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James Keith C. Heffron
De La Salle University, Manila

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THE ESTABLISHMENT OF A UNIFIED ASEAN MONETARY SYSTEM FOLLOWING THE EUROPEAN MODEL: IS IT LEGALLY FEASIBLE?

Written by:

Atty. James Keith Heffron
Department of Commercial Law
College of Business
DLSU-Manila

Abstract

For the last several decades, the drive towards globalization has influenced most of the world's economic and fiscal direction. Regional cooperation therefore is a natural step towards this thrust. For many years, many sectors have been clamoring for a unified monetary system in the ASEAN patterned after the European Monetary System, the same system that gave birth to the Euro – the European Union's regional currency. The main benefit of having a regional unified monetary system is price and currency stability. This in turn would result to an accelerated economic growth in the region especially in developing members such as the Philippines. However, the question is – will the current legal frameworks within the ASEAN allow the establishment of an ASEAN Monetary Authority through a unified ASEAN central banking system following the template of the European System of Central Banks? Using the doctrinal and comparative approach, the article exposes the major legal hurdle that prevents the establishment of this unified authority - the member states' strong legal adherence to monetary sovereignty - a solid doctrine deeply engrained in each of their domestic laws. The article then uses the same approach to present a clear understanding of this major legal hurdle and advocates an openness to its revision, hopefully paving the way for the establishment of a legally feasible unified ASEAN monetary authority.

MONETARY AUTHORITIES IN ASEAN

The Central Banks in ASEAN

A state cannot exist without a sound and stable monetary policy. The only effective way to achieve this is through the establishment of a monetary authority tasked to lay down and enforce financial policies including the overseeing and regulation of the state's banking system. The monetary authority should be essentially independent, free from political interference, and is usually governed by its own charter.

Usually, the monetary authority is lodged within the state's *central bank*. In the Philippines, the *1987 Philippine Constitution* provides that its central monetary authority shall be the Central Bank of the Philippines or locally known as the *Bangko Sentral ng Pilipinas* (BSP).

In Indonesia, *Act of the Republic of Indonesia Number 23 of 1999 Concerning Bank Indonesia as amended* conferred on Bank Indonesia the position as the country's central monetary authority having the function of implementing its monetary policies. It is independent and fully autonomous. In Malaysia, the Bank Negara Malaysia acts as its central bank. Under the *Central Bank of Malaysia Act 2009*, the bank is given the legislative authority to act as the state's monetary authority thereby having the power to regulate its financial system.

In Singapore, the *de facto* central bank and financial regulatory authority is the Monetary Authority of Singapore (MAS). It was established in 1970 through the *Monetary Authority of Singapore Act* and its main function is to regulate the state's financial sector and promote economic growth. Prior to the establishment of the MAS, the functions of a central bank were then exercised by several departments in the Singaporean government. Regulation and supervision of banks were the function of the Commissioner of Banking, finance companies were under the Commissioner for Finance Companies, foreign exchange was under the Exchange Control Department, external assets of the government were handled by the Department of Overseas Investment, while the financial functions of government from the sale of treasury bills to the management of the clearing house system were under the office of the Accountant-General. These were seemingly possible then considering the relative youth and diminutive size of its modern financial system.

In Vietnam, the promotion of monetary policy and supervision of financial institutions is exercised by the State Bank of Vietnam, the country's central bank. *The Law on the State Bank of Vietnam* enumerates the twenty-seven tasks and powers of the bank ranging from the issuance and management of currency, supervision and regulation of commercial banks to regulation of foreign loans. In Thailand, state monetary authority is exercised by the Bank of Thailand, its main objectives being *"to carry on such tasks as pertain to central banking in order to maintain monetary stability, financial institution system stability and payment systems stability,"* (Bank of Thailand Act, 2008).

In Brunei, the *Autoriti Monetari Brunei Darussalam* now known as the Brunei Darussalam Central Bank (BDCB) is the state's central bank having as its primary functions: formulation and implementation of financial policies and regulation to ensure financial and domestic price stability, to establish and oversee the state's payment system, and to develop its financial sector (AMBD Order, 2010). In Cambodia, the National Bank of Cambodia acts as the state's central bank. Its principal functions include: the formulation, implementation, and management of monetary and exchange policies, the regulation and supervision of banks and financial institutions, and the issuance and control of its national currency (Law on the Organization and Conduct of the National Bank of Cambodia, 1996).

In Laos, the Bank of the Lao P.D.R., established in 1968 and fortified through *Law No. 5 Dated October 14, 1995 on the Bank of the Lao PDR*, acts as the country's central bank. It is tasked with management of the state's money supply and reserves, issuance of currency, and regulation of its financial institutions. In Myanmar, the Central Bank of Myanmar acts as the autonomous and independent body that implements the country's monetary policy and supervises its financial institutions. In 2013, the *Central Bank of Myanmar Law* was enacted establishing the bank's foremost functions, which is to ensure the stability of local prices, money, and the monetary system.

The Southeast Asian Central Banks (SEACEN)

One of the indicators of regional cooperation with the aim of financial integration is the development of the Southeast Asian Central Banks (SEACEN). The SEACEN is a regional conference of central bank governors who meet regularly to discuss and exchange information on regional economy and finance.

One of the main outputs of the conference is the setting up of the SEACEN Centre, which is a regional research and training center with the objective of promoting *"a better understanding of the financial, monetary, banking and economic development matters which are of interest to the central banks and monetary*

authorities of the countries in South East Asia or of interest to the region as a whole; and to stimulate and facilitate cooperation among central banks and monetary authorities in the area of research and training" (SEACEN Centre, 1982).

THE ASEAN INTEGRATION

The Association of Southeast Asian Nations (ASEAN) was established in 1967 to secure regional peace and support economic development. To realize these goals, one of the primary objectives of the ASEAN is regional economic integration. One of the integration's moves was the establishment of the *Framework Agreement on Enhancing ASEAN Economic Cooperation*. In line with this, the *Common Effective Preferential Tariff* (CEPT) scheme was created with the aim of providing for reduced and/or preferential tariff and the elimination of non-tariff barriers on *"all manufactured products, including capital goods, processed agricultural products and those products falling outside the definition of agricultural products"* (ASEAN, 1992). The CEPT would then be the basis for the *ASEAN Free Trade Area* (AFTA) where member states agree to put in place mechanisms to enhance preference, and in effect a freer trade, on locally manufactured goods of member states.

On November 20, 2007, the association adopted the *ASEAN Charter*. The Charter serves as the legal and institutional framework of the ASEAN, expressly defining its purposes, one of which, is its fundamental economic function which is *"to create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment in which there is free flow of goods, services and investment; facilitate movement of business persons, professionals, talents and labour, and freer flow of capital"* (ASEAN Charter, 2007). In effect, the momentous agreement *"sets out rules of membership, transforms ASEAN into a legal entity and envisages a single free trade area by 2015 for the region of 500 million people"* (Belford, 2008). Though not yet being the same, the Charter placed the ASEAN a step closer to a status similar to that of the European Union.

Another move is the creation of the *ASEAN Economic Community* (AEC). The AEC aims to help put into action the economic purpose of the ASEAN. This is to effectively facilitate trade and investment by ensuring a free flow of goods, services, and capital. The AEC aims to turn the region into a single market and production base with the aim of making it *"a more dynamic and stronger segment of the global supply chain"* (Bali Concord II, 2012).

On November 22, 2015, the ASEAN Leaders at the 27th ASEAN Summit adopted the *AEC Blueprint 2025*. The Blueprint laid down the action plans of the AEC from 2018 to 2025 which includes stronger financial integration, more efficient and coherent payment and settlement systems among member states, and more connected capital markets. This is in line with the AEC's objective of strengthening and encouraging more dynamic cross-border and trade activities including e-commerce. Thus, the Blueprint provided, *"the financial sector integration vision for 2025 encompasses three strategic objectives, namely financial integration, financial inclusion, and financial stability, and three crosscutting areas (Capital Account Liberalisation, Payment and Settlement Systems, and Capacity Building)*." To help realize these objectives, the Blueprint laid down the following strategic measures:

i. Strengthen financial integration to facilitate intra-ASEAN trade and investment by increasing the role of ASEAN indigenous banks, having more integrated insurance markets, and having more connected capital markets. These will be supported by robust financial market infrastructure that is safe, cost-efficient, and more connected. Financial liberalization will be undertaken with greater regulatory cohesiveness to keep requirements for regulatory compliance to a minimum to reduce costs, while remaining prudent.

ii. Promote financial inclusion to deliver financial products and services to a wider community that is under-served, including MSMEs. This would also include initiatives to address the uneven digital gap in the region and reflect changes in the demographic structure, as some countries become aging societies.

iii. Ensure financial stability through the continuous strengthening of regional infrastructure, particularly in times of regional stress. (ASEAN Secretariat, 2015)

To promote these strategic measures, financial integration in the ASEAN will involve the liberalization of financial services including the ultimate integration of regional banking systems. Per the *2020 ASEAN Banking Integration Framework*, the aim is to reduce and/or remove certain restrictions on ASEAN Member States (AMS) banks and to eventually lead to the establishment of *Qualified ASEAN Banks* (QABs), which will be given the same treatment as local banks in each of the AMS (De Jesus, F.L.B., Torres, E.A., 2017).

This initiative is in line with *the Protocol to Implement the 6th Package of Commitments on Financial Services under the ASEAN Framework Agreement on Services* (AFAS). In the area of capital accounts, the objective is to reduce and/or remove restrictions on foreign exchange transactions among AMS to effectively facilitate and encourage a free and more convenient movement of capital and eventually a single or unified capital exchange market (BSP Media and Research). As for the harmonization of payments systems, the Blueprint essentially provides:

> Payment and Settlement Systems will be further enhanced in several areas such as promoting standardization and developing settlement infrastructure for cross-border trade, remittance, retail payment systems and capital markets. This will provide an enabling environment to promote regional linkages and payment systems that are safe, efficient and competitive. This will also require a certain level of harmonization of standards and market practices based on international best practices (such as ISO 20022) to foster stability and efficiency within as well as outside the region. (ASEAN Secretariat, 2015)

THE EUROPEAN MONETARY SYSTEM

In 1944, the 44 countries that participated in the *United Nations Monetary and Financial Conference* entered into the *Bretton Woods Agreement* which established the *Bretton Woods System*. Under the system, the U.S. dollar was the chosen currency that was to be valued in gold. In turn, the other currencies of the participating nations pegged their value to the U.S. dollar. This system helped create an efficient foreign exchange system, thereby prevented competitive devaluations of currencies. This in turn promoted a fair and smooth trading system among the participating nations. As a result, the system furthered international economic growth (Chen, 2022). This system was in effect for 30 years.

In 1971, U.S. President Richard Nixon enacted a plan that ended the conversion of the U.S. dollar to gold. With the collapse of the infamous *snake in the tunnel* European monetary cooperation in the 1970s which saw many countries leaving the so-called system because of the instability and unsustainability brought about by the free-floating U.S. dollar, the other currencies pegged to it also began to untenably float, eventually leading to the demise of the system.

To preserve the stability of their currencies, the affected countries had to resort to new monetary agreements. Thus, the *European Monetary System* (EMS) was born. The EMS primary objective was *"to stabilize inflation and stop large exchange rate fluctuations between European countries, (which) formed part of a wider goal to foster economic and political unity in Europe and pave the way for a future common currency, the euro"* (Chen, 2022).

The EMS was formed between member states of the European Economic Commission (EEC) to foster close cooperation among the members' Central Banks with the aim of bringing forth monetary stability. The EMS essentially put forth a mechanism which managed the members' currency exchange rates, primarily preventing large exchange fluctuations. In essence, these fluctuations were controlled and based on the European Currency Unit (ECU), which is an artificial basket of currencies coming from 12 member states that are weighted according to these states' European Union output (Chen, 2022). The ECU was then used as a basis from which other currencies of the union were pegged.

The *Maastricht Treaty* creating the European Union (EU) also created the *European System of Central Banks* (ESCB) whose primary function is to promote and maintain price stability in the EU. Likewise, the Maastricht Treaty also created the *European Central Bank* (ECB). The ECB together with the other national central banks of the member states form the ESCB. The ECB was granted the exclusive power to issue banknotes within the community and these notes would have the status of legal tender within the community. This then gave birth to the *Euro*, which is the common, single and unified currency used by most member states in the EU.

Further, both the ECB and the ESCB were granted full autonomy and independence by the Maastricht Treaty, with absolutely no political and economic interference from any of the member states' governments. In fact, the Treaty went a step further in the realm of non-interference when it required that the organic laws of the member states creating their respective national central banks or monetary authority should conform to its principles and provisions.

Thus, the EU believes that the only way to achieve the goals and specific objectives of its monetary and economic policies is through the strict adherence to a unified monetary system which includes the establishment of a unified central banking system with one regional central bank that essentially dictates the currency policies of each of the member states.

Essentially, the main advantage of having a shared monetary policy under a unified central banking system across the region is price stability (Mishkin, 1998). Further, this also brings a significant reduction of the so-called asymmetric "shock" bought about by sudden devaluation of currencies in member states or the sudden changes in the exchange rate brought about by domestic volatile situations such as political events or natural disasters that may affect local economy. A central banking system having a unified monetary policy ensures a stable exchange rate mechanism that may help in cushioning the negative impact of such events. Lastly, having a unified monetary policy across the region ensures transparency in price comparison among member states. This in turn will promote healthy competition and therefore stimulate capital investments.

THE SINGLE CURRENCY CONCEPT: THE EU LESSONS AND WHY THE ASEAN SHOULD NOTE

The concept of a single currency is not a novel concept. As early as the 16th century, the silver Spanish dollar was already legal tender in the Spanish territories, which extended to most parts of Europe and Asia. Due to the quality of the silver Spanish coin, the currency became universally accepted as a common mode of exchange for goods and services. In the 19th century, the *gold standard* was introduced. World currencies were then valued in their corresponding weight in gold. After World War II, the United States dollar became the global standard and most of the values of the world currencies were pegged against it. In the 1990s, the Euro was being officially used as legal tender by the EU Eurozone – an area comprising of 19 out of the 27 member states. This translates to a population of over 300 million people. The Euro is the second largest and most traded currency after the U.S. dollar (Boesler, 2013). There are around 22 states outside the EU that peg their own respective currencies to the Euro, 14 of which belong to Africa, which in turn translates to a population of over 180 million people (Cardoso, 2013).

Proposal for an ASEAN Single Currency

As the effects of financial integration are gradually being realized across the region, many experts are predicting that the next logical step would be monetary integration. This can eventually include the creation of a single regional currency that would replace the respective traditional currencies of the individual states.

In the 1990s, the Research Institute of Economy, Trade and Industry (RIETI) of Japan proposed the *Asian Monetary Unit* (AMU). This is a basket of currencies composed of several Asian countries including the ASEAN member states (AMS), Japan, China, South Korea and several East Asian countries. The AMU was modeled after the *European Currency Unit*, which was the precursor of the Euro. The AMU is being used as an economic trade balance indicator of the foregoing states and is said to be a logical precursor to a possible ASEAN single currency unit (Pekkanen, Ravenhill, Foot, Rosemary, 2014).

In his remarks at the Economix 2004 Conference, then ASEAN Secretary General Mr. Ong Keng Yong said that though the ASEAN does not have yet the conditions for an optimal currency union, it is nevertheless *"undertaking certain policies and projects that are expected to achieve some of the objectives of a single currency arrangement (and) in the process, this would also contribute to the necessary conditions for adopting a common regional currency."* (Ong, 2004)

The move for a single currency has always been supported by the needs of the changing times. Population increase, which logically leads to an increase in commercial and cross-border trade, and technological advancements in information technology, mobility and communication, have been the primary arguments to support this move. In an Asian Development Bank (ADB) study, it was thought that "*three sets of factors are likely to encourage the initiation of currency unions across the globe in the future: (i) the increasing number of countries in the world; (ii) globalization; and (iii) the diminishing role of independent national monetary policies, especially for small countries.*" (Madhur, 2001).

The ultimate objective of a single ASEAN currency unit is essentially cost effectivity and convenience. Since the primary economic objective of ASEAN is the development of a single market base to facilitate the free flow of trade and capital, a single currency will in turn help attain this objective.

A Worthy Look: The EU Lessons

The single currency concept is arguably one of the best - and one of the worst - legal and economic creations of the EU. The ASEAN will therefore benefit from the hindsight of the Euro experience as it gets to observe in real life its benefits and drawbacks.

Currency Stability

A single regional currency would naturally result in the elimination of the use of individual state currencies. Since the accepted medium of exchange will be uniform for all states then the concept of currency exchange will be abolished. This will

stabilize currency movement since all ancillary transactions in connection with the need for currency exchange constancy will have to be eliminated. Not only will there be savings in terms of time and convenience, but this will also remove certain costs related to currency exchange protection (i.e., hedging). Reduced costs and improved transactional efficiency will naturally result in a freer flow of trade. This would encourage more investments and ultimately more economic movement in the region. Further, the elimination of a currency exchange rate will lead to lesser market risks brought about by market speculations such as those that were attendant with the 1997 Asian crisis (Al Ubaydli, 2016).

A common currency used by all member states in a single region would likewise ensure value stability. It is common instance that when a local currency is exchanged for a foreign currency, the differences in the prices of goods and services would naturally result in the experiential devaluation of that currency. The purchase power of that currency can differ from state to state. A common or single currency will help address that challenge.

Price Stability and Transparency

As a single currency is adopted, the need to exchange money for the local currency is eliminated. This therefore results in considerable ease when foreigners transact with state locals. A more convenient transaction experience would therefore encourage business in between states, which would naturally result in more trade and capital investments. Further, the elimination of currency risk and the cost-efficiency of cross-border transactions will certainly lead to lower and stable prices of goods and services (Ong, 2004).

Cost Efficiency

One of the primary arguments that support a single currency is the reduction of transactional costs. As the need for a currency exchange is eliminated, the incidental and related expenses therefor is naturally removed. This would then translate to considerable cost-savings that would consequently bring down the prices of goods and services. A reduction in the prices of goods and services will strengthen the purchasing power of an individual and will thus encourage more cross-border trade. One of the industries that will benefit from this is the tourism industry since citizens of member states will be encouraged to visit the other states without the risk and worry of reduced purchasing power.

More Value Credibility

The establishment of the Euro as the single currency for the EU Eurozone saw its rise to become one of the most valuable and strongest currencies in the world. It only comes in second to the U.S. dollar in terms of the value of its reserves and the quantity of trading. The use of a single regional currency, as it is utilized in a bigger region and supported by various economies, means a more credible and stable medium of exchange.

The Drawbacks

Elimination of Local Monetary Policy

One of the strongest arguments against the adoption of a single regional currency is the loss of the autonomous monetary policy of the individual states (Madhur, 2001). For financial integration to be achieved using a single regional currency, regulation by a regional monetary authority is necessary. This authority would supplant and supersede the respective monetary policies of the individual states. The drawback is that the individual states will lose the ability to tailor their monetary policies to their peculiar economic needs. This has been seen in the recent debt crisis experienced by Greece when it was held hostage by the monetary policy of the EU. It was not able to customize its monetary policies to save itself from the said crisis (Fontinelle, 2020).

Further, interest rates would have to be set, controlled, and regulated by the regional monetary authority. The interest rate policies would naturally have to be uniform across the region. This may be unrealistic given the stark differences in the national economies of the member states of the ASEAN.

Disadvantaged Economies

Since the adoption of a common currency will encourage the spread and distribution of businesses and capital investments, this will thus encourage capital movements on more investment-friendly economic climates. This would result in an uneven development of economies as more investment friendly states will naturally get the bulk of capital investments.

THEORETICAL FRAMEWORK: SUPRANATIONALISM

The establishment of the EU finds its philosophical foundation on the international relations theory of supranationalism. Supranationalism is a form of international cooperation and governance where a state surrenders a degree of its sovereignty to the “supra” organization that it belongs. The “surrender” of this sovereignty is the state’s delegation of authority of its decision-making powers in certain chosen policy areas to the said union. The delegation of the authority is voluntary. However, once given to the union, the said state must abide by the collective decision regardless of its position (Leal-Arcas, 2022).

Advocates of supranationalism have argued that it promotes regional peace and stability, economic growth via trade integration, a stronger influence in the world stage, and a more stable rule of law. Its detractors, however, posit that supranationalism effectively diminishes the sovereignty and independence of a state since it is constrained to give up a certain control in local policy direction by "pooling" its sovereignty with other states and giving in to their collective weight for the purpose of a supposed higher objective (Nugent, 2003).

This is stark contrast to intergovernmentalism. Intergovernmentalism speaks of regional cooperation without the surrender of state sovereignty. Though states usually decide on policy matters via consensus, each state has an effective veto power and is not constrained to follow the collective position. Intergovernmentalism *"allows states to cooperate in specific fields while retaining their sovereignty...(i)n contrast to supranational bodies in which authority is formally delegated, in intergovernmental organizations states do not share the power with other actors, and take decisions by unanimity*" (McLean and McMillan, 2009).

The ASEAN, though some may argue is a supranational organization, is however in fact an intergovernmental organization. Its areas of cooperation - which include economic, peace and order, cultural, territorial and border management, among others – are at most partnerships that foster intentional rather than obligatory collaboration. In the words of the 10th Secretary General of the ASEAN, Filipino diplomat Rodolfo Severino, Jr.,

> ASEAN is an inter-governmental organization where decisions are based on consensus of all the member countries. It is not, and was not meant to be, a supranational entity acting independently of its members. It has no regional parliament or council of ministers with law-making powers, no power of enforcement, and no judicial system. Much less is it like NATO, with armed forces at its command, or the UN Security Council, which can authorize military action by its members under one flag (Severino, 1999).

AN ASEAN CENTRAL BANKING SYSTEM: ITS LEGAL FEASIBILITY

The benefits of having a regional unified monetary system patterned after the EMS and ECU template are bereft of any doubt. Indeed, the main effect of a unified system - price and currency stability - will bring forth much needed economic growth in the region especially on those developing member countries such as the Philippines. However, though the economic benefits are certainly astonishing, the question is - will the present legal frameworks within the ASEAN allow the establishment of an ASEAN Monetary Authority through a unified ASEAN Central Banking system following the template of the ESCB and ECB?

Unfortunately, since the ASEAN adopts the doctrine of intergovernmentalism at the heart of its philosophical foundation, it does not, as it could not, allow the establishment of a regional unified monetary authority.

One of the greatest strengths of the EU is the commonality of its cultures. Such commonality likewise stretches to the member states' economic principles and philosophies. Therefore, it is not surprising that most member states have similarities in their economic health and well-being. They do not have a wide margin over the other when it comes to their respective measures of economic growth and development such as Gross National Product (GNP), Gross Domestic Product (GDP), Gross Domestic Output (GDO), and the like.

However, this is not necessarily true for most of the ASEAN states. This is primarily due to the wide diversity of cultures, economic discipline, philosophies and principles. Not to mention the clear wide disparity among states in economic development and growth. For instance, the GDPs of Singapore and Mynamar are considerably different. Singapore, though relatively a small country in terms of landmass and population, has a highly developed economy compared to its other bigger neighbors. Due to these stark differences, a unified regional monetary policy controlled by a regional central banking system may prove to be detrimental rather than beneficial to economically weaker countries. This is because in a centralized monetary system, member states may have difficulty in addressing domestic financial issues without getting the imprimatur of the regional central banking authority. This *"hands-are-tied"* principle may prove to be a risk, and high at that, in situations where localized adverse national events that do not necessarily affect the region need to be immediately addressed.

Therefore, one of the greatest costs of a unified monetary system, following the theory of supranationalism, and as shown in the Maastricht Treaty, is the loss of local monetary sovereignty. Unfortunately, this loss of monetary sovereignty is not just prohibited, but abhorred, in the current legal frameworks of the ASEAN member states.

For instance, in Indonesia, Article 4 of Act No. 23 of 1999 as amended states that its central bank, the Bank Indonesia, is "*a state institution independent in performing its duties and*

authorities, free from intervention of the Government and/or any other parties, except for certain matters expressly regulated under this Law." This is in line with one of the general policies of the law that essentially adheres to the belief that the independence of the Bank Indonesia is necessary to maintain the stability of the rupiah, its national currency.

In Brunei, the BDCB is an independent and autonomous institution as provided for in Part II No. 5 of AMBD Order of 2010: "*in the pursuit of its objects and the performance of its functions, the Authority shall be autonomous and accountable as provided for in this Order.*" In Cambodia, Title I, Article I of the Law on the National Bank of Cambodia categorically provides that its central bank is an *"autonomous public entity of a commercial and industrial stature."*

In Malaysia, Part V, No. 2 of the Central Bank of Malaysia Act 2009 provides that *"the monetary policy of the Bank shall be formulated and implemented autonomously by the Bank, without any external influence."* In Myanmar, Chapter 2, No. 7 of the Central Bank of Myanmar Law provides that *"for the successful achievement of its aim and objectives, the Central Bank may exercise independently the powers conferred upon it in carrying out the functions and duties contained in this Law."* Other member states such as Singapore, Vietnam, and Laos likewise maintain independent monetary policies free from internal and external political or non-political interference.

In the Philippines, legislation is clear that the state shall always maintain its monetary sovereignty. This is enshrined in no less than its highest law – the 1987 Philippine Constitution. Thus, Article XII provides:

> SECTION 20. The Congress ***shall establish an independent central monetary authority***, the members of whose governing board must be natural-born Filipino citizens, of known probity, integrity, and patriotism, the majority of whom shall come from the private sector. They shall also be subject to such other qualifications and disabilities as may be prescribed by law. ***The authority shall provide policy direction in the areas of money, banking, and credit.*** It shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions. Until the Congress otherwise provides, the Central Bank of the Philippines, operating under existing laws, shall function as the central monetary authority.

The monetary policies of the country, in the areas of money, banking and credit, are formulated via legislation under the direction of the central monetary authority – the BSP. Thus, all policies relating to the supply of money coming in and out of the country, policies on exchange rates, pegging of interest rates and the cost of money can only be within the jurisdiction and control of the country, thru the BSP. Under Article 1, Section 1 of Republic Act 7653 or the *New Central Bank Act*:

> SECTION 1. Declaration of Policy. - ***The State shall maintain a central monetary authority that shall function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit.*** In line with this policy, and considering its unique functions and responsibilities, the central monetary authority established under this Act, while being a government owned corporation, shall enjoy fiscal and administrative autonomy.

The Philippine Supreme Court, in the case of *Bangko Sentral ng Pilipinas v. Banco Filipino Savings and Mortgage Bank,* likewise affirmed the authority of the BSP as the sole and independent central monetary authority in the country with a mandate of carrying out the state's fiscal responsibilities. Thus*, "the primary objective of the Bangko Sentral is to maintain price stability conducive to a balanced and sustainable growth of the economy"* (Supreme Court of the Philippines, 2018).

At present, the establishment of an ASEAN central banking system patterned after the European Monetary System where a regional central bank will dictate domestic monetary policy is not legally possible for the Philippines. Indeed, if the BSP's function as the primary institution in dictating domestic monetary policy is removed, this will effectively destroy the country's monetary sovereignty – an act that will squarely violate the 1987 Philippine Constitution.

Further, the BSP's administrative powers and quasi-judicial functions will be rendered nugatory since under a unified regional banking system dictated by a regional central bank, administrative cases involving all banks under that region should be under the supervisory jurisdiction of the regional monetary authority. The Philippine Supreme Court, in the case of *Apex Bancrights Holdings vs. BSP,* fortified the BSP's jurisdiction over financial institutions by stating that the BSP has the sole authority to supervise banks including the power to subject it to receivership, liquidation or even close the same by reason of violation of the law since it is the agent of the State in implementing police power in the banking industry. Thus, *"it is settled that "[t]he power and authority of the Monetary Board to close banks and liquidate them thereafter when public interest so requires is an exercise of the police power of the State"* (Supreme Court of the Philippines, 2017).

Moreover, under Republic Act No. 7721 or *An Act Liberalizing the Entry and Scope of Operations of Foreign Banks in the Philippines and for Other Purposes*, it was made clear that though the country allows for the entry of foreign banks, the banking sector shall remain to be nationally controlled by Filipinos. To top it all, no less than the 1987 Philippine Constitution has prescribed that the destiny of the state's national patrimony and economy should be determined solely by Filipinos. This is very clear in the various patriotic principles that can be found in Article XII such as those on protection of Filipino enterprises against unfair foreign competition, Filipino nationality requirements for certain areas of investments, regulation of foreign investments, and regulation of foreign loans.

In most industries, just like in the banking sector, the Philippines employs a Filipino-first policy. This policy is deeply enshrined in its economic and fiscal legislation and in its body of jurisprudence. The purpose of which is to guarantee that its sovereignty is secured in all aspects of its national existence, especially when it comes to the structural integrity of its economy.

Table 1. An overview of enabling/constricting policies of each ASEAN member vis-à-vis the establishment of an ASEAN monetary union

Country	Enabling Policies	Constricting Policies
Brunei Darussalam	x	Autoriti Monetari Brunei Darussalam Order (AMBD) of 2010 as amended (2010).
Cambodia	x	Law on the Organization and Conduct of the National Bank of Cambodia (1996).
Indonesia	x	Act of the Republic of Indonesia Number 23 of 1999 Concerning Bank Indonesia as amended (1999).
Lao PDR	x	Law No. 5 Dated October 14, 1995, on the Bank of the Lao PDR (1995).
Malaysia	x	Central Bank of Malaysia Act (2009).
Myanmar	x	Central Bank of Myanmar Law (2013).
Philippines	x	1987 Philippine Constitution; Republic Act 7653, New Central Bank Act (1993).
Singapore	x	Monetary Authority of Singapore Act (1970).
Thailand	x	Bank of Thailand Act B.E. 2485 as amended by B.E. 2551 (2008).
Vietnam	x	Law on The State Bank of Vietnam (2010).

CONCLUSION AND RECOMMENDATION

Indeed, the benefits of regional monetary and financial integration are clear. The European model has proven to be an effective system in maintaining price stability in the region. However, given the stark cultural and economic differences between the EU and ASEAN, it is not surprising why most of the ASEAN member states still maintain a strict policy when it comes to monetary sovereignty. Monetary sovereignty is so embedded in ASEAN domestic legal systems that its states are not bereft of legislation that promotes this doctrine.

Thus, what then can be a plausible legal solution?

Following the theory of supranationalism, which the EU has credited to the effectiveness of its integration, the ASEAN must evolve into *"an independent and strong supranational institution (that would be) necessary to facilitate the effective handling of the complex processes of regional integration"* (Kim, 2011). This integration would therefore necessitate a transfer of a certain degree of national sovereignty by the member states to the ASEAN. This essentially *"means shifting away from the ASEAN way of decision making - based on the principles of consensus and consultation, which require near-unanimity - toward a qualified majority voting (i.e., pooling sovereignty) on key integration issues"* (Kim, 2011) such as domestic monetary and fiscal policy.

Necessary Plan of Action

In order to transform the ASEAN into a supranational organization that would therefore pave the way to a unified ASEAN monetary union, it is necessary that there should be a top-down overhaul of each of the member states' domestic monetary and fiscal legislation that will allow for the gradual easing, and eventual surrender of, monetary sovereignty. There is no other way.

Indeed, the adoption of a regional central banking authority that will dictate regional monetary policy will pose a seeming legal conflict in most ASEAN member states. In the Philippines, as with other member states, the philosophy of nationalism is so engrained in local legislation that this novel concept will have to entail possible constitutional revisions. The philosophy of strict nationalism behind its patrimony and economic laws would have to be reevaluated and possibly diminished, if not abandoned. This will naturally mean amendments to the key economic and fiscal provisions of the 1987 Philippine Constitution.

To further aid in the effective implementation of an integrated financial sector governed by a regional unified central banking system, the domestic banking sector should naturally be liberalized, giving less restrictions to foreign banks, especially if these banks are from ASEAN member states. This may prove to be a hurdle for states such as the Philippines, whose domestic legislation again expressly prohibits total control of the banking sector by foreign entities. However, if this strict policy is not eased, a unified central banking system will prove to be ineffective since the banking sector will be denied of a level playing field that would allow the expertise and resources of foreign players.

Further, member states must be open to the adoption of a single currency. This is a natural consequence, and necessary creation, of a unified monetary union. To do so would mean to

again abandon certain fiscal and monetary policies in favor of those of the supranational institution.

This path however is not without caution.

When the EU adopted the Euro as the regional currency, member states had to give up monetary sovereignty and employ measures that would liberalize their banking sector. These acts are without any risks. In fact, the ill-effects of these measures came out during the different financial crisis that hit some of its members. Most notable as mentioned was the Greek sovereign debt crisis in 2009. Due to the lack of flexible monetary policy measures in its financial system due to its membership in the EMU (Eurozone), the effects of the then world-wide recession exposed the structural weaknesses in the Greek economy. This lack of flexibility prevented the Greek economy from adopting and adjusting, thus paving the way of its economic collapse.

Future Research Direction

The benefit of hindsight from the experiences of the European Monetary System and the Economic Monetary Union should push the ASEAN to scrutinize, study and learn from the challenges, mistakes, and even the victories of the whole Euro odyssey. A thorough study of the success and failures of the legal mechanisms pertaining to the resolution of conflicts among states should be the priority since this will provide a deep understanding as to how the ASEAN can manage its own inter-state conflicts – a logical consequence, and natural risk, of the surrender of monetary sovereignty to a supranational union. This would then help ease the solid, and almost myopic, wall of nationalism that ASEAN states have adopted in their monetary and fiscal policies as patently reflected in their respective domestic legislations.

Learning from these lessons are not just valuable but are imperative because this is the only way by which the ASEAN can come up with a more suitable, relevant, and appropriate unified ASEAN Monetary System model that will be dedicated and applicable to the peculiarities of its economic, developmental, and more importantly, its regional cultural identity.

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