POLICY ANALYSIS OF DATA LOCALIZATION IN DIGITAL MARKET INTEGRATION IN SOUTHEAST ASIAN REGION

ANALISIS KEBIJAKAN LOKALISASI DATA DALAM INTEGRASI PASAR DIGITAL DI WILAYAH ASIA TENGGARA

Posman Krismanto Sitinjak dan Riva’atul Adaniah Wahab
School of Public Policy and Management, Tsinghua University
Beijing 100084, China
E-mail: posm001@kominfo.go.id, riva002@kominfo.go.id

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Abstrak

Perkembangan teknologi informasi dan komunikasi (TIK) telah memengaruhi berbagai sektor kehidupan manusia termasuk perdagangan. Pada bulan November, negara anggota Association of South East Asian Nation (ASEAN) telah menandatangani kerangka kerja sama integrasi pasar digital sebagai manifestasi keinginan mereka untuk memfasilitasi transaksi e-commerce lintas batas. Salah satu kekhawatirannya adalah hambatan perdagangan dari skema perlindungan data digital yang diterapkan oleh negara-negara ASEAN khususnya kebijakan lokalisasi data. Penelitian kualitatif ini menggunakan pendekatan “nation as a unit of analysis” dari metode perbandingan cross-national melalui studi literatur. Tujuannya untuk 1) memperkenalkan status dan alasan da dalam balik undang-undang lokalisasi data digital di negara ASEAN, 2) menggambarkan kemungkinan implikasi ekonomi pertukaran data lintas batas antarnegara ASEAN, 3) mengusulkan mekanisme untuk mengatasi masalah transfer data lintas batas dalam perspektif teori integrasi regional. Hasil penelitian menunjukkan bahwa hukum lokalisasi di negara ASEAN khususnya di Indonesia, Malaysia, dan Singapura berbeda-beda tetapi implementasi transfer data lintas batas memiliki kesamaan motif ekonomi. Selain memiliki pengaruh positif terhadap perekonomian, transfer data lintas batas juga dapat mengakibatkan konsentrasi modal dalam wilayah ramah bisnis dalam kondisi disparitas pembangunan sehingga dapat membahayakan bisnis TIK yang ada. Dengan demikian, ASEAN perlu membentuk komisi untuk mengembangkan kerangka kerja peraturan tinggal yang baru. Negara-negara ASEAN juga harus mengembangkan infrastruktur TIK dan lingkungan bisnis yang lebih matang untuk mendukung implementasi hukum yang ada. Dalam kondisi ini, peran hubungan internasional dalam menangani masalah lokalisasi data dengan mempertimbangkan berbagai rezim politik di ASEAN diperlukan.

Kata Kunci: e-commerce, integrasi pasar digital, transfer data lintas batas, kebijakan lokalisasi data, ASEAN.

Abstract

The development of information and communication technology (ICT) has influenced various human life sectors, including trade. On November, Association of South East Asian Nation (ASEAN) member countries signed a cooperation framework for digital market integration as manifestation of member willingness to facilitate cross border e-commerce transaction within region. One of its concerns is trade barrier originating from digital data protection schemes applied by ASEAN states particularly data localization policy. This qualitative research uses a cross-national comparison, especially “nation as a unit of analysis” approach through literature study. It aims to 1) introduce existing status and rationales behind digital data localization law in ASEAN countries, 2) describe possible economic implication by allowing data exchange across borders among ASEAN countries, 3) propose mechanism to address cross border data transfer issues in the perspective of regional integration theory. Results show that localization law in ASEAN member states particularly in Indonesia, Malaysia, and Singapore have different attitude but same economic motives towards cross border data transfer. Besides having positive influence on economic performance, trans-border data transfer may result in capital concentration within business-friendly territory in the condition of development disparity and may harm the existing ICT business. Thus, ASEAN could jointly established commission to develop new single regulation framework. ASEAN countries also must develop more mature ICT infrastructure and business environment in order to support the implementation of existing law. In this conditions, the role of international relations in addressing data localization issues considering various political regimes within ASEAN is needed.

Keywords: e-commerce, digital market integration, cross border data transfer, data localization policy, ASEAN.
INTRODUCTION

Naskah The development of information and communication technology (ICT) has influenced various human life sectors, including trade. The ICT usage creates ease of transactions and encourages business processes transformation. Consumers can reduce their searching costs and sellers can reduce new market entering costs (Competition Commission Singapore, 2017). These condition trigger the development of online trading activities (e-commerce), not only among country’s regions but also across countries, including in Southeast Asian countries.

The number of online trade transactions in the Southeast Asia region continues to grow each year. The development of the Southeast Asian e-commerce market driven by these following conditions (Parcel Perform, 2018):

1. The growth of mobile devices penetration is very fast. The number of mobile device users in Myanmar has grown from 10% in 2014 to 80% in 2017, and predicted to reach 90% by the end of 2018. E-Marketer noted more than 90% of internet users use mobile devices to access the internet.

2. The development of social media usage for e-commerce (social e-commerce). This phenomenon is also called “shadow marketplace”. The results of Google and Singapore’s Temasek study found that ASEAN countries have population with the longest duration of internet use. Most of the activities are social media access causing higher social commerce transaction opportunities. As many as 50% of online shopper in Thailand bought products through e-commerce on social media.

3. Offline-based stores start to open online stores. For instances, Thailand-based fashion retailer Pomelo, Singapore-based Love Bonito, and Matahari Indonesia.

4. Many e-commerce players from other countries target ASEAN market. Amazone entered Singapore since 2017, Chinese e-commerce Alibaba increased its investment in Lazada shares from 51% to 83% and Tokopedia Indonesia, Tencent from China also invested in Go-Jek Indonesia, while Jing Dong (JD) established a joint partnership with Central Thailand Group with an investment value of USD500 billion.

Figure 1 shows the e-commerce ecosystems. Moreover, those developments such as payment methods (cash on delivery (COD), mobile banking, etc), logistics, and cross border transactions also contribute to increasingly e-commerce development in Southeast Asia (Lee & Das, 2018).

Figure 1. E-Commerce Ecosystem (Lee & Das, 2018)

In 2016, Statista reported that retail e-commerce sales in Indonesia, Thailand, Singapore, Malaysia, Vietnam, and Philippines amounted to USD5.29 billion, USD2.89 billion, USD2.13 billion, USD1.97 billion, USD1.71 billion, and USD0.05 billion respectively (Statista Research Department, 2016). Looking deep in Indonesia market, the Global Web Index of Q2 and Q3 recorded that 86% of Indonesian people buy online products or services (Nurdian, 2019). Bank of Indonesia (BI) posted an increase of e-commerce transactions value by 151% from Rp 30.942 trillion in 2017 to Rp 77.766 trillion in 2018. Specifically in January 2019, the value of online store transactions recorded by BI showed a figure of Rp 8.204 trillion, increased by 135.8% compared to January 2018 (Daniel, 2019). In 2019, Statista Market Outlook recorded that the number of online purchase transactions excluding business-to-business (B2B) in Indonesia reached 107 million, an
increase of 5.9% compared to 2018. (Nurdian, 2019). Statista data also showed an increase in revenue of the Philippine e-commerce market in 2018, the previous year only reached P36 trillion to P44 trillion. With the amount of e-commerce registration amounting to 2% of the total retail market, the figure is predicted to rise by 10.5% in 2019 (Zialcita, 2019). Frost and Sullivan noted that 40% of e-commerce transactions in Southeast Asia were cross border transactions (ADB, 2018).

As shown in Figure 2, to encourage e-commerce development in ASEAN countries, the availability of technology infrastructure such as broadband internet networks should be upgraded. It also needs regulations/policies (Lee & Das, 2018), legal environment, and regulations harmonization among ASEAN countries (Competition Commission Singapore, 2017).

![Figure 2. Situating E-Commerce Within ASEAN/ASEAN Economic Community (AEC) (Lee & Das, 2018)](image)

Table 1 shows more detail e-commerce market comparison among Southeast Asia countries.

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ASEAN Single Digital Market

On November 12th 2018, Association of South East Asian Nation (ASEAN) member countries signed a cooperation framework for digital market integration within region which plan to be implemented in 2025. Through the agreement, member states are willing to facilitate cross border e-commerce transaction within region.

One of the concern in the framework is trade barrier originating from digital data protection schemes applied by ASEAN states particularly data localization policy. While data privacy, security, and sovereignty were the major concerns, data flow across borders should be facilitated to grasp the (economic) potential of those integration.

Market integration allows firms to operate in different countries without necessity to establish physical offices in each operation area. Firm also seek for the most efficient supply chain by establishing global value chain. We see recent development of manufacture and service global outsourcing in China and India. It is not only give efficiency benefit to the firm but also job opportunity to society. As consequences, localization, an effort to keep economic resources within own territory may hamper firm ability to create value and improve efficiency (Ghemawat, 2017; Manyika et al., 2016).

Nevertheless, market integration brought a new challenge of governance mechanism. Supranational bodies, states, and not states actor build a network and influence each other decision. While states are less powerful, other actors such as supranational bodies, private sector, and NGOs have contribution in shaping governance process (Bevir & Hall, 2018).

Debates on Data Localization Law

In digital market, data is a commodity and has particular economic value that can be measured. It is tradeable and exchangeable. *OECD* had already investigate the market price of various data type: USD 0.50 cent for an address, USD 2 for a date birth, USD 8 for social security number, and USD 55 for combination of address, date of birth, credit record, and social security number (OECD, 2013). Nevertheless, the study was not yet covered the monetary value of personal behavior data like preferences, buying pattern, and location that could be analyze to deliver more value (not only for commercial used, but also for surveillance interest) to entity which hold the data.

Although world become more convergent and integrated through internet network deployment and multinational company operates globally but many states government take an opposite direction through data localization law, a measure to prohibit or restrict data (particularly digital data) transfer across their national border.

Primary argument may support the data localization is national sovereignty and security interest (Chander & Le, 2015; Hill, 2014). After Snowden leaked US agency foreign intelligence activities in 2013, governments around the world increase their attention on data localization law. Russia enacted the law in 2014 which require entity who collect Russian citizen personal data should locate its database in Russian territory and processing such kind of data can be done only within Russian region. Meanwhile, China passed the law in 2016 which impose personal data and critical infrastructure in solving regional issues especially related to national sovereignty such as human rights, national border, and free labor market. Human right issues in some ASEAN countries cannot be resolved under this mechanism such as in Myanmar. Another unsolved problem is dispute in national border in South China Sea between Vietnam, Indonesia, Malaysia and The Philippines.
information be stored and processed inside China. Any outside activities regarding those data subject to state assessment (Sargsyan, 2016; Selby, 2017). However, localization is not only a preventive measure taken by the government, but it also a mitigated tool when leakage occurred. Just consider when Facebook has a personal data leakage crisis, states law enforcement can do the investigation easier and not burden by the inter government agreement to comply (if exist) and things will be more complicated if no mutual agreement exist.

On opposite perspective, scholars describe this control lies on miss conception of motives. Keep personal data in state territory still not ensure the security of your data and even make data more vulnerable to cyberattack because the data is stored only in one place (Mishra, 2016). Moreover, it is not only hamper economic development but also threaten democracy (Chander & Le, 2015; Cory, 2017). They argued business cannot select for more efficient facilities such as data center and platforms available outside its host country. In addition, they suggest the measure will significantly increase states ability and probability to monitor their citizen and neglecting freedom of speech. However, most scholar analysis take a perspective of developed countries in ICT business to assess the disadvantages of data localization. For example, business in more mature environment such as India, United States, and Singapore (opponent of data localization) will have a competitive advantage compare to Vietnam or Indonesia in the event of free movement of personal data transfer. Call center outsourcing, e-commerce, data center, and any ICT related business has well-established in those three states while another two states still develop their ICT business. Then, correlating data localization law with authoritarian government may become a weak argument because some democratic states also adopted those control to some extent such as Canada, Taiwan, and the European Union (EU). Under new General Data Protection Regulation (GDPR), data transmission to third party outside EU will subject to some compliance requirement.

Due to existing debates on data localization policy and recent effort to integrate e-commerce market within ASEAN states, this research would like to introduce existing digital data localization law in the region and rationales behind the measure. It is also would like to describe possible economic implication to the member states by allowing data exchange across their borders considering the gap of development state among ASEAN countries. Then, this research would like to propose mechanism to address cross border data transfer issues in the perspective of regional integration theory. Following those objectives, three research question will be addressed throughout discussion: (1) What are the motives behind localization law in ASEAN member states; (2) How cross border data transfer may change business landscape among ASEAN member states; (3) How to achieve digital market integration from the perspective of regional integration theory.

This study is a qualitative research using a cross-national comparison, especially “nation as a unit of analysis” approach to investigate the existing conditions and answer the research questions. Through this method, the diversities or similarities within data localization in digital market integration framework among ASEAN countries can be captured. Thus, policy initiative of others can also be learned (Gharawi, Pardo, & Guerrero, 2009). However, this research will largely take Singapore, Malaysia, and Indonesia as case example because they are in major position within ASEAN economic and represent the different view of data localization policy within ASEAN member states.

Relevant data and information are collected through observation and literature study to investigate and analyze the problem. Data and information include journals, books, news, national policy documents, NGOs reports, past research, and other resources. We also identify existing research on data
localization policy and digital market integration. At the end of this research, conclusions and recommendations are made after conducting cross-national comparison then providing them using descriptive approach.

RESULT AND DISCUSSION

This chapter discusses about localization law in ASEAN member state particularly in Singapore, Malaysia, and Indonesia.

Localization Law - ASEAN Perspective

ASEAN member states have at least three different views towards cross border data transfer. States such as Vietnam and Indonesia have a comprehensive set of localization law. They do not just prohibit outward data transfer but also require localized data infrastructure. Then, countries like Malaysia only allowed cross border data transfer to authorized place approved by minister but do not have local infrastructure obligation. On the other side, Singapore is largely support cross border data transfer by allowing transfer and only demand a reliable data protection are exist (The Asean Post, 2018; Pitakdumrongkit, 2018).

Personal data protection in Indonesia regulated under several policies such as Electronic Information and Transaction Act No. 19/2016, Government Regulation on Management of Electronic System and Transaction No. 82/2012, and Minister of Communication and Information Technology Regulation on Personal Data Protection in Electronic System No. 20/2016 (Chander & Le, 2015; Cory, 2017; Nugrahai, Kautsarina, & Sastrosubroto, 2015). Through all those policies, government of Indonesia has strong level of control on its cyberspace data localization. It obligates electronic system operator for public services locating its data and recovery center within Indonesia territory and restrict personal data transfer abroad without any consent from the authority. It also requires electronic system operator to be certified by authority and own adequate level of resources (technology, human, methodology) to protect personal data of its user. Furthermore, electronic system operator whether it operates public or private service should store its transaction data within country area and utilize national internet gateway and network facilities. If electronic system operator not yet able to do so, it can use abroad facilities subject to approval of state administration (Presiden Republik Indonesia, 2012; Presiden Republik Indonesia, 2016; Menteri Komunikasi dan Informatika Republik Indonesia, 2016). Meanwhile, Malaysian government implement medium level of control in case of cross border personal data transfer. Malaysia Personal Data Protection Act legalized in 2010 and took effect in 2013 state personal data transfer to outside Malaysia only allowed to the place that have been specified by the minister, upon recommendation of Commissioner. Minister can specify the place if there is a law in the destination place similar to the Malaysia act or the place ensure they have similar level of protection provided by the Malaysia act (Parliament of Malaysia, 2010). In 2017, Personal Data Protection Commission published consultation paper to gain public feedback on the criteria to define a whitelist places for personal data transfer but until this research finished, the criteria had not yet legalized. On the opposite direction, Singapore allow outward data transfer under the condition that organization provide a standard protection comparable to the protection under Singaporean Personal Data Protection Act No. 26/2012 and data owner has been given consent on usage objective. The law also does not restrict specific destination place for allowing data transfer. It even exempt standard protection requirement to do data transfer subject to organization request and commission approval (President Republic of Singapore, 2012).

To understand economic motives of localization policies, we may examine localization barriers to trade (LBT) and
enterprise support (ES) approach for global development policies. LBT puts pressure to localize economic activities in exchange for market access Meanwhile ES concern about innovation by competition (Ezell, Atkinson, & Wein, 2013). Indonesia takes the LBT approach by obligating entity to build data infrastructure in their national territory. With around 250 million populations and among them 39% are active internet users, the local market is attractive for data related business. Ipsos Business Consulting in their market study forecast Indonesia data center market will be worth IDR 3.2 Trillion (USD 225 million) while e-commerce market will be worth around USD 12.3 million. Therefore, by doing such protection, government hope to promote foreign direct investment (FDI) in ICT sector and to certain extent protect local player. On the contrary, Singapore takes ES approach due to its strategy to drive digital integration in region so Singapore will reduce any barrier to do the digital trade (Pitakdumrongkit, 2018; Strait Times, 2017). Singapore itself is the most robust data center market in Asian due to its massive connectivity to the global market and business friendly environment. In the event of free flow of data transfer in ASEAN, Singapore will have competitive advantage to export their services to any ASEAN member states. While Indonesia and Singapore put position in opposite pole, Malaysia lies in between. It also takes, to certain extent, ES perspective in shaping their outward data transfer policy but not as firm as Singapore do. Unlike Indonesia that try to protect local market, Malaysia set their eyes to the global market. It would like to invite global player to invest in data infrastructure which can serve any clients around the world. However, Malaysia authority establish whitelist system for outward data transfer. Until this research is finished, there still no study to measure how much this less strict control will differentiate economic outcome of Malaysia compare if strict or loose control were applied.

Cross Border Data Transfer and Digital Business in ASEAN

Internet deployment had opened opportunity to global digital trade across countries. Companies like e-Bay, Amazon, and Alibaba serve customer worldwide without necessities to establish branch or office in each country. This lead to the consequences of trans border personal data transfer which resulted efficiencies for company operation (Kuner, 2010). According to the McKinsey analysis, cross border data transfer contributes to 10.1% increase of World’s GDP (Manyika et al., 2016).

In South East Asia, digital economy generates revenue around USD 150 billion each year. The region has population around 620 million with GDP USD 2.4 trillion in 2014 and growing middle class. ICT foreign investment in ASEAN have grown considerably from USD 2.8 billion in 2010 to USD 3.9 billion in 2017, while cross-border ICT mergers and acquisitions rose to USD 3.6 billion in 2017 from USD 172 million in 2010 (Hwew, Kirollos, & Salta, 2018). However, the side story was not content. Disparities remains a major problem for the region. Only Singapore (rank 16th in UN ICT Index) are consider ready to embrace digital revolution. Only Singapore, Malaysia, and Brunei Darussalam have internet penetration rate over 75 percent. In the aspect of business environment, only Singapore and Malaysia lead in ease of doing business index and others are leg significantly behind.

Then, how those gap connected to the dilemma of localization law? Although numerous scholars suggest free flow of trans-border data transfer have positive influence on economic performance, but in the condition of development disparity, those practices may result in capital concentration within business-friendly territory. If countries with extensive localization law like Indonesia and Vietnam could not catch up with Singapore or Malaysia in terms of ICT infrastructure and business environment, then allowing free flow data transfer may harm its existing ICT business. Companies may move
their storage or office to location where the cost are most efficient. We can look at the recent attempt from Indonesia authority to facilitate cross border data transfer have face massive rejection from local ICT company association. In case of Vietnam, we still not yet see response on its localization because the act just effectively implemented in January 2019. Giant companies like Facebook and Google still wait to see how local authority enforce the regulation.

Governing Cross Border Data Transfer-Integration Approach

Based on various attitudes and motives on localization law, there are two approaches can be considered from perspective of regional integration theory to develop cross border data transfer governance: liberal intergovernmentalism (LI) and constructivism (CM) (Donnelly, 2010). LI approach, developed by Andrew Moravscik in early 1990s, seek to delegate national sovereignty to transnational institution. It describes process of negotiation in the demand and supply mechanism where demands are national preference as a given factor while supply is supranational institution decision (Moravscik, 1993, 1998). However, this approach has a drawback. Country or coalition who most favored by integration will work harder to dominate (Laursen, 2008). On the other hand, CM approach view national interests are the key to negotiate in supranational level. It argues that states social ontology such as norm and practice should be taken account in regional integration study (Christiansen, Jørgensen, & Wiener, 1999). How this two approaches apply on addressing cross border data transfer in ASEAN digital integration?

As LI suggested, there should be a delegation of authority (may be a partial authority) from national to transnational institution. ASEAN could jointly established commission to develop new single regulation framework in personal data protection, monitoring mechanism, and law enforcement agreement. However, what Andrew Moravscik describes as “grand bargain”, there will be an adjustment or disparity between states interest and the new established framework. In the national level, government should align their public policy, law, and legislative function accordance with delegation of authority. This process will result a convergence and stable of law and economic environment. While, this approach may also create what Laursen describe as a domestic loser when country interest not accommodate in the new framework (Laursen, 2008).

From CM perspective, ASEAN member countries may establish single framework which acknowledge the supremacy of national law and regulation. States will be allowed to maintain their national interest in exchange of allowing cross border data transfer. Company that operate or serve particular market will be subject to obey local law and regulation. For example, Indonesia may allow cross border data transfer but keep local infrastructure usage obligation for company which like to deploy their services in Indonesia or Vietnam may loosen its control in outward data transfer but still demand to have access to company database in basis of needs. This approach will be more efficient in terms of negotiation process but it may cause the result of integration not as satisfying as expected. Entity which like to operates in ASEAN region must comply to different set regulation that result to inefficiency

CONCLUSION AND RECOMMENDATION

Conclusion

Localization law in ASEAN member states particularly in Indonesia, Malaysia, and Singapore have different attitude but same economic motives towards cross border data transfer; 1) Indonesia: Prohibiting cross border data transfer and localizing data infrastructure to promote Foreign Direct Investment in ICT sector and to certain extent
protect local player, 2) Malaysia: Allowing cross border data transfer to authorized place and no localization infrastructure obligation to invite global player to invest in data infrastructure, and 3) Singapore: Largely supporting cross border data transfer and demanding data protection to reduce any barrier to do the digital trade thus Singapore will have competitive advantage to export their services.

Trans-border data transfer not only have positive influence on economic performance, but also in the condition of development disparity, those practices may result in capital concentration within business-friendly territory. If countries with extensive localization law like Indonesia and Vietnam could not catch up with Singapore or Malaysia in terms of ICT infrastructure and business environment, then allowing free flow data transfer may harm its existing ICT business.

From LI approach, ASEAN could jointly established commission to develop new single regulation framework. In the national level, government should align their public policy, law, and legislative function accordance with delegation of authority. This process will result a convergence and stable of law and economic environment. From CM perspective, ASEAN member countries may establish single framework which acknowledge the supremacy of national law and regulation. This approach will be more efficient in terms of negotiation process.

**Recommendation**

However, analysis in this research was only from the perspective of localization law and its economic motives. The outcome of digital integration may be varied considering tax, company law, and investment incentive applied by states when digital integration effectively implemented. It is also important the role international relations in addressing data localization issues considering various political regimes within ASEAN. This limitation opened the opportunity to further analysis of digital integration considering those factors.

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