

**COMPARATIVE STUDY ON THE ENVIRONMENTAL  
INSTITUTION BUILDING IN THE EUROPEAN UNION AND  
ASOCIATION OF SOUTHEAST ASIAN NATIONS**

**Lesson Drawing From EU to ASEAN**

**THESIS**

A thesis submitted in partial fulfillment of the requirements for  
the Master Degree from the Institut Teknologi Bandung and  
the Master Degree from the University of Groningen

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FACULTY OF SPATIAL SCIENCES  
UNIVERSITY OF GRONINGEN**



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**ABSTRACT**  
**COMPARATIVE STUDY ON THE ENVIRONMENTAL**  
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The European Union institution gives massive impacts and influences to its member directly and indirectly through legislation, policy, and policy formulation and implementation on many policy areas especially in environmental areas. The European Union environmental regulations will be followed and become important references to member states in order to control and regulate their national environmental regulations from national levels until local levels. The European Union members' states will implement all European Union environmental regulations instead of having to accept the consequences from environmental regulation refusal and their failures.

The environmental degradation especially air pollution / haze transboundary pollution has occurred in the Southeast Asia Region since mid 1980's until present. Many environmental agreements and regulations have been declared by ASEAN, without any massive impacts to minimize the air pollution / haze transboundary pollution that occurred in this area. The question is, why this phenomenon could happen.

This research has two objectives. The first objective is to get clear insight about environmental institution building in European Union and environmental building in ASEAN organization to solve the environmental problems within their areas. The second objective is to give recommendation to ASEAN organization to solve the environmental problems by using their environmental institution buildings. To achieve the research objectives the researcher used theoretical review of institutional building concept by Patsy Healey in order to construct the framework elements to examine both environmental capacity buildings in EU and ASEAN. The comparison method is used in order to get lessons learned for ASEAN from EU.

The research process resulted several conclusions. First, non-interference policies in ASEAN become major barriers to enforce the member states implement the environmental regulation properly. Second, need of improvement about control and distribution of right and duties within the ASEAN environmental institution building. Third, the appropriate implementation from the national levels to local levels in reality like or dislike by member states should be influenced by enforcement rights from regional/international level. Fourth, need of improvement of representative levels in the decision making process in the ASEAN environmental institution building.

Finally, the recommendation for ASEAN to improve their capabilities of environmental institution building with inspired the subsidiarity concept from EU. There are also possibilities to involve many interest parties and stakeholders in the decision making process and control of implementation from the ASEAN environmental regulations.

**Keywords :** *Institution Building, Capability, Policy Transfer, Environmental, European Union, ASEAN.*

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## PREFACE

This master thesis is concerning comparative lessons of environmental institution building both European Union and Association Southeast Nations which the first idea of this thesis is from the fire occurring in Indonesia polluting the surrounding. Therefore, I write the thesis to give my contribution to a better condition in environmental condition around in the ASEAN. Instead of that, the thesis is dedicated to fulfil my double degree master programme, the MT Programme Development Planning and Infrastructure Management of the Department of Regional and City Planning of Institut Teknologi Bandung and the M.Sc Programme Environmental and Infrastructure Planning of the Faculty Spatial Sciences at the University of Groningen.

It is almost impossible to acknowledge all those who have supported me in my writing. First, I would like to thank Allah S.W.T for the bless given to me, without the blessing I will not have enough capacity to finish my thesis. And then, I must thank to my supervisors, Dr. Johan Woltjer from RuG, and Dr. Ir. Uton Rustan, M.Sc, Ph.D from ITB, for the valuable discussion and suggestion, and also for the supporting to get the better spirit in my writing. I would like to thank to the Netherland Government and Bappenas for giving me the scholarships in this programme, because without the scholarship, it is almost impossible I finish the program. Furthermore, I would like to express my gratitude to the following people.

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Groningen, July 2006

Nur Iskandarsyah

## **Chapter I**

### **Introduction**

#### **1.1. Background**

Berlin Climate Conference, that was held in 1995 many experts noticed that individuals and societies will have to change their ways of thinking if human caused the climate change to be counter acted. This process must be applied for all aspects of global changes; the key trends have not diminished over the last few years; on the contrary, they have become more dangerous than ever before.

The German Advisory Council on global change describes in its 1995 annual reports “Ways Towards Global Environmental Solutions”, while ultimate solutions have not yet crystallized in many areas. The council proceeds on the assumption that, if those involved are willing and taking appropriate action, problems can be solved. i.e. that irreversible and disastrous development is not inevitable. Whether these solutions are actually striven for is still an open question; since major reorientations are required at the local, national and global levels.<sup>1</sup>

In this report it is stated that, two ways must be taken in. First, societal conditions for the solutions of global environmental problems must be changed, achieving these conditions at individual and institutional levels represent a major challenge for governments and societies. Second, international arrangements relating to various global

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<sup>1</sup> “World in Transition : Ways Towards Global Environmental Solutions”, German Advisory Council on Global Change, Annual Report 1995, Springer.

environmental problems have to be adopted and strengthened by democratic process, and implemented with appropriate measures.

Most international declarations and conventions for combating global environmental problems and their consequences demand a strengthening of environmental awareness among the population and measures relating to environmental education. Global environmental politics will only fulfill its tasks if a population whose environmentally appropriate way permits them to demand and assert the solutions to global environmental problems and supports decision makers in the individual nations. The idea of sustainable development is firmly anchored in the consciousness of people. It can be a strategy for behavioral change to be effective. Therefore, what are required are worldwide and far reaching measures of environmental education.

Perception of people on environmental problems is one important requirement for changes of environmentally harmful forms of productions and consumption “environmental awareness” has long since escaped the confines of the industrial countries, although there still are substantial disparities between countries.

Environmental education is an important tool for abandoning environmentally harmful forms of behavior, and for learning environmentally appropriate behavior. Criteria for sound environmental education involve learning from personal and conveyed experience in everyday situations (situation orientation), learning in connection with ones own direct actions (action orientation), and incorporation of the subject matter into the socio-political context (problem orientation). In spite of numerous political declarations of intents, initiatives and programs, environmental education worldwide must be declared as underdeveloped, particularly with respect to global environmental problems. However, this should not blind us to the substantial differences existing between individual countries. In the industrial countries where environmental education

has attained a relatively secure status, both in the formal educational system and outside of it a local, regional or national perspective in environmental education still prevails. In developing countries, on the other hand, considerable structural shortcoming exists in the educational systems, resulting in a very weak and insecure status of environmental education. For this reason, great importance is attached to the educational commitment of Non Governmental Organization.

Reinforcing technology transfer from industrial countries to developing countries ranks among the classic demands of developing policy, and meanwhile has become an established component of international environmental agreements. German Advisory Council on Global Change in 1995 emphasized that such technology transfer must be regarded as an exchange of know how in broader sense, in which industrialized countries can also learn from developing countries. This caution is not only for the values and social structures of the other cultures but also to adapt technologies.

The transfer of know how is predominantly effected via market and competitive processes, through granting property rights and access to existing and newly acquired know how. Until now, such exchange of knowledge has mainly occurred between industrial countries. As experience in Asia shows that consistent educational reform and development of own research capacities are major prerequisites for exchange, and should therefore form the basis for measures and programs in the industrial countries.

The major point of environmental problem occurring in the South East Asia Countries (ASEAN), since in the middle of 1997 until present especially every dry season is a widespread series of forest fire in Indonesia, particularly the provinces of Sumatra and Kalimantan threw a blanket, smoky haze over a large portion of ASEAN. The smoke from the forest fires traveled hundred miles across the ASEAN regions, reaching all the



way to the southern parts of Thailand and the Philippines. However, the most severe effects were felt in Singapore, Malaysia, Brunei and of course Indonesia itself.

Shaun Narine in his book of Explaining ASEAN: Regionalism in Southeast Asian (2002) stated that throughout 1997-1998, Southeast Asia experienced the environmental disaster of regional haze. Large parts of Indonesia, Malaysia and all of Singapore and Brunei were covered in smoke resulting from forest fires. Most of these fires were burning in Indonesia, though parts of eastern Malaysia contributed to the general problem. During this period, forest fire burned in around total of 8 million hectares in Southeast Asian. The haze had potentially devastating health consequences.

The Indonesian Forum for the Environment (The Non Government Organization), and some NGO in Malaysia called on ASEAN government to take urgent comprehensive action on what is diplomatically called the haze problem at a meeting of senior environment officials from ASEAN countries held in Penang Malaysia. The Food and Agriculture Organization (FAO) again called on ASEAN nations to enforce bans on open burning to prevent the annual pollution crisis and to protect forest. An FAO expert claimed that most of the fires are intentional and used by companies to clear forest for agro industries.

The underlying problem behind these forest fires is of course the land tenure. Central and local governments need to work together to develop policies for forest and agriculture which are suitable for local conditions and local needs.

So, as partnership for sharing information, experiences, responsibilities and benefits, and also working toward common good through joint efforts and approach, ASEAN is in a strong position to solve its fire problems at the regional level.

## **1.2. Problem**

Global environmental policy institutions primarily exist as horizontal self-coordination between nation states because of the lack of higher hierarchical control level. They use both directly and indirectly controlled instruments. International institutional arrangements and practices change within the scope of a process, which may result in the formulation and implementation of more effective targets and measures.

In accordance with the basic principles of national sovereignty, environmental policy depends on the approval of nations in each individual case. Accordingly, the decision making process traditionally takes place in the form of negotiations. Decision making is characterized by differing interest structures in the individual nations, and is usually complicated and protracted process. The implementation of international action programs that have been agreed upon is also a complex process, and in most cases it can only be monitored based on corresponding reports by the nation states. Even if violations against agreed arrangements can only be enforced under very specific conditions.

However, varieties of institutional innovations have been initiated in the course of the internationalization of environmental policy since the middle of 80's. They include the setting up of institutions for a transfer of finance and technology from North to South, as a form of direct control, as well as certain changes that have been made in process, resource and organizational control by means of indirect control.

Important institutional arrangements in the form of funds have been set for finance and technology transfer such as in the case of the protocol and the convention on climate change. The environmental protection obligation on the part of the developing countries is tied to a transfer obligation of the industrial countries on a legally binding basis. If the north does not pay, the South is relieved of its obligations.

In addition a partial change in traditional direct control is taking place in environmental policy, resulting in a growing preference for forms of indirect control

which is taking place in accordance with the concept of sustainable development. These innovative approaches include the development of human and institutional capacity (capacity building) in developing countries. Resources transfer to poorer nations, new rights to participation for non-governmental actors, and agreement on procedures that promote a reconciliation of interest without the need for a hierarchical regulatory framework, and which facilitate and accelerate both decision making and implementation.

Within the European Organization, one of the main regulations issued by EU is about the implementation of environmental protection policy in all development projects of member states. In this term, there was separation of responsibility between a national level of member state and an EU level. If, there is only a problem which is faced by member state and, which cannot be solved in national level, EU will hold the problem in order to solve it with institution building that EU have.

If we discuss the institution at on international level, the states on Southeast Asia region have also the institution at the international level, which is called ASEAN (Association of South East Asia Nations). The function and the objectives of this organization have some similarities with the EU, except to make the single economic power in the region. There are also existences of the regionalization of environmental institutions.

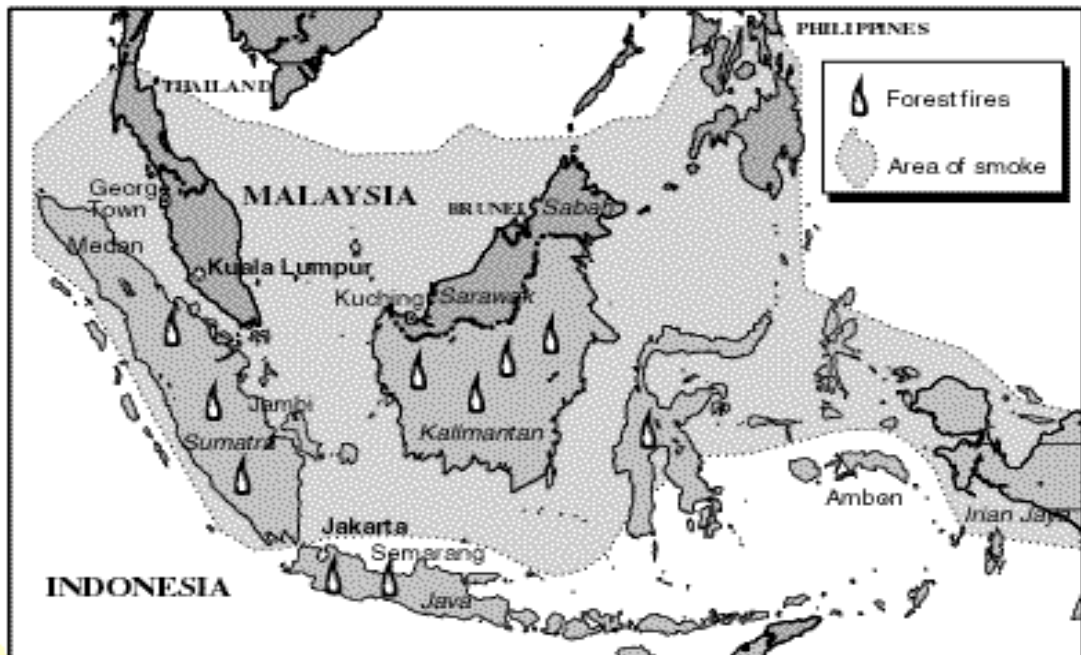
Following the 1994 incident of Haze that occurred in ASEAN region, ASEAN environment minister met in July 1995 and agreed to a make Cooperation on Transboundary Pollution. This plan laid out the general policies and strategies at the national and regional levels to deal with atmospher and other forms of transboundary pollution. This cooperation proposed included, among other things, plans to increase national abilities to deal with forest fires, and to build a regional mechanism to coordinate cooperation of member states in fighting the forest fire.

The ideas and principles behind the cooperation plan have already been launched, but with so many ASEAN initiatives, there was little implementation. For instance, the fires of 1997 until 2005 demonstrated the lack of follow up the plan. Although, Singapore provided Indonesia with satellite imaging to detect fires, but this was extent of cooperation based around the plan. In general, the effected states tried to deal with the haze through bilateral and emergency arrangements. The ASEAN environment ministers met in December 1997 and agreed to a Regional Haze Action Plan, once again, ASEAN member states agreed to various preventing and monitoring mechanism and also committed to strengthen regional fire fighting capabilities. In April 1998, the action plan agreed to establish fire fighting organizations in Indonesia. Despite these efforts, doubt always remains on the ability of ASEAN as an organization to supply omission of the Indonesia national system. This is primarily because of the ASEAN norm for non-intervention in domestic affairs of member states and the relative weaknesses of central institutions in ASEAN.

The explanation above stimulates the researcher to focus and to take attention on taking in hand of environmental problem in the international level and their influence with member states.

The main problem is the environmental problem, which is caused by one of ASEAN member states like air pollution by forest fire which cannot be solving in national level. It was polluting the states around the region. The institution at international level participate to solve the problem. The institution building as EU has strong influences to member state of EU to support and help the member states that cannot solve the problem in international level. This institution capacity as EU has will be more useful, if ASEAN have the capacity like EU has. Figure 1.1 shows the forest fire and smoke area that occurred in ASEAN area on April – November 1997.

Figure 1.1. Forest Fires and Area of Smoke on ASEAN



Source : Narayan Sastry, "Forest Fires, Air Pollution, and Mortality in Southeast Asia," *Demography*, Vol. 39, No. 1, 2002

### 1.3. Research Objective

It is explained above that the environmental problems faced by EU member states, which could not be solved in the national level will encourage the involvement the EU organization to solve these problems. The environmental problems faced by ASEAN member states which could not be solved in the national level will get higher possibility to get the way out if the ASEAN have the hierarchy and institutional building like EU has. The objective of this research is to get clear insight on the capability of environmental institution building of EU and ASEAN. After gets clear insight and their comparison, the researcher will view the possibility to transfer the environmental institution and policy from EU with more focus on the environmental quality cluster: air pollution to ASEAN.

### 1.4. Research Question

The main question on my research is “How does the possibility of EU environmental policy especially in the policy of environmental quality policy (study case air pollution), which can coordinate and become the important reference of the development program among member states on EU can be transferred into ASEAN policy?”

In order to limit the research process and focus more on answering the main question, the researcher will elaborate the main reason of the establishment of environmental institutions, their institutional design and methods of operating.

### **1.5. Methodology of Research**

In order to get the result analyses, the research processes needs the secondary data. The secondary data has been chosen because of the limited time to conduct the research (5 months) by using the primary data that usually needs direct interview, which does not only take time but also needs extra time to visit the resource persons.

The secondary data is the result of some study literatures and information or data that have been collected before by the organizations that involved in order to provide the EU and ASEAN organization. It uses study literature of books, journal articles, seminar proceedings, working paper and secondary data from official documents and internet.

### **1.6 Structure Of The Research**

The research consists of five chapters. In order to give the general information needed to enter the following chapter, the first chapter will explain the background and the main problem, research objective and research question, and methodology and structure of the research.

The second chapter will explore the concept of capacity building, factors constrain and degrees of transfer. Some literatures, which relate to the policy transfer will be explored as well to construct framework elements.

The third chapter will describe European Union organization development and focus more on the local environmental quality institution, cluster air pollution. This chapter does not only explain the work of the institution but also explains how the institution can influence the state members.

The forth chapter will discuss the development process of ASEAN organization and the relation between this institution and the member states in brief. This chapter will also analyze the ASEAN environmental institution building by comparing ASEAN environmental institution building with EU environmental institution building and try to find policy transfer possibilities from EU to ASEAN.

The fifth chapter will give the conclusion remarks and lesson learned from the research.

## **Chapter II**

### **Theoretical Framework**

#### **2.1. Introduction**

This chapter will elaborate two main theoretical backgrounds that are used to explain building process from environmental institution of European Union and how to transfer that kind of institution and policy as well to the ASEAN organization.

There are three theories that will be elaborated and used. The first one is the theory of Spillover by John McCormick. The second is the theory of systemic institutional design by Patsy Healey, and the third is the theory of policy transfer and lesson drawn by David Dolowitz and David Marsh.

#### **2.2. The Theory of Spillover**

To know better the background of development process of environmental policy in European Union, we should know the concept of spillover. John McCormick (2001) says that this concept is usually identified with neo functionalist theories of regional integration, and suggest that as organization such like EU become involved in one area of policy, they will find that political, economic and social forces will compel them to become involved in additional areas of policy. This is particularly true of the single market program, where efforts to bring down barriers to trade have already found EU institutions making policy in areas that were not anticipated by the authors of the Treaty of Rome (which established the European Economic Community in 1957) such as consumer protection and the environment. However, it often a few choices, the creation



of new programs has revealed or created new problems, which in turn have led to demands for additional supporting programs.

Neo functionalism builds on these arguments by suggesting that prerequisites are needed before integration can proceed, including favorable public opinion, a desire by elites to promote integration for pragmatic reasons and the delegation of powers to a new supranational authority. In the case of the environment, the first of these came with the rising awareness in Western societies in 1960s about the impact of industry and consumerism on the environment. The second came in the early 1970s when the leaders of the member states agreed to cooperate on environment matters, and the third came following the Single European Act when the environment was made a formal policy concern of the European Community. Neo functionalism suggests that when these prerequisites have been met, joint action in one policy area will create pressure that will cause spillover into other related areas. In particular, technical spillover became a motive force as disparities in environmental standards led the member states to work towards common standard in order to remove barriers to the single market and led them increasingly to institutionalize the European response to environmental policy needs.

### **2.3. The Theory of Systemic Institutional Design**

In order to a better understand from the process of building an institution, EU has and makes lesson learn from that process. It will be nice if we first elaborate the theory of systemic institutional design from Patsy Healey. Healey (1997) said that the objective of systemic institutional design would be to create a structure which would encourage practices in which a full range of stakeholders were given respectful consideration, which would foster collaboration and the building of link through which social learning could take place, and which would encourage a public realm of multi cultural argumentation.

The reason why the systemic institutional design important is, that the systemic institutional design carries substantial things in order to make frame of specific activity. The systemic design is not autonomous and isolated from the other relation but it is enmeshed in networks of relation that contributes to their articulation and realization.

There are four parameters that Patsy Healey (1997) suggested as the key point which political communities should consider when mobilizing to change the systemic design. These are :

1. The nature and distribution of rights and duties.

The purpose of giving attention of the nature and distribution of rights and duties is to encourage people and organization to interact and give them the power to be involved.

The way to consider rights is in relation to process of participation in organization, to be consulted and informed. This leads to an interest in right to be heard, to be taken account of and, to enable knowledgeable participation. All these rights give individuals a constitutional basis for holding those who exercise organization to account. In short, rights help to strengthen the power of voice.

In return for the rights and the reciprocal one from the rights there are duties. The duties are the consequences from the community who involve in the decision making process in the organization. The objectives of duties itself are to attend the concerns of their communities and, to undertake programs which the communities have agreed. There are four kinds of duties regarding Patsy Healey (1997). First, the duty to pay attention to the concern of the members of political communities needs to be interpreted in our diverse and differentiated contemporary societies to include a duty to treat all members not merely with respect, but acknowledging their particular circumstances and values. Second, the

duty to carry out agreed policies and programs effectively leads to an agenda of substantive for those in organization. Third, the duty to operate within openly agreed principles and to report back to members of the political community on what has been done on their behalf complements the duty to pay respectful attentions to the members of the community and the diversity of their values and conditions. The Fourth is the duty to foster the building of democratic institutions capacity.

2. The control and distribution of resources.

The political community that seeks to promote collaborative approach to local environmental management likely needs resources pot of various kinds, which members can draw upon in particular circumstances. These include : First, resources to ensure that all members have access to the means to a minimum quality of life as understood in that political community. Second, resources to allow the exercise of all member rights to enable participation in organization, to enable rights to be claimed and challenges to be made. Third, resources for capital investment. Fourth, resources to provide redress to those adversely affected by policy initiatives adopted by majorities. Fifth, resources to ensure that a wide range of good quality information is available at an accessible cost to members of communities.

3. The specification of criteria for redeeming challenges.

The rights and duties are interpreted and what is seen to be legitimate purposes is not inherent in the rights and duties. This depends on the political, legal and administrative cultures of governance. These provide the values and the language within which rights are redeemed, duties defined and resources allocated and distributed. Institutional design efforts could make a difference by targeting

specifically the vocabulary of legal and administrative discourse and specifying the principles which should be satisfied when challenges to rights and duties are redeemed.

4. The distributions of competencies.

The last parameter, which Healey (1997) considered to mobilize systemic design, is the distribution of competencies. Coordination problems could happen in the organization activity, which has complex societies. Healey suggests two factors to solve the problems. First, the primary responsibility for task definition and performance should be as near as possible to the place where the performance of the task is experienced. This emphasized the importance of all the levels involved in the organization tasks related to the management of environmental change. The second is the duty to pay attention and to consult. This duty could be more specified with some references to fulfill coordination requirements.

#### **2.4. Policy Transfer and Lesson Drawing.**

The globalization characterized the area of increasing interest within politics and research. Since there is an international network of experts and governments and also internet facilities, a cross national experience has an increasingly powerful impact upon decision makers within the private and public sectors. In particular, policy transfer is dynamic, in which knowledge about policies, administrative arrangements or institutions is used across time or space in the development of policies, administrative arrangements and institutions elsewhere. According to David Dolowitz (1996), policy transfer can be defined as the process by which the policies and/or practices of one political system is fed into and utilized in the policymaking arena of another political system.

The following analytical framework offered by Dolowitz (2000) describes the process of policy transfer and provides a framework for exploring the international movement of policy. It is based on nine questions:

- Why and when do actors engage in policy transfer?
- Who transfers policy?
- What is transferred?
- From where are lessons drawn?
- Are there different degrees of transfer?
- When do actors engage in policy transfer and how does this affect the policy making and policy transfer processes?
- What restricts policy transfer?
- How can researchers begin demonstrating the occurrence of policy transfer?
- How can policy transfer help our understanding of policy failure?

Actually, there are major differences between policy transfer and lesson drawing. Page (2000) distinguished between policy transfer and lesson drawing. He said that the emphasis of the policy transfer tended to be on understanding the process, which policies and practices move from exporter to importer jurisdiction and how the conditions, which might make them work in a similar way, can be created in importer jurisdictions. He also argued that the prime objective of the policy transfer is to throw light on decision making processes, while the prime objective of lesson drawing is to engage in policy transfer to use cross national experience as a source of policy advice.

According to Dolowitz and Marsh (1996), there are three factors leading to policy transfer. First, the voluntary transfer, the main reason why voluntary transfer happened was some forms of dissatisfaction or problems with status quo and it will happen when 'routines' stop providing the 'solution'. Second, the direct coercive transfer, the main

reason of this condition was when one government or organization forces another to adopt a policy. Third, the indirect coercive transfer, there are many reasons which cause the indirect coercive transfer like : the emergence of an international consensus, political actors perceive that their organization or country falling behind the neighbors or competitors, the world economy constraints individual governments and economic pressure, technology can also push the indirect coercive transfer. They also identify the six main categories of actors involved in policy transfer like : elected officials; political parties; bureaucratic; pressure groups; policy entrepreneurs/experts; and supra national institutions. It is possible that in some specific cases of transfer more than one category of actor is likely to be involved.

Dolowitz and Marsh (1996) also give the different degrees of transfer. There are five degrees of transfer : copying, emulation, hybridization, synthesis, and inspiration. Copying occurs when a country adopts a program in use elsewhere without any changes. Emulation happens when a country rejects copying in very detail, but accepts that a particular program elsewhere provides the best standard for designing legislation at home. Hybridization and synthesis involve combining elements of program found in two or more countries to develop a policy best suited to the emulator.

Transfer may shape a policy change and may also lead to implementation failures. According to Dolowitz and Marsh in James and Lodge (2003), there are three factors which contribute to policy failures :

First, in the case of uninformed transfer, the borrowing country may have insufficient information about the policy/institution and how it operates in the country from where it is being transferred. Second, in the case of incomplete transfer, crucial elements of what made the policy or institutional structure a success in the originating country may not have been transferred leading to failure. Third, in the case of

inappropriate transfer, insufficient attention regarding social, economic, political and ideological differences between transferring and the borrowing country leads to failure.

Transfer can also confront some constraints. With respect to policies, Dolowitz and Marsh (1996) identify six factors, which constrain policy transfer. First, the complexity and past policies can be factors constraining policy transfer. The complexity of a program affects its transferability; the more complex a policy or program is the harder it will be transferred. To explore the relation between complexity and its transferability, Rose in Dolowitz and Marsh (1996) sets out six hypotheses:

1. Program with single goal is more transferable than program with multiple goals.
2. The simpler the problem the more transfer will occur.
3. The more direct the relationship between the problem and solution is perceived to be the more it is to be transferred.
4. The fewer the perceived side effects of a policy the greater the possibility of transfer.
5. The more information agents have about how a program operates in another location the easier it is to transfer.
6. The more easily outcomes can be predicted the simpler a program is to transfer.

Second, because policy transfer is not a discrete phenomenon, past policy can constrain actors as to what can be transferred and what actors look when engaging in policy transfer.

Third, according to Wolman in Dolowitz and Marsh (1996), institutional and structural constraints faced by actors transferring policies are crucial. He demonstrates that policy transfer from federal countries to unitary countries will face a constraint. Fourth, ideological differences can also make constraints in policy transfer. Robertson in Dolowitz and Marsh (1996) suggest that the success of transfer is more likely if the policy

is consistent with the dominant political ideology in the host country. Fifth, bureaucratic capacity and technological abilities may influence the transfer. The desirable policies and programs will not be transferred if implementation is beyond a nation bureaucratic capacity and technological ability. Sixth, financial resources are also another critical constraint for actors engaged in policy transfer since implementation costs money. Differences in physical circumstances may be a constraint because every country has its own specific physical circumstance that requires a specific policy approach. The more different in physical circumstances the more difficult policy transfer can occur.

## **2.5. Concluding Remarks**

The spillover and systemic institutional design theory will be used in the research in order to determine the capability of environmental institutional building of EU and ASEAN organization. The theory will determine every aspect that can influence the capability of environmental institution building. This theory can explain the phenomena how the EU organization can build the institution from the beginning until present. There was no institution that can organize and control the environmental condition as well which tied the policy of member states and the organization until emerged the institution. The theory can explain why the member can still consequence and obey the rules and policy that is stated in the institutions. Planning systems especially in Europe have tended to develop out of strongly hierarchical conceptions of levels of governance, even in practice such hierarchies are moderated by consensus seeking practices between the levels (Healey 1997). This recognizes the reality that the stakeholders in local environmental change are to be found particular urban regions and even beyond national boundaries.



The feasibility of policy transfer will be elaborated with the theory of policy transfer. The principle of institutional design will be transferred to ASEAN organization. This has the objective, which in order to get the institution as EU has can operate in ASEAN circumstances. This theory will be used in order to get the possibility of the kinds of institution, which ASEAN will have.

## **Chapter III**

### **The Development of European Union and Environment Policy**

#### **3.1. Introduction**

This chapter will explain the environmental institution building in the European Union organization. The description will be started from the emergence of the environmental building using the concept of spillover. The explanation will continue with the division of institutional building, which will be divided into 4 main parts as Patsy Healey concept on the institution building. The emergence of environmental institution building will be explained more details for example, the reasons why the environmental institution are needed in order to support the main objective of Single European Market in EU. The division of institution building using Patsy Healey concept will give explanation the influence factors of institution, which will compare with the ASEAN environmental building.

#### **3.2. From The Single Market to Environmentalism (Spillover)**

The emergence of environmental institution building in the European Union organization has been effected by the Single Market Policy, which is the main objective of the European Union. The creation of a single market is a fundamental provision of the Treaty of Rome and is the driving force behind the process of economic integration. The launch of the single market program in 1985 signaled a realization that non tariff barriers were one factor contributing towards slow growth in the European Economy (Pamela M. Barnes, 1999). It was recognized that removing barriers to trade would reduce the transaction costs of doing business across the whole of the EU and as consequence of

expands trade. Following this, the competition would become more intense with industry becoming increasingly specialized within regions. The White Paper on 'Completing the Internal Market' (Commission of the European Communities, 1985) didn't deal directly with environmental policy, although it was concerned with the free movement of goods that have an environmental impact. The Single European Act (SEA), which came into force in 1987, speeded up the single market legislative process. It's deal with the problem of harmonization of standards as well as the need to include environmental protection considerations in other policy areas.

There were early fears that the completion of the single market would have a negative effect on the environment, because it looses the members states of their national control over traded goods. It was felt that economic growth might accelerate the depletion of resources and that open borders would encourage trade and the expansion of road price and air transport as well increasing the movement of nuclear and hazardous waste (Commission of the European Communities, 1992). In fact, the completion of the single market is a process that is taking place over a number of years. This has allowed the creation of a greater body of common environmental rules governing the conduct of industry and markets.

Competition among rules is a global problem, but the creation of the single market within the European Union has increased the potential for this phenomenon to occur. Varieties of cultural influences and legal traditions, along with differences in capacities of environments to absorb pollution, have helped to shape the contrasting environmental regimes across Europe. These offer a potential business exploitation, especially if public attitudes to environmental degradation or lack of resources reduce willingness to reform in line with the rest of EU. Also, a government might manipulate environmental rules in order to encourage industry to locate in its territory or offer an

advantage to domestic industry which has already located there. These differences in approach to environmental protection can be seen when we compare the UK with other member states. The UK approach stressed the capacity of the environment to absorb pollution, in while the Netherlands and Germany stress the flow of resources around the economy and not the production line approach. Before the completion of the single market these approaches could coexist, the removal of barriers has exposed the incompatibility of the two systems (Weale A , 1994).

A problem may arise if competition among rules leads to the bidding down of standards. Initially, differences in environmental standards can generate competition, during which a degree of arbitrage take place, with the commercial and industrial sector taking advantage of opportunities offered by the different rules. Finally, in order to protect their industrial base, countries may feel obliged to remove any environmental protection that is losing national competitiveness. Alternatively, there could be a drift towards reimposing restrictions on trade in order to keep the system of environmental protection in place at the expense of the trading system. There is therefore a risk of market failure caused by 'free riding' on different environmental standards, with the result that either the trading system does not work as it should, or the standard of environmental protection reduced.

One consequence of the completion of the single market is the fear that national environmental standards will become a barrier to trade. In 1994 the Economic and Social Committee (ECOSOC) warned a general and increasing trend towards protectionism through the use of national environmental measures. An increasing number of product related to national environmental laws, decrees or voluntary agreements was emerging as new non tariff barriers to trade to protection national industry. The consequence of this was that the EU collective investment in the creation of the single market was threatened.

The justification for the continued maintenance of national standards is based either on the desire of the member states to achieve environmental improvement for their national citizens, or the wish to retain an environmental comparative advantage which will benefit economic development. The Commission of the European Communities (CEC) in 1996 believed that an EU framework could be the best guarantee of striking the right balance between single market and environmental objectives. They assert that 'Environmental policy is an essential component of the creation of the internal market. Moreover, effective environmental protection, which goes beyond national borders, can only be achieved in the framework of a functioning internal market and common environmental rules' (CEC, 1996). To make this, the member states may adopt diverging legislation in the environmental field that could fragment the single market.

In short, the emergence of environmental institution building was the effect of Single Market Policy in Europe. To support the policy within this region and to support the fair competitions among member states and also to protect environment in this region effected by the industrialization and market competition, the European Union decided the strict environmental regulation and environmental institution building like present.

### **3.3. The Distribution of Rights and Duties Between EU and Member States**

To get better understanding about the distribution of rights and duties between EU and member states, the main principle to picture this phenomenon is using the subsidiary concept while this concept is at the core of the character of the EU. Its precise meaning and implications are open to debate. An attempt was made in the Maastricht Treaty to define the powers of the EU by focusing on subsidiarity and insisting that the EU should act, only if "the objectives of proposed action can not be sufficiently achieved by the member states and can therefore, by reason of the scale or effects of proposed

action or effects of proposed action, be better achieved by the community”. Table 3.1 is an attempt to list the balance of policy responsibilities, but the balance is constantly changing, both within and among policy areas.

It is possible to identify three important break points in the development of the EU environmental policy that the rights and duties of EU and member states as well. The first was the introduction of the first Environmental Action Programs (EAP) in 1972, which signaled the response of the national governments to growing global awareness of environmental degradation and a recognition that joint action would result in benefits for the creation of the market and protection of the environment. The second was the adoption of the Single European Act (SEA) in 1987. The SEA gave a firm legal basis to supranational action. It puts in place the foundations for the move away from a policy based on ad hoc measures which attempts to address individual problems and also provides the basis for the introduction of environmental objectives into other areas of policy. The SEA also enables the EU to play a more active role in global environmental agreements which were being negotiated. The third major step was Treaty of Amsterdam in 1997, the commitment to integrate environmental requirements into legislation. All legislations have to take environmental impact into account. In addition, there is an explicit statement of the legitimacy of supranational actions to achieve a policy based on the principle of sustainable development. National environmental policies are also increasingly being built on the basis of a commitment to sustainable development. The EU environmental policy is a catalyst for national action as well as being stimulated by developments at national level.

**Table 3.1 Balance of Policy Interest Between The EU and The Member States**

<b>European Union</b>	<b>Shared</b>	<b>Member States</b>
Trade Policy Agriculture Fisheries Competition	Transportation Development Cooperation Monetary Policy Employment	Foreign Policy Defense Policy Education Policing

<b><u>Environment</u></b> Immigration Consumer Policy Cross-Border Crime European Culture Cross-Border Banking Working Condition EU Transport Networks Customs Issues	Culture Regional Policy Energy Rural Development Vocational Training Small & Medium Enterprises Information Networks Export Promotion	Criminal Justice Tax Policy Citizenship Health Care Postal Service
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**Source :** John McCormick, "Policy Performance in the European Union", Lynne Rienner Publisher, UK, 2001.

### 3.3.1. Impact of Treaty Changes to Rights and Duties

Many Treaties occurred in the process of the emergence of environmental institutional building in the EU from the treaty of Paris (1951) until treaty of Amsterdam (1999) . Treaty changes have increased the chance for environmental nationalism to develop. The SEA, the Maastricht Treaty and the Amsterdam Treaty all contained opportunities for the national governments to exploit way outs in order to protect national industrial interest. In the consolidated version of the treaty, there were deals with approximation of laws, regulations and administrative provisions of the member states that directly affect the establishment and functioning of the common market (single market). This is one area where the treaty has been changed to promote higher environmental standard. Instead of merely making harmonization proposals requires the Commission of European Communities (CEC) in making proposals in the areas of health, safety, environmental protection and consumer protection, to take as a base a high level of protection. They must also take particular account of any new development based on scientific facts. There are provisions for the member states to retain higher environmental standards and even to improve on those that currently exist.

- Member states can retain national environmental provisions on the grounds of the need to protect their environment. However, they must inform the CEC of

these provisions and the reasons for retaining them (article 95:4 (100a:4 Treaty of European Community)).<sup>2</sup>

- Member states can introduce national provisions based on new scientific evidence relating to the protection of the environment. This applies to problems specific to that member state. The member state is required to notify the CEC of the envisaged provisions as well as the grounds for introducing them. These increases further the ability of member state to follow divergent national strategies.<sup>3</sup>

It is then up to the CEC to decide if this provision is genuine or if it is really a form of arbitrary discrimination or disguised restriction on trade. The CEC then has six months to approve or reject the national provision. If it doesn't respond, the national measures will be approved by default. If the Commission believes that the member state is abusing its powers, the case can be referred to the European Court of Justice (ECJ). The Commission is expected to consult with member states if it believes that a national measure is distorting trade, and make recommendation on how this can be avoided. If a member states does not comply with the Commission's recommendation, other member states will not be required to amend their own provisions in order to eliminate such distortion. Finally, if the member state that has ignored the recommendation of the Commission causes distortion detrimental only to itself, sanction will not be applied.

The effect of European integration also occurred on the domestic policies of the member states. As John McCormick (2001) stated that four key effects on the domestic policies of the member states :

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<sup>2</sup> M Barnes, Pamela., "Environmental Policy in the European Union", Edward Elgar Publishing Ltd, UK, 1999.

<sup>3</sup> Et.al, M. Barnes, Pamela., 1999.



- Member states had to think much more about such issues in supranational terms, with the common European interest replacing multiple sets of national interest as the key driving force in their considerations. The need to build the single market has compelled them to work cooperatively both on defining problems and on agreeing responses to such problems.
- Member states have had to adopt the same institutional, legal and procedural responses to these problems.
- Member states have had to become used to multi level governance in the formulation and implementation of environmental policies. Not only to reach agreement among themselves, but also had to reach common agreement in the face of demands made by extra European actors in negotiations.
- Member states have become subject to far greater external pressures, their policies now being driven by the compromises reached as a result of discussion among them, rather than as a result of domestic debates among interested parties, notably industrial and agricultural interest.

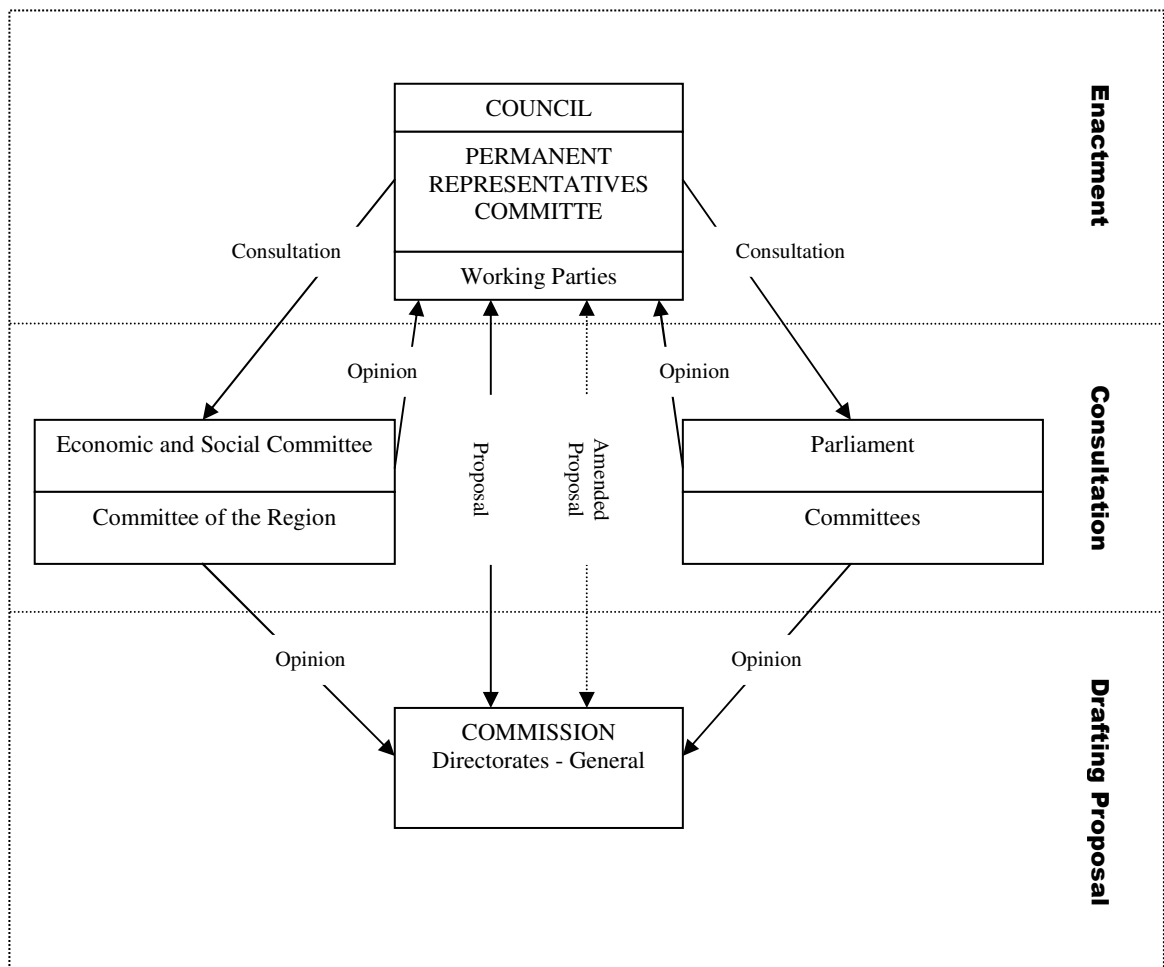
The example about the effect of EU directive to the domestic policies, based on the Unseen Europe, Ravesteyn (2004) stated that the EU directive about Integrated Pollution Prevention and Control (1996/61/EC), which combine with the prescribed national emission ceiling for ammonia (NEC Directive, 2000/81/EC) have important spatial consequences in the Netherlands. In the Netherlands the main contribute source of ammonia emission is from intensive livestock units. The State Secretary for the Environment (VROM) and the Minister of Agriculture (LNV) link this directive to the protected areas under the Habitats and Birds directives. As an effect, no new intensive livestock units are permitted in a 500 meters zone around the protected areas and expansion of existing farms is prohibited.

### **3.4. Control and Distribution of Roles on Making EU Environmental Policy**

The background of the control and distribution of resources as Patsy Healey (1997) stated, in the process of institution building was that the political community that seeks to promote collaborative approach is likely need resources pot of various kinds, which members can draw upon in particular circumstances. So, this process of control and distribution of resources should be provided: that all members should have access to the political community, rights to participation, capital investment, redress those are adversely affected by policy initiatives adopted by majorities, availability of good quality information. The example of implementation on this concept, we can see on the making process of the environmental policy on EU.

European Union has a unique political and judicial system with an institutional framework within which decision is made. This system also occurred in the environmental institution building in this organization. As Pamela M. Barnes (1999) said that within the EU, environmental policy emerges from the complex negotiation, which takes place within the institutional triangle of the Council of Ministers (CoM), the Commission of the European Communities (CEC) and the European Parliament (EP). The institutional framework for policy making is supported by the European Court of Justice (ECJ) which, while not part of the decision making process, has had a significant impact on the development of Policy through its ruling. Other institutional actors include the Economic and Social Committee (ECOSOC, which was established by the Treaty of The European Economic Communities in 1957) and the Committee of the Regions (CoR, which established by the Maastricht Treaty changes in 1993). The relative roles which they play in the policy decision making process are illustrated in Figure 3.1.

***Figure 3.1. Decision Making in the European Union***



**Source :** Pamela M. Barnes and Ian G. Barnes, “Environmental Policy in the European Union”, Edward Elgar Publishing Ltd, UK, 1999.

In addition, environmental policy making is open to the influence of interest groups, national government departments and agencies, industrial organizations and individuals. Table 3.2 shows the roles of the actors in the making and implementation of environmental policy.

### 3.5. Specification The Criteria for Redeeming Challenges

In the 1996 review was carried out by the Commission of European Community (CEC) about the implementation of environmental law. The conclusion was reached that a more holistic approached had to be adopted to ensure that the problems associated with

implementation and enforcement of legislation would be overcome. CEC proposed that this process should be viewed as part of a 'regulatory chain' which included the transposition of legislation into the national legislation, the design of the legislation, the institutional structure which was involved in its implementation, and education and information dissemination. If the recommendations of this report are taken into account, the future of the EU environmental policy will be more soundly based. The CEC views the European Environment Agency (EEA) as being able to provide the link in the chain between evaluation and design of legislation. The regulatory chain is illustrated in Figure 3.2.

This approach based on Pamela M Barnes (1999) was a crucial development within the EU because of some reasons. First, the EU is drafting more environmental legislation in the form of framework directives. The early consideration of the problems of national implementation and enforcement will ensure that this form of legislation achieves the stated objectives. Second, the policy will become effective as the evaluation process become wider and reports and analyses are fed back into the review of legislation once it has been adopted. Third, the commitment to integrate environmental considerations into the sectoral policies of the EU will be easier to fulfill.

There are also constraints on the ability of the CEC to ensure that this method is adopted. The political willingness of the national governments to support the more holistic approach outlined above has to be ensured. There will be an increase in the involvement of the CEC, especially Directorate General XI of CEC, which has responsibility on the area of Environment, Nuclear Safety and Civil Protection, in the preparatory work of the legislative process.

Other recommendations outlined in the 1996 review were that : First, in the absence of an EU environmental inspectorate, EU-wide criteria for the completion of

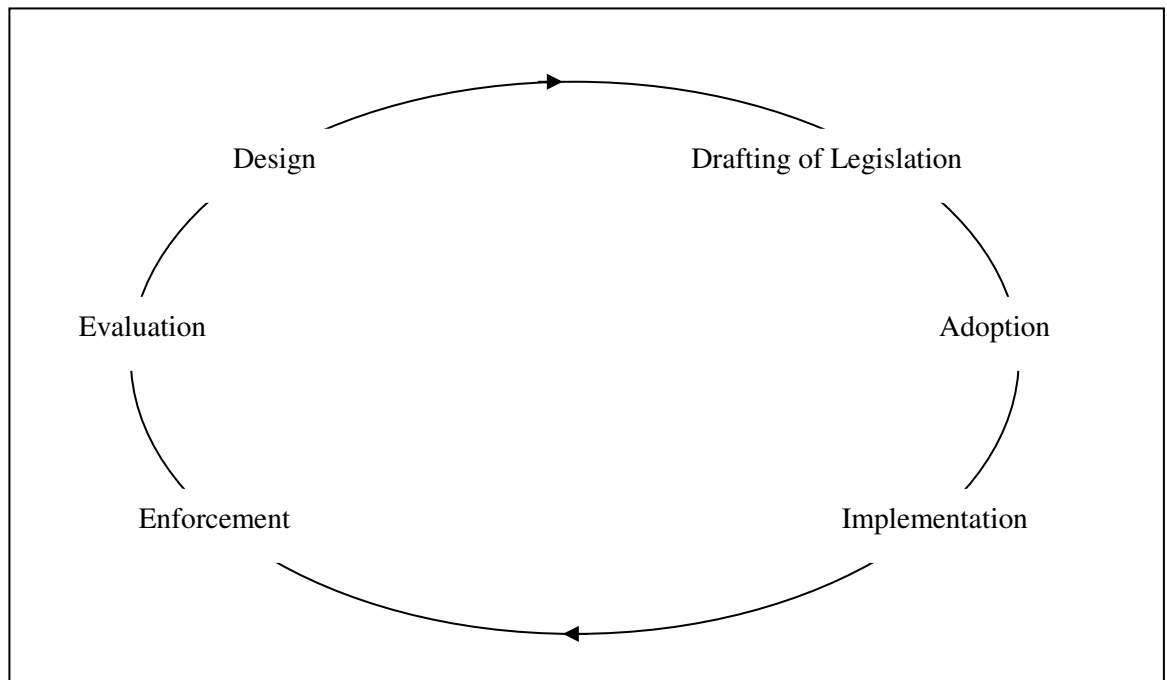
inspection tasks by the national authorities should be provided. Second, an environmental complaints and investigations procedure within the member states that would receive and examine complaints from the public about the implementation of EU environmental law should be introduced. Third, there should be increased opportunities for environmental cases to be dealt with by national courts through broader access to justice on EU environmental law issues.

**Table 3.2** *Actors Involved in Making EU Environmental Policy*

No	Policy Phase	Actor
1	Defining the environmental problem in general terms	Multiple influences at national and EU level
2	Deciding how to apply the principle of subsidiarity	Council of Minister, European Commission, Commission initiates the legislation
3	Setting the agenda	European Council, Council of Ministers. Influence of the Commission and the European Parliament
4	Teasing out the differing strands of the problem	Consultation phase, adding the European Parliament, the Economic and Social Committee, and the Committee of Region
5	Objectives setting and prioritization of the issues	Council of Minister
6	Identification of the preferred option	Council of Minister
7	Implementation, Monitoring and Control	National governments and the Commission; support of the European Court of Justice
8	Evaluation and Review	National governments, Commission, NGOs, individual, industrial actors
9	Policy maintenance, succession and possible termination	Commission and national governments

**Source :** Pamela M. Barnes and Ian G. Barnes, “Environmental Policy in the European Union”, Edward Elgar Publishing Ltd, UK, 1999.

**Figure 3.2.** *The Regulatory Chain*



**Source :** Pamela M. Barnes and Ian G. Barnes, “Environmental Policy in the European Union”, Edward Elgar Publishing Ltd, UK, 1999.

Among recommendations made to overcome some of the problems of enforcement of policy is increasing the opportunities for the national courts to deal with cases of infringement of environmental legislation. This has several advantages. It is accordance with the application of the principle of subsidiarity and shared responsibility. It has the practical advantage of enabling quick and low cost settlement issues to be made in a way that is more accessible to the citizens of the EU. The European Court of Justice could be consulted as a last resort. At the same time, if these opportunities for the national courts to deal with cases are made available, there will be more requirements for the introduction of mechanisms to monitor enforcement of policy at the supranational level. Otherwise the danger of increased fragmentation and undermining of the attempts to achieve a concerted and harmonized environmental policy within the EU will grow.

The review’s recommendations are acknowledgment of the fact that the ‘top-down’ approach to policy making is not providing effective environmental protection. The structure outlined would create a more holistic approach to the implementation of

environmental policy which would ensure that the problems of enforcement and monitoring receive a much higher profile in any future developments. A more holistic approach is essential if the commitment to the application of the principles of subsidiarity and sharing of responsibility want to be met.

### **3.6. 'The Right Man on The Right Place' (Distributions of Competencies)**

Five keys important elements involved in the process of the making, running and controlling the environmental policy within the EU institutional building. Their tasks, roles also the actors should be distributed based on their competencies. There are :

#### 3.6.1. Commission of the European Community (CEC)

The CEC has a vital role in the decision making process. The tasks of the CEC are : ensure that the interest of the EU is paramount and the integration process is advanced; initiate legislation and propose policy; act as the executor and administrator for the Council and the European Parliament; manage the EU financial resources; ensure that the legislation is implemented and enforced; act as external negotiator for the member states in a number of different international negotiations and treaties; act as a mediator between the national governments.

Therefore, the Commission has the opportunity to play a major role in the formulation of the European Union environmental policy. 'It is a truly supranational bureaucracy that can openly seek to influence the policies of its own members'.<sup>4</sup>

##### *3.6.1.1. Presidency of European Commission*

Appointments to the Commission are made by the mutual agreement of the 15 governments of the member states and the Commission president for terms of office of

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<sup>4</sup> Porter, G and J. Welsh Brown, "Global Environmental Politics", Oxford and Boulder, CO, Westview Press, 1991.

five years. All the commissioners may have their appointments renewed by national governments which nominated them.

The president of the Commission is in a more prominent and somewhat ambivalent position. On the one side the president is regarded as first among equals in relation to the other commissioners and may be outvoted by the other members of the college. On the other side the choice of the president of the Commission is made by the heads of the national governments of the member states. The president of Commission automatically becomes member of the European Council and represents The EU in many international negotiations. As a result many of the individuals who have been chosen as presidents of the Commission have been former prime ministers or equivalent.

The Amsterdam Treaty gave the president of the Commission the right to be involved in the choice of the other commissioners. This has increased the role of the president commission and may as a result undermine the formal equality of the college of the commissioners. However, following the ratification of the Maastricht Treaty, changes were made to the consultation process about the nomination of Commission president and the commissioners. Agreement is required amongst the national government on the president nomination and appointment is subject to the approval of European Parliament (EP). The rights of the European Parliament to be consulted about the nominations for the president were also increased. Table 3.3 shows the commission on the period of 2000-2005.

#### *3.6.1.2. Directorates General of European Commission*

The European Commission is divided into specialized divisions or Directorates General (DG). The number of DG has grown from 9 to 24. In addition to help from the DG, the work of the Commission is also supported by 15 specialist service departments which include translation and legal service. DG XI, which has responsibility for the



environment, was established in 1981 to replace a minor service department which had operated from 1971.

A senior official, a director general, who reports to a commissioner, heads each of the DG. At the DG level a network has been established on the environment which meets regularly two or three times a year to review environmental issues. In each of the DG an official at director or head of unit level is the designated environment integration correspondent with responsibility to ensure that information about proposed environmental measures is disseminated.

Since the Maastricht Treaty the European Parliament has had the right to initiate some legislation. In practice this means that the EP has the opportunity to ask the European Commission to draft proposals for legislation. The directly elected representatives of the citizens of the EU are not responsible for making legislation. In the majority of cases the legislative power rests with the Council of Minister and the European Commission. Concerning the lack of accountability of actions was instrumental in the changes made to the Maastricht Treaty which gave the EP the opportunity to question the appointment of the President of the European Commission and the commissioners. This did not alter the role of the European Commission in the decision making process. It brings the European Commission under greater scrutiny by the European Parliament.

The European Commission is empowered to bring cases before the European Court Justice. Additional powers were given to the Commission in the Maastricht Treaty to recommend the level of fines which national governments would be subject to if they were found to break legislation. Failure to implement environment legislation provided the first cases to test this power in early 1997.

*Table 3.3 The Commission 2000-2005*

<b>Commissioner</b>	<b>Responsibilities</b>
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Romano Prodi, President of Commissioner	Horizontal services, Monetary and Institutional Affairs
Neil Kinnock, Vice President	EU administrative reform
Loyola de Palacio, Vice President	Transport and Energy, relations with the European Parliament
Philippe Busquin	Research
Mario Monti	Competition
Viviane Reding	Education and Culture
Anna Diamantopoulou	Social Affairs
Erkki Liikanen	Information Society and Enterprise
Michael Schereyer	Budget and anti fraud
Chris Patten	External relations
Franz Fischler	Agriculture and Fisheries
<b>Margo Waldstom</b>	<b>Environmental</b>
Antonio Vitorino	Immigration and Ombudsman
Poul Nielson	Development and Humanitarian aid
Pascal Lamy	Trade
Pedro Solbes Mira	Economic and Monetary affairs
Michel Barnier	Regional Policy and funding
David Byrne	Consumer affairs and health
Frits Bolkestein	Internal market and taxation
Gunter Verheugen	EU enlargement

**Source :** Pamela M. Barnes and Ian G. Barnes, "Environmental Policy in the European Union", Edward Elgar Publishing Ltd, UK, 1999.

### 3.6.2. Council of Ministers (CoM)

The Council of the EU is usually known as the Council Ministers (CoM). Although it's a single body within the Treaty, in practice the Council is divided into meetings of the national politicians with responsibility for different policy areas. The meetings of the environment council may occur only two or four times a year.

Since 1990 a small number of joint council have been organized which bring together the ministers to responsible for more than one policy. The advantage is that this enables environmental objectives to be more carefully considered in other areas of policy. The role of the CoM are : provide the broad guidelines of policy; represent the interest of the member states; make decisions about the adoption of the legislation; provide a forum in which the differing national concerns may be reconciled; provide a forum in which differences between the institutions may be resolved; perform the pre eminent role in the context of the intergovernmental 'pillars' of the EU.

Each of the member states of the EU holds the presidency of the CoM in turn. The civil service of the member state holding the presidency takes on certain tasks during this period on behalf of the EU.

### 3.6.3. European Parliaments (EP)

The members of the European Parliament have been elected by direct universal suffrage since 1979. Before that the members were nominees from the member states. The roles of the EP are to : reject or amend legislation; approve the appointment of the CEC; act with the CoM as the budgetary authority of the EU; approve agreements with non EU states; table question to the CEC and CoM; receive petitions from the citizens of Europe; appoint an ombudsman.

The seat in the EP is allocated to the member states on the basis of population size. The number of seats in the EP allocated to the different members states on 1994, 1995 and 1999 showed on Table 3.4.

### 3.6.4. European Court of Justice (ECJ)

The European Court of Justice (ECJ) was outside the decision making process of the EU. However, the presence of the Court that makes the EU unique. The role of the ECJ in interpreting the EU agreed law that makes the decision making process effective. The governments of the member states have agreed to be bound by the rulings of the court based on the legislation adopted by the CoM.

The roles of the ECJ are to : apply directly the law of the CEC; interpret the provisions of the CEC law; declare void any legal instrument adopted by the CEC, CoM, or the national governments which is incompatible with the EU law; pass judgement on the validity or interpretation of points of the EU law; deliver an opinion on agreements with non EU states; ensure that the application of the law by the member states is consistent for the whole of the EU.

***Table 3.4*** *Number of Seat in the EP allocated to the Different Member States*

	<b>1994*</b>	<b>1995**</b>	<b>1999</b>
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Belgium	25	25	25
Denmark	16	16	16
Germany	99	99	99
Greece	25	25	2
Spain	64	64	64
France	87	87	87
Ireland	15	15	15
Italy	87	87	87
Luxembourg	6	6	6
Netherlands	31	31	31
Portugal	25	25	25
United Kingdom	87	87	87
Sweden	-	21	21
Austria	-	20	20
Finland	-	16	16
<b>Total Member of EP</b>	<b>567</b>	<b>626</b>	<b>626</b>

\* Number of member EP at the time of the 1994 direct elections

\*\* Following accession of Austria, Sweden and Finland to the EU, the number of member EP was increased to 626 after 1 January 1995

**Source** : European Voice 17-23 June 1999

The ECJ is subject to certain constraints. The powers given to the court through the treaties mean that the court may uphold the importance of environmental protection in a general sense. It's more difficult for it to role on specific environmental issues, as these are not referred to in the Treaty. The approach that the ECJ takes is to decide on a case by case base. Individual judges may exert a considerable influence on rulings. As a consequence, some of the judgements of the ECJ appear to be difficult to reconcile with an institution contributing to enhance environmental protection.<sup>5</sup> Despite this, the ECJ had an important influence on the way in which the EU environmental policy has developed through its more than 100 rulings on cases in this area.

The powers of the ECJ to impose penalties on national governments were increased in the Maastricht Treaty changes with the introduction of article 228 Treaty of European Community, giving the Court the right to fine member states which did not comply with earlier judgments.

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<sup>5</sup> M Barnes, Pamela., "Environmental Policy in the European Union", Edward Elgar Publishing Ltd, UK, 1999.

### 3.6.5. Economic and Social Committee (ECOSOC) and Committee of the Region (CoR)

In addition, there are two committees which have the right to be consulted about the submit an opinion on proposed legislation. These committees have an important role to play : ECOSOC that represents sectional interest and CoR that represents regional interest in the policy making process. In order to ensure that all interests are represented in the policy making process, the work of the European Parliament must be supported through these and other mechanism. The number of members of these committees allocated to each member state is intended to reflect the size of the population of the individual countries of the EU

ECOSOC is a consultative committee which brings together different economic and social interest groups. The membership comprises 222 appointees of the member states and whose appointments are for four year renewable terms. The primary role of the ECOSOC is to advise all the main institutions in decision making process. It is organized into nine specialist groups, one of which is concerned with environmental issues. It has the right to be consulted before certain decision is made. The ECOSOC may also issue its own opinion on all aspects of EU legislation and therefore may be considered to influence the making of policy. Since the Amsterdam Treaty amendments to article 262 Treaty of the European Commission, the European Parliament also has the right to consult the ECOSOC on any matter.

There are three represented groups on the ECOSOC : First, employers that are representatives of both the public and the private sector; Second, Workers that are predominantly trade union representatives; Third, Various other interest, including small and medium enterprises, consumer groups and environmental organizations.

The Maastricht Treaty established the consultative Committee of the Region (CoR), which the powers given to the committee were limited. Its 222 members are recruited from the regional and local authorities within the EU. The primary role of the CoR is to provide the CoM and CEC with information about the view of the local and regional authorities, particularly where the issues require cross border cooperation. The CoR has emphasized the importance of the role, which the local and regional authorities should play in the definition of policy and in the management and evaluation of the policy as it operated.

### **3.7. Concluding Remarks**

The emergence of environmental institutional building in the EU occurred because of the effect from European Single Market Policy. The environmental institution is needed in order to avoid the environmental degradation European region and to make environmental standards from European market competition. The clear separation distribution of rights and duties between member states and EU based subsidiarity principle made member states realize the consequences of implementation failures from EU environmental policy.

The collaboration planning process in EU environmental decision making made the environmental policy face a little reluctantly and frictions on the implementation process in member states level. The enforcement institution within the EU environmental institution building like European Court of Justice and European Parliaments forces the government of EU members states implements the environmental policy correctly instead of the consequences from implementation failures. The negative side from the EU environmental institution building is the institution which can interference the national

rights of member states instead of positive side achievement of environmental standard within European Union region.

All the institutional buildings with their capacities, which EU have, described above have made this institution which can function and distribute to the improvement of environmental condition within the member states and European region as well. In this research, the institutional described above will be tried to compare with the ASEAN environmental institution building, which will described using the institution building approach by Patsy Healey in the next chapter (Chapter 4).

## **Chapter IV**

### **The Development of ASEAN Environmental Policy and Comparison with European Union Environmental Policy**

#### **4.1. Introduction**

This chapter will elaborate the building of ASEAN focusing on the institutional building on the environmental policymaking. The approach to show the institutional building will use the theory of Institutional Building by Patsy Healey. After explaining institutional building on environmental sector in ASEAN, this chapter will elaborate the comparison on environmental institution building between ASEAN and European Union followed by lesson learned from this comparison.

#### **4.2. The Distribution of Rights and Duties between ASEAN and Member States on Environmental Institution Building**

First of all, the basic principle to explain the relation between ASEAN and member states to solve the environmental problem, we should understand the fundamental principle of ASEAN organization in general. Based on the Treaty of Amity and Cooperation (TAC) in Southeast Asia, signed at the First ASEAN Summit on 24 February 1976, it was declared that in their relation with each other, ASEAN organization and all the member states should be guided by the following fundamental principles:

- Mutual respect for independence, sovereignty, equality, territorial integrity, and national identity of all nations;
- **The right of every states to lead its national existence free from external interference, subversion or coercion;**
- **Non-interference in the internal affairs of one another;**
- Settlement of differences or disputes by peaceful manner;
- Renunciation of the threat or use of force;
- Effective cooperation among themselves.

Based on the fundamental principles above especially on the *bold statements*, we can imagine the restriction and limitation, the role of ASEAN to influence, to judge and to give the punishment the member states from the failure of implementation the treaties and agreements especially on the environmental case.

ASEAN organization was established in 1967 by the ASEAN Declaration. In the of 2001, there were 10 members. These are : Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei, Vietnam, Laos, Myanmar and Cambodia. The primary purposes of ASEAN are to accelerate economic growth and to promote matters of common interest in



economic fields. Although, at the beginning establishment of ASEAN did not focus or mention the cooperation in the environmental field in the ASEAN Declaration, based on the United Nations Reports (2005) increasing awareness in the world in the area of the environment culminating with Stockholm Declaration 1972 which called for regional cooperation in environment, led to the launch of ASEAN Sub-regional Environment Programmes (ASEP) since 1977. The effort from ASEAN in order to cooperate on environment led to establishment of institutional structure.

The cooperation among member states in ASEAN organization to solve the environmental problem was done through *fragile* consensus. There is no ASEAN Parliament to issue laws/regulations to its member states and also no enforcement agencies. Because of the absence of enforcement at sub-regional level (member states), the role of each of its member states in implementation and enforcement becomes critical. At present, the role of ASEAN in the environmental policy is essentially the guiding force. Each member states must play its part in implementing the various ASEAN instruments. The environmental instruments which are implemented such are : Meeting of the ASEAN Heads of Government, The ASEAN Ministerial Meeting on the Environment (AMME), ASEAN Senior Officials on the Environment (ASOEN) and the subsidiary working group.

#### **4.3. Control and Distribution of Roles on Making ASEAN Environmental Policy**

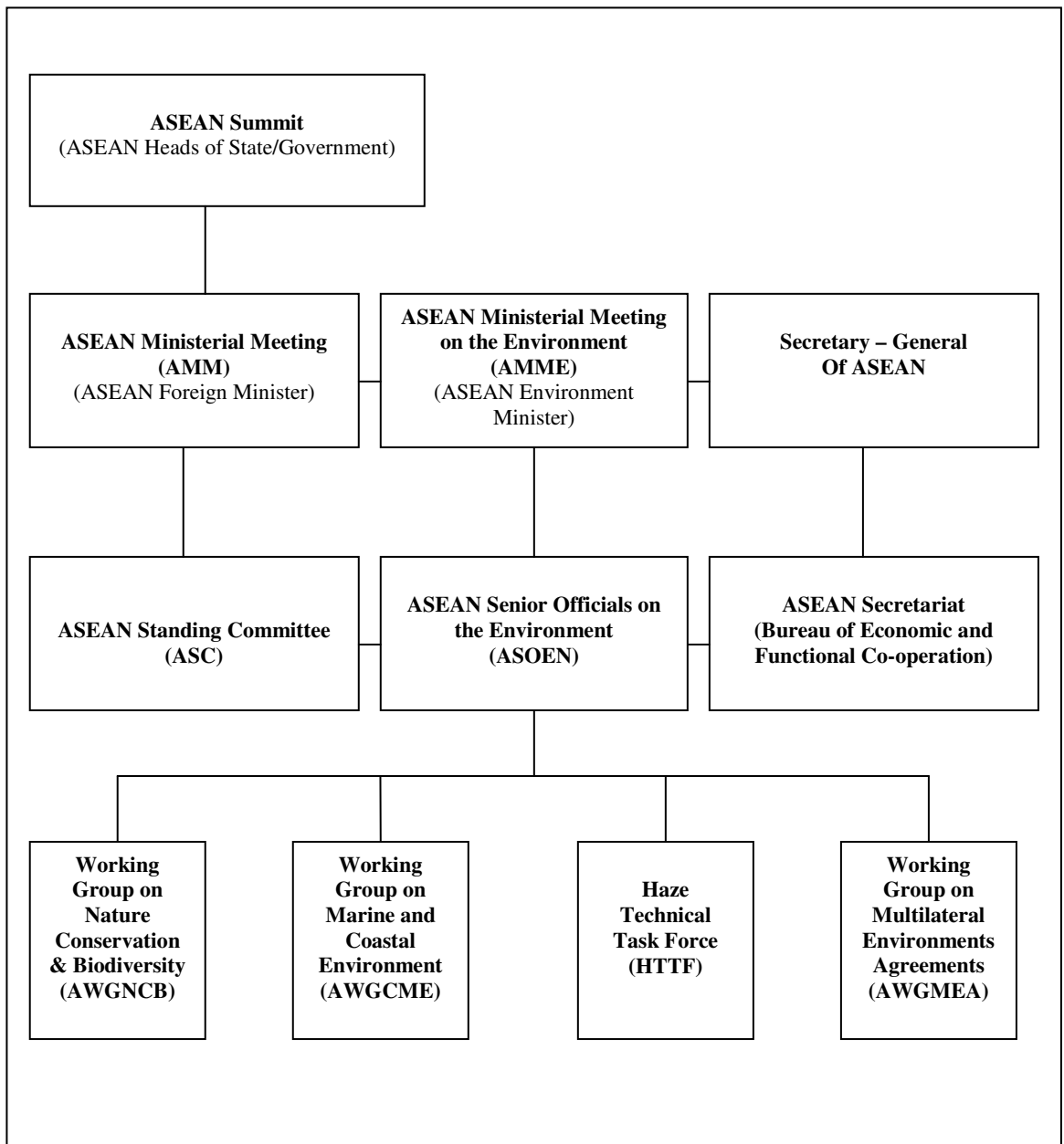
The ASEAN organization formulated a framework because of increasing awareness in the world that was marked by Stockholm Declaration which called for regional cooperation in environment. An early initiative was the preparation of ASEAN Sub-regional Environment Programmes (ASEP) in 1977 with the assistance of the United

Nations Environment Programme (UNEP). The current institutional framework for environmental co-operation in ASEAN is showed in the Figure 4.1

Based on the Second ASEAN State of the Environment Report 2000 (2000), a formally instituted structure exists in the ASEAN where environmental issues are considered at various level up to the ASEAN Heads of States. On the these Summit/Meetings, the ASEAN Heads of States provide the vision and broad thrust for ASEAN cooperation in various sectors including cooperation in the environment area. The ministers of the environment from the ASEAN member states are primarily responsible for the policy matters which are related to the environment. The Environment ministers meet once every three years formally.

The ASEAN Senior Officials on the Environment (ASOEN) that was structured in 1998 to enable it to be more responsive to emerging problems at regional and national levels, doing a meeting annually (at least once a year) and the major responsibilities are formulation, implementation and monitoring of regional programs and activities related to environment. ASOEN comprises heads of environmental ministers and also can be a secretary general or director general of ministry of environmental in their countries. ASOEN is assisted by 4 supporting/subsidiary bodies namely Working Group on Nature Conservation & Biodiversity (AWGNCB), the Working Group Marine and Coastal Environment (AWGCME), Haze Technical Task Force (HTTF), Working Group on Multilateral Environment Agreements (AWGMEA). The ASEAN secretariat coordinates and reports to ASOEN on all activities that do not include on the working groups above like, environmental education, and environmental technologies.

*Figure 4.1 ASEAN Institutional Framework for Environmental Co-operation*



**Source** : ASEAN Secretariat & ASEAN Report To The World Summit On Sustainable Development, 2002.

ASOEN reports to the AMME that meets once in every three years formally and on informal basis annually between the formal meetings. AMME is primarily responsible for policy matters related to the environment. The deliberations of the the environment ministers are considered by the minister at their ASEAN Ministerial Meetings (AMM),

especially in terms of enhancing coordinating and synergy with the other sectors of cooperation.

Based on the Second ASEAN State of The Environment Report 2000, ASEAN secretariat provides support for all of institution bodies that are involved in the formulation of environmental policy like in the figure 4.1. ASEAN secretariat acts as a resource base, providing advice and information. ASEAN secretariat also ensures proper coordination between activities of various other sectoral areas to promote synergy and avoid duplication. Another important role played by this institution is the coordination between ASEAN bodies and its programs with those dialogue partners and other international organization in terms of resource mobilization, program implementation and in general enhancing institutional linkage. The bureau of economic and functional cooperation, especially the environment unit, handles all matters related to environment.

#### **4.4. Specification The Criteria for Redeeming Challenges In The Implementation of Environmental Policy**

The cooperation among ASEAN member states in general is guided by the vision and broad strategic thrust provided by the Heads of State. After reviewing the last three decades of ASEAN cooperation, they renew ASEAN commitment to regional cooperation in 1998, taking into account past achievements, present realities and future opportunities.

Among many priority areas concern that addressed by ASEAN Head of states, environment is addressed. The ASEAN leaders envisioned “a clean and green” ASEAN with fully established mechanism for sustainable development to ensure development to ensure the protection of the region environment. To ensure the realization of this vision, the heads of states adopted the HA Noi Plan Action (HPA) outlining specific courses of

action for implementation. The HPA identifies several priority areas of concerns not only environment problem but also economic, science and technology, human resources and political problem,

On environment area, HPA sets out 15 objectives addressing areas of primary concern to ASEAN and detailing specific thrust areas for implementation (ASEAN Environmental Management Framework, ASEAN Environment Report 2000). The HPA addresses environmental protection and sustainable development through the following objectives :

- Fully implement the ASEAN cooperation Plan on Transboundary Pollution with particular emphasis on the Regional Haze Action Plan by 2001;
- Strengthen the ASEAN Specialised Meteorological Centre with emphasis on its ability to monitor forest and land fires and provide early warning of transboundary haze on the year 2001;
- Establish the ASEAN Regional Research and Training Centre for Land and Forest Fire Management in the year 2004;
- Strengthen the ASEAN Regional Centre for Biodiversity Conservation by setting up networks of relevant institutions and carry out collaborative training and research activities by the year 2004;
- Promote regional coordination to protect the ASEAN Heritage Parks and Reserves;
- Develop a framework and improve regional coordination for the integrated protection and management of coastal zones by the year 2001;
- Strengthen institutional and legal capacities to carry out international agreements by the year 2001;
- Harmonise the environmental databases of member countries by the year 2001;

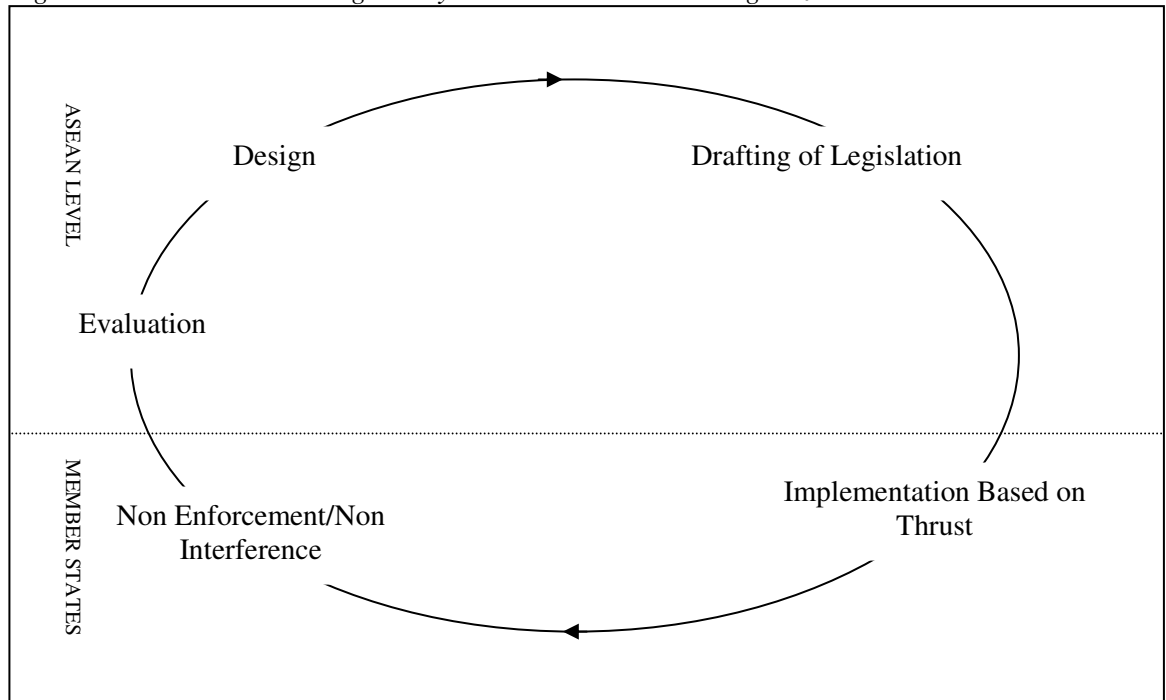
- Implement an ASEAN regional water conservation program by the year 2001;
- Establish a regional centre or network to promote environmentally technologies by the year 2004;
- Formulate and adopt an ASEAN Protocol on access to genetic resources by the year 2004;
- Develop a Regional Action Plan for the Protection of the Marine Environment from Land Based and Sea Based activities by the year 2004;
- Implement the Framework to achieve the long term environmental goals for ambient air and river water qualities for ASEAN countries;
- Enhance regional efforts in dealing with climatic change;
- Enhance public information and education to promote awareness of and participation in environmental and sustainable development issues.

While the ASEAN environmental vision and Ha Noi Plan of action define the broad strategic and policy framework for environmental cooperation in the ASEAN region, the environment minister of member states at annually formal meeting issues declaration on the environment and sustainable development. The declaration assesses the current status and developments both regionally and globally, articulate ASEAN's concerns and responses in addressing these issues and provides senior officials with policy guidance on the next work and initiatives.

From the specification of the criteria for redeeming challenges in the implementation of environmental policy within the ASEAN member states, we can summaries that the there was a chain process from designing the environment policy. The ASEAN level responsibilities are on the evaluation process, design process, drafting of legislation of environmental policy. The member states responsibilities are on the step of

implementation and the members committed to a policy of non interference in the affairs or non enforcement among member states. The chain is showed in the figure 4.2.

*Figure 4.2 Environmental Regulatory Chain within ASEAN Organization*



**Source :** Compiled by The Author (2006)

#### **4.5. Distribution of Competencies within Environmental Institution Building in the ASEAN Organization**

As already mentioned before that the main principle from the relation within ASEAN organization and member states is “non – interference”, so the distribution of competencies remain on the responsibility of member states to distribution of competencies within their internal environmental institution building without any interference from ASEAN organization.

The collaborative process to distribution of competencies in the ASEAN organization itself can be showed on the appointing the secretary general in this organization and the member of ASEAN secretariat. Both institutions have roles on the

environmental policy making, like described above. The rest institutions within ASEAN organization involved in policy making are filled by member states representative appointed by their government.

The Highest decision making role of ASEAN organization is the Meeting of the ASEAN Head of State and Government which is called ASEAN Summit that is held every year. The ASEAN Ministerial Meeting (Foreign Minister) is held on annual base. This is not only for environmental problem but also for all issues which occur in ASEAN region.

The Secretary General of ASEAN is appointed on merit and accorded ministerial status. The Secretary General of ASEAN has a five year term, this mandates to initiate, advises, coordinates, and implements ASEAN activities. The members of the professional staff of the ASEAN Secretariat are appointed on the principle of open recruitment and region wide competition. ([www.aseansec.org](http://www.aseansec.org))

The description above described the level of ASEAN responsibilities on distribution of competencies within environmental institution. The rest of responsibilities remain in the level of member states.

To make clear about the role of distribution on member states level, we will see the distribution of competencies in one of the environmental case. The example case is the most serious problem on environmental case area that occurred in ASEAN region in recent year was transboundary haze pollution from land and forest fires (Second ASEAN State of the Environment Report 2000). The next description will explain the distribution of competencies on member states level.



4.5.1. The Distribution of Competencies on Environmental Institution Building within Member States (Responsibilities on the Member States Level) the Case of Operationalized Regional Haze Action Plan

Based on Asian Development Bank Report 2001, Institutional arrangements and also distribution of competencies for various functions relating to protection, mitigation and monitoring of forest fire and haze vary considerably among the ASEAN Member States.

Indonesia

Three separate national-level organizations manage forest and land fires in Indonesia. BAKORNAS PB (the National Coordination Agency for Disaster Management), an intersectoral agency chaired by the Coordinating Minister for Public Welfare, coordinates fire management when fires reach a magnitude at which they are declared national disasters (such as those during 1997-1998). Inclusion of forest and land fires into the overall responsibility of BAKORNAS PB is under consideration. So far, BAKORNAS PB has addressed all types of disasters other than fires. BAKORNAS PB also has counterpart agencies at the provincial and district levels (SATKORLAK PB and SATLAK PB, respectively).

An interdepartment organization, the TKNPKHL (the National Coordinating Team for Land and Forest Fire Control Management) was established by the State Minister of Environment. The membership of the team is similar to that of BAKORNAS PB. TKNPKHL operates only at the national level, and is not mandated to operate at either the provincial or the district level. BAPEDAL (the National Environmental Impact

Management Agency), which functions as the secretariat for the TKNPKHL, used BAPEDALDA (BAPEDAL's provincial-level counterpart) as its contact point during the 1997-1998 fires.

The third fire organization, PUSDALKARHUTNAS (National Center for Forest Fire Control) of MOFEC was established in 1995, following the large-scale fires of 1994. PUSDALKARHUTNAS mobilizes firefighters at the provincial, district, and field levels. At the provincial level, forest fire management is tasked to PUSDALKARHUTLA, which falls under the responsibility of the Provincial Governor. At the district level, forest fire management is tasked to SATLAK KEHUTANAN (District Forestry Response Team for Fire Control), which falls under the responsibility of the Bupati (regent). Membership at the provincial and district levels is similar to that of the units under BAKORNAS PB.

The absence of a single line organization for fire management in Indonesia has made fire suppression ineffective and inefficient. Suggestions have been put forward that an integrated fire management system could be developed under a single line organization that is given the responsibility, authority, and adequate funding for fire suppression. As MOFEC already has a significant degree of fire management capacity, it would seem appropriate for that agency to function as the coordinating organization for agencies involved in fire suppression at all levels.

### Malaysia

Responsibility for fire management in Sarawak, Malaysia, is distributed among three agencies, whose efforts are closely coordinated: the Sarawak Forest Department (forest fire protection measures, rehabilitation of fire burned areas); the Sarawak Natural Resources and Environment Board (NREB) (for implementation of regulations under the Natural Resources and Environment Ordinance); and the Fire and Rescue Department of

Malaysia (fire suppression). The distribution of responsibility (to take the lead role) is based on the technical specialization of the respective agencies.

The Natural Resources and Environment Ordinance specifies that open burning of refuse or other combustible materials and use of any land to deposit refuse without permission are offenses. The relevant provision reads: “Any person who, without the written permission of the Controller, cuts, destroys and burns vegetation in any area which is not a Native Customary Land, shall be guilty of an offence. Penalty: a fine of thirty thousand ringgit and imprisonment for three years.”

The fire permit granted will specify the period and extent covered, nature of permit, and the conditions to be complied with: e.g., the phasing of burning and the area to be burned each week, period within which burning is to be completed, reduction of flame, precautions to be taken, etc. The Fire and Rescue Department is informed of all the fire permits granted. The Board itself has no trained firefighters. During 1997, a few hundred fire permits were granted, covering an area of 2,429 ha. NREB monitors open burnings on a daily basis to prevent their spread. It also monitors the level of atmospheric pollution. There are three API machines installed in the border areas of Sarawak. In due course, the Board will establish a fire danger warning system.

#### Other ASEAN Countries

The fire management structures in Brunei Darussalam, Philippines, and Singapore have direct-line organizational structures. Brunei Darussalam has a specialized fire organization, the Brunei Fire Service. Other AMCs entrust fire responsibility to a department or a ministry. The Singapore Civil Defense Force (SCDF) under the Ministry of Home Affairs is the national emergency authority providing emergency fire, rescue, and ambulance services all levels.

In the Philippines, forest fire management falls under the Environment Management Bureau (EMB) at the Department of Environment and Natural Resources (DENR). DENR staff are represented at all levels of government from the national down to the community level. Thus, in the AMCs, there are no separate fire management agencies. Since several agencies share the responsibility, coordination becomes a serious problem. As yet, there are no arrangements for single window coordination.

#### **4.6. Comparison on the Environmental Institution Building Between EU and ASEAN.**

The objective of comparison on the environmental building between EU and ASEAN are: firstly, to know the weaknesses from ASEAN environmental institutional building that is the one of the cause from unsolved environmental problem in ASEAN region. Secondly, from the weaknesses of ASEAN environmental institution building the author tries to get the lesson learn and the possibility to transfer the environmental institution building like EU.

##### 4.6.1. The Emergence of Environmental Institution Building in EU and ASEAN

In European Union the emergence of environmental institution building from 'nothing to something' because the spillover effect from the Single Market Policy from the EU itself. The single market policy caused fears a negative effect on the environment. Not only it can caused loosed the member states to control their traded goods, which can caused environmental destruction, but also the fear that national environmental standards will become a barrier to trade. Hence, the environmental institutions building in EU emerges to support fair competition among member states on EU single market policy. The environmental policy is a major supporting unit with the other policy in EU. The

failure of implementation environmental policy from member states will effect the implementation of the other policy in the EU organization.

In ASEAN the emergence of environmental institution building came from the recognizing the benefit of collective action to address environmental problems (Second ASEAN Environment Report 2000). As we know that the background from ASEAN building are: to promote the economic, social and cultural development of the region through cooperation; safeguard its political and economic stability against great power rivalry; serve as forum for the resolution of intra regional differences (EU-ASEAN Relations, European Communities, 1998). The emergence of ASEAN was not causing the emergence of environmental institution building in ASEAN directly. The environmental institution seems like incremental part (non-systemic) of the process in the building of ASEAN.

#### 4.6.2. The Distribution of Rights and Duties

The most important principle on the distribution of rights and duties in the EU organization is the principle of subsidiarity, which noted that EU have the rights and can act only if the objectives of the proposed action can not be sufficiently achieved by member states. There was a clear separation on the rights and duties between member states and organization. The member states should and have to implement the consensus that have been made by the community. The obligations and duties from the member states is to implement the environmental consensus despite the EU action.

The distribution of right and duties based on the fundamental principle of ASEAN-Member States relation are: The right of every states is to lead its national existence free from external interference, subversion or coercion; Non-interference in the internal affairs of one another. This condition made the rights and duties between

ASEAN and member states is *fragile*. It happened because there was not clear enough about the right from the ASEAN environmental institution building in the case of failure on the environmental policy implementation from member states or duties on member states. The ASEAN sets no pre-conditions for membership. ASEAN and its members are committed to a policy of non-interference in the affairs of their neighbors.

#### 4.6.3. The Control and Distribution of Roles on Making Environmental Policy

The control and distribution of roles on making environmental policy within EU institution made by formal and institutionalized decision making mechanism. Environmental policy emerges from the complex negotiation within the complex formal institutional building in EU. For example, ministerial decisions are taken by votes and also the representative members of the institutional building took and selected from the various level of interest from member states. This mechanism took in order to accommodate many aspirations level and groups from the member states.

The control and distribution on making environmental policy within ASEAN made on consensus and informal persuasion and discussion. There is no voting in ASEAN meetings or working group. ASEAN's focus is on consensus and informal persuasion and discussion. The one and only permanent and formal institution is Secretariat of ASEAN, which head by Secretary General. The rest institutions are group of meeting to make consensus.

#### 4.6.4. Specification the Criteria for Redeeming Challenges in the Implementation of Environmental Policy

Using the regulatory chain in the EU environmental institution building is the effective way to avoid the failure of the implementation on environmental policy. The factor of enforcement that was done in the institution building made the policy implementation will more effectively implement on the level of member states. Clear definition and responsibility of task in the permanent and formal EU environmental institution building also made the agreement enable to be followed up in the level member states obviously.

The condition of regulatory chain in the ASEAN environmental institution building was more fragile because of the clear separation of responsibility from environmental policy formulation level in the ASEAN institution with the implementation responsibility in the member states level. This condition made the link of regulatory chain of environmental policy in the ASEAN institution building not effective enough to force the agreement that has been decided. Many institutions within the ASEAN organization, involved in the environmental decision-making made the decision making process more sophisticated even the implementation process has not been approved yet.

#### 4.6.5. Comparison in the Distribution of Competencies within Environmental Institution Building in the ASEAN and EU

All of the institutions within environmental institution building in the EU organization are filled by representatives, who are selected by complex elections process from member states. The objective of this process is to ensure the representative of all interest parties and elements from all of the member states. The members of the

representatives' members also will change regularly. The representatives all of the interest party in environmental institution building made their aspirations be able to be accommodated in the environmental regulation. This condition also contributed the benefits to member states in order to minimize the friction or refusal that came from some elements in the implementation process at the members states level.

The permanent institution in the ASEAN environmental institution building only remains on the secretariat general of ASEAN. ASEAN's focus is on the consensus and informal persuasion and discussion. The secretary general is self appointed on merit and ministerial status. The secretariat general staff are selected based on profession in the member states, which are representatives of interest element questionable. The main regulation on environmental regulation made in the ASEAN institution building and the implementation process lays on the member states based on the trust that member states will implement appropriately. At the national level, institutional weaknesses are a big factor causing inefficiencies in the environmental management (Asian Development Bank Report 2001)

#### **4.7. Concluding Remarks**

The description of environmental institution building in ASEAN organization in this chapter and their comparisons with European Union environmental institution building (compilation in the table 4.1) will be taken as references to the lesson learned and the conclusion, which will be described in chapter 5. The lesson learned in chapter 5, will use the lesson drawing concept by David Dolowitz.

*Table 4.1 Compilation of EU-ASEAN Comparison on Environmental Institution Building*



	<b>European Union</b>	<b>ASEAN</b>
<b>The Original Priorities from Institution (in general)</b>	Post war <b>economic construction</b> , the desire to prevent nationalism leading once again to conflict, and the need for security in the face of the threats posed by the cold war	The territorial and political disputes between nations of Southeast Asia.
<b>The Emergence of Environmental Institution</b>	The emergence because of the Environmental standard becomes requirement from the major objective of European Union (European Single Market Policy)	The emergence because of the recognizing the benefits of collective action to address environmental problems
<b>Distribution of Rights and Duties</b>	Clear division of rights and duties from EU and member states based on the subsidiarity principle	Unclear division the right and duties between ASEAN and member states because of the non-interference policy
<b>Control and Distribution of Roles</b>	The main principle on the decision making process based on the complex and permanent institution	The ASEAN's focus on the informal persuasion and discussion made control and distribution roles weak
<b>Specifications of Criteria for Redeeming Challenges</b>	The enforcement of implementation in the level of member states avoids the implementation failure	There is no enforcement of implementation on the member states because the ASEAN commitment based on the non-interference and thrust.
<b>Distribution of</b>	The representative of environmental interest parties in the environmental institution building is the	Too many governments representatives from member states that held on the ASEAN environmental

<b>Competencies</b>	major important element to get the aspiration from many interest parties.	institution building and the many environmental interest parties and involved parties not include in the policy making process.
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**Source :** Compiled by the Author (2006)

## **Chapter V**

### **Conclusions and Lesson Learned**

#### **5.1. Conclusion**

The reflection from desire of ASEAN member states to cooperate each other to solve the environmental problem within the area was signed by the first ASEAN Environmental Program (ASEP). The program was implemented between 1978 and 1982 and was designed to promote the proper management of the environment in order to sustain the continuous economic development while continuing to maintaining a high standard of living. ASEP I was followed by ASEP II between 1983 and 1987 and by ASEP III in 1988. The ASEP III program concentrated on the environment, the urban environment, the marine environment and environmental education.

More illustration of the importance of regional cooperation among ASEAN members was the creation of the ASEAN Senior Officials on the Environment (ASOEN), at the Fourth ASEAN Ministerial Meeting on the Environment in Malaysia in June 1990. The first task of ASOEN included the harmonization of environmental standards among ASEAN members, the creation of some common contingency plans to address the pollution that resulting from maritime disasters, the issue of transboundary pollution, the assessment of environmental and resource management, and the creation of programs to further environmental education and awareness.

By these meetings and other declarations and also programs, ASEAN has pursued to address the environment problems relating to air pollution. The Agreement on Conservation of Nature Resources made in Kuala Lumpur in July 1985 promotes national conservation strategies and coordinates them regionally.

From the numerous ASOEN projects that have been initiated, only a few that have specially targeted the problem of air pollution. The Urban Air Pollution Monitoring and Control Program is only in its initial stages, but it represents a long term project to at least assess the problem of urban air pollution. It is clear, that there is a need and a desire for further air pollution programs.

The air quality regulation is just one of the many areas that illustrates the necessity and the feasibility of regional cooperation. Moreover, ASEAN has increasingly shown an awareness of the linkages between environmental conservation and the ability to sustain economic development. The attempts of member states to use domestic legislation to control the regional problem of air pollution is a necessary, but not a sufficient, step towards controlling the problem. ASEAN states such as Singapore, with its Clean Air Act, and Malaysia with its legislation regarding emissions from diesel

engines and lead concentration in gasoline, but after all truly effective regulation of air quality requires a regional approach.

Unfortunately, the cooperation and regulation in the regional level that have been made could not work and solve the environmental problem especially the haze transboundary problem, air pollution within this area. Based on the research study, conducted by Ministry of State for Environment in Indonesia, the fires and haze that have occurred since 1982 until 1998 were due to a wide range of many factors. One of them was: lack of institutional commitment at regional, national, provincial, and local levels to make investment in order to prevent land and forest fires.<sup>6</sup>

Besides direct cause described above, there are also contribution factors that increase the potential of fire danger. These include lack of political will, weak legislation, ambiguous legislation and institutional factors. In fact, the most important of these are policies and institutions.

The thesis research more focuses on the institution factors in the regional level (ASEAN). The thesis research compared the environmental institution building in the European Union with the environmental institution building in ASEAN in order to get the point of lesson learned from EU to ASEAN.

The first conclusion from thesis research is that there is a basic fundamental barrier on the process environmental capacity building. A fundamentally important component of ASEAN is its pattern of diplomacy. The ASEAN traditional way is based on the Malay cultural practices of *musyawarah*<sup>7</sup> and *mufakat* (principle of collaboration

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<sup>6</sup> Ministry of State for Environment Republic of Indonesia and United Nations Development Programme 1998, *Forest and Land Fires in Indonesia*, Volumes I and II.

<sup>7</sup> *Musyawarah* means that a leader should not act arbitrary or impose his will, but rather make gentle suggestions of the path community should follow, being careful always to consult all other participant fully and to take their views and feelings into consideration before delivering his synthesis conclusion. *Mufakat*, means consensus and is the goal toward which *musyawarah* is directed. (Narine, Shaun., 2002., *Explaining ASEAN : Regionalism in Southeast Asia*)

process). They represent an approach to decision making that emphasizes consensus and consultation.

Based on this cultural condition, ASEAN has developed the ASEAN tradition way. The ASEAN tradition way is about the management and containment of problems. It is a consultative process that is motivated by the desire to create a stable environment. There are many techniques used by ASEAN to achieve the environmental goal center around symbolism and indirect approaches to avoid conflict situations. Within ASEAN, conflicts are dealt by postponing difficult issues so that it does not interfere with other areas of cooperation, and quiet diplomacy. As a result, ASEAN is not capable of resolving many issues of contention within this ASEAN organization and member states, but it can move those issues aside so that they do not prevent progress in other areas.

That is why the environmental problems, which emergence within ASEAN area could not be solved appropriately. As Jorgenson Dahl (1982) notes that , “A residue of goodwill based on feelings of brotherhood and kinship may serve the same purpose as oil on rough sea. They take the edges off the waves and make for smoother sailing.” Again, however, there is nothing unique about cultural communalities forming the basis of more cooperative relations between states.

The existence of ASEAN way as a manifestation of cultural preferences is an obstacle of the entire environmental institution building. The refusal of the ASEAN states to create strong, binding institutional structures is not simply an example of Asian antipathy toward such structures. Rather, it reflects the facts that the ASEAN states do not wish to sacrifice sovereignty or independence of action to a supranational body. They do not share the level of consensus or recognition of common interest necessary to sustain strong institutional obligations.

In general, the ASEAN way is a realistically modest approach to dealing within the ASEAN environmental institution building. An ASEAN traditional way recognizes what it is possible to achieve between states. By appealing to the lowest common denominator, it does not push the institution beyond what it can sustain. It does not allow disagreement in some areas to prevent cooperation in others. Nevertheless, the ASEAN traditional way also becomes the ASEAN's institutional weaknesses. A strict approach to regional relations is necessary because ASEAN lacks the higher levels of community and integration that would allow it to support binding, strongly institutionalized structures. The ASEAN traditional way may even sustain this limited sense of community by encouraging ASEAN's lowest common denominator approach, rather than forcing the member states to compromise to a higher level of cooperation.

The ASEAN way was the direct influence of the non-interference policy, which occurred within the institution. Non-interference in the wide range made difficulties to the international / regional institution to interfere the failure of implementation from regional environmental regulation in the level of national. Hence, there will be not any consequences to member states if they failed in the implementation of regional environmental agreement and environmental regulations.

The second, the factors of contribution of right and duties at the level of regional (ASEAN) and member states become unclear. There was no clear statement and regulation, what regional institution can do if the failure of environmental regulation and their implementation occurred on the member states level. On the EU environment institution building is clear that there are many consequences if the member states failed to implement the environmental regulation and environmental agreement, which regional institution (EU) makes. This condition happens because the subsidiarity principle is one of the major principle in this institution.

Third, the lack of control and distribution of roles occurred in ASEAN because there is no mechanism standard to control the implementation from ASEAN institution to member states. It's also very hard for ASEAN to control the member states because of the non-interference policy within this institution. The institution lays down the rest off all implementation of environmental regulation on the member states level and believes that member states will implement the environmental agreement correctly. Different with ASEAN, in the EU there is a strict controller institution, and strict procedure in order to make sure that all member states implement all of environmental agreement and regulations correctly.

Fourth, In the ASEAN there is no enforcement right to enforce the member states implement and adopt the environmental regulation and agreement into their environmental national policy and regulation. The positive side of this term is the emergence of national identity. Nevertheless, the other sides there are also weaknesses because of this there will be weak of obligation to the member states which implement the environmental regulation and agreement from regional level (ASEAN). However, the subsidiarity principle in EU made the member states a little bit loss of their nationalism (national identity) because of many national environmental regulations would refers to EU regulation that reflection of many member states within the EU. Nevertheless, at the other side the environmental regional standard could be realized on all of the member states correctly.

Fifth, in EU institution building, there was a reflection of many interest parties and many actors involved in the planning and decision making process. This condition contributes the achievement of acceptance all of the involves and interest parties in order to implement the environmental regulation correctly on the member states level. Meanwhile, the decision making process of environmental agreement in the ASEAN

institution have been made majority by government representatives of member states. The top down approach on the level of regional and national level to implement the environmental regulation made the involved parties and interest get only a little room capabilities to voice their interest and the implementation by them get reluctances.

Finally, the past policies/basic motivation from both institution (EU and ASEAN) directly influenced the regionalism motivation continuity. For instance, one of the basic motivations foundation from EU is economic construction within this region, which made the role of EU still needed until present. The economic construction spilled over the environmental institution building within the EU institution building. Whilst, the basic motivation of ASEAN, which the political and territorial dispute between regions, since the communism falling down, the effectiveness from the role of ASEAN organization is a little bit unclear. Therefore, these conditions also influenced the continuity and integrity member states within the regional organization.

From the conclusion above, there are many lesson learned and constraints in order to achieve the effectiveness of implementation of environmental regulation on the level regional (ASEAN) institution building. All of that will be explained in the next sub chapter.

## **5.2. Lesson Learned**

On the concept of policy transfer by David Dolowitz, it is stated, that there are many factors which constrain policy transfer like: the complexity of a programme, past policies constrain, the institutional and structural constrain, bureaucratic and economic capabilities, and technological capabilities. In the case of this research described before, the research more focuses on the institutional and policy terms.



From the side of past policies, the ASEAN 'tradition' and non-interference policy within ASEAN made the implementation of environmental regulation become not effective. The positive sides of remaining the ASEAN 'tradition' and non-interference policy are the emergence of nationalism and tighten the sovereignty of member states. However, the negative side of this condition made the international agreement and regulation (ASEAN) can not function properly. Two conditions that remain in the ASEAN institutional building become major barriers of environmental policy and institutional transfer from EU to ASEAN.

The lesson learned that could be synthesized from past policies is that if the ASEAN have the willingness to implement and operate of their environmental agreements and regulation in the level of member states correctly. ASEAN should minimize the level of ASEAN 'tradition' and non-interference policy become strictes, and allow the international organization handle the environmental problem if the member states could not solve the environmental problem that occurred in their area (subsidiarity concept).

On the factor of institutional and structural side, the conditions of environmental institution building like ASEAN have, made most of agreements and regulations weak on the implementation in the member states level. This condition occurred because from the beginning of the environmental planning decision process until the control of implementation there was no appropriate continuous cycle on it. In the environmental decision making process for instance, the decision making process involving only the representatives of governments from member states. Most of the interest parties and involved parties outside the governments from member states are absence and not involved in the planning decision making process. This condition makes the implementation of environmental agreements and regulations will face the acceptance

problem in democratic states. In short, on the first step of planning decision making process of environmental regulation, the representatives of many actors involved are still questionable.

On the control process from ASEAN environmental institutional building, the absence of controller institution made the regulation more fragile on the implementation. The concept 'the state above the states' like EU environmental institution building have, could be the inspiration to handle the entire problems that remain in the ASEAN environmental institution building. Like the explanation in the previous chapter (chapter 3), we can imagine that EU environmental institution building like the state, which can control the member states.

Last but not the least, the research found the two usefulness theories to describe the phenomena from environmental institution building on EU and ASEAN. First, the institutional building concept by Patsy Healey is not only be able to draw and describe the environmental institution capability building, but also can find the strength and weaknesses and also compare both environmental institutions building. Second, the concept of lesson drawn by David Dolowitz has been used by the author in order to find the niche and possibilities to transfer the *good side* from EU environmental institution building to ASEAN institution building.

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