MIMBAR KEADILAN
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Development of Democracy in Indonesia From A Perspective International Law

Sanda Yoga Pindonta Sembiring[1*], Angel Safira Christi Siregar[2], Bertrand Silverius Sitohang[3]

[1,2,3] Universitas Katolik Santo Thomas

sandayoga444@gmail.com[1*], angelsafirachristi@gmail.com[2]

Abstract

The coexistence of national and international laws regulates relations both within and between states worldwide. This paper explores the interaction and integration of these legal systems, questioning whether they stand independently or form part of a larger legal framework. International law serves crucial functions for countries, including Indonesia, functioning both as rules binding its subjects and as a tool for achieving national goals. This dual role underscores its significance in political and economic realms, where adherence to international agreements influences policymaking and economic outcomes. However, this interaction isn't without challenges, as international norms can constrain developing countries like Indonesia, impacting their legislative sovereignty. This study aims to review the implementation and impact of international law on Indonesia's constitution, examining its theoretical underpinnings, practical applications, and the evolving legal framework that governs international agreements within national law.

Keywords

Democracy; International law; Development

Introduction

As we all know, apart from national law which regulates and applies in a country, there is also international law which regulates relations between countries in the world. The existence of international law and national law is also an interesting thing to discuss, where in the relationship between the two there are groups of people who question the existence of these two laws, whether they are separate and can be said to stand alone or whether they are part of a sub system. what is bigger is an even bigger legal system order (Sukarno. 2017). International law has a very important function for countries in the world, including Indonesia. The function of International Law is 'as rules or norms that apply to its subjects. Apart from that, it's functional

International law is an instrument used by the government of a country to achieve its national goals. This function can be interpreted as a political instrument, which functions as a tool or instrument that is differentiated from International Law as a rule. International law is used as a political intervention, in essence it will be accommodated in legal products, namely statutory

regulations. Likewise, in the function of the economy, because the economic sector is a field that can bring profits. Therefore, developed countries are very concerned about implementing international agreements with developing countries so that their interests in the political or economic fields are met. Because Indonesia follows international agreements, the state is obliged to transform the provisions of international agreements into national law (Torfason, M. T., & Ingram, P. 2010).

The function of international law for Indonesia is to 'introduce new concepts in the national interest. For example, the concept of an archipelagic state. So, Indonesia as an archipelagic country must follow the provisions of international law. Apart from that, the benefit of international law for Indonesia is that it can be used to resolve the Sipadan-Ligitan case even if it loses, resolving the GAM case with the assistance of Sweden, Timor Leste and so on. International law has an influence on member countries such as Indonesia. There are positive and negative influences. The positive influence that international law can have is that it can be used as a means of resolving disputes between countries. With international law, a dispute can be resolved through diplomatic channels. The negative influence is that developing countries like Indonesia will be pressured by developed countries. For example, in terms of making legal regulations intervene in developed countries. This raises problems because international law can be used by the international community to optimize international law for Indonesia to comply with its wishes. If this continues, Indonesia will be constrained and will not be free to make the regulations used in developing its country. (because it always intervenes).

PROBLEM STATEMENT

How is the implementation and development of international law regarding the constitution?

RESEARCH OBJECTIVES

1. to review the application of international law to the Indonesian constitution
2. to review the impact of the implementation of international law on the constitution

Methodology

Literature study is the first step in the data collection method. Library study is a series of activities related to methods of collecting library data, reading, taking notes and processing research materials (Suyatno. 2016). Library studies rely on research materials from libraries, such as books, journals, encyclopaedias or magazines as data sources. Non-print works such as audio recordings, videos and films are also sources of library data. Literature studies can also study various reference books and similar previous research results which are useful for obtaining a theoretical basis regarding the problem to be researched. Literature study also means data collection techniques by reviewing books, literature, notes and various reports related to the problem you want to solve (Thalhah, H. 2009).

Discussion

A. Implementation of International Law on National Law

The application of international law into national law, known as the implementation of International Law into National Law, can be viewed from a theoretical aspect as well as from aspects of state practices. The different views of various theories that discuss the relationship

between international law and national law often differ from state practices in implementing international law into national law. Besides that, the practices of one country are different from those of other countries. The process of implementing international law into national law usually goes through a ratification procedure through national law, with the aim that the provisions of international law can be binding within a country. This ratification applies to international agreements, for example convections, protocols, covenants and other international agreements whose entry into force requires ratification.

The implementation of international law into national law actually does not solely depend on the will of the state through the ratification process, but there are also provisions of international law which directly bind states without going through an approval or ratification process. These international legal provisions are based on international customary law, legal principles or legal principles that apply universally. Discussing the implementation of international agreements into national law, firstly, the position or existence of international law in national law is known, or is the recognition of national law regarding the application of principles, rules or provisions of international law. Terroristically there are two views regarding the nature of the application of international law, namely the views of voluntarism and objectivism.

According to the voluntarist view, the essence and enactment of international law is based on whether or not the state is willing to submit to international law. So, whether there is international law or not is solely based on whether or not the state is willing to adhere to the provisions of international law that apply if there is prior consent from the state. In fact, in international law there is also customary international law and general principles of law, which apply whether or not there is approval from the state. This is a weakness of the voluntarism view, which only sees international law in the form of international agreements. In contrast to the voluntarism view, according to the objectivism view, it is found that the essence of the application of international law is whether or not there is a state's willingness to comply with the requirements of international law. As a result of the differences between these two views, it gives rise to two different points of view regarding the relationship between international law and national law. The voluntarism view sees international law and national law as two systems that coexist and are separate from each other, as stated by voluntarists as follows:
Internasional law and national law are two separate, mutually independent legal order that regulaterquite different matters and have quite different sources''

The voluntarist view in looking at the relationship between international law and national law is known as the "dualism" view, as a result of this view, according to dualism, in order for international law to apply in national law, this international law must first be transformed into national law and turned into law. national. According to the dualist view, if international law has been transformed into national law, international law no longer exists, because it has turned into national law. Furthermore, according to an objectivist perspective, the relationship between national law and international law are two parts of one legal system. The enactment of international law into national law regardless of whether the state wishes or not. Whether or not there is a law is not based on the will of the state, but rather on human will in an effort to preserve life and the will of the state, but rather on human will in an effort to preserve life and achieve the goals of life itself. This view is known as the minimalist view. The result of the monism view in seeing the relationship between international law and national law is two sets of one legal system. This relationship creates a hierarchical relationship between international law and national law.

1. Monism with the primacy of national law

According to the view of monism theory with the primacy of national law, the position of national law is higher than international law. International law is nothing other than national

law for foreign affairs {auszeres staatrecht}. This is based on the view that international law originates from national law, the reasons underlying the theory are:

(a) There is no single organization above countries that regulates the lives of countries in the world;

(b) The basis of international law that regulates international relations. It lies entirely in the state's authority to enter into international agreements (constitutional authority).

The fundamental weakness in Minse's view of private national law is that it still assumes that the existence of international law depends on whether or not the state is willing to make international agreements. Even though in reality the source of international law is not solely based on international agreements, but also originates from customary international law, the application of which does not necessarily require state approval or recognition, the weakness of this theory is the same as the view of voluntarism.

2. Monism with private international law

This theoretical view is in contrast to the theory of moism with the primacy of national law according to monism with the primacy of international law, seeing that the position of international law is higher than national law. National law originates from national law, so that the position of national law is below international law. Furthermore, according to this theoretical view, the essence of the enactment of national law is based on a "delegation" of authority from international law. In terms of the authority of a country to make international agreements, it is a delegation of authority granted by international law. The weakness of the monism theory with national legal priorities is that it is not in accordance with reality. In reality, the existence of national law precedes international law. In addition, the right to make international agreements does not come from the delegation of international legal authority, but is a full right from national law in the constitutional field.

3. Practice of Implementing International Law in Indonesia

Indonesian practice regarding the relationship between national law and international law reflects an acceptance of both the teachings of monism and dualism. However, at the same time it can also be said that Indonesia is practicing a more pragmatic approach, namely a more flexible approach that focuses on the subject matter. Indonesia's legislative practice in implementing international legal norms through laws or decisions or regulations from the President shows that Indonesia adheres to the doctrine of transformation which is believed to be a concrete form of the teachings of the dualism school. Meanwhile, several judicial decisions in Indonesia, for example the decision of the Constitutional Court (MK) in the judicial review of Law (UU) Number 16 of 2003 concerning the Eradication of Criminal Acts of Terrorism, where the MK 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. Recent practice shows that Indonesia has also absorbed elements from the monist school.

Before the amendment to the 1945 Constitution (UUD) and before the birth of Law Number 24 of 2000 concerning International Agreements, Indonesia's practice regarding international agreements was largely guided by the 1969 Vienna Convention concerning International Agreement Law or international customary law. Meanwhile, the legal basis for regulating international agreements is Article 11 of the 1945 Constitution (before amendments) and Letter from the President of the Republic of Indonesia Number: 2826 dated 22 August 1960 concerning Making Agreements with Other Countries. Presidential Letter Number: 2826, dated 22 August 1960, if viewed from a legal perspective, according to Harjono does not have binding force or legal force, and leads to the practice of juridical fiat accompli against the DPR's power in terms of making and ratifying international agreements. However, Bagir

Manan expressed a different opinion that the President's letter Number: 2826, dated 22 August 1960, when viewed from constitutional law, is classified as a written constitutional convention.

Therefore, before the birth of Law Number 24 of 2010 concerning International Agreements which regulates the procedures for making international agreements, Presidential Letter Number: 2826 applies as a law that must be obeyed and obeyed. However, in practice the implementation of the letter this president has had so many irregularities that it needs to be replaced by laws that specifically regulate international agreements. The provisions of Article 11 of the 1945 Constitution underwent changes after the People's Consultative Assembly (MPR) of the Republic of Indonesia dated November 9 2001 which stipulates the Third Amendment to the 1945 Constitution, which changes and/or adds 2 (two) paragraphs.

In the provisions of Article 11 of the 1945 Constitution, namely paragraph (2) and paragraph (3), so that Article 11 of the 1945 Constitution reads: "(1) The President with the approval of the House of Representatives (DPR) declare war, make peace and treaties with other countries; (2) President in making other international agreements that have far-reaching consequences and fundamental to people's lives related to the state's financial burden, and/or requires that changes or formation of laws must be approved DPR; and (3) Further provisions regarding international agreements are regulated by law invite."

The provisions of Article 11 of the 1945 Constitution stipulate that the President is an organ. The main person who represents the country in conducting relations with other countries. Besides that, this provision also expressly states that the President makes agreements other international issues that have broad and fundamental consequences for life people who are related to the state's financial burden, and/or require changes or the formation of laws must be approved by the DPR. The meaning of "DPR approval", based on practice or customs, as well as the provisions that apply in the system representative democracy has three functions attached to the DPR, namely the legislative function (legislative function), budget approval function (budget function), as well as supervision and control function (control function).

An international treaty is an agreement between two or more countries to giving birth to a law or agreement to bind oneself to a law that applies across the board country. Law Number 24 of 2000 concerning International Agreements, Article 1 number 1 determines that "International Agreements are agreements, in form and name certain matters, which are regulated in written international law and give rise to rights and obligations in the field of public law." If the meaning of the agreement international function is linked to the function of the DPR, so it will include internal functions make "laws", because create a law or approve a law that applies across countries. The legal form of the DPR's legislative products is a law. By herefore, every international agreement that requires DPR approval will be granted form of "law".

According to Law Number 24 of 2000 concerning International Agreements, the initiators in making international agreements are State Institutions, Non-Departmental Government Institutions (LPND) and Regional Governments. Law Number 24 of 2000 concerning International Agreements, Article 5 paragraph (1) emphasizes that "State institutions and government, both departmental and non-departmental, at the central and regional levels, which have plans to make an international agreement, first do it consultation and coordination regarding the plan with the Minister." Therefore, the initiating agency is required to consult and coordinate with the Minister Foreign Affairs, which in this case is represented by the Directorate General of Law and Treaties International and/or regional or multilateral units in the Department of Foreign Affairs (Deplu).

The consultation and coordination mechanism can be carried out through:

1) Correspondence between the initiating agency, the Department of Foreign Affairs and other related agencies; And

2) Interdep meeting between the initiating agency, the Department of Foreign Affairs and other related agencies.

The government and DPR can discuss the Draft Legalization Law. These international agreements are carried out through Prolegnas and Non-Prolegnas (according to with the regulations in Law Number 12 of 2011 concerning Establishment Law, and Presidential Regulation Number 61 of 2005 jo. Presidential decree Number 68 of 2005, as well as the DPR's Rules of Procedure). As ius constitutum in Indonesia it is related to the enforcement of agreements internationally in the territory of the Republic of Indonesia. Provisions of Article 15 paragraph (1) of Law Number 24 2000 confirmed: "...International agreements...are ratified by law or presidential decree". The phrases "law" and "presidential decision or regulation president)", is implementing legislation or legislative action. According to Bagir Manan as a consequence of being given the form of a law, then all procedures for forming a law applies to international treaty laws and regulations, except:

1) The right of initiative to make and enter into an international agreement exists solely to the President. The DPR does not have the right to make or enter into an agreement international.
2) The DPR does not have amendment rights in ratifying international agreements. The DPR only has the authority to approve or disapprove, accept or reject ratify an international treaty.

Ratification of international agreements whose material is not included as material as intended in Article 10 of Law Number 24 of 2000, is carried out by Presidential Decrees or Presidential Regulations, including: Agreements in the field of science and technology, Economics, Engineering, Trade, Culture, Commercial Shipping, Tax Avoidance Multiple, Investment Protection and Technical Agreements. As the most important part in the process of making an agreement, ratifying the agreement international needs to receive in-depth attention considering that at that stage a country officially bind themselves to the agreement. In practice, form validation is divided into four categories, namely:

1) Ratification if a country will ratify an agreement international parties also signed the text of the agreement;
2) Accession if a country wants to ratify an international agreement did not participate in signing the agreement text;
3) Acceptance; And
4) Approval is a statement of acceptance or agreement from countries

Parties to an international agreement regarding changes to that international agreement. Apart from that, there are also international agreements that do not require ratification and come into effect immediately after signing.

Conclusion

The discussion centers on the interaction between international law and national law, exploring their coexistence within a larger legal framework. International law functions crucially for nations, including Indonesia, both as rules governing their conduct and as instruments for achieving national goals. This duality prompts questions about whether these laws are separate and independent or part of a broader legal system. Internationally, laws serve various functions, from political instruments to economic tools. They influence member states like Indonesia positively through dispute resolution and negatively by potentially limiting national legislative autonomy. Indonesia adheres to international agreements by transforming them into national law, impacting concepts like the Archipelagic State and resolving disputes through international cooperation.

The implementation of international law into national law varies between voluntarism and objectivism perspectives. Voluntarism suggests international and national laws are

separate, requiring transformation for international laws to apply domestically. Objectivism views them as part of one legal system, influencing each other hierarchically. In Indonesia, legal practice reflects acceptance of both monism and dualism. Legislation incorporates international norms through acts of Parliament or presidential decrees, balancing pragmatic flexibility with adherence to constitutional principles. Historical practices and legal changes, such as amendments to the Constitution and the enactment of specific international treaty laws, demonstrate Indonesia's evolving approach to international legal integration. This summary captures the key points regarding the role and implementation of international law within Indonesia's legal framework, highlighting its evolution and practical applications.

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