



The Dynamics of  
**Law and Politics**  
IN SOUTHEAST ASIA

EDITOR

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Universitas Airlangga

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## PREFACE

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Southeast Asia has always been dynamic and too important to forget. It is resourceful by many scholars from five different continents, a beautiful destination for travelers, the right places for investors, and rich soil for the spread of democratic values. Southeast Asia has its uniqueness. The countries of Southeast Asia are facing enormous challenges economically, politically, and socially. Thanks to the ASEAN as a regional mechanism, the challenges do not translate into bloody conflicts. It is also evidence that ASEAN is a thriving institution that embraces all member states and has made ASEAN functional to channel its member interests. Within the context of the ASEAN Community, scholars are agents of change and can be a strong supporter of people-to-people connectivity. Scholars bind together with common goals: friendship and solidarity by sowing knowledge, promoting creativity and innovation, and empowering people.

In this context, education is a powerful tool for creating norms and empowering people to achieve a set of goals. Through education, people help to understand each other better. In interstate relations, education is soft power through which the state achieves its goals by using symbiotic relations. Education fosters goodwill among scholars by sharing knowledge, creating networks, and supporting each other in meaningful ways. Based on this reason, we work together to make this volume a

reality and harnessing as a media to build a strong relationship between Indonesia and Malaysia.

This book is the third volume since its initiation in 2017, consisting of a collection of ideas that bring readers to understand that uniqueness. This book does not promise a golden series of problem-solving ideas of a vast array of problems in the region. However, this book is a set of critical thoughts on many problems that have been around Southeast Asia. Jointly authored by scholars from two countries, essays in this book are written concisely by scholars from the Faculty of Law and International Relations University of Sultan Zainal Abidin, Kuala Terengganu, Malaysia and Faculty of Social and Political Sciences Universitas Airlangga, Surabaya, Indonesia. Each chapter represents each scholar's view and understanding of the region from different cases.

This book consists of two sections: (1) Law and Islam Dynamics, and (2) Politics and Current Issues. This section offers writing from various points of view: security, education, legal, human resources, governance, politics, and interstate relations. The first section elaborates on the development of law and the dynamics of Islam in academic discourse. Eleven articles discuss the development of the law. The first three articles describe the development of law, such as "Good Governance and Quality of Regulation" by Mohd Yazid Abdul Majid, Zuhairah Ariff Abd Ghadas, and Ahmad Shukri Yazid; "Regulating Entitlement of Spouses to Matrimonial Property Under The Law Reform (Marriage And Divorce) Act 1976: An Analysis of Section 76" by Nur Amani Pauzai and Murshamshul Kamariah Musa; and "Enhancing Stakeholders Engagement in Rulemaking Process Via Public Consultation" by Zuhairah Ariff Abd Ghadas, Mohd Muzaffar Abd Hamid, and Mohd Yazid Abdul Majid. The next two papers discuss the problem of children in law perspectives. People with disabilities experience widespread barriers, which include barriers in the health system, employment, education, social interaction, employment, facility services, and others, in particular children. The article which discusses the problem of children with disabilities is clearly described in "The Right to Education of Children with Disabilities: International Human Rights

Law and Malaysian Law Perspectives” by Aminuddin Mustaffa, MD. Mahbulul Haque, and Mohd Badrol Awang. Discussion about the children is completed by Shariffah Nuridah Aishah binti Syed Nong Mohamad who writes in the article entitled “Pemulihan Kanak-Kanak Tidak Terkawal: Analisis Perundangan di Beberapa Negara Asia”.

The other articles discuss the current issues in law perspectives. The first article discusses the law implication toward employees regarding the spread of the covid-19 pandemic which is a detailed explanation in “Employer’s Right to Retrench Employees Due to Covid-19: Analysis from Malaysian Employment Law Standpoint” by Kamaliah Salleh, Asiah Bidin, Noraida Harun and Noor ‘Ashikin Hamid. The second article discusses the demarcation of the role and relationship between law and sports in Malaysia remains a contentious issue. Further explanation can be seen in “Judicial Intervention Involving Sports Matters in Malaysia: A Study of Selected Case Law in Malaysia from 1957-2017” by Nor Fadzlina Nawi, Rozita Abd Latif, and Murshamshul Kamariah Musa. There are four papers that discussion in Islamic law perspectives which completing this chapter. “A Study on Position of Islam in Malaysian Constitution” by Noor ‘Ashikin Hamid, Kamaliah Salleh, Nazli Ismail@Nawang, and Asiah Bidin, Noraida Harun discuss the impact of colonial rule diminished the political power of the Malay rulers and undermined the position of Islamic law in Federation. “Maslahah as a Legal Basis for the Enforcement against Khalwat Offence in Malaysia” by Mahamad Naser Disa, Noor ‘Ashikin Hamid, Kamaliah Salleh, Asiah Bidin, and Noraida Harun highlights the importance of preserving of “*maslahah*” and preventing “*mafsadah*” is the main theme of Syariah. The fear of committing tajassus or breaching one’s privacy cannot in any way prevent the “*maslahah*” of securing the *masaalih* and eradicating the *mafaasid*. “The Overview Process (Amaliyyah Al-Tasawwur) in Islamic Judicial Proceedings: An Appraisal on Its Importance and The Applicable Methods” by Mohd Badrol Awang, Aminuddin Mustaffa, Mohd Lotpi, Mohd Yusob, Naziree Md Yusuf, and Nor Aida Ab. Kadir explicates some methods to be employed by the judges in effecting the process of *al-tasawwur* whenever relevant and necessary according to the peculiar

need of the cases in hand. At meanwhile the last article in this chapter discuss women's rights in Islam which further description on "Debating on Women Rights in Islam: The Case of Indonesia" by M. Muttaqien.

The second section in this book consists of nine articles that discuss political perspectives. The first article discusses Freedom of expression is one of the fundamental liberties and an indispensable trait of a democratic society. Further discussion can be found at "Freedom of Political Expression: Legal Position in Malaysia and The United Kingdom" by Nazli Ismail Nawang & Noor 'Ashikin Hamid. "Poverty Reduction as a Means to Conflict Resolution" by Baiq Wardhani discuss how important poverty reduction can be used as a strategy to prevent conflict, since poverty is still a world major problem, particularly in undeveloped and developing states. The next article explains the concept of social entrepreneurship has revived global attention by the states as an innovation in promoting social well-being among citizens. Further reading can follow at "Proposed Legal Framework For Public Interest Corporation In Southeast Asia" by Zuhairah Ariff Abd Ghadas, and Mohd Shahril Nizam Md.Radzi. "ASEAN Security Mechanism and Its Impact on Regional Security" by Abdullahi Ayoade Ahmad discuss ASEAN which faces increasing challenges to its policy of conflict avoidance because the more intrastate conflicts, the more it can turn to the interstate conflicts in ASEAN. At meanwhile the problem of Brain Drain as a logical implication of globalization became pivotal issues not only in some developing countries but also in Southeast Asia, in particular in the Philippines. Discussion about that problem can be found in "Globalization and Brain Drain in the Philippines" by Pratiwi Ramandita and Suyatno Ladiqi. The influence of China as an important issue on a global level nowadays also is discussed in the article entitled "Belt and Road Initiatives (BRI) di Asia Tenggara: Prospek dan Tantangan" by Fadhila Inas Pratiwi. Regionalism issue also is explained in this section, in particular how the election in Myanmar will affect political stability in Southeast Asia. Further discussion can be found at "Myanmar General Election 2020 and Muslims Free Parliament" by Md. Mahbubul Haque, and Aminuddin Mustaffa.

Finally, the last two articles are “The Role of Indonesian Islamic Philanthropic Groups in Establishing Indonesian Humanitarian Alliance (IHA) as State’s Diplomatic strategy to unravel Rohingya Crisis” by Siti Rokhmawati Susanto and “Championing the Course of Palestine: The Strategy and Impacts Towards Malaysia During the Tenure of Dr. Mahathir Mohammad” by Abdul Majid Hafiz bin Mohamed. Siti Rokhmawati Susanto’s paper portrays a significant case on how Indonesian Islamic philanthropy groups play a prominent role to establish a collective humanitarian mission, called IHA, to unravel the conflict in Myanmar. Meanwhile, Abdul Majid Hafiz bin Mohamed outlined how Mahathir’s administration went to the extent of committing some of their resources to help the Palestinians.

The University of Sultan Zainal Abidin, Kuala Terengganu, and Universitas Airlangga have worked closely for the past five years to achieve our common goal: cooperation between two emerging universities. The goal has been set consciously since the two determined to do the best for the nation. We want to thank all authors and the Airlangga University Press for making this volume materialized. We are confident this volume will significantly contribute to disseminating knowledge and the friendship of the two states.

Editors

Suyatno Ladiqi, Baiq Wardhani, Zuhairah Ariff Abd. Ghadas,  
M. Muttaqien



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# Section 2

## **POLITICS & CURRENT ISSUES**

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# 12 | Proposed Legal Framework for Public Interest Corporation in Southeast Asia

Zuhairah Ariff Abd Ghadas, Mohd Shahril Nizam Md.Radzi, Norhasliza Ghapa and Nur Amani Pauzai

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## INTRODUCTION

A rapid development in industrial revolution has affected the environment and the sustainability of the society, while too many pollutions and economic unbalance in the society occurred from industrial operation. Therefore, there is a need to urge the corporations to participate in combating such problems through social entrepreneurship. The concept of social entrepreneurship has revived global attention by the states as an innovation in promoting social well-being among citizen. In United Kingdom for example, a special business vehicle was created to facilitate social entrepreneurship agenda. Therefore, the purpose of this paper is to propose Public Interest Corporation (PIC) as specific business entity for social entrepreneurship in Southeast Asia. This paper discussed the

concept of social entrepreneurship, followed by discussion and descriptive analysis on the concept of social entrepreneurship in all Southeast Asia countries.

### **Social Innovation and Social Entrepreneurship**

There are two schools of thought on social entrepreneurships.

1. Social Innovation

This school of thought is influenced by Peter Drucker in defining the concept of entrepreneurship. A social innovation school of thought focusing on the founder of the organization to act in creative way in his mission to solve social problems. This school of thought, has included all organizations which engage with innovative ways in improving their operational efficiency and to maximize their mission performance.

2. Social Business school of thought

In different to social innovation, social business school of thought focuses on the entrepreneurial activities engage by organization to earn income for social purpose.

This school of thought, introduces a hybrid organization as a new concept for social entrepreneurship business vehicle. According to Emertson & Twersky the concept of social entrepreneurship has faced transformation from sole market orientation to an open market by engaging with business approach as to ensure an efficiency of their social mission. It also goes beyond philanthropic organization by operating in various business entities such as cooperative and social purpose venture. Hence, social entrepreneurship in this school promotes self- sufficiency for their sustainability.

Social innovation is defined as an innovative activities or services in which their primary objective is to meet with social need. The concept was introduced to invite more participants in protecting social interest. A James and T Dale describe social innovation as

*"a novel solution to a social problem that is more effective, efficient, sustainable or just than existing solutions and for which the value created accrues primarily to society as a whole rather than private individuals".*

As for the social entrepreneurship, there are many definitions of social entrepreneurship among scholars. Commonly, social entrepreneurship is defined as "entrepreneurial activity with an embedded social purpose". William, highlights that social entrepreneurship is a community enterprise which is founded by local people with the purpose to overcome the economic problems of the people and Zappla defined social entrepreneurship as a non-profit organization in which maximize their social mission in a creative way.

### **Social Entrepreneurship in the Southeast Asia countries**

Southeast Asia comprises of Brunei, Malaysia, Indonesia, Thailand, Singapore, Vietnam, Cambodia, Myanmar and Laos. All of these states are embraced under one association known as ASEAN as regional cooperation between states in various aspects. Among of the ASEAN purposes are:

1. To accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian Nations;
2. To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter;
3. To promote active collaboration and mutual assistance on matter of common interest in economic, social, culture, technical, scientific and administrative field.

From economic perspective, ASEAN's is strategically located in dynamic ASIA region and plenty of natural resources as well as biodiversity give some potentials to robust their economic prosperity. Nevertheless,

most of the ASEAN members are developing countries, whereby most of them are struggle in enhancing their economy after financial and domestic crisis.

Appreciating their strength and problems ASEAN has come with economic integration between the states through ASEAN Economic Community in 2015. However, there will be a new challenge for state members to ensure that such prosperity is inclusive and beneficial to the community.

In relation to social entrepreneurship, It has been argued that the concept of social entrepreneurship in this region is still within development phase whereby most of the social entrepreneurship focusing on human capital and poverty eradication and environment issues. Table 1 shows the concept of social entrepreneurship and organizations operated by social entrepreneurs in each ASEAN's members.

**Table 1.**

State	Regulation for Social Entrepreneurship	Organization for Social Enterprise
Brunei	No specific regulation on social enterprise	Government agencies, and NGO
Malaysia	No statutory definition on social enterprise.	Government agencies, NGO, private sector
Indonesia	No specific regulation and definition of social enterprise Exist in various forms and approaches, but most of them adopt business approach.	NGO, Government agencies and private sector.
Myanmar	No statutory specific regulation to govern social entrepreneurship	NGOs, business entities and Government Agencies
Cambodia	No one definition on social entrepreneurship, most of social entrepreneurs believe that its revenue-generating strategies to directly serve its goal to create social value	NGO, and others entities
Laos	No specific regulation to govern social enterprise	NGO and Government Agencies

State	Regulation for Social Entrepreneurship	Organization for Social Enterprise
Thailand	The regulation for Promotion Social Enterprise defines social enterprise as business that has explicit purpose addressing problem and developing a community, society or environment and generating revenue by selling goods or providing service not with primary objective if maximizing profit for shareholders or owner	Any business entities
Vietnam	Three characteristics of social entrepreneurship under Law on Enterprise no 68/2014/QH13 <ol style="list-style-type: none"> <li>1. being established under the Law on Enterprise</li> <li>2. its objective is to resolve social or environmental issues for the interests of the community, and</li> <li>3. at least 51 per cent of its profits must be re-invested to accomplish its social and environmental objectives as registered.</li> </ol>	Any business entities.
Philippine	Currently there is no specific definition and legislation to govern social enterprise in Philippine	Cooperative and association, Microfinance Institution
Singapore	There is no specific regulation to govern social enterprise; moreover, they are self-identified. Might exist in 3 categories <ul style="list-style-type: none"> <li>- Involve in a trading activity that has no direct social impact but contribute some profit for social benefit.</li> <li>- Involve in trading activity and have direct social impact.</li> <li>- Involve in a trading activity and generates a financial return in direct correlation to the social impact created</li> </ul>	NGO, private sector, cooperative

Referring to Table 1, it can be seen that social entrepreneurship in Southeast Asia are established by various organizations as to suit the capacity and their respective country legal system. Furthermore, according to Kerlin, social enterprise in Southeast Asia has also moved

from social origin theory to associate with revenue generating activities as to support their sustainability. It is also observed that some countries have moved ahead by passing legislation to define their own concept of social entrepreneurship. Unfortunately, they are unclear as regards to the business vehicle to support the operation. In the absence of specific business vehicle to facilitate social enterprise make them in difficulties while the existing organizations are fail to meet with the social enterprise's need. As for instances most of the state prohibits NGO to involved in market trading and the present business entities are focusing on the profit for the founders or shareholder instead of social benefit.

*"There are ways that the concept of social entrepreneurship can be adapted to a regional landscape. While economic integration will remain a priority on the official ASEAN agenda this year as the AEC deadline approaches, the public sector, private sector, and civil society must begin to address the social challenges that will emerge from the rapidly changing economic landscape. The social enterprise model provides a community-based alternative to a state-based social sector by allowing civil society to independently pursue social innovation and address problems in new ways."*

### Legal System of Southeast Asia countries

Table 2.

State	CIVIL LAW	COMMON LAW
Brunei		x
Malaysia		x
Indonesia	x	
Myanmar		x
Cambodia	x	
Laos	x	
Thailand	x	
Vietnam	x	
Philippine	x	
Singapore		x



Based on the Table 2, it is observed that the legal system in Southeast Asia are different as some countries apply the common law system whilst some apply the civil law system. For example, Malaysia, Singapore, and Brunei share the same experience of British colonization whereas Indonesia is influenced by the Dutch law and Philippine inherited the Spanish laws.

**Table 3.**

State	Business Structure with Corporate Personality	
	Partnership	Company
Brunei	Not Available	Unlimited Company & Limited Company
Malaysia	Limited Liability Partnership	Limited Company & Unlimited Company
Indonesia	Not Available	Limited Company
Myanmar	General Partnership	Limited Company
Cambodia	General Partnership	Limited Liability Company
Laos	General Partnership	Limited Company
Thailand	Partnership	Limited Company
Vietnam	General Partnership	Limited Company
Philippines	General Partnership	Limited Company
Singapore	Limited Liability Partnership	Limited Company & Unlimited Company

Table 3 indicates business structure with corporate personality recognized by the states. Based on the table, it is observed that all states recognize legal principle of corporate personality despite of different legal system. In addition, the principle has also been embedded into conventional corporation in all states and partnership for Thailand and Philippines.

### **Legal Principle of Corporate Personality**

The concept of corporate personality came from Roman law which believed to be foundation of civil law. Roman law recognizes corporation into four

categories namely as, public government bodied (*civitates*), religious society (*scribae* and trade society (*fabri*). Private corporation was only permitted to be operated with the section of the state for specific purpose. As a result of this recognition, Roman law declared that, any bodies entail with corporate personality is separated from its founder, in term of liability and assets and made the entity as a legal unit for that particular purpose.

Further the doctrine of corporate personality had been received and was advance by canon law. Initially this principle was only applicable for essclassical where there was a conflict between state and church and the church was keen to secure it perpetual ownership on property and to avoid feudal obligation. As a result, corporate personality becomes an established principle in English law.

### **Concession Theory of Corporate Personality**

From a legal jurisprudence's perspective, a corporate personality derived from concession theory. Concession theory focusing of the state sovereignty to imposed any law within it territory. Historically, concession theory exists during a conflict between religions institutions and feudal organization, when the state claims for state sovereignty on its territorial jurisdiction.

This theory proposes that state as a human being who has a power to bestow and withdraw any laws as it wish. According to Dicey, concession theory emphasize on the unlimited power possesses the state to create any law. Thus, it has a power to confer legal personality to any organization as it wish.

Therefore, realizing to challenges and advantages it is a right time to introduce Public Interest Corporation (PIC) as a specific business vehicle for social entrepreneurship in Southeast Asia. Public Interest Entity is established similar to the conventional corporations or any business entity which has corporate personality. As a body corporate entity PIC enjoys all attributes of a company such as perpetuity, limited liability and separate legal entity. These attributes ensure the smooth operation and sustainability of the business. However, in a slightly different with

conventional corporation state may impose a regulation, that the operation of PIC should prioritize social interest instead of shareholders.

### **Legal Framework for Public Interest Corporation (PIC)**

Operating as business entity, a PIC has to compete in an open market for profit generating. As a major distinction from conventional corporation, a PIC will prioritize public interest in its operation. Hence, it's relevant to discuss the concept of public interest before a thorough discussion on its application to our Public Interest Corporation.

The concept of public interest is not a new things, it was described a long time ago by Aristotle as a *common interest* and Locke as *public good*, and has always been associated with political philosophy.

Literally public interest is a combination of two words of "public" which come to the meaning of *an ordinary people in general*, whereas an "interest" is an original word from Anglo-Norman French "interesse" in which always referring to various meaning in English; *feeling of wanted to know something, late payment rate, having a common concern the advantage or benefit of group of person*. Nevertheless, the third meaning is most the suitable to be applied to this research.

The term public interest is often used to justify political claims and government policies that propose certain ideas. Conceptually the meaning of public interest is derived from political philosophy, and consists of a normative element. The normative concept of common good is used to evaluate policy and to measure benefiting contributions for the community. This notion has been used to refer to the genuine interest of the community, rather than private ones. John Dewey asserts that the concept of public interest is something moved from private into the public to be shared. This concept is always connected with the power of the state to introduce policy, in order to set out the fundamental values of society. John Dewey also explains that the concept of public interest is embedded with the collective principle of serving the needs of those communities affected by decisions made for them. It also refers to the idea that involvement in

society partly constitutes the meaning of the good life. In discussing this matter Chris Wheeler explains that there are two components rooted in the concept of public interest. These two elements are important in deriving its definition;

1. The objectives and outcomes from the decision-making process should emphasize the interest of the public.
2. Processes and procedures adopted in reaching the decision should be conducted fairly, reasonably, and comply with the principle of natural justice.

He further adds that the concept of public interest can be defined based on the objectives and approach taken. That means, based on the components suggested above, that it can be said that it is the duty of administrators in creating any policies to ensure that both the outcomes and its process discern and prioritize the benefits and advantages for the public.

Beyond the political aspects, public interest is encountered in legal concepts. There are several cases from various jurisdictions that must be taken into account in analyzing this concept from a judiciary perspective.

There are many instances of cases where the courts have attempted to define the concept of public interest. The term public interest first came to the courts in 1810 through Lord Matthew Hale's judgment in the case of *Allnut v Inglis*. In dealing with monopoly pricing, Lord Hale argued that a business ceases to be a *jurist private* and become *juris publici* when its activities present a threat to the public interest. Thus, the interests of a private company should not be prioritized over public benefit, when the business involved is subject to the rights of the public. The court in this case also introduced the doctrine of prime necessity to define public interest. The judge further explained that in this context the public interest is similar to the public's expectation to be served reasonably and with moderation. Hence it is an obligation for monopoly companies to provide their service at a reasonable price to the public.

In other cases, *R v Bedfordshire* (24.LJ. Q.B .84) Campbell CJ defines public interest as

"it does not mean that which is interesting as gratifying curiosity or love of information or amusement: but that in which a class of the community have a pecuniary interest, or some interest by which their legal right or liabilities are affected"

The Supreme Court of Australia in the case of *Director of Public Prosecutor v Smith* [1991]1 VR 63 , per Kaye, Fullagar and Ormiston held:

"The public interest is a phase that does not need to be, indeed could be usefully, be defined ... Yet, it is a useful concept because it provides a balancing test by which number of relevant interests may weigh one against another ... the relevant public interest factor may be vary from case to case- or in the oft quoted dictum of Lord Hailsham of Marylebone 'the category of the public interest are not closed"

Additionally in *McKinnoo v Secretary, Department of Treasury* the Federal Court of Australia also explained that, the concept of public interest is a best advancement of community interest in which depending on each circumstances. Furthermore it might appear in several lists to be taken into consideration.

Similar with other jurisdictions, the Malaysian courts also deal with the concept of public interest. The doctrine *prime necessity* as in *Allnut's case* was adopted in Malaysia through *Labuan Ferry Corporation Sdn Bhd v Chin Mui Kein (Trading under Style of Econ Focus Enterprise) & ors and other appeal* The Court of Appeal in Putrajaya unanimously agreed to reject an appeal from the Labuan Ferry and held that the ferry service between Menumbok and Labuan was clearly subject to the common law doctrine of prime necessary by virtue of section 3 (1) of Civil Law Ac 1956.

The concept of public interest has also been taken into consideration in cases related with the fundamental rights of individuals. This can be seen from several cases relating to the limitation of constitutional right

given to the individual. As in *Ooi Az Puan v PP*, in discussing to the right to consult counsel according to Article 5 (3) of Federal Constitution Suffian LP held that

“The right ... begins from a moment of arrest but cannot be exercised immediately after arrest. A balance has to be struck between the right of arrested person and the duty of the police to protect the public from wrong doer by apprehending them and collect whatever evidence exists against them”

The judge in *Teoh Eng Huat v Khadi Pasir Mas* also arrived at a similar approach in dealing with a sensitive issue. Hamid J emphasized that the interest of the nation must prevail over the minor rights prescribed in Article 11 of our Federal Constitution.

Thus it can be understood that there is no exact definition of public interest. It can vary according to circumstance-yet from the scholars and the courts' decision above, it seems a similar approach in defining public interest is applied. Without giving the list of the matters for public interest, scholars and courts maintain to priority interest for members in the community (welfare of public), rather than private rights of any individual, as a fundamental element for the concept of public interest. Subsequently this approach provides more space to the parties involved to take into consideration all aspects which may effect to the community, before reaching a decision or enacting a policy.

### Pre-entry Test

In order to apply the concept to our PIC, before getting recognition, any new incorporation or organizational structure are required to pass an entry requirement test. Similarly in UK, a CIC must fulfill the community interest test, as this distinguishes it from other non-profit organizational models. The test generally looks into the purpose for which the business was set up, the range of activities in which the business will engage, and who is benefiting from the business's activities. It is not required that every activity carried out by a CIC is directly beneficial to the community, but

it is important that everything that the CIC does should in some sense benefit the community.

There are several criteria that need to be satisfied:

1. The purpose for which it is set up
2. The range of activities in which it will engage
3. The targeted group, benefiting from the activities.

Organizations or companies are also disqualified from being recognized as PICs if the organization's activities involve any political campaign activities, or in any activities in which a reasonable person could believe that the benefits gained from the activities are only for the members of a particular body and not for wider community.

Therefore, in order to be recognized as a PIC a respective business entity is required to undergo a specific test to meet with the above criteria.

### **Specific Requirements as Public Interest Protection**

The unique feature of public interest implanted in Public Interest Corporations is protected through several specific requirements, for which compliance mandatory. They are:

#### **Asset Lock Management**

Asset lock management is an essential feature which Public Interest Corporations must have within its constitution, in order to ensure that the assets of the PIC are used exclusively for the benefit of the community.

Any assets and profits other than those which are distributed in accordance with the rules on dividend capping must be retained within the Public Interest Corporation and used solely for community benefit.

In a manner similar to how CICs practice liquidations and striking off events, the corporation is also subject to the asset lock body. The asset lock body is another social enterprise or charitable organization in which all residual assets of the corporation will be transferred to should these

particular events arise. The main objective of this is to ensure that the spirit of social enterprise is still continued or maintained through the asset lock body. Thus a PIC shall nominate asset lock body in its constitution.

### **Profit Distribution**

Being a corporate entity, PICs can be formed from any existing corporate entities, such as companies, limited liability partnerships, and even cooperative societies. The return of benefits to the public becomes mandatory, rather than as philanthropic activities engaged in by conventional corporations through corporate social responsibility. Therefore there must be "*dividend cap*" or profit sharing principle to ensure that although people can invest in a PIC, but that it cannot be misused for personal gain. The dividend cap requirement assures the public that investments in a PIC are genuine, while still maintaining an effective means of attracting financial support. Referring to the UK CIC dividend cap requirement, there are two elements which must be observed by Public Interest Corporation, namely; an aggregate limit on the total dividend declared and an ability to carry forward unused dividend capacity.

### **Statutory Obligation**

It is vital for Public Interest Corporation to be imposed with statutory obligation such as registration and the submission of annual reports and annual accounting reports. These obligations are aimed at ensuring that the company keeps proper financial records and statutory records, such as registers of members and directors, and provides the regulator sufficient information to keep the public record up to date.

In the UK the accounts of a CIC are reported separate to other documents, but are subject to the same delivery dates and must be delivered together to the registrar. The annual report of a CIC must show that the entity satisfies the community interest test, and that it is engaging appropriately with its stakeholders in carrying out activities which benefit



the community. Among the fundamental disclosures contained in the report are details of what the CIC has done to benefit the community, the amount of dividends declared (or proposed) on shares, performance related interest paid, and evidence of compliance with the capping rules and information on the transfer of assets to another locked body or otherwise at less than market value for the benefit of the community. However, the CIC does need to justify its status by declaring how it will be of benefit to the community.

Applying the same concept to our PIC, it is the duty of the corporation to submit all related documents to the Companies Commission of Malaysia annually, and the reports will be publically disclosed by the commission. It is important to promote and enhance public and investor confidence towards the PIC vehicle, as a hybrid organization. It is believed that the statutory obligations would promote confidence for the transparency and accountability of a PIC's corporate governance practices. If an organization failed to meet these obligations they may be disqualified from being a Public Interest Corporation, and lose all benefits awarded to it.

### **Formation**

Public Interest Corporations could be established through a registration process, submitting their constitution to the respective regulatory body.

### **Constitution**

It is mandatory for PICs to have a constitution upon of its establishment. The constitution will consist of an internal arrangement which regulates the organization. This may include all matters relating to the operation of the organization. Therefore, the constitution itself must clearly detail the purpose of its establishment, and object clauses to prioritize and serve for community benefit.

Several provisions need to be embedded into the constitution, including all matters relating to the management of the entity, such

as meetings, admission of members, the appointment and removal of directors, etc.

Consequently all provisions in the constitution will be a legally binding contract between the organization and its members. Therefore, any organizations who intend to operate as a PIC has to amend their constitution to include all of the above matters, before being allowed to operate.

The constitution of the organization also will be acting as a safeguard from any misconduct committed by the management. The court also may declare that any conducts or transaction in which contrary with the purpose of its establishment to be considered as a void under doctrine of *ultra vires*.

The purpose of this doctrine is to protect the interest of investor and creditor of the company, to prevent the company from using investor 's money for a purposes other than empowered by law (constitution).

Thus, both concession and purpose theories provide the most suitable justification to confer legal person status for our Public Interest Corporation. Through this status, Public Interest Corporation may operate as a hybrid business entity without fear of conflict of interest to uphold community interests rather than private profit.

### **Registration**

Public Interest Corporations could be established as a new incorporating entity, or become registered through a conversion process. For newly incorporating entities, similar procedures stated in the Companies Act 2016 that apply to traditional corporations would be extended for the establishment of PICs. However, differing from the establishment of a private company, the founder of this new entity would be required to submit a complete constitution to a regulatory body. Upon registration, the constitution will be placed on the public record open for inspection.

Other corporate entities are welcome to operate as a PIC. This could be realized through a conversion process –from the original entity, into a

Public Interest Corporation. A special resolution for conversion and a new constitution to give effect on the public interest requirements would need to be submitted upon the registration process.

The proposed entity will become a Public Interest Corporation as soon as the regulatory body issues a certificate.

For unincorporated entities, it is mandatory for them to incorporate, before being allowed to operate as a Public Interest Corporation. Thus, a similar process of conversion would then be accessible to them.

### **Dissolution**

Since the nature of our Public Interest Corporation is created through the power of the state for a specific purpose, it can also be dissolved, and the life of the organization brought to an end. Uniquely, for the Public Interest Corporation, dissolution can be in the form of winding-up, or through a striking up process.

### **Winding -Up**

Winding up is a normal process for corporate bodies when they cease or intend to cease to operate. Thus, as a corporate entity, a Public Interest Corporation could face these procedures, whether solvent, or insolvent. In this context, any winding-up process that would be applicable to traditional corporations would also be relevant to our Public Interest Corporation. The process includes the Judicial Rescue Scheme, before dissolution procedures.

Despite sharing procedures and regulations with traditional corporations, restrictions apply to Public Interest Corporations in the distributing of assets after the liquidation process. Public Interest Corporations are subject to asset lock requirements in distributing their assets. Members are not allowed to receive any residual assets, more than the paid up value of their shares.

If there are any remaining assets, distribution shall be made to the asset lock body, as determined in the organisation's constitution. However, if the constitution does not mention a specific asset lock body, the Companies Commission of Malaysia make a determination on behalf of the organization.

In exercising its duty, the Companies Commission of Malaysia may consult the directors and members of the respective Public Interest Corporation, in redirecting the assets before issuing any directions.

### **Striking Out**

The organization could also face having their status as a Public Interest Corporation struck off, in the eventuality that the organization fails to meet the requirements and standards as prescribed for recognition as a Public Interest Corporation.

In this situation, the Companies Commission of Malaysia may begin an inquiry of the entity, and if the Commission is satisfied with the defaulting, they may publicly publish the decision to strike out the entity. Once the Gazette has been made, the entity is disqualified from being a Public Interest Corporation, and should operate as its original form of business entity.

This policy differs slightly compared with a Community Interest Company, whereby the organization is only allowed to convert into a charitable organization. The reasoning behind this policy is to encourage business activities among entrepreneurs, even within the community of conventional business entities - thereby promoting national economic growth, and so then they still may contribute to community development through existing Corporate Social Responsibility programs.

### **CONCLUSION**

Despite of divergence business structure in Southeast Asia, there is a meeting point in business entity whereby all states recognize corporate

personality as a legal principle for corporate body. Through a social innovation called Public Interest Corporation (PIC), social entrepreneurship could be promoted in Southeast Asia countries.

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