

## **LIBERALIZATION OF MEDICAL PERSONNEL SERVICES TRADE THROUGH THE ASEAN FRAMEWORK AGREEMENT ON SERVICES IN THE MUTUAL RECOGNITION ARRANGEMENT**

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### **ABSTRACT**

International services trade has become free trade regime. Free trade principles have been freely liberalized by developed countries in obtaining maximum profits regardless of the losses suffered by developing countries. In ASEAN region, whose members are mostly developing countries with the largest potential market in the world, this is certainly a cause for concern. Therefore, ASEAN countries see the need for regulations related to services liberalization in ASEAN region. At the 12th ASEAN Summit in 2007, the ASEAN Services Trade Framework Agreement was formed which acts as the basis for the ASEAN services liberalization known as the AFAS. Indonesia has ratified this agreement through Presidential Decree No.88 of 1995 which declares the AFAS as its national policy. As a follow-up measure, ASEAN passed a negotiation on mutual recognition arrangement known as the MRA whose main objective is to facilitate professional services under the AFAS. Indonesia has ratified The MRA on Dental Practitioners on 26 February 2009. This agreement demands the readiness of a country to prepare ideal infrastructure, legal protection, and adequate quality professional resources. Thus, services trade concerning with dental professional health workers, especially in Indonesia, will be able to compete with partner countries that are more prepared.

**Keywords:** *Medical Services Liberalization, Mutual Recognition Arrangement, the ASEAN Framework Agreement on Services, Regulation.*

### **INTRODUCTION**

Regulations related to international trade have been issued in the General Agreement on Tariff and Trade (GATT) instrument which becomes the basis for in forming the World Trade Organization [“WTO”]. Indonesia has become a member of GATT since 1950 under the name of the United States of Indonesia. It was notified by the Dutch Government in Article XXVI paragraph 4. Since then, Indonesia has played an active role in every international discussion, especially those relating to international trade. (Brotosusilo, 2006)

The current world economic development, especially international services trade, has entered free trade regime, which some countries see as a new form of colonialism (Snyder, 1987). The free trade principles have not been properly applied, resulting on trade with no restrictions. Free industrial countries will use any means to maximize their profits regardless of the losses experienced by developing countries.

This proves that there is a growing demand for developing countries to open services market as widely as possible to fellow developing countries, rather than similar demand from developed countries. In other words, developed countries are trying to protect their services industries. (Nirmala, 2019) Therefore, the negative impacts of the free trade system on developing countries outweigh its positive impacts.

A concern about the emergence of internal and external threats in Southeast Asia, which are predominantly developing countries, provides a strong reason to form regulations as an effort to face services trade liberalization

At a meeting of ASEAN countries held in Bangkok, Thailand in 1995, the ASEAN Frame Work Agreement on Services (AFAS) was formed as a basic guideline in creating services trade liberalization in ASEAN (ASEAN, Pedoman Integrasi Ekonomi ASEAN dibidang Jasa, 2009). The AFAS was preceded by the signing of the Framework Agreement on Enhancing ASEAN Economic Cooperation at the 12th ASEAN Summit in 2007 which resulted in the Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015, and at the 13th Summit in Singapore which produced the Blueprint for the ASEAN Economic Community.

Indonesia ratified the AFAS in Jakarta on 30 December 1995 (RI, 2020), with Presidential Decree No.88 of 1995. Following up on the AFAS, the 7th ASEAN Summit was held on 5 November 2001 in Bandar Sri Begawan, Brunei Darussalam. There, the Mutual Recognition Arrangement (MRA) was mandated to facilitate the flow and distribution of professional services under the AFAS agreement. Concerning the field of dental professional health services, Indonesia has signed The MRA Framework on Dental Practitioners on 26 February 2009 in the Economic Ministerial Meeting.

From the above explanations, the author tries to draw a line regarding arising concerns in ASEAN member countries. On one hand, no-restrictions trade provides opportunities for each country through specialization of superior commodity products. But on the other hand, this kind of trade does not necessarily lead to prosperity for all the countries involved. (Will, 1988)

The success of services trade in Indonesia, especially in the field of dental health professional, depends on the improvement in health quality, regulatory readiness, and dentists' ability as the main indicators. If these were to be done, then what Indonesia will do will be in line with the objectives of the AFAS which are mandated in The MRA on Dental Practitioners, in the section of Right to Regulate.

It must be admitted that, inevitably, services trade liberalization must be faced. Therefore, Indonesia's readiness in facing the ASEAN services trade liberalization should become a consideration for the author to conduct a deeper analysis related to the ASEAN services trade liberalization with the AFAS as the legal instrument as mandated in the MRA.

## **RESEARCH METHOD**

This journal writing implemented qualitative research method with normative legal approach. (Diantha, 2016) The primary data used in this research were sourced from books and legal journals (Soemitro, 1990) that discuss services trade liberalization. To enrich data, additional sources were also used, including the Framework Agreement on Enhancing ASEAN Economic Cooperation, which resulted in the "Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015", the Blueprint for the ASEAN Economic Community (AEC Blueprint), the General Agreement Tarrif on Services (GATS) as regulated in Annex 1b of the WTO Treaty, and the Mutual Recognition Arrangement (MRA) framework. This research also implemented literature study as secondary data collection. It used a conceptual approach and an analytical approach. Document analysis technique was sued to search various necessary data. (Mamudji, 1995)

## ANALYSIS AND DISCUSSION

### 1. ASEAN Services Liberalization Regulations in the Framework of the AFAS Agreement

To strengthen services trade liberalization among ASEAN countries, there are at least two legal instruments that are used as guidelines. One of them is the AFAS which acts as the main regulatory instrument for regional services trade liberalization in ASEAN countries. The other one is the GATS that regulates services trade liberalization within the scope of the WTO agreement. Thus, the implementation of the GATS which also includes all the WTO members also binds ASEAN countries that are members of the WTO to perform enact commitments in the WTO.

International regulations regarding services trade liberalization are formulated through the WTO treaty framework, and it led to Uruguay Round which states general agreement on services trade as the main framework. Meanwhile, the GATS includes general regulations regarding all services sectors.

The main objective of these two instruments is to provide a system for adjusting barriers to services trade liberalization. The AFAS has then become a reference for ASEAN countries to gradually increase their market access and ensure equal national treatment for services providers in ASEAN region. Therefore, the AFAS has become a free trade agreement (FTA) in ASEAN Region.

The objectives of services liberalization in ASEAN regional context are outlined in Article I of the AFAS, namely: (ASEAN D. , 2009)

- a. *To enhance cooperation in services amongst member states in order to improve the efficiency and competitiveness, diversify production capacity and supply and distribution of services of their service suppliers within and outside ASEAN.* – Enhancing cooperation in services sector among ASEAN countries in order to increase the efficiency and competitiveness of ASEAN services industry.
- b. *To eliminate substantially restrictions to trade in service amongst member states; and.* – Diversifying production capacity, supply, and distribution of services.

c. *To liberalise trade in service by expanding the depth and scope of liberalization beyond those undertaken by member states under the GATS with the aim realizing a free trade area in services.* - Removing major barriers to services trade liberalization by creating regulations and liberalization scope beyond the commitments under the guidelines of the GATS-WTO.

Concerning services liberalization, the AFAS adopts several principles from the WTO. These principles include:

- (i) *Most Favoured Nation (MFN) Treatment* – Convenience given to a country applies to all other countries;
- (ii) *Non discriminative* – Trade barriers apply to all countries, without exception;
- (iii) *Transparency* – Each member is obliged to publish all laws, regulations, implementation guidelines, and all generally accepted decisions/provisions issued by central and regional governments;
- (iv) *Progressive liberalization* – Gradual liberalization related to economic development of each member.

In enacting their commitments to the AFAS, ASEAN countries are required to provide higher commitments to fellow ASEAN members compared to their commitments to the GATS-WTO and to open more sectors or sub-sectors. That way, the AFAS is also known as the GATS Plus. (APEC)

By taking into account national interests and economic developments of ASEAN member countries, the services liberalization process is carried out gradually and carefully. Therefore, by stipulating that member countries may not withdraw their agreed commitments, the agreed flexibility principle is then implemented. (ASEAN D. , 2009)

The AFAS services trade liberalization mechanism is based on a series of negotiations under the ASEAN Coordinating Committee on Service (CCS). This organization was founded in 1996 and is responsible to the ASEAN Economic Minister (AEM) through the Senior Economic Official Meetings (SEOM).

Under the CCS, ASEAN has coordinated 5 rounds of negotiations that reached 7 packages of commitments under the AFAS agreement covering the liberalization of commercial services, professional services, distribution, construction, education, environmental services, health, marine transportation, tourism, as well as telecommunication and information technology.

The AFAS round of negotiations are based on several parameters and timeframes stated in the ASEAN Economic Community Blueprint (AEC Blueprint) discussed at the 13th ASEAN Summit in Singapore in November 2007. The ASEAN Services liberalization has 13 coverage targets, one of which is related to Mutual Recognition Arrangements.

In the AEC Blueprint, it is stated that a necessary effort to support services liberalization is the establishment of the MRA. In other words, in order to encourage liberalization in this sector, especially those related to the Presence of Natural Person, the MRA negotiation is conducted to encourage freer worker mobility in ASEAN region.

The MRA is used to facilitate the transfer of professional personnel among ASEAN countries, especially in the context of market integration while maintaining the specificities of each country. The MRA agreement is also used to exchange information on best practice in standards and qualifications

The MRA aims to create accreditation procedures and mechanisms to achieve equality and recognize differences existing among countries in terms of education and training, experience, and licensing requirements for professional practices. With this implementation, ASEAN countries will get several benefits in the form of reduced costs, legal certainty, increased competitiveness, and free trade flows. Until 2020, there have been 8 MRA agreements in the service sector that have been signed by ASEAN countries, that are:

**Tabel 1 *Mutual Recognition Arrangements***

<b>NO</b>	<b>MRA</b>	<b>Tempat dan tanggal penandatanganan</b>
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1	MRA on Engineering Services	Kuala Lumpur, 9 Desember 2005
2	MRA on Nursing Services	Cebu, Filipina, 8 Desember 2006
3	MRA on Architectural Services	Singapura, 19 Desember 2007
4	Framework Agreement for Mutual Recognition on Surveying Qualification.	Singapura, 19 Desember 2007
5	MRA on Tourism Professional	Ha Noi, Vietnam, 9 Januari 2009
6	MRA on Accountancy Services	Cha-am, Thailand, 26 Februari 2009
7	MRA on Medical Practitioners	Cha-am, Thailand, 26 Februari 2009
8	MRA on Dental Practitioners	Cha-am, Thailand, 26 Februari 2009

The MRA is defined as professional practitioners from certain service sub-sectors who are individuals from certain countries who have completed certain professional trainings and fulfilled qualifications in certain fields and are registered and/or licensed by professional regulatory bodies which are technically, ethically, and legally handle professional practitioners in their respective fields.

There are 6 regulatory criteria provided by the services liberalization cooperation framework through the MRA which consist of education, assessment, registration, licensing, advance professional education experience, and code of ethics.

Professional regulatory authority, as a recognition mechanism, refers to any organizations given the authority to regulate and supervise professional practitioners in their respective fields. In this case, there are several exceptions, one of which is contained in the MRA of medical and dental health services. There is a provision which states:

*"any arrangement which would confer exemption from further assessment by the PMRA/PDRA if the host country may be concluded on with the involvement and consent of that PMR/PDRA"*

In terms of dispute resolution, the following provisions are generally found in the MRA in ASEAN which states that:

*“ASEAN member states shall at all times endeavor to agree on the interpretation and application of this MRA and shall make every attempt through communication, dialogue, consultation and cooperation to arrive at a mutually satisfactory resolution of any matter that might affect the implementation of this MRA”*

These provisions are based on the ASEAN Protocol on Enhanced Dispute Settlement Mechanism, drawn up in Vientiane, Lao PDR on 29 November 2004, which are applied to disputes concerning with interpretation, implementation, and application of provisions in the MRA mechanism.

Services liberalization in ASEAN region aims to create a competitive environment to provide a better and more efficient mechanism. Modern economies rely heavily on fast and effective services to promote the growth of other economic sectors. Given that roughly 40%-50% of the Gross Domestic Product (GDP) of ASEAN countries comes from services trade, then services liberalization plays a strategic role in the economies of ASEAN countries. (ASEAN, ASEAN Statistical Yearbook, 2020)

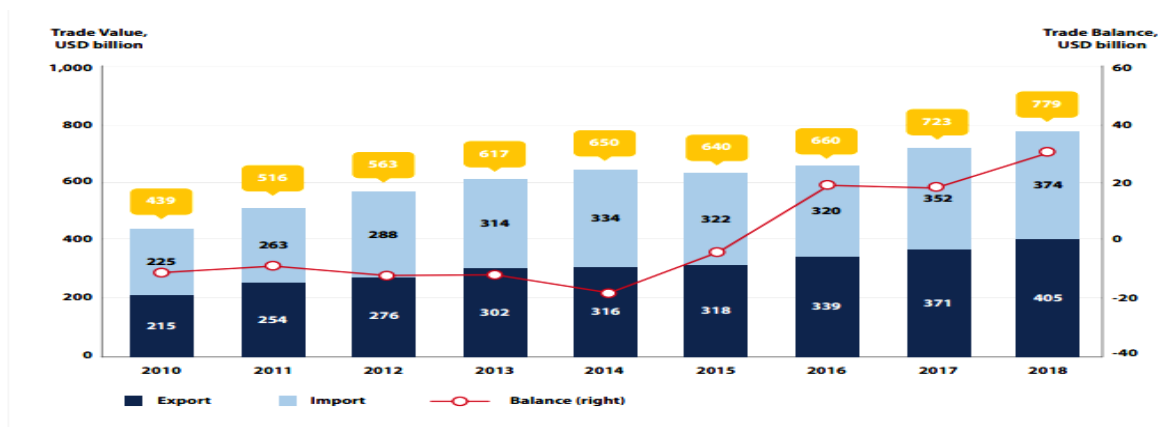
To show its commitments to the AFAS, the Indonesia government issued the Presidential Decree No.18 of 2020 concerning the 2020-2024 National Medium-Term Development Plan (RPJMN) through the National Development Planning Agency. One of its objectives is to improve the quality of health and human resources of and simplification of regulations.

Through progressive and well-managed services liberalization, an expansion of production capacity and economic growth will be triggered in ASEAN region. As a domestic services provider, Indonesia will benefit from more open access to markets, as well as from new information and ideas emerging as a result of the opening up of services



sector. In this case, services trade liberalization offers some advantages for Indonesia in the forms of influx of technology and new knowledge and management skills. (ASEAN, ASEAN Integration Report, 2019)

### ASEAN's Trade in Services, 2010-2018



Source: ASEAN Secretariat (as of September 2019).

### ASEAN Exports of Services 2010-2019

Host Country	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Brunei Darussalam	460.5	500.6	482.7	492.8	557.8	650.6	530.4	551.4	570.6	617.9
Cambodia	2,028.5	2,730.1	3,192.1	3,493.7	3,810.8	3,954.7	4,032.9	4,608.2	5,451.2	6,086.3
Indonesia	16,670.5	21,888.2	23,660.2	22,944.1	23,530.9	22,220.9	23,323.5	25,327.7	31,206.9	31,644.8
Lao PDR	511.0	549.7	643.4	780.6	764.4	844.1	834.9	780.5	921.4	1,179.2
Malaysia	34,509.5	38,849.8	40,562.3	42,110.2	42,047.8	34,847.1	35,582.4	37,057.4	40,240.5	40,988.1
Myanmar	376.8	765.5	1,233.0	2,760.1	3,113.8	3,753.4	3,785.1	3,817.8	4,653.5	6,662.8
Philippines	17,782.0	18,878.0	20,439.2	23,335.2	25,498.1	29,065.0	31,203.6	34,831.6	38,396.8	40,973.6
Singapore	100,383.1	119,256.7	129,446.4	142,027.7	153,771.0	153,202.4	151,695.2	169,713.2	202,583.4	204,807.4
Thailand	34,339.8	41,544.6	46,521.4	54,804.1	51,940.2	58,082.1	63,786.4	70,964.2	77,473.6	81,994.2
Viet Nam	7,459.7	8,691.0	9,620.0	10,710.0	12,231.0	12,580.0	22,511.7	22,826.3	27,040.0	29,824.9
<b>ASEAN</b>	<b>214,521.5</b>	<b>253,654.2</b>	<b>275,800.7</b>	<b>303,458.5</b>	<b>317,265.8</b>	<b>319,200.4</b>	<b>337,286.1</b>	<b>370,478.3</b>	<b>428,537.9</b>	<b>444,779.1</b>

Source:  
ASEAN Secretariat

Note:  
1) Based on IMF Balance of Payments Manual, 6<sup>th</sup> Edition

### ASEAN Imports of Services 2010-2019

(in million US\$)

Host Country	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Brunei Darussalam	1,267.3	1,817.4	2,639.9	2,857.5	2,190.2	1,657.6	1,645.3	1,248.1	1,578.5	1,807.0
Cambodia	1,018.4	1,387.9	1,591.8	1,790.6	2,083.8	2,242.4	2,430.5	2,745.1	3,056.1	3,273.9
Indonesia	26,461.0	31,691.4	34,224.4	35,014.6	33,540.6	30,917.5	30,407.4	32,706.8	37,691.9	39,398.3
Lao PDR	263.1	321.6	738.6	1,057.1	1,150.1	1,078.5	1,022.4	1,116.4	1,154.1	1,252.6
Malaysia	32,479.9	38,373.8	43,326.6	45,154.6	45,319.0	40,129.8	40,143.0	42,372.2	44,581.2	43,624.3
Myanmar	808.4	1,099.9	1,463.5	2,197.7	2,197.9	2,398.0	2,515.0	2,880.8	3,457.1	3,653.8
Philippines	12,017.0	12,318.0	14,259.5	16,320.4	20,921.6	23,610.2	24,160.5	26,138.5	26,789.0	27,928.1
Singapore	100,518.8	117,827.2	132,909.6	149,712.9	166,662.1	161,696.0	158,858.3	180,276.1	200,491.7	199,043.7
Thailand	41,333.3	46,097.4	45,671.4	47,402.8	45,247.3	42,518.3	43,511.4	46,668.3	54,939.1	58,669.2
Viet Nam	9,921.0	11,859.0	11,050.0	13,538.0	15,519.0	16,703.0	17,808.2	18,707.9	20,374.0	21,138.0
<b>ASEAN</b>	<b>226,088.2</b>	<b>262,793.6</b>	<b>287,875.3</b>	<b>315,046.0</b>	<b>334,831.6</b>	<b>322,951.4</b>	<b>322,502.0</b>	<b>354,860.1</b>	<b>394,112.7</b>	<b>399,788.9</b>

Source:  
ASEAN Secretariat

Note:  
1) Based on IMF Balance of Payments Manual, 6<sup>th</sup> Edition

## **2. The AFAS Implementation through the MRA in Providing Legal Protection for Dental Health Services Profession in Indonesia**

In order to facilitate the flow of professional personnel among ASEAN member countries, in 2001 ASEAN agreed to initiate negotiations on the MRA through the Coordinating Committee on Service (CCS) forum. This MRA prepared a sectorial approach for every professional workforce in a particular service sector. The preparation of this MRA can be done on the basis that member countries that are not ready can join at the next opportunity when they are ready.

Focusing on health sector, until 2020 there have been 3 MRAs which are the scope of negotiations in the professional field of medical personnel, including the MRA on Medical Practitioners, the MRA on Nursing Practitioners, and the MRA on Dental Practitioners. All of which were signed in 2009. (ASEAN, ASEAN Integration Report, 2019)

As one of the founding countries of ASEAN, Indonesia has been able to create regional stability in various sectors of Southeast Asia Region. In terms of dental medical professionals, in implementing The MRA on Dental Practitioners, by 2020 Indonesia is in

the stage of mutual recognition of professional services which include exchanges of information data, visiting experts, as well as science and technology experts.

The hope of mutual recognition from ASEAN member countries as contained in the MRA framework will result in a simple and effective ASEAN services liberalization regulatory agreement to serve as the basis for the regulatory mechanism for dental medical personnel services liberalization in ASEAN region in its vision for 2025.

The framework mechanism for dental services liberalization in ASEAN still implements regulations from their respective countries. Regarding exchange mechanism for dental medical personnel, Indonesia provides a regulation in the form of the Minister of Health Regulation No. 67 of 2013 concerning the utilization of foreign health personnel and the Indonesian Medical Council Regulation concerning adaptation and registration procedures. These two regulations explain that foreign medical personnel must meet certain criteria and conditions that have been stipulated in National Law No.29 of 2004 concerning Medical Practice, specifically Article 32 paragraph (1) which states:

*Foreign dental medical personnel entering Indonesia must first take competency evaluation in order to obtain competency certification which is then used to issue a Temporary Registration Certificate (STRS) to issue Practice License (SIP). This SIP, both for Indonesian and foreign dentists is necessary to provide medical practice services in Indonesia and must be registered in the Indonesian Medical Council.*

A meeting discussing mutual recognition of dental medical services liberalization by ASEAN members on the Joint Coordinating Committee on Dental Practitioners (JCCDP) on 30 November 2020 was conducted. It resulted in an agreement stating that the ASEAN services trade liberalization contained in the AFAS through the MRA on Dental Practitioners must contain the following qualifications:

- a) Have qualifications recognized by the PMRA from Country of Origin and Country of Target;

- b) Have a valid professional registration and current practice certificate for providing medical practice issued by the PMRA from Country of Origin;
- c) Have provided active medical practices as a Dental Medical Practitioner, for not less than five (5) consecutive years in Country of Origin;
- d) Follow the Continuing Professional Development (CPD) policy mandated by the PMRA from Country of Origin;
- e) Have been certified by the PMRA from Country of Origin for not violating any professional or ethical standards, both local and international levels, with respect to medical practice in Country of Origin and in other countries to the extent mandated by the PMRA;
- f) Have stated that there are no pending investigations or legal proceedings against them in their Country of Origin or other countries; and
- g) Fulfill other requirements that may exist on the application for registration recognized by the PMRA or other relevant authorities of Country of Target.

Article 5 of the MRA on Dental Practitioners under the section of Rights to Regulate, which states:

*“This MRA shall not reduce, eliminate or modify the rights, power and authority of each ASEAN member state, its PDRA and other relevant authorities to regulate and control dental practitioners and the practitioners and the practice of dentistry. ASEAN member states, however, should undertake to exercise their regulatory power reasonably and in good faith for this purpose without creating any unnecessary barriers to the practice of dentistry.”*

The MRA on dental practitioners should not reduce, abolish, or change the rights, powers, and authorities of any ASEAN member countries, the PMRA, and other relevant authorities to regulate and supervise medical personnel services and their implementation. However, ASEAN member countries must use their regulatory powers properly and with good intentions to achieve the objectives of the MRA by avoiding unnecessary barriers to the implementation of dental services.

This provision clearly states that protection of dental medical personnel in the scope of ASEAN is included in the sovereignty of each country of target while still paying attention to safety and matters that are not detrimental to the dental services provided by the aforementioned dentists.

As a follow up measure on the signing of the MRA on Dental Practitioners, Indonesia is currently collaborating with the Indonesian Medical Council, which is an autonomous, independent, non-structural body consisting of the Medical Council and the Dental Council. Together, they are currently drafting guidelines for registration procedures for foreign dentists who want provide medical services in Indonesia.

Article 46 of Law No.36 of 2014 concerning Legal Protection of Health Workers, contains legal provisions related to health workers which states:

*"Legal protection is given to health workers who perform their duties in accordance with professional standards and standard operating procedures."*

This article provides legal protection for health workers in the form of a sense of security in carrying out their profession, as well as protection against dangerous situations that can threaten mental health, both from natural and human causes.

In ASEAN, there is no written statement regarding legal protection for skilled workers. However, as countries that respect human rights, such legal protection is provided in The International Covenant on Civil and Political Right (ICCPR), with its optional protocol of the Universal Declaration of Human Rights (UDHR). The ICCPR basically provides provisions regarding restrictions on the use of authority by the state's repressive apparatus, so the rights accumulated therein are also often referred to as negative rights.

To prevent the threat by foreign health workers, the government plays an important role in protecting national medical personnel. Several efforts have been made by the government including regulating the status of foreign health workers and Indonesian health workers in Law no. 29 of 2004 concerning Medical Practice, Law no. 36 of 2014

concerning Health Workers and its derivatives of the Minister of Health Regulation No. 67 of 2013 concerning the Empowerment of Foreign Citizen Health Workers.

Therefore, the benefits expected by Indonesia as a member of ASEAN services trade through the AFAS framework mandated in the MRA on Dental Practitioners are to facilitate the mobility of qualified dental practitioners in ASEAN, to increase the exchange of information and experts, and to provide opportunities for capacity building and training for Indonesian dentists.

## **CONCLUSION**

The AFAS mandated in the MRA aims to create a competitive environment for medical services liberalization for the sake of better and more efficient provisions. Through progressive and well-managed services liberalization, a certainty and various legal benefits will be provided for domestic medical personnel, especially for Indonesian dentists in the form of technology influx and quality improvement of domestic dentist resources.

The government plays a very crucial role in the effort to protect Indonesian dental health workers in facing the threat of services trade liberalization. There are several efforts made by the government, including regulating the status of foreign health workers and Indonesian health workers through its national regulations which refer to the AFAS and the MRA provisions as its legal framework.

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