com

**Law Faculty, Freie Universität Berlin
2016**

ASEAN in Brief

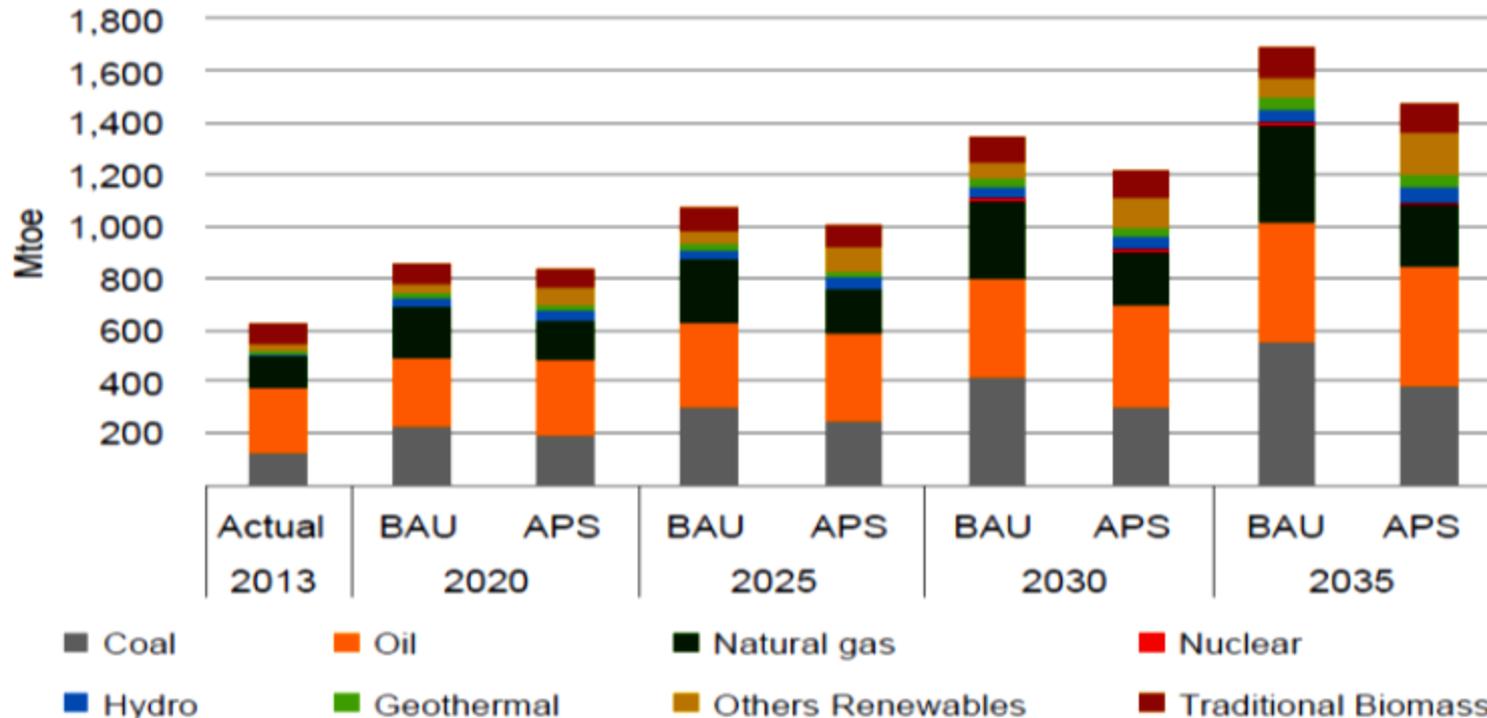
- ✦ **The Association of Southeast Asian Nations** (ASEAN), established on 8 August 1967 in Bangkok, Thailand, with the signing of the ASEAN Declaration (Bangkok Declaration) by Indonesia, Malaysia, Philippines, Singapore and Thailand. Subsequent memberships: Brunei Darussalam, Lao PDR, Myanmar, Cambodia. Viet Nam
- ✦ In 2025 ASEAN envisages the **ASEAN Economic Community (AEC)**:
“...will transform ASEAN into a single market and production base, a highly competitive economic region, a region of equitable economic development, and a region fully integrated into the global economy...”
- ✦ ASEAN is a Regional Trade Arrangements (RTAs) and subject to **Article XXIV GATT/WTO (General Agreement on Tariffs and Trade) 1994 Agreement**



Energy Sustainability Goals in ASEAN

- ✦ The ASEAN Plan of Action for Energy Cooperation (APAEC): 2004-2009 > 2010-2015 > 2015-2025
 - ✦ APAEC 2016-2025, which is “Enhancing Energy Connectivity and Market Integration in ASEAN to Achieve Energy Security, Accessibility, Affordability and Sustainability for All”
 - ✦ Aspirational target to increase the component of Renewable Energy (**RE**) to **23%** by **2025** in the ASEAN Energy Mix
 - ✦ Increase the promotion of renewable energy financing schemes
 - ✦ Increase the commercial development and utilisation of biofuels with a reference standard to facilitate deployment
 - ✦ Strengthen resilience and emergency preparedness in energy infrastructure/facilities to and natural disasters. *mitigate the impact of climate change*
 - ✦ Effectively manage *the implementation of the APAEC 2016-2025.*
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Energy Outlook and RE in ASEAN

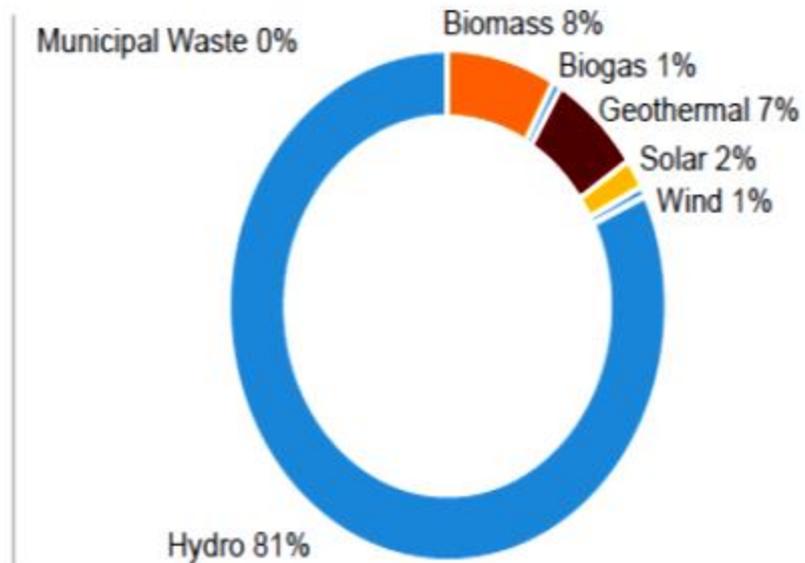
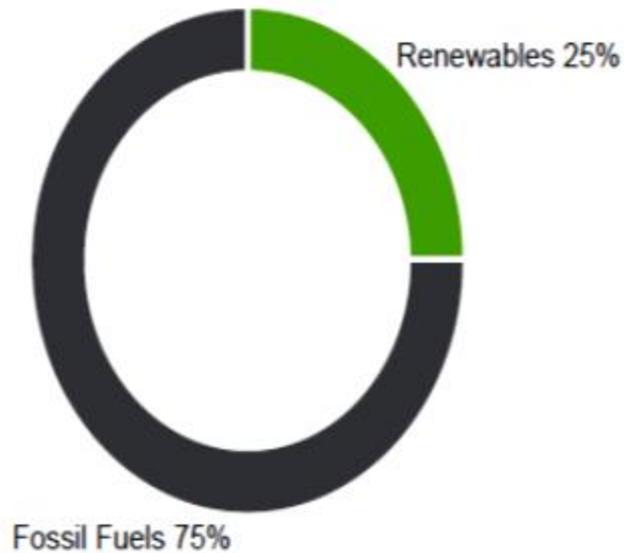


BAU: Business As Usual Scenario (Energy consumptions, Population growth, GDP growth)

APS: Alternative Policy Scenario (Efficient Scenario)

Source: ASEAN Energy Centre, 2015

Energy Outlook and RE in ASEAN



Source: ASEAN Energy Centre, 2015

Case Study: Indonesia's Energy Sustainability Policy

Energy Conservation

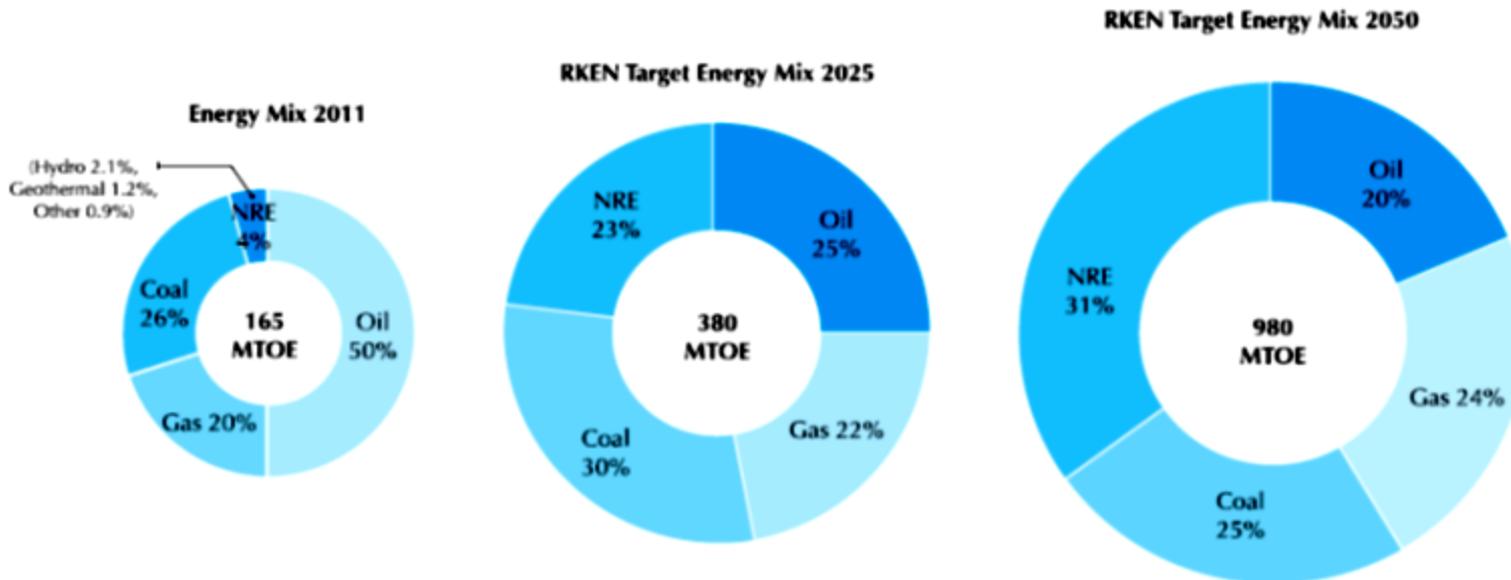
Increase energy efficiency on supply and demand side, e.g. industrial, transportation

Energy Diversification

Increase the share of New and renewable energy use in the national primary energy mix

Presidential Regulation Number 5/2006

Presidential Regulation 4/2010: PLN and Private Investors



Case Study: Indonesia's Energy Sustainability Policy

• Renewable Energy Production and Potential

NO	NRE	RESOURCES	INSTALLED CAPACITY (IC)	RATIO OF IC / RESOURCES (%)
1	2	3	4	5 = 4/3
1	Hydro	75,000 MW	7,572 MW	10.1 %
2	Geothermal	28,910 MW	1,403.5 MW	4.9 %
3	Biomass	32,654 MW	1,717.9 MW	5.4 %
4	Solar	4.80 kWh/m ² /day	48.05 MW	-
5	Wind	3 – 6 m/s	1.87 MW	-
6	Ocean	49 GW ***)	0.01 MW *****)	-
7	Uranium	3,000 MW *)	30 MW **)	-

*) Identified in the Kalan Basin in West Kalimantan

**) As a center of research, non-energy

***) Source: National Energy Council

*****) BPPT's Prototype

RE in Indonesia- ASEAN: SWOT Analysis

Strength

Promotion of renewable energy

Promotion of energy efficiency

Energy market integration and connectivity enhancement

Abundance of Renewable Energy Sources

Weaknesses

Decentralization (Provincial Autonomy)

Corruption in Concessions

Lack of sectoral coordinations: between Energy Regulatory Body and other sectoral authorities

Fragmentations of Integrated Laws and Regulations

Opportunities

National government capacity building

Fossil fuel subsidy reform

Energy Supply Security paradigm shift

National government willingness creation

Political trust building

Threats

Climate change detrimental effects

Volatilities of Fossil Energy's Prices

Deficites of State Household's Budget

Other sectoral detrimental effects

Energy Law's Objectives

- ✦ **First**, the sustainability and reliability of the energy supplies: both of short-term technical energy supplies and long-term energy supplies
 - ✦ **Second**, operation of energy supplies shall not be contrary to environmental protection objectives, e.g. every undertaking shall minimize the occurrences of damages to environments as well as to humans' health: CO2 emissions reduction
 - ✦ **Third**, eradicate and to prevent restrictive practices to competition in an energy sector, whereas these measures aim to enable every undertaking to set competitive prices for energy supplies: (*Konzept des wettbewerbsanalogen Preises*) - (*Konzept der Kosten der effizienten Leistungserbringung*) - (*billigem Ermessen*).
 - ✦ **Fourth**, sophisticated rules concerning contracts of energy supplies between the corporations, which are aimed to benefits of consumers and compliance with modern equitable competition rules
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Energy Law's Objectives



Energy-competition Law's Concerns

- ✦ **High energy market concentration especially at the wholesale level**
- ✦ **Vertical foreclosure due to an insufficient level of 'unbundling between network operation vis-à-vis supply and/or generation activities**
- ✦ **Insufficient cross-border capacities and different market designs constituting an obstacle to further market integration**
- ✦ **Lacks of efficient and transparent price formation and 'information asymmetry between incumbents and market entrants**
- ✦ **Long contract duration and restrictive practices in relation to supply contracts causing foreclosure of downstream markets**
- ✦ **Regarding balancing markets: existing balancing regimes often to favour incumbents and creating barriers to the new entrants in the energy sector**

Energy-competition Law's Objectives

(Schmidt, 2008)

NEGOTIATING STRATEGY	Horizontal	Concerted practices
		Cartels
	Vertical	Vertical pricing
		Vertical price recommendation
		License contract
OBSTRUCTION OR IMPEDIMENT STRATEGY	<i>De jure</i>	Boycott, Refusals to supply
		Price differentiation and discrimination
	<i>De facto</i>	Exclusive agreement and tying contract
CONCENTRATION OR CONGLOMERATION STRATEGY	External	Horizontal
	Internal	Vertical
		Conglomerate (diagonal)

Energy-competition Law's Approach to RE

- ✦ **Rule of reason** approach i.e. the individual and/or block exemptions to companies/firms generating and/or using Renewable Energy sources. Four cumulative considerations:

First, business action must contribute to improving the production or distribution of goods/ promoting technical or economic progress. The possible benefits may be twofold: contribution to the improvement in the production or distribution of goods, or the promotion of technological/economic progress.

Second, the business action must allow consumers a fair share of the resulting benefit.

Third, the business action must not impose restrictions that are not indispensable to the attainment of the benefits (indispensability-test)

Fourth, the business action must not afford companies/firms the possibility of eliminating competition

- ✦ **Improving Coordination between Competition Authority (CA) and Sectoral Regulatory Bodies**, that is to say, to integrate structure of markets and pricing of energy services (**ex-ante approach**) *vis-a vis* abuse of market power and anticompetitive practices in the energy market (**ex-post approach**). **Example:** *Bundesnetzagentur and Bundeskartellamt (Germany)*

- ✦ **Promoting competition in the energy market** by ensuring fairness and transparency of energy service provision, especially by gradually eliminating the

State Owned Enterprise (SOE)'s Monopoly and Oligopoly in energy (RE) sectors

RE & Convergence of Energy-competition Law

- ✦ **Definition: Convergence of Energy-competition rules is defined as the process whereby several nations or group of nations collectively decide to adopt identical, or at least compatible, rules and normative principles in one or several regulatory areas, notably Energy-competition aspect. (World Bank, 2014)**
 - ✦ A “loose” convergence: one or several countries decide to rely upon common normative principle in one regulatory aspect, yet the details on how to achieve compliance with the principles are given to national laws. Example: Model Laws, OECD’s Law Recommendation
 - ✦ A “deep” convergence: the involved countries decide to approximate divergent legal standards for facilitating free trade arrangements
 - ✦ Geradin (2014) recommends:
 - ✦ First, the regulatory “transplant” form: one of several involved countries decide to transpose in its domestic legal system one or several set(s) of competition rules from another nation. Example: transposition of the *acquis communautaire* in for acceding countries in EU
 - ✦ Second, “approximation”: concerned countries negotiate a common set of rules and then adjust their domestic competition regulations as to make them compatible with the common (regional) regulations. Example: Implementation of Directives (direct effect).
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RE & Convergence of Energy-competition Law

(Andrea-Florina,2014)

Model	Key Characteristics	Examples
Centralized	Regional authority	EU
	Regional law	
	Regional enforcement	
Partially centralized	Regional authority	
	Regional law	
	Domestic enforcement	
Partially decentralized	No regional authority	ASEAN
	Regional law	
	Domestic enforcement	
Decentralized	No regional authority	
	No regional law	
	Domestic law subject to harmonization criteria	

Discussion and Feedbacks

THANK YOU

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Спасибо