

## Conference Paper

# Free Trade Principles of the Service Sector Applicable on Mutual Recognition Arrangement in ASEAN

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**Abstract.**

Free trade extends to services as well as to goods. In this situation, removing trade restrictions on services is necessary to increase market accessibility. While this is going on, the application of national treatment, technical regulations, standards, and conformity assessment might be a barrier to the free trade of services. This research intends to examine the “mutual recognition arrangement’s” (MRA) free trade principles for the services sector. This research is normative legal research. MRA is one of ASEAN’s policies in facilitating free trade including trade in services. Under AFAS (“ASEAN Framework Agreement on Services”), which intends to mobilize trade in the service sector, particularly about standardization and conformity assessment, MRA on free trade in the service sector is developed. The principle of non-discrimination, which consists of “most favored nations” (MFN), national treatment, and transparency, supports free trade in the service industry. Free trade in the service sector through the MRA has the principle of mutual recognition through testing of qualification requirements and technical standards that have been approved by member states without discrimination such as giving special treatment. Every producer gets equal treatment both at home and abroad, and all provisions and policies must be published so that each member of the state may be aware of them.

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## 1. INTRODUCTION

Free trade, in both the products and services sectors, is trade based on supply and sales mechanisms without the involvement of the government. Regarding determining the selling price of goods or services in accordance with their sales objectives, producers are completely within their rights. Free trade is not dependent on the political or economic structure of a nation. The goal of free trade is to strengthen a country’s economy and improve its access to the global market. Free trade also serves as an instrument for the sharing of technology since it allows nations to engage and learn about each other’s technological advancements. Free trade can increase economic

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growth, the thinking is based on that each society or country has different resources both in number and type. Therefore, every society or State will benefit [1].

Indonesia has several international trade areas that have been agreed between countries in an agreement called a “free trade agreement” (FTA). A “Free Trade Agreement” is an international treaty agreement involving two or more parties who have agreed in regulating reciprocal preferential tariffs between the parties to the agreement [2]. There are three main components of the FTA, first trade in goods which aims to do away with tariffs and deal with non-tariff barriers, second trade in services which aims to maintain market access so that service product providers can continue to develop, and third trade investment which aims to promote and safeguard investment in Indonesia [3].

The role of the service sector in trade is still neglected, because historically the State has focused more on trade in the goods sector. This is because the service sector is intangible compared to the goods sector. Services are often difficult to observe when crossing borders and add little value to trade. This is because national statistical systems actually have difficulty in obtaining and measuring the value of services in trade [4]. Data sets that have been jointly developed by the “*Organization for Economic Co-operation and Development*” (OECD) and the “*World Trade Organization*” (WTO) have filled the gap and proved that services play a bigger role than previously thought. Especially with the existence of a global value chain (GVC). However, Indonesia has not followed its peers to take advantage of the benefits of service exports. This is a concern considering the increase from various circles regarding the service sector which has the potential to increase and develop international trade.

Like trade in goods, trade in services has also experienced liberalization which includes several barriers that affect market access, namely a limited number of service providers, limited transaction volumes and number of operators, as well as restrictions in the form of law and foreign ownership. Meanwhile, obstacles regarding the application of national treatment are discriminatory regulations on tax requirements, regulations on citizenship, regulations on the period of residence or length of service, regulations in terms of licensing, regulations on standardization and qualification, and regulations on limits on property and land ownership [5].

Countries not only carry out cooperative relations that are global but also cooperate with countries that are both located in certain regions or called regional cooperation. Regional cooperation is cooperation that is easier to do towards the ideals contained in globalism, namely as an ideal inspiration that is always far from the reality of international politics. Basically, regional cooperation is a form of interdependence that is regulated based on geographical proximity that can develop into various common interests.

Therefore, regionalism is a necessary stage for the international community in the direction of globalism to which it aspires. As a member of the ASEAN, which was founded on the basis of the “Bangkok Declaration” on August 8, 1967, Indonesia participates in a certain kind of regional cooperation.

By unifying norms and compliance, one attempt is made to enable the liberalization of trade in services in the ASEAN region. The rule in question has to do with the training required of employees in the service industry. Because the free flow of services, which is covered by the AFAS cooperation framework is correlated with the free flow of labor. In the realm of services, the acceptance of norms that have been sanctioned by ASEAN members is referred to as a MRA [5].

MRA is an ASEAN initiative created under AFAS (the “ASEAN Framework Agreement on Services”) with the goal of promoting both the movement of products and services. The MRA is one of the tools that ASEAN uses to get rid of non-tariff barriers and promote free trade in the area in order to construct the ASEAN Economic Community. MRA is a pact reached between Member States to address the assessment of standards and quality compliance between them. MRAs frequently grant the exporting party the right to test, examine, and certify the goods in accordance with the demands and rules of the importing state on the country of origin prior to export. This agreement promotes commerce and enables suppliers to verify that their products are in line with the standards of the importing state on product inspection, testing, and certification prior to import and sale [6].

Following that, how do the basic principles of the “Mutual Recognition Arrangement” apply to the free trade service sector as the problem is formulated in the current research. The subject of this piece examines how the principles of the “Mutual Recognition Arrangement” are understood in terms of free trade services.

## 2. METHODOLOGY/ MATERIALS

This paper’s research was conducted using “normative legal research” techniques. Document studies are used in this study as a source of reference material for writing, namely the usage of legal resources such as “laws and regulations”, contracts, and potential scientific publications. Because this research is mostly based on secondary material obtained from the library, it is also known as literary research or document study [7]. The principles of free trade in the service sector through “Mutual Recognition Arrangements” are the subject of this normative legal study, which will analyze define the complete topic of study in accordance with the facts gathered.

### 3. RESULTS AND DISCUSSIONS

#### 3.1. "MUTUAL RECOGNITION ARRANGEMENT" (MRA)

"Mutual Recognition Arrangement" (MRA) is one of the declarations made in order to accelerate the realization of the "ASEAN Framework Agreement on Services" (AFAS). The Mutual Recognition Arrangement aims to mobilize the movement of the goods trade sector as well as certain service sectors. Mutual Recognition Arrangement in the field of goods covers 20 types of goods included in 12 integration sectors, while "Mutual Recognition Arrangement" in the field of services covers 8 service sectors mobilized by ASEAN [8].

The "Mutual Recognition Arrangement" has a major influence on its implementation in the implementation of the second pillar of the "ASEAN Community", namely the "ASEAN Economic Community". This is because basically the "ASEAN Economic Community" consists of four basic pillars, namely [9]:

- (1) "A Single Market and Production Base"
- (2) "A Competitive Economic Region"
- (3) "Equitable Economic Development"
- (4) "Integration with the Global Economy"

In the "ASEAN Economic Community" itself there are five core elements that must be fulfilled to realize the first pillar of the "ASEAN Economic Community" as a single market and production base, namely:

- (1) "Free Flow of Goods"
- (2) "Free Flow of Services"
- (3) "Free Flow of Investments"
- (4) "Free Flow of Skilled Labor"
- (5) "Free Flow of Capital"

In order to promote the fulfillment of the first pillar of the "ASEAN Economic Community", namely "the single market and production base", the Mutual Recognition Arrangement of the service sector is engaged in the mobilization of specific professions in ASEAN countries. This has a direct impact on the fulfillment of elements of free flow of services and free flow of skilled labor.

In order to increase efficiency and competitiveness, diversify production capacity, and distribute supply services and supplier services from both within and outside of ASEAN, the "Mutual Recognition Arrangement" (MRA) was established under the

“ASEAN Framework Agreement on Services” (AFAS). The Mutual Recognition Arrangement also aims to significantly reduce barriers to service trade between ASEAN member states. Additionally, it seeks to liberalize trade in services by going beyond the global trade agreement known as GATS (“General Agreement of Trade in Services”), which was already implemented by ASEAN member states.

Article V of AFAS, which GATS (“General Agreement of Trade in Services”) aims to implement, states that ASEAN member states may recognize education or experience gained, requirements satisfied, and licenses or certifications obtained in other ASEAN member states as licensing or certification of service suppliers [9].

The ASEAN member states liberalize trade in products, services, investments, and labor for the purpose to realize the “ASEAN Economic Community”. The Mutual Recognition Arrangement’s function in this context is to facilitate trade liberalization. In the area of trading commodities, services, and labor, numerous “Mutual Recognition Arrangements” have been developed since 2002. “The Mutual Recognition Agreement” on free trade in the service sector is the main topic of this paper. Establishing an MRA for the service sector aims to build accrediting processes and mechanisms that will promote equality and acknowledge regional disparities in experience, education, and licensing standards for professional practice.

### **3.2. “MUTUAL RECOGNITION ARRANGEMENT” (MRA) ON FREE TRADE IN THE SERVICE SECTOR**

The Mutual Recognition Arrangement is used by ASEAN to support the AFTA regime. This regime was formed to support the liberalization of trade between ASEAN countries. This is in accordance with the objectives of the “ASEAN Economic Community”, which is to create a prosperous, stable and highly competitive ASEAN economic area characterized by freer traffic flow of goods, services and investment so that a more equitable economy occurs and reduces economic disparities between people. The other objectives are to accelerate trade liberalization in the service sector and accelerate the free movement of professionals and services in the ASEAN region. In fact, Indonesia has responded to service liberalization by ratifying the “ASEAN Trade in Service Agreement” (ATISA) through the stipulation of “Presidential Regulation of the Republic of Indonesia Number 3 of 2023 concerning the Ratification of the ASEAN Trade in Service Agreement”/ Presidential Regulation 3/2023. As one of the efforts made by the Government of the Republic of Indonesia to realize a sustainable national economy as required by the “Constitution of the Republic of Indonesia Year 1945”, this

Presidential Regulation was formed based on the agreement of the ASEAN framework in the sector of services.

In the service sector, the Mutual Recognition Arrangement concerns eight professions and the eight professions are governed by their own international agreements. The eight professions related to service sector trade and the date of making their respective Mutual Recognition Arrangements are [9] :

1. ASEAN Mutual Recognition Arrangement on Engineering Services was made on December 9, 2005 in Kuala Lumpur, Malaysia;
2. ASEAN Mutual Recognition Arrangement on Nursing Services was made on December 8, 2006 in Cebu, Philippines;
3. ASEAN Mutual Recognition Arrangement on Architectural Services was made on November 19, 2007 in Singapore;
4. ASEAN Mutual Recognition Arrangement on Surveying Qualifications was made on 19 November 2007 in Singapore;
5. ASEAN Mutual Recognition Arrangement on Accountancy Services was made on February 26, 2009 in Cha-am, Thailand;
6. ASEAN Mutual Recognition Arrangement on Medical Practitioners was made on February 26, 2009 in Cha-am, Thailand;
7. ASEAN Mutual Recognition Arrangement on Dental Practitioners was made on February 26, 2009 in Cha-am, Thailand;
8. ASEAN Mutual Recognition Arrangement on Tourism Professionals was made on 9 November 2012 in Bangkok, Thailand.

Basically, these eight Mutual Recognition Arrangements have similar goals to each other. Such as exchanging information and facilitating the mobility of experts of the profession concerned. This has been stated directly in the Mutual Recognition Arrangement. This agreement is included in international agreements, where international agreements are agreements made and entered into by one State with another State to determine mutually agreed legal decisions.

As an international treaty, a Mutual Recognition Arrangement must meet certain conditions in order to be formally declared and recognized as an agreement. Certain elements that must be fulfilled in order to be declared an international agreement are the existence of Preamble, Body, Concluding Clause and Annex. In this regard, all eight

Mutual Recognition Arrangements already have them (with the exception of some MRAs that do not or do not yet have an Annex), but this does not preclude the establishment of the MRA itself because the Annex is optional [10].

The Mutual Recognition Arrangement has been ratified by the “Presidential Decree of the Republic of Indonesia Number 82 of 2002” concerning the ratification of the ASEAN Framework on Mutual Recognition Arrangements. This agreement was signed by the “Government of the Republic of Indonesia” on December 16, 1998 in Hanoi, Myanmar [11]. This Presidential Decree was ratified on November 29, 2002 in Jakarta.

Arrangements related to foreign workers in the profession in the Mutual Recognition Arrangement are contained in several national laws which then the provisions of these laws and regulations are adjusted after “the enactment of Law Number 6 of 2023” concerning the Determination of the Job Creation PERPPU into Law. The arrangements regarding foreign workers in the eight professions are:

1. Mutual Recognition Arrangement of engineer profession

The national law related to the engineer profession is “law number 11 of 2014 concerning engineering”. The articles related to the Mutual Recognition Arrangement are in article 18 paragraphs 1 to 3 which states the requirements for foreign engineers to practice in Indonesia, then in article 19 which states the obligations of foreign engineers in practicing in Indonesia and article 21 which states administrative sanctions against foreign engineers [12].

2. Mutual Recognition Arrangement of nursing profession

The national law related to the nursing profession is “law number 38 of 2014 concerning nursing”. The articles related to the Mutual Recognition Arrangement are articles 24 and 25 which regulate the administrative requirements of foreign nurses [13].

3. Mutual Recognition Arrangement of the profession of architect

National laws related to the architect profession so far do not exist specifically, but this already exists in laws related to construction services, namely law number 2 of 2017. The articles related to the Mutual Recognition Arrangement are in articles 19, 20 and 21 which regulate the obligations and conditions of acceptance of foreign architects and article 22 which regulates administrative sanctions for foreign architects [14].

4. Mutual Recognition Arrangement of the profession of surveyor

“Mutual Recognition Arrangement regarding” the survey profession is contained in the “Regulation of the Minister of Trade Number 14/M-DAG/PER/3/2006” concerning the provisions and procedures for issuing survey service business licenses. This is contained in article 7 paragraphs 2 and 3 which regulate foreign survey personnel [15].

#### (5) Mutual Recognition Arrangement Profession of doctor and dentist

One national law, namely Law Number 29 of 2004 Concerning the Practice of Medicine, governs the professions of doctors and dentists[16]. Article 30 contains the provisions relating to the Mutual Recognition Arrangement. It states that foreign-trained physicians and dentists who wish to practice in Indonesia must have their diplomas evaluated for validity, adhere to adaptation programs and competency certificates, have a certificate attesting to their physical and mental well-being, and make a commitment to uphold and abide by professional ethics. Articles 31 and 32, which govern temporary registration certificates and conditional registration letters, are the following two articles [16].

#### 5. Mutual Recognition Arrangement of accountant profession

Law No. 5 of 2011 Concerning Public Accountants is the national law pertaining to the accounting profession. Article 7 of the articles relating to the Mutual Recognition Agreement governs the license to practice for foreign accountants and states that foreign public accountants may apply for a license to practice before the minister if the governments of Indonesia and the other country they are from have mutually agreed to do these things [17].

#### (7) Mutual Recognition Arrangement of tourism profession

National laws related to the tourism profession are law number 10 of 2009 concerning tourism. Article 56 of the documents relating to the Mutual Recognition Arrangement states that tourism business owners may hire foreign professionals in accordance with the law, but only after receiving a letter of recommendation from the organization representing foreign professionals in the tourism industry [18].

With the Mutual Recognition Arrangement agreement in the service sector, Indonesia gains a number of advantages as well, including deepening its understanding of ASEAN culture, expanding its knowledge of professionals in other more advanced service fields, improving English language proficiency among its populace, and quickening the flow of foreign investment into the country.



### 3.3. PRINCIPLES OF FREE TRADE IN THE SERVICE SECTOR IN MUTUAL RECOGNITION ARRANGEMENTS

Trade in services in international trade has an important value, although the value of services has a small portion of global service exports, amounting to 23% of global exports. As an added value, the contribution of service exports reached 45% of the total value added of global exports. Trade in services covers a wide field and is conducted in four ways, namely [19]:

(1) Cross-Border supply, where the giver and recipient of services do not need to leave the country

(2) Consumption Abroad, where the service recipient comes to the country where the service provider is

(3) Commercial Presence, where service providers establish branches or representatives in the country where services are consumed

(4) Temporary Employment, where service providers send their employees to the country where the service recipient is

Bilateral liberalization of services has an approach in the form of positive lists and negative lists. In the positive list approach, all service sectors are closed to foreigners in principle except the service sector which has been included in the commitment list. Conversely, while in the negative list approach, only the service sector is included in the commitment list that is closed to foreign parties.

The international organization known as the WTO is in charge of regulating agreements on trade in products, services, and intellectual property rights. The WTO is an international body that seeks to boost economic growth by promoting free trade. The WTO principles consists of [1]:

1. *Non-Discrimination*, is the main principle of applying equal treatment to products or producers from member States. This principle includes *Most Favored Nations (MFN)* that no country is given special treatment in international trade and *national treatment*, namely equal treatment between domestic and foreign producers.
2. *Reciprocity*, which is providing mutually beneficial reciprocal treatment. This principle is difficult to implement given the economic differences between member countries. Developing countries usually have limited alternatives to offer compared to developed countries. It is this imbalance that often complicates the implementation of the principle.

3. *Market Access*, which encourages competition between domestic and foreign producers. Overseas producers should also be given access to the domestic market. In this case the principle of transparency is very necessary, all provisions and policies must be announced so that they can be known by Member States.

4. *Fair Competition*, that is, competition must be based on the same base.

The principles of free trade in the service sector are not much different from the WTO principles of *non-discrimination* which include MFN, *national treatment and transparency*. Nevertheless, each State has the right to propose specific commitments on which service sectors will be liberalized.

“The World Trade Organization” (WTO) only defines mutual recognition as a tool to ease the outcomes of conformity acceptance assessment (testing, evaluation, and verification) in the explanation of the “Technical Barriers To Trade Agreement”. To enable the exchange of products and services, recognition is necessary in the trading process. Technical standards and certification requirements that have been mutually agreed upon by Member States are referred to as being recognized. These educational requirements and technical criteria have been implemented in the professional service sector to reduce the number of foreign professionals who enter a country’s service industry [5].

The goal of developing mutual recognition in the service trade sector is to build accrediting processes and mechanisms to promote equality and acknowledge regional variations in educational and professional requirements, professional expertise, and licensing requirements. The government enforces these educational requirements and technical standards in order to decrease the likelihood that the market will fail due to customers receiving inaccurate information while using the service. Mutual Recognition is a procedure that allows other countries to acknowledge a service product’s qualifications in one jurisdiction. In other words, *Mutual Recognition* aims to facilitate the learning of the principle of recognition of equality for member States so that they can understand the differences in regulations in their respective economic sectors that must be harmonized.

## 4. CONCLUSION AND RECOMMENDATION

The conclusion is *Mutual Recognition Arrangement* is an agreement between two or more parties that provides mutual recognition, accepting some or all aspects of conformity value testing from a party such as certification and testing. Free trade in the

service sector through the MRA has the principle of *non-discrimination*, which includes *Most Favored Nations (MFN)*, *National Treatment* and *Transparency*. In this regard, free trade in the service sector through the *Mutual Recognition Arrangement* has the applicable principle of providing mutual recognition through testing of qualification requirements and technical standards that have been approved by Member States without discrimination such as giving special treatment, every producer gets equal treatment both at home and abroad and all provisions and policies must be published so that may be known by each Member State.

Based on the discussions that have taken place on Indonesia, as a nation that has agreed to implement service liberalization by ratifying the MRA through Presidential Regulation Number 82 of 2002 and the ASEAN Trade in Service Agreement (ATISA) through Presidential Regulation Number 3 of 2023, needs to review service trade region policies that can harm Indonesia to upholding the principle of free trade through ATISA.

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