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The Principle of *Pacta Sunt Servanda* in Enforcement International Criminal Law

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Abstract. *The development of the world which is marked by the rapid progress of science and technology has increased the intensity of relations and interdependence between countries. The improvement of these relations further enhances international cooperation as outlined in various forms of international agreements. General arrangements regarding international agreements are contained in the 1969 Vienna Convention on International Treaty Law. In the general principles of international law, it is known as the principle of Pacta Sunt Servanda, which generally means that the agreement is only binding on the parties that make it. This research study is normative juridical in nature as the main approach, by looking at international law as rules/norms and general law principles in the enforcement of international criminal law. In general, Pacta Sunt Servanda is interpreted as the binding of a country to an international agreement caused by the agreement of the country to bind itself to an international agreement. A country that is a participant in an international agreement made based on international treaty law must comply with the agreement/agreement, because the country is bound by Pacta Sunt Servanda. The existence of the principle of Pacta Sunt Servanda in the enforcement of international criminal law is getting stronger from time to time. This is seen by the increasing difficulty of the criteria given to enforce provisions in agreements relating to international crimes to countries that are not bound by the international treaty.*

Keywords: Enforcement; Pacta Sunt Servanda; Treaty.

1. Introduction

International agreements are one source of law Internationally recognized by the international community, such as those quoted by Boer Mauna that this is

recorded in article 38 of the statute International Court of Justice, that the sources of international law are:

a. International Agreements (international conventions), neither of which general or specific,
b. International Customs (international custom)
c. Common law principles (general principles of law) which recognized by civilized nations.
d. Court decision (judicial review) and expert opinion whose expertise has been recognized (teaching of the most highly qualified publicist)is an additional source of international law.[1]

Since the establishment of the Republic of Indonesia, the pattern of foreign relations has been wanted is free active politics which is one embodiment of the goals of the Government of the Republic of Indonesia, namely protect the entire nation and the entire homeland of Indonesia, advancing the general welfare, educating the life of the nation and participate in implementing world order based on independence, lasting peace, and social justice. To use carry out the free and active foreign policy, the nation Indonesia as part of the nations of the world combines themselves in international relations. Instruments used in international relations including agreements. About international agreements, Article 11 of the 1945 Constitution (UUD 1945) stipulates that the President with the approval of the DPR makes agreements with other countries.

The development of the world is characterized by rapid progress science and technology has increased the intensity relations and interdependence between countries. The improvement of these relations further enhances international cooperation as outlined in various forms of international agreements. Special for countries of Southeast Asian regional countries, have formed the Charter Association of Southeast Asian Nations (ASEAN) as the basis relationship and cooperation.[2]

By getting bigger and increasing each other interdependence between countries, will encourage the holding of cooperation international law, which in many cases is formulated in the form international agreement. There are differences in state systems, forms countries, differences in outlook on life, culture, religion or trust is not a barrier to cooperation, can even increase the intensity of relations between countries. Likewise the issues that are the target of internal regulation

[1] Boer Mauna, International Law Understanding Roles and Functions in the Era Global Dynamics, Alumni Publishers, Bandung, 2000, p. 84
[2] Zulkarnain Ridlwan, Maintaining the Pacta Sunt Servanda Principle of International Agreements, Monograph on International Law Dimensions, Vol 2 January 2014, p. 75-97 3Sam Suhaedi Admawiria, Introduction to International Law, Alumni, Bandung, 1968, p. xvi.

International agreements are not the only issues that exist only on the surface of the earth, but has expanded to problems that is in the bowels of the earth and also that is outside the planet earth (in air and space). Therefore with the support of such a fact[3] encourage the creation of rules firmer and more certain, namely in the form of international agreements. It is not an exaggeration to say, that as long as the ongoing relations between countries or relations international law, during which it will also give birth to various agreements international. Through international agreements on the exercise of rights and obligations of the state as a member of the international community will be more focused and guaranteed.

This creates an embed "quacy of law" for criminal law The international community began to fade as it grew stronger agreement on the principle of non-impunity (no immunity) for perpetrators of extraordinary crimes against humanity. However p it still leaves problems because it involves roles state as a major actor in international relations.

The most important thing in the state is sovereignty. General arrangements regarding international agreements found in the 1969 Vienna Convention on the Law of Contracts International. This convention was formed on 23 May 1969 and began effective after ratification by 35 countries as stipulated in Article 84, namely on January 27, 1980.[3]

Where in international law is known the principle of equality of position of the state. The existence of international criminal law instruments is a polemic in which each country has its own sovereignty over people, objects and events that occur within that country. Like international law which is formed based on consensus, so too does international criminal law. The logical consequence of a consensus is that the state may participate and may not. The general principles of international law are known as principles of pacta sunt servanda which in general can be interpreted that the agreement only binding on the parties who made it. Seeing this of course there is the potential for international criminal law to return to its position quacy of law. Therefore the author feels interested in discussing Principles of *Pacta Sunt Servanda* in International Criminal Law Enforcement.

2. Research Methods

This research study is normative juridical as an approach main, by looking at international law as a rule/norm and general law principles in criminal law enforcement international. Researchers will base on the provisions and general principles in international treaty law and law international criminal. In normative

[3] Danel Aditia Situngkir, The Binding of the State in International Agreements, Reflections on Law, Journal of Legal Studies, Vol. 2 No. 2 April 2018 p. 167-180

juridical research, the type of data used is secondary data, which is obtained from the data literature.[4]

3. Results and Discussion

3.1. The Principle of *Pacta Sunt Servanda* in International Agreements

Entry into force of an international treaty is usually called "entry into force". After all the countries involved in the process making the agreement and has entered into the agreement international agreement in the form of signing by appointed country representative, then if determined by the agreement itself when is the last clause that must be fulfilled before the agreement is declared to come into force is a process submission of ratification to the agency/institution designated for receive the results of the ratification. If all conditions are required has been fulfilled then since then also the agreement internationally declared valid. For example for the Vienna Convention 1969 concerning International Agreements as regulated in

Article 84, the new agreement is effective after the thirtieth day after the date of deposit of the instrument of ratification or accession by thirty five countries. This new convention entered into force 27 January

1980, meaning that it took about 11 years after its finalization

The new treaty document (May 23, 1969) stated this convention be in effect.

For non-party states as a general rule, a

International agreements may not impose obligations or rights on third party countries without their consent

(Article 34 of the 1969 Vienna convention). In practice, in the past, this principle was confirmed in the agreement international. This general principle is stated in the Latin theorem "*pacta tertiis nec nocent nec prosunt*" get internal support the practice of countries, in court decisions.

For example in German interest in Polish Upper Silesia Case, where the Permanent Court of International observes that the treaty only creates law between the

[4] Marzuki, P. M, Legal Research, Prenada Media Group, Jakarta, 2005, p. 24

States which are parties to the treaty, in case of any doubt, no there is a right that can be inferred from in favor of a third State.[5]

This general principle is in line with the principle of *Pacta Sunt Servanda* recognized by the civilized nations of the world within the framework International Relations. This principle is universally recognized. Schmitthof and also Goldstajn considers this principle/principles (along with the principles freedom of contract) as an important principle. Confession in the legal system in the world is not too difficult to found it. Even countries in the world include this provision in its national laws and regulations.[6]

In general *Pacta Sunt Servanda* interpreted as the binding of a country to an international treaty resulting from the consent of that country to bind themselves to international agreements. When a State be a party to an international treaty, stated the will to be bound by the provisions stipulated in the agreement. This has an impact on the provisions stipulated in the treaty applies within the territory of that country stated.

Grotius said that among the natural law principles that underlie the international legal system, *Pacta Sunt Servanda* is the most fundamental principle.*Pacta Sunt Servanda*Which is part of the natural law that forms the basis for consensus. Anzilotti adherents of dualism and Italian nationality strengthens Grotius' views and lays the foundation for bondage international law in principle*Pacta Sunt Servanda*.[7]Most reasons Fundamentals that strengthen this principle in terms of international relations are due to the basic principles of sovereignty and independence of states, which presupposes that states must agree to the rules before they can be bound by them.

A country that is a participant in a treaty international law made under treaty law must comply with the agreement/agreement, because the state is bound by*Pacta Sunt Servanda*. It's not rules stating that the principle is said to be the highest principle in relations between countries bound by international agreements, but as stated in Article 38 Paragraph (1) that in deciding a dispute, then 72 must be based on international law, namely applying existing international treaties and customs, and this is an acknowledgment of treaties as a source of formal law, while the Statute is a source of material and rules secondary from treaty make-law.[8]

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[5] Ugo Villani, 'The Security Council's Authorization of Enforcement Action by Regional Organization' (2002) 6 Max Planck Yearbook of United Nations Law, p. 535, 538 – 539

[6] Huala Adolf, Fundamentals of International Contract Law, Refika Aditama, Bandung, 2006, pp. 25-26

[7] Yudha Bhakti Ardhiwisastra, International Law, Alumni, Bandung, 2003, p.

[8] Dina Sunyowati, International Law as a Source of Law in National Law, Journal of Law and Judiciary, Volume 2 Number 1 March 2013, p. 1-18

3.2. The Principle of *Pacta Sunt Servanda* in Enforcement of International Criminal Law

In summary, international criminal law can be defined as a set of rules and legal principles that govern about international crimes.[9]To further emphasize things these are said to be meaningful legal principles or principles concerning the substance of the norms regulated in a international agreement. Which is the norm about Classification of acts that fall under the category of crimes international, who should be responsible for the act, who has the right to prosecute and who has the right to judge and so on. All of those things regulated in an international agreement.

Because all of these provisions are contained in the agreement internationally, then the parties involved in the process the establishment of the agreement is the state. Jean Boden regard sovereignty as a special characteristic of the State, Sovereignty is the main thing of every unit

sovereign called the State.[10]Without sovereignty, then nothing State and therefore sovereignty is absolute power and eternal of an unlimited and indivisible state for.

In international criminal law actually just at the time the enactment of the Rome Statute there are norms that positively can applied in the enforcement of international criminal law. Business previous international criminal law enforcement to request accountability to the perpetrator is actually contradictory on a non retroactive basis. in several criminal courts previously formed, in addition to being ad hoc as well formed based on an agreement made after the event happen. The previous International Criminal Court namely:

a) Nuremberg Tribunal, United States of America, France, United Kingdom and The Republics of the Soviet Union signed the London Agreement on August 8, 1945 to establish the Court

International Military. This court was formed to adjudicate criminals/people acting in the interest of European Axis Countries, either as individuals or as members of the organization, who committed the crime against peace, war crimes, crimes against humanity.

b) Tokyo Tribunal (Tokyo International Military Court)

[9] Parthiana, IW International Criminal Law, CV. Yrama Widya, Bandung. 2006 , page 26
[10] Ardhiwisastra, YB International Law, PT. Alumni, Bandung. 2003, p. 41

(International Military Tribunal For The Far East, 1948). General MacArthur acting with powers as commander-in-chief of the allies on January 19, 1946 set up a Court to try people jointly individual or as a member of an organization or both commit crimes against peace. The International Court for the Far East was formed for punished by holding a trial fair and swift the great war criminals of the far east The International Court of Justice has jurisdiction to try and punish Far Eastern war criminals as individuals or as a member of the organization charged with offenses which include Crimes against the Peace Conventional Crimes Against War Crimes Humanity.

c) International Criminal Tribunal for the Former Yugoslavia/ ICTY (War Crimes Tribunal in former Cases Yugoslavia) (Statute of The International Criminal Tribunal For The Former Yugoslavia, 1993), this Court was established pursuant to an acting UN Security Council Resolution pursuant to Chapter VII of the UN Charter, the Court was formed to holding people accountable for violations the weight of international humanitarian law on the territory of the former Yugoslavia since 1991. The Court has jurisdiction to prosecute those responsible for serious violation of international humanitarian law (gross violation of the Geneva Conventions of 12 August 1949 , Violation of the laws or customs of war, genocide, crimes against humanity).

d) International Criminal Tribunal for Rwanda/ ICTR (Court War Crimes in Cases of the former Rwanda) (Statute Of The International Tribunal For Rwanda, 1994) this court established under United Nations Security Council Resolutions act under Chapter VII of the UN Charter to sue Persons Responsible for genocide and crimes other serious violations of international humanitarian law in Territory of Rwanda and neighboring countries, which occurred between 1

January 1994 to December 31, 1994 Court The International has jurisdiction to try those who responsible for serious violations of the law international humanitarian law (genocide, crimes against humanity, Violation of General Article 3 of the Geneva Convention and Additional Protocol II).

Looking at the ad hoc international criminal court above, it can be seen that the formation of the agreement became the basis the formation of the court occurred after the incident occurred and retroactively enforced. The formation of the Nurenberg Tribunal and the Tokyo Tribunal tends to be more to the will of the victorious country war to punish the countries that lost in the world war second. Maybe term “history written by the winner” not too making it up if pinned on this event. Because the people who were tried in that court were citizens of the countries that lost the second world war it is impossible to refuse the will of the victorious State of war to prosecute people who are considered "perpetrators" through London Agreement and International Military Tribunal for Far East Charter. Even in the formation of the two agreements the countries that its

citizens tried did not express consent to comply with the provisions therein, even though the provisions of the provisions in the agreement relating to interests those countries.

After the establishment of 4 (four) ad hoc courts colored by debate among academics related to general principles are violated such as *Pacta Sunt Servanda*, retroactivity and legality, the Statute was formed in 1998 Rome on the establishment of the International Criminal Court. This Statute declared effective after 60 (sixty) countries submitted its ratification document to the UN General Assembly. This court is a new breakthrough in criminal law enforcement international because this Court is a criminal court the first permanent international to be established.

The International Criminal Court is of course only adjudicating certain crimes. Talk about crime international law is certainly a very serious crime against humanity. The Rome Statute mentions 4 (four) crimes the jurisdiction of the court is the crime of genocide, crimes against humanity, war crimes, crimes aggression.[11] In Article 17 of the Rome Statute is the central norm in the complementary concept of the International Criminal Court. It sets the criteria prior to the acceptance of a case by International Criminal Court, Prosecutors and Judges of the Court International Criminal will evaluate the case first formerly.

From the description above it can be seen that the existence of the principle *Pacta Sunt Servanda* in the enforcement of international criminal law getting stronger over time. This is seen increasingly the difficulty of the criteria given to enforce the provisions in agreements related to international crimes against countries that are not bound by the agreement the international. This means that the equality of state sovereignty can increasingly be felt. The characteristics of this international crime are: not much different from national crimes where those who are asked to be held accountable are individuals who are increasingly closely related with the sovereignty of the state, as the state should be which has the authority to try its citizens.

4. Conclusion

The state can play the role of a state party or a non-state parties to international agreements and that role will be influencing state action against international treaties the. The binding of countries in international agreements can seen from the first two aspects of the role of the state in international agreements and the second from the substance of international treaty itself. In the enforcement of international criminal law, the principle of *Pacta Sunt Servanda* also strengthens along with development era. By looking at the establishment of a criminal court

[11] Statute Of The International Tribunal For Rwanda. 1994, art. 5

ad hoc international before we can conclude, that recognition of state sovereignty by strengthening the principles this *Pacta Sunt Servanda* is getting real. But due to the purpose of international crime is to ask for accountability perpetrators of international crimes by bringing to the fore court and tried fairly.

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