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THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER

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Thammasat University

Prof. Yuzuru Shimada
Nagoya University

Melissa Crouch
UNSW Australia

Prof .Henk Adding
Utrecht University

Assoc. Prof. Dr. Hj. Sri Kusriyah
Sultan Agung Islamic University

Democracy In Digital Era : Law, Governance, Sosial And Economic Perspective In Asia, Australia And Dutch

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THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER

THEME : DEMOCRACY IN DIGITAL ERA: LAW, GOVERNANCE, SOCIAL AND ECONOMIC PERSPECTIVE IN ASIA, AUSTRALIA AND DUTCH

Keywords: *Digital Media, Political and Governance Institutions, Electoral Processes, People Representation, Digital Disinformation, Democracy, Digital Economic, Social issue*

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UNSW Australia


Prof Henk Adding
Utrecht University


Prof. Henning Glaser
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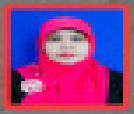
Nagoya University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This agenda aims to provide insights in theory and practice:

1. To exchange and discuss views on the most important issues on Democracy in Digital Era: Law, Governance, Social and Economic Perspective in Asia, Australia and Dutch and its consequences to Law in countries.
2. To discuss the challenges and practical aspect of Democracy and Governance in a Digital Era.

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KATA PENGANTAR

Bismillahirrohmanirrohim

Assalamu'alaikum Wr. Wb.

Puji syukur kehadirat Allah S.W.T, Tuhan Semesta Alam Yang Maha Esa. Alhamdulillah, sebagai ucapan syukur kehadirat Allah Subhanahu Wata'ala kami dapat menyelenggarakan The 6nd Proceeding International Conference And Call Paper dengan tema "*Democracy In Digital Era : Law, Governance, Sosial And Economic Perspective In Asia, Australia And Dutch*" terselenggara dengan baik. Pemilihan tema tersebut dipilih karena pada era searang ini kita dihadapkan dengan era industri 4.0, dimana para kandidat doktor dituntut untuk bisa menyesuaikan dengan perkembangan global dan meningkatkan kompetensi keilmuan serta kemampuan.

Pada seminar ini telah dipresentasikan hasil penelitian dosen dan mahasiswa yang diikuti oleh peneliti-peneliti dari berbagai universitas yang telah mebahas berbagai keilmuan Hukum dan Humaniora.

Sesungguhnya keberhasilan dalam mencapai tujuan pendidikan yang dicita-citakan sangat tergantung pada sikap mental, partisipasi serta disiplin setiap unsur yang terlibat dalam proses belajar mengajar. Mudah-mudahan seminar Internasional yang sederhana ini dapat memberi sumbangsih dalam mencerdaskan bangsa Indonesia serta semoga Allah SWT selalu menyertakan ridho-Nya. Amin. Akhir kata, kami mengucapkan terima kasih kepada pimpinan Universitas Islam Sultan Agung, pimpinan fakultas Hukum Unissuala, pemakalah, editor dan serta pihak-pihak yang telah membantu terselenggaranya seminar ini dengan lancar tanpa hambatan suatu apapun.

Wassalamu'alaikum Wr.Wb.

Table Of Content

Legal Standing Of International Treaties In The National Legal System

Achmad Rusdiannor[1], H. Puar Junaidi[2], S.Sos, Ali Murtadlo[3].

Abstract

This paper discusses the issue of the legal standing of international treaties in the national legal system. International agreements within the framework of the national legal system still raise a problem. This problem is rooted in the lack of clarity about the doctrine adhered to by Indonesian law. The approach method in this paper uses the normative juridical method. The findings in this paper state that an agreement can be effective in the end depending on the national practice of each country. A country is responsible for implementing treaties in a national setting. If its application violates international law, a country cannot use the provisions of its national law as a defence and justification for the violation. International treaties have binding legal force and become a source of law in national law because they have been made in accordance with the provisions of the constitution not because they are contained in the form of legislation.

Keywords : Legal Standing ; International treaties ; national legal system ;

A. INTRODUCTION

The nation and state of Indonesia is a nation that was born "by the grace of Allah the Almighty", and this recognition is officially stated in the highest document of the Preamble of the 1945 Constitution. [4] The issue of the relationship between international law and national law is an interesting issue to discuss. International law is a regulation that regulates transnational matters. International law was originally defined as behavior and relations between States, but in the development of increasingly complex patterns of international relations this understanding later expanded so that international law also deals with the structure and behavior of international organizations and, to a certain extent, multinational companies and individuals. It is inevitable that international law affects national law. This is because it cannot be separated from a country which is an inseparable part of the international community. [5]

The politics of international treaty law in Indonesia is very interesting to study because there are differences in views between constitutional law experts and international legal experts in addressing the application of international agreements in Indonesia. The constitution of the Republic of Indonesia in 1945 did not expressly regulate the relationship between international law with national law within our national legal system. Article 11 of the 1945 Constitution only regulates the relationship between the President and the DPR in terms of making international agreements with other countries.[6]

The term "agreement (treaty)" is the term most widely used in the context of the agreement/treaty

1. Faculty of Law, Sultan Agung Islamic University, Semarang
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4. Sri Endah Wahyuningsih , *Urgensi Pembaharuan Hukum Pidana Materiel Indonesia Berdasarkan Nilai–Nilai Ketuhanan Yang Maha Esa*, Jurnal Pembaharuan Hukum, Volume I No.1 January-April 2014, p. 17-23
5. Rispalman, Hubungan Hukum Internasional Dengan Hukum Nasional,Dusturiyah : Jurnal Hukum Islam, Perundang-undangan dan Pranata Sosial, Vol 7, No 1 (2017), p.1-12
6. Wisnu Aryo Dewanto Akibat Hukum Peratifikasian Perjanjian Internasional Di Indonesia:Studi Kasus Konvensi Palermo 2000, Veritas et Justitia, Vol 1, No 1 (2015), hlm.39-60

(international agreement), but a number of terms or designations are usually and sometimes used to express the same concept, such as the protocol (protocol), act, charter (charter), covenant (covenant), pacts and the concordat. Each of these terms refers to the same activity and the use of one term rather than another often implies more than a desire for multiple expressions. [7]

International treaties are agreements that are entered into between members of the community of nations and aim to result in certain legal consequences. From this definition, it is clear that to be called an international agreement, the agreement must be entered into by the subject of international law who is a member of the international community. First of all, what includes agreements between countries.[8]

Based on article 2 of the Vienna Convention on the Law of Treaties , 1969, it is stated that the "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. So several elements can be drawn from the definition limits set out in the Vienna convention, namely: (1). An agreement made between countries in writing; (2). Regulated by international law; (3). It can be a single instrument or two or more related instruments and whatever name is given to it. [9]

If viewed historically, the 1954 DenHaag Convention on the protection of cultural objects in situations of armed conflict is an international treaty that is multilateral in nature, because it was held or made by a number of countries, namely 56 countries, even now 95 countries have ratified it. In addition, this convention was formed based on international law, including international conventions that already exist and are valid and formulated in writing.

Agreement is an international agreement if the agreement is regulated by an international legal regime. In this case it seems clear, the 1954 Den Haag Convention is a convention which is regulated and subject to the international humanitarian law regime, so that in essence this convention is built on the basis of the principles of international law and the principles of humanitarian law. [10]

This definition was later developed in Article 1 paragraph (3) of Law no. 37 of 1999 concerning Foreign Relations, namely:

"International treaties are agreements in any form and designation, governed by international law and made in writing by the Government of the Republic of Indonesia with one or more countries, international organizations or other international legal subjects, as well as creating rights and obligations to the Government of the Republic of Indonesia which are public law in nature. "

Furthermore, in Article 1 point a of Law no. 24 of 2000 concerning International Treaties is formulated as follows:

"International treaties are agreements, in a certain form and name, which are regulated in international law which is made in writing and creates rights and obligations in the field of public law."

From a functional perspective, from a legal source perspective, international agreements can be divided into two groups, namely " treaty contracts" and "law making treaties" . What is meant by "treaty contracts" are agreements such as a contract or agreement in civil law which only results in rights and obligations between the parties who enter into the agreement, for example, agreements regarding dual

7. Malcolm N. Shaw, International Law , Fifth Edition, Cambrige University Press, United Kingdom, 2003, p. 812
8. Hilda , Position and Binding Power of the 1954 Denhaag Convention on the Protection of Cultural Objects in Armed Disputes against Disputing Parties (United States-Iraq) According to the 1969 Vienna Convention on International Treaties, Cita Hukum Journal , Vol. I No. June 1, 2013 , pp. 109-122
9. Ibid
10. Boer Mauna, International Law: Definition, Role and Function in the Era of Global Dynamics , 2nd Edition, Alumni, Bandung, 2005, p . Lm . 88.

citizenship, border agreements and trade agreements. Meanwhile, "law making treaties" is intended as an agreement that lays down provisions or legal rules for the international community as a whole, for example the 1969 Vienna Convention and the 1982 Law of the Sea Convention. "Law making treaties", is an international agreement that contains legal principles. which can apply universally to members of the community of nations; thus, they are categorized as international treaties that serve as direct sources of international law. The provisions formulated in the law making treaties can be general or specific in the fields of politics, security, economy, social, law, communication and humanity. Thus, there is only one specific type of treaty that can be considered as international law, namely what is called a law making treaty. Unless held by a number of countries acting in the common interest also aimed at creating a new regulation.

The international agreement itself has various names and terms , including treaty, pact, convention, statute, charter, declaration, protocol, arrangement, accord, modus vivendi, covenant, and so on. According to Boer Mauna, both the 1969 Vienna Convention on Treaty Law and the 1986 Vienna Convention on Treaty Law between States and International Organizations or between International Organizations do not differentiate between various forms of international agreements. [11] However, experts agree that judged juridically all of these terms have the same meaning as international agreements. [12]

In practice, several international treaty countries can be divided into two groups. The first category is an agreement formed through three stages of formation, namely negotiation, signing and ratification. The second category is an agreement formed through two stages, namely negotiation and signing. For the first group, it is usually carried out for agreements that are considered very important so that it requires approval from the agency that has the right to enter into the agreement (treaty making power). This is usually based on the reason for the formation of new laws or related to state finances. Whereas the second category was simpler, this agreement was not considered very important and needed a quick settlement.[13]

The consent of a country to bind itself to an agreement (consent to be bound by a treaty) can be given in various ways and depends on the agreement between the participating countries at the time the agreement was concluded. According to Article 11 of the Vienna Convention, an agreement to bind itself to a treaty can be expressed in various ways, namely signing, exchange of instruments that form the agreement, ratification, acceptance, and accession or through other approved means. The form of agreement which is the most frequently used method is signing and ratification.[14]

The purpose of writing this study is to determine and analyze the legal standing of international agreements in the national legal system. International treaties within the framework of a national legal system still cause problems. This problem is rooted in the lack of clarity about the doctrine adhered to by Indonesian law.

B. RESEARCH METHODS

The research is a qualitative research.[15]The method used is a normative juridical approach. the normative juridical approach method , namely research that explains the provisions in the prevailing laws and regulations, is related to the realities in the field, then analyzed by comparing the demands for ideal values that exist in the laws and regulations with the existing reality. in the field. This type of research is

11. Boer Mauna, Op.Cit ., P. 89.
12. Yudha Bhakti Ardhiwisastra, International Law of Bunga Rampai , Alumni, Bandung, 2003, p. 108
13. Sri Endah Wahyuningsih, *Protection against Witnesses in Criminal Justice Proceedings in Indonesia Based on the Humanitarian Value,* International Journal of Innovation, Creativity and Change. www.ijicc.netVolume 13, Issue 7, 2020, https://www.ijicc.net/images/vol_13/Iss_7/13701_Wahyuningsih_2020_E_R.pdf, p.1786.
14. Rosmawati, The Influence of International Law on the Development of National Law, Kanun Jurnal Ilmu Hukum , No. 61, Th. XV (December, 2013), p. 455-471.
15. Anis Mashdurohatun, Ferry Susanto Limbong, Legal Protection of Trademarks Based on the Justice Value, International Journal of Innovation, Creativity and Change. Volume 12, Issue 12, 2020.pp.1213.

descriptive analysis, because the researcher wishes to describe or explain the subject and object of the research, which then analyzes and finally draws conclusions from the results of the study. It is said to be descriptive because this research is expected to obtain a clear, detailed, and systematic picture, whereas it is said to be an analysis because the data obtained from library research and case data will be analyzed to solve problems in accordance with applicable legal provisions.[16]

C. RESEARCH RESULTS AND DISCUSSION

1. Legal standing of international agreements in the national legal system

In the development of life with humans who tend to know less about national borders, it is possible that the agreement between countries in resolving various problems as outlined in the form of international agreements is an increasingly important source of law. The problem is, because there are more and more trans-national problems that require arrangements whose scope is only possible with international treaty instruments. According to Mochd, Burhan Sani, this is because international agreements have succeeded in creating new legal norms needed to regulate relations between countries and between peoples of countries whose volumes are getting bigger, the intensity is getting stronger, and the material is getting more complex.[17]

Meanwhile, the problem of the place of international law in the overall legal system is an interesting issue, both from a theoretical or legal perspective as well as from a practical point of view. At this level, the implementation of an international treaty as one of the main sources of international law is closely related to the national legal system of a participating country. It must be admitted that in terms of theoretical and practical optics, the existence of international agreements within the framework of a national legal system still raises a problem. This is due to the absence of law or doctrine in the Indonesian legal system regarding the relationship between international law and national law.

In theory, the issue of an international agreement is rooted in the lack of clarity about the flow / doctrine espoused by Indonesian law on the relationship of international law and national law. In government circles and public opinion, various lines of thought are polarized along two poles. First, the line of thought that places international treaties that have been ratified as part of national law. Second, the line of thought that requires a separate national legislation to implement an international agreement that has been ratified.[18]

In theory, there are 2 (two) views on international law, namely: First, the Voluntarism View, which is a view that bases the application of international law on the will of the state. Second, the Objectivist View, namely the view that assumes the existence and application of international law is independent of the will of the state and is based on the existence of legal norms.[19] These different views have different legal consequences. The view of voluntarism will result in the existence of international law and national law as two legal instruments that exist side by side and separately. Meanwhile, the Objectivist View considers it as two parts of a single legal instrument. [20]

Furthermore, the issue of the relationship between international law and national law can be discussed from two perspectives, namely from the point of view of theory or legal science and from the point of view and practical needs. From a theoretical point of view it can be seen from:

16. Anis Mashdurohatun, Syaiful Khoiri Harahap & Gunarto, Implementation Of Dispute Settlement Outside The Court Through The Indonesian National Arbitration Agency (Bani) Based On Islamic Justice, Hamdard Islamicus, Vol. 43 No. 1 (2020), pp.387.
17. Mochd. Burhan Tsani, Law and International Relations , Liberty, Yogyakarta, 1990, p. 8-9
18. Damos Dumoli Agusman, "The Legal System of International Treaties in Indonesian National Law, Overview of Indonesian Practices", International Law Journal , Volume 5, Number 3, (April 2008), p. 488-489
19. Mochtar Kusumaatmadja and Etty R. Agoes, Introduction to International Law , Second Edition, Alumni, Bandung, 2002, p. 56
20. Ibid.

1. Dualism that places international law as a legal system separate from national law. In this case there is no hierarchical relationship between these two legal systems. The consequence of this flow is the need for "transformation" legal institutions to convert international law into national law based on the laws and regulations applicable to this conversion procedure. By converting these international legal principles into national law, the character will change into a national legal product and act as national law and subject to and enter into the order of national legislation.
2. Monism that places international law and national law as part of a unified legal system. International law applies within the scope of national law without having to go through a process of transformation. Even if there is national legislation that regulates the same problem, the legislation in question is only an implementation of the intended international law. In this case, the applicable international law in the national legal system will remain in its character as international law.

The consequence of the view of monism is that between these two sets of legal provisions there may be a hierarchical relationship. According to Mochtar Kusumaatmadja, this hierarchy problem gave birth to 2 (two) different points of view in the flow of monism, namely:[21]

1. Monism understanding primat national law, which is an understanding that argues that in the relationship between national law and international law the main thing is national law. International law is nothing but a mere continuation of national law, or none other than national law for foreign affairs (auszeres staatsrecht). In other words, international law is based on national law.
2. Monism with the primatism of international law, which is an understanding that argues that in the relationship between national law and international law the main thing is international law. National law is subject to international law and is essentially binding based on a delegation of powers from international law.

Unfortunately, the Indonesian legal system has not indicated whether it adheres to monism, dualism or a combination of both. If it is related to the provisions of Article 4 paragraph (2) of the International Treaty Law, at first glance, it appears that basically Indonesia adheres to monism, because every formulation of government foreign policy must be guided by the provisions of national law, but on the other hand, based on practice, Indonesia tends to monism with priority international law. Although Kusumaatmadja acknowledged this understanding or theory was not able to provide satisfactory answers in explaining the problem of the relationship between national law and international law, he clearly portrayed Indonesia as leading to the primat monism of international law and suggested that in the future the political-law choice to be taken was the flow this.[22]

In this case, both monism theory and dualism theory argue that a treaty can be effective in the end depending on the national practice of each country. It is clear that a country is responsible for implementing treaties in a national setting. If its application violates international law, a country cannot use the provisions of its national law as a defence and justification for the violation.

The practice of Indonesian legislation in the application of international legal norms through both

21. Ibid.
22. Danel Aditia Situngkir , Bounding of the State in International Treaties, LEGAL REFLECTION , Volume 2 Number 2, April 2018, H lm. 167 - 180

laws and presidential decrees shows that Indonesia adheres to the doctrine of transformation which is believed to be a concrete form of the teachings of the dualism school of thought. Meanwhile, in the decision of the Constitutional Court (MK) in the judicial review of Law Number 16 of 2003 concerning the Eradication of Criminal Acts of Terrorism, the Court refers directly to various international legal instruments such as the Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (ICCPR 1966), Rome Statue of the International Criminal Court (ICC, 1998) and so on, which shows that Indonesia also absorbs from monism schools. Indonesian practice related to the relationship between national law and international law reflects the acceptance of both the monism and dualism schools of thought. At the same time it can also be said that Indonesia is practicing a more pragmatic approach. [23]

If Indonesia will apply the application of international law pragmatically, in practice Indonesia will make 3 (three) grades of international agreements, namely: [24]

1. International treaties that will take effect immediately without the ratification/accession process. To the treaty in this category then the choice of Indonesia is applying the theory of Incorporation (Automatic standing incorporation)
2. An agreement that requires transformation in national law (legislative ad hoc incorporation) and requires the approval of the House of Representatives in the transformation process , the form of the transformation is the Ratification Law.
3. International treaties that require transformation in national law (legislative adhoc incorporation) but do not require the approval of the House of Representatives in the transformation process. The form of the transformation is a Presidential Regulation.

Furthermore, certain international treaties do not require implementing provisions, on the contrary there are treaties requiring implementing provisions in their national law. In international law there are two theories which explain the need for national implementation provisions in the context of implementing international agreements. The two theories referred to are the theory of incorporation and the theory of transformation. According to the incorporation theory, international law acts as national law automatically so there is no need for ratification. Meanwhile, the theory of transformation of international law can only apply as national law if it has been ratified in the form of legislation. In other words, international treaties have a legal effect on the national atmosphere. International treaties still maintain their international character (authenticity), but are implemented in a national legal atmosphere.

So what about the practices adopted in Indonesia? According to Kusumaatmadja, in the context of Indonesia, this issue is not regulated in the 1945 Constitution but can be found in practice so far. Indonesia does not adhere to the theory of transformation, let alone an incorporation system. Indonesia is more inclined to the system of Continental European countries where it immediately considers that it is bound by the obligation to implement and comply with all provisions of agreements and conventions that have been ratified without the need to re-enact implementing legislation. However, in some cases the promulgation of the national law is absolutely necessary, namely, among other things, if changes are needed in the national law, which directly concerns the rights of citizens as individuals.[25]

23. Dhiana Puspitawati, Adi Kusumaningrum , Reposisi Politik Hukum Perjanjian Internasional Dalam Rangka Mewujudkan Tertib Hukum di Indonesia, Masalah-Masalah Hukum , Jilid 45 No.
24. Aminoto and Agustina Merdekawati, Prospects of Placing International Agreements Binding Indonesia in the Hierarchy of Indonesian Legislation, Mimbar Hukum , Vol. 27, No.1, February 2015, p. 87.
25. Mochtar Kusumaatmadja and Etty R. Agoes, Op.Cit. , p. 92

In the author's view, Indonesia does not adhere to a transformation system or an incorporation system, but tends to favor a mixture of the two systems. This can be seen in Article 9 of the International Treaties Law, the ratification (ratification) of international treaties carried out by Law and Presidential Decrees.

2. Enforcement of International Treaties in the National Legal System

Ratification by constitution if with regard to issues directly related to the interests of the nation as a political issue, peace, defence and security, sovereignty, human rights and the environment, the establishment of new legal norms, and loans and or grants. Meanwhile, other international treaties that are not included in the above categories are procedural in nature and require application in a short time without affecting the national legislation, ratification by Presidential Decree and a copy submitted to the DPR for evaluation.

So the substance of this Article is related to the theory of transformation. In addition, Article 15 and Article 16 also regulate international treaties that are not ratified by Laws and Presidential Decrees but take effect immediately after signing or exchanging agreement documents or diplomatic notes or other agreed methods, especially agreements that technically regulate cooperation in various field. So the substance is related to the doctrine of incorporation.

After all, whether or not an international treaty is required to make implementing rules if it is applied in a national legal environment depends on the contents of the agreement itself, namely whether the contents of the agreement have the character of a self-executing agreement? On the other hand, if an agreement does not apply automatically in a national atmosphere, the international agreement means that it is non-self-executing. If the agreement automatically applies as international law, then the problem can arise, namely how is the existence of the treaty law if it is faced with national law that is not in accordance with the contents of the agreement? In this case, if we return to the transformation theory which teaches that a treaty which has been made into national law by means of transformation will have the same status as other national laws, the lex posterior derogat lege priori principle will be applied.

If elaborated further, in Indonesian Constitutional Law it is not easy to find legal rules governing the status of International Law and International Treaties in the national legal system. The 1945 Constitution does not include a single article regulating this status. Articles 11 and 13 of the 1945 Constitution of the Republic of Indonesia, which have to do with international law, only regulate the process/procedure for the ratification and appointment and acceptance of ambassadors in the realm of national law. Laws relating to International Law, such as Law Number 37 of 1999 concerning Foreign Relations and Law Number 24 of 2000 concerning International Treaties also do not include separate articles regulating this status.

The basis for the president's authority in making international agreements is regulated in Article 11 of the 1945 Constitution of the Republic of Indonesia which regulates international agreements as follows:[26]

1. The President with the approval of the House of Representatives declares war, makes peace, and makes agreements with other countries.
2. The President in making other international agreements that have broad and fundamental consequences for the lives of the people related to the financial burden of the State, and / or requiring the amendment or formation of laws must be approved by the House of Representatives.
3. Further provisions of the international treaty set in the constitution.

26. Firdaus, The Position of International Law in the Indonesian National Legislative System, Fiat Justisia journal of legal science , Volume 8, No.1, January-March 2014, pp. 36-52

The provisions of Article 11 of the 1945 Constitution of the Republic of Indonesia do not appear to have sufficiently regulated the position and position of International Law in the Indonesian Constitutional Law system and Article 11 cannot be used as a legal umbrella when examining international provisions that will become part of National Law and in practice it is also unclear Indonesia embracing monism or dualism in the relationship between National Law and International Law. Even Law no. 24 of 2000 concerning International Treaties, is not in sync with the spirit and spirit of the 1945 Constitution of the Republic of Indonesia as mandated by the Preamble of the 1945 NRI Constitution, does not fit the structure of state power sharing, hierarchy of laws and regulations, if it is placed in the position and hierarchy of International Law, which will raises various implications and theoretical and practical problems, which can be questioned and challenged.

Article 11 of the 1945 NRI Constitution does not regulate the relationship between International Law and National Law, but this article regulates the President's constitutional authority to make international agreements in the 1945 NRI UUD system. According to the 1945 Constitution of the Republic of Indonesia, the President is the head of government and has the authority to represent the Government. Indonesia in foreign relations in this case makes international agreements, thus Article 11 is the internal material of the Indonesian constitution. In relation to aspects of International Law, the provisions of Article 11 can have external consequences, namely in the context of the relationship between the Government of Indonesia and other countries that enter into agreements with Indonesia. If internally the President has committed an act in accordance with the provisions of Article 11, then the act is constitutionally lawful and therefore has legal consequences. Because it is a legal act, it means that it is legally binding on other state institutions, including the legal subjects related to the contents of the agreement. Whereas from the international aspect in accordance with the universal legal principle that what is done by a legitimate representative of a country will bind all elements that it represents, both state institutions and citizens, this provision is not regulated in the Constitution but becomes a universal principle.[27]

The enforcement of international agreements into the Indonesian legal system is not always based on the existence of implementing rules. The basis for its implementation is in the constitutional system which gives authority to the President as the only institution that represents the State in foreign relations. If the President has used the powers in accordance with the provisions of the constitution, as a consequence the result must also be accepted as constitutional because it will also mean carrying out constitutional orders. The granting of a place for an International Agreement in the national legal system is a reflection of constitutional enforcement. Without having to find its basis in the Vienna Convention regarding the Law of Treaty, the basis for binding international treaties is contained in the constitution which does not require that international treaties be contained in the form of laws. If after all, Indonesia has never accepted the Law of Treaty, it does not mean that Indonesia does not have a legal basis to enforce an International Agreement in its national law.[28]

For countries that have never accepted the Law of Treaty but are in fact involved in making international agreements with other countries and accepting the provisions of the Law Treaty as their reference, the Law Treaty can be considered in substance which has become an international custom so that it can become one of the sources International law. This means that International Treaties have binding legal force and become a source of law in National Law because they have been made in accordance with the provisions of the constitution not because they are contained in the form of Laws, so that International

27. Harjono, International Treaties in the UUD 1945 System , Law Evaluation Workshop Paper No. 24 of 2000 concerning International Treaties, 18-19 October 2008, in Surabaya, p. 9.
28. Ibid.

Agreements are a source of law outside the source of law.

CONCLUSION

Legal standing international agreement within the national legal system in International treaties within the framework of a national legal system is still problematic. This problem is rooted in the lack of clarity about the doctrine adhered to by Indonesian law. that an agreement can be effective ultimately depends on the national practice of each country. A country is responsible for implementing agreements in national settings. If its application violates international law, a country cannot use the provisions of its national law as a defense and justification for the violation. International treaties have binding legal force and become a source of law in national law because they are made in accordance with the provisions of the constitution, not because they are set forth in the form of statutory regulations.

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