Legal Politics Regarding the Application of International Treaties in Indonesia

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Abstract. Philosophically, international relations have become one of the objectives mandated in the opening of the fourth paragraph of the 1945 Constitution of the Republic of Indonesia, namely "to participate in carrying out world order based on independence, eternal peace and social justice." This country aims to become the basis for the Indonesian state to conduct international relations based on independence, eternal peace, and social justice. These values of independence, eternal peace, and social justice are the political lines of the Indonesian state to conduct international relations with other countries or other subjects of international law. It means that international treaties as a medium for establishing international relations are built on the basis of a country's legal politics. The strategic position of international treaties aims to realize the legal politics of a country. Globalization has affected international relations that are increasingly intensive, complex, and fundamental. The existence of global awareness as a world community has influenced the legal politics of a country. Various international treaties regulating the liberal economic system have been implemented in economic globalization. On the other hand, the demands for human rights and democratization as a product of globalization have resulted in various international treaties being ratified by modern countries today. Various modern countries have harmonized national laws on international developments with various ratified international treaties. Globalization that is taking place in the current era has indicated a shift in the legal politics of a country, including the politics of international treaty law. The politics of international treaty law as part of the politics of foreign relations contains policy lines on foreign relations that embody the legal ideals of the Indonesian people. Political law that guides international treaties is a legal ideal as mandated in the 1945 Constitution of the Republic of Indonesia. The type of research in this paper is normative legal research, which examines library materials or secondary data.

Keywords: legal politics · international treaties · politics of international treaty law

1 Introduction

State facilitation in international treaties is an embodiment of international legal relations and national law. The study relationship between national and international treaty law is in the study of the relationship between national and international law [1].

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Theoretically, the relationship between the two laws is explained in the flow of monotheism and dualism. Since the establishment of Law Number 24 of 2000 concerning International treaties over 20 years, there are still unanswered problems [2].

The issues that arise from the enactment of Law Number 24 of 2000 are as follows: *First of all*, it is related to the definition of the international treaty itself. Article 1 paragraph (1) of Law Number 24/2000 has regulated in such a way the definition of an international treaties, namely: An international treaties is an treaties, in a certain form and name, which is regulated in international law which is made in writing and gives rise to rights and obligations. The field of public law, in fact, still cause debate and many interpretations. There is no clear definition of which parties can be parties to international treaties made with the Government of the Republic of Indonesia, as well as the legal consequences arising from an international treaties; this has resulted in a misunderstanding of several international treaty practices in Indonesia. An example is an assumption that the contract made by Indonesia with Freeport is an international treaties regulated by international treaty law. In fact, in this case, Freeport is not a subject of international law and has no consequences in public law. In order to avert future mistakes, there is a need for a better definition of international treaties.

Elucidation of the Law of the Republic of Indonesia Number 24 of 2000, it is stated that the International treaties referred to in this law is any treaties in the field of public law, regulated by international law, and made by the Government with the State, international organization, or subject of international law. Other. Thus, international treaties are included in the study of public international law. Public international law aims to distinguish the scope of the study from international civil law. The term public international law is also commonly referred to as international law, while private international law is often also referred to as international civil law [3].

The forms and names of international treaties in practice are quite diverse, including; *treaty, convention, treaties, memorandum of understanding, protocol, charter, declaration, final act, arrangement, exchange of notes, agreed minutes, summary records, process verbal, modus vivendi,* and *letter of intent.* In general, the form and name of the treaties indicate that the materials regulated by the treaties have different levels of cooperation.

second, theoretically, the problems contained in the regulations related to international treaties are also rooted in the lack of clarity about the schools/doctrines adopted by Indonesian law regarding the relationship between international law and national law. In developed countries, this flow is reflected in the constitutional provisions or the Basic Law, which expressly contains the rules regarding the status of international law in their national law. Unfortunately, the Indonesian legal system has yet to pay attention to this issue [4].

Third, there is confusion in the use of the words 'ratification' and 'ratification.' In its development, Law Number 24 of 2000 adopted the term ratification, and unfortunately, the Indonesian Government translated it as 'ratification.' This law, by definition, only regulates ratification from the perspective of external procedures, namely legal actions to bind oneself to an international treaties in the form of ratification, accession, acceptance, and approval. This legal action is marked by the issuance of notification/accession/acceptance/approval. However, Law No. 24 of 2000 uses the same term

(ratification) to describe legal actions that fall into the category of perspectives known in the science of internal legislation [5].

International treaty legal experts such as Wayan Parthiana also indicated the possibility of this error. They questioned the term 'ratification' contained in Article 9 paragraph (1) of the Law, whether what was meant was also ratification as an act of exiting to bind oneself to the treaties [6]. The term ratification is known in statutory logic, mixed with the term ratification as a translation of ratification.

The term ratification used in Law Number 24/2000 confuses other fields. One of them is the use of Law as the only legal product to show the approval of the House of Representatives of the Republic of Indonesia (hereinafter abbreviated as DPR RI) on an international treaties proposed by the government. This form of consent is then referred to as the ratification law. This issue has been discussed in the Constitutional Court (MK) regarding the judicial review of the ASEAN Charter. The Constitutional Court's stance was shown in decision Number 33/PUU/IX/2011, which was issued on February 26, 2013. The Court said that the Constitutional Court has the authority to examine the ASEAN Charter because this document is nothing but an inseparable part of the Law which is an object that is legal to be tested by the Court. Because formally, this Charter is a law, then there is no reason for the Constitutional Court not to be able to test it [7].

Utrecht, a legal expert at the beginning of independence, interpreted that an international treaties approved by the DPR and outlined in a consent law *(goedkeuringswet)* was a ceremonial law [8]. The decision then also ordered to review again whether the law is the right product in actualizing the form of approval of the DPR RI on an international treaties.

The formulation of international treaties is often considered not to involve the community and does not represent the community's interests. It can be proven from many international treaties considered detrimental to the community, such as treaties on free trade. Some have even been submitted to the Constitutional Court for violating constitutional rights, such as the ASEAN Charter. In the Constitutional Court Decision Number 33/PUU-IX/2011 [9]. Regarding the Review of Law Number 38/2008 concerning the Ratification of the ASEAN Charter, it can be seen from the reasons of the Petitioners that the ASEAN Charter, according to the Petitioners, is contrary to the 1945 Constitution of the Republic of Indonesia, one of which is Article 27 paragraph (2) that the existence of a Free Trade Area as a consequence of the enactment of the ASEAN Charter, will make several workers lose their jobs. It is contrary to Article 27 (2), which states that every citizen has the right to work and a decent living for humanity. The state is considered not to protect the rights of its citizens.

On 22 November 2018, the Constitutional Court, through its decision Number 13/PUU-XVI/2018, decided on a judicial review of Law Number 24 of 2000 [10]. The judicial review was carried out by several civil society groups and traditional salt farmers, as stated in the ruling document. The main issue in the lawsuit is whether all international treaties must first be approved by the House of Representatives (DPR) to be binding and valid in Indonesia. A lawsuit for cancellation was filed against Article 2, Article 9 paragraph (2), Article 10, and Article 11 paragraph (1) of the International Treaty Law. The lawsuit states that:

"Errors in qualifying international treaties will certainly have an impact on the loss of people's control presented by the House of Representatives (DPR) to carefully bind Indonesia to international treaties that will have a direct impact on state sovereignty. So that people's rights will not be harmed and will not be violated by the application of international treaties into national law".

Furthermore, it is stated that: "……..the authority to approve the DPR as a representation of the people is omitted in Law Number 24/2000". The Constitutional court judges rejected three requests for annulment of Article 2, Article 9 (2), and Article 11 (1) but accepted one request for the cancellation of Article 10 of the International Treaties Act.

The government's involvement in an international treaties can influence the policies that will be applied to the community so that it directly affects the community [11].

In the increasingly intensive relations between countries, international relations today have become a necessity for countries in international relations. That is not only political and security needs, but other needs, such as the needs for economic development, law, culture, technology, and other needs.

The international community's political, economic, and security developments often feature various international treaties that are under the control of the dominant countries in the development of the international community. Social reality reveals that the development of society constructs international treaties. The mainland European community constructed international treaties on human rights, mostly individualistic, with a liberal-individualistic character [12]. The 1998 Rome Statute is an international treaties built on humanitarian awareness due to human rights violations.

In the field of economic globalization, the Uruguay Round treaties and the World Bank Establishment treaties are treaties that enforce an economic system built on the ideology of free-fight liberalism. The treaties in the form of a Letter of Intent between Indonesia and M. Camdessus, Director of the International Monetary Fund (IMF), is also the implementation of an economic system in a market mechanism. Likewise, the treaties on forming the ASEAN Economic Community applies liberalization of trade in goods, services, investment, and human resources [13].

In the era of globalization, the interaction and intensity of relations between countries have increased and are marked by the achievement of various bilateral, regional, and multilateral cooperation treaties. These treaties are usually stated in the form of international treaties covering various fields, including politics, economy, trade, law, defense, socio-culture, etc. [14]. Mutual need between nations in various fields of life, which results in the emergence of a permanent and continuous relationship between nations, also results in an interest in maintaining and regulating such relations. Because the needs between nations are reciprocal, maintaining and regulating such beneficial relations is in mutual interest [15].

In terms of carrying out foreign relations today, it is inseparable from the mechanism of international treaties. International treaties between countries have an essential role; even international treaties themselves are a source of international law and, at the same time, a way for all countries to develop peaceful cooperation, regardless of the social system and constitution. The ability to conclude international treaties is an attribute of a sovereign state [16].

The relationship between these countries is possible for a conflict between the national legal system and international treaties. This reformed legal system has emphasized the constitutionality aspect to limit the state's power over its people and, at the same time, limit the state's power to make international treaties which have been enjoyed as the prerogative of the President. The constitution has become a benchmark in the administration of the state and is the basis for determining what norms are acceptable to limit individual freedom [17]. External developments further complicate this condition. So far, the issue of the constitutionality of international treaties has never been questioned because, conventionally, international treaties are understood only as contracts between countries and are almost unrelated to the domain of national law. The understanding so far is that international treaties are only understood as instruments that regulate relations between countries and do not regulate internal state objects (Treaty binds on states, not in States).

Often international treaties are only seen as the affairs of the Ministry of Foreign Affairs. Currently, the two developments above have intensified the interaction between international treaties and national law, marked by the increasing number of national legal issues regulated by international treaties. Without realizing it, international treaties can contain material that regulates the lives of individuals [17]. The application of the status and implementation of international treaties in each country is different; there are several understandings regarding the application of international law in the realm of national law of each country. In this case, it appears that the understanding adopted by a country also depends on the legal system adopted by each country.

Another issue contributing to the polemic on the dynamics of constitutional law related to international treaties is the judicial review of Law No. 38/2008 concerning the Ratification of the ASEAN Charter by the Constitutional Court. The Constitutional Court, in this case, considers that Law Number 38 of 2008 has the same position as other laws so that it can be reviewed materially [18].

The author assumes that the law is only an implementation of the ratification of the ASEAN Charter. Likewise, regarding Law Number 24 of 2000, which technically regulates international treaties, but if we look at Article 10 of the law, which regulates the matter or content of the substance of international treaties, we will find (in letter f) that international treaties loading material on foreign loans/grants must be carried out through a ratification mechanism, meaning that the treaties is governed by international law. However, in practice, many loan treaties are regulated using the international civil law regime, which in its mechanism uses governed by other than law. Alternatively, what is often understood as a choice of law in the aspect of international civil law?

Another problem is the difference between the entry into force of an international treaty under international law and Indonesian national law. For example, the trade treaties between Indonesia and Australia, the Comprehensive Economic Partnership treaties, which was signed on March 4, 2019, was ratified by Indonesia with Law Number 1 of 2020, which in Article 1 paragraph (2) states that this law shall come into force on February 28, 2020. Meanwhile, international law states that it will take effect on July 5, 2020. Likewise, the 1982 international treaties United Nations Convention on the Law of the Sea (UNCLOS) was signed by Indonesia on December 10, 1982, then ratified by the DPR. With Law No. 17/1985, so according to national law, this law came into

force on December 31, 1985. Then the ratification was sent to the Secretary General of the United Nations on February 3, 1986. Meanwhile, UNCLOS came into force in international law on November 16, 1994.

The matters described above are part of the problems related to the legal status and position of international treaties in national law. The lack of clarity regarding the status and position of international treaties carried out by our country so far cannot be separated from the lack of clearer and more detailed arrangements regarding international treaties in our country's legislation, where this will be intertwined with legal policies (politics of law) that apply in our country.

2 Research Method

In general, the methodology is a logical and systematic study of the principles that guide research. The methodology also means a scientific way of seeking truth. The legal research methodology is the same as the methodology of other sciences; the difference is in the method [19].

The research method is an important factor in supporting a study's results. Legal research recognizes 2 (two) methods, namely normative legal research methods, and non-doctrinal or empirical legal research methods. The method used in the research must be under the legal concept used.

This study uses the legal concept of positive norms in the statutory system, so the type of research in writing this law is normative legal research, which is a scientific research procedure to find the truth based on the logic of legal scholarship from the normative side. Steady scientific logic in normative legal research is built on scientific disciplines and the workings of normative legal science, namely legal science whose object is the law itself [20].

According to Soerjono Soekanto [21], legal research conducted by examining library materials or secondary data is called normative legal research or literature, including:

a. Research on legal principles
b. Research on legal systematic
c. Research on the level of the vertical and horizontal synchronization
d. Legal comparison
e. Legal history.

The form of research in legal writing is prescriptive research because this research contains a discussion which is an analysis of the weaknesses of the current international treaty law politics in Indonesia. Hence, the author wants to provide outputs in suggestions related to these weaknesses.

Doctrinal research is based on library studies (documents) that examine (mainly) secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 24/2000 concerning International Treaties, Law Number 31/1999 concerning Foreign Relations, the 1969 Vienna Convention, etc. At the same time, secondary legal materials are obtained through the study of research

results, books, scientific journals, and jurisprudence, as well as other library materials that discuss international agreements.

3 Findings and Discussion

History records that the process of binding international treaty rules to Indonesia has been confirmed in various national laws and regulations as mandated in Article 11 of the 1945 Constitution regarding the ratification of international treaties. It is further regulated in Presidential Letter Number 2826/HK/1960 regarding making agreements with other countries, later refined in Article 10 of Law Number 24/2000 concerning International Agreements.

Indonesia's practice of making international treaties prior to the enactment of Law Number 24/2000 is not free from confusion because all documents, as long as they are cross-country and as long as the Government of Indonesia is a party, are considered an international agreement [22].

In Indonesian Constitutional Law, it is not easy to find legal rules governing the status of International Law and International Treaties in the National Law of the Republic of Indonesia. The 1945 Constitution does not include a single article that regulates this status [23].

In addition, Indonesia's labor dynamics had also given color to the issue of international agreements made by Indonesia, where during the Old Order and New Order, the President was free to determine whether or not an international agreement should be requested for approval from the Council, while the Council itself never questioned it because it was motivated by the assumption that the approval of the DPR in Article 11 of the 1945 Constitution (before the amendment) was only facultative. It has prompted the amendment of Article 11 of the 1945 Constitution with the addition of paragraph 2 in the article, which has explained that in international agreements, the approval of the DPR is a must.

Before the enactment of Law Number 24/2000, all documents, as long as they were cross-border and the party was the Government of the Republic of Indonesia, were treated as international agreements and stored in the "Treaty Room" of the Ministry of Foreign Affairs. Agreements made by the Government of Indonesia with Non-Governmental Organizations (NGOs) are also considered international agreements. Treaties made by Pertamina and PT. Caltex, PT Stanvac and PT. Shell has also been considered an international treaty and was even ratified through Law No. 1/1996 [24].

In addition, Indonesia becoming a state party in international trade agreements (TRIPs/TRIMs and WTO) also affects our national law.

Likewise, in human rights development, it cannot be ignored that the role of international agreements is very significant to the status and position of human rights ratification in Indonesian constitutional law. (Such as the absence of national laws governing anti-torture after Indonesia ratified the Convention Against Torture and Other Cruel Inhuman and Degrading Treatment or Punishments (CAT) through Law Number 5/1998).

The development of Indonesia's international treaty law related to foreign relations is mentioned in the RIS Constitution; the 1950 Constitution, which had been in effect, placed the making of treaties in the Chapter on Foreign Relations. The President's

authority to conclude an international treaty is determined by constitutional law and mandated in the Constitution. The natural thing is in public law. The authority to make international agreements is the authority of the head of state to conduct cross-country relations. This authority is related to international law, which is based on the 1969 Vienna Convention on Treaty Law, and Law Number 24/2000 is located and is subject to international law.

One of the most important principles in international agreements is the principle of pacta sunt servanda, meaning that the agreement is binding as law for its maker. By some scholars, the use of the principle is equated with the principle [25] This principle is stated in Article 26 of the 1969 Vienna Convention which states: *Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*

According to Hans Kelsen, the principle of *pacta sunt servanda* is a *grundnorm* or basic norm in international law. The binding power of the rules of international law is based on a higher rule which in turn is also based on a higher rule, and so on until the top of the pyramid, where there is a basic rule *(grundnorm)*, which can no longer be returned to a higher rule. But must accept the existence of an initial hypothesis that cannot be explained legally [26].

International treaties ratified by a country have internal and external legal consequences. The external legal consequences mean the relationship of the country concerned to the agreement concerning other countries that are equally bound to the agreement. If a state has ratified an international treaty, then the state must implement the international agreement based on the principle of *pacta sunt servanda.* States should not use national law as an excuse for failing to fulfill international treaty obligations. As a result of the internal nature of the ratification of international treaties, it means that the state is obliged to implement the international agreement in its national law [26].

The nature of international agreements, among others, as laws for those who make them, sources of law that bind the parties involved in them, agreements or legal relationships regulated by international law, and mutual agreements or consensus between the subjects of international law involved, which are governed by international law [27].

The functions and objectives of international agreements, among others, are the main tools for carrying out international transactions or legal relations, providing rights and obligations that bind the parties to international agreements, and being a means of control for the participants involved in implementing the contents of the agreement., guarantee legal certainty for interested parties, and create relations for the participants in the relevant international agreement [27].

A. Legal Politics of International Treaty

Identification of the legal politics of international treaties can be traced from understanding legal politics, foreign policy, and the politics of international treaty law. Bernard L Tanya formulates that legal politics is between the realism of life and the demands of idealism. Legal politics should not be tied to what exists but seek a way out of what should be. [28] Therefore, the existence of legal politics is characterized by demands to vote and take action.

Legal politics is an ideal/hope, and there is a legal vision that is determined first, then the form and content of the law are built to realize that vision. Legal politics bears

the social burden of a society, a nation, or a country to realize the goals of that society, nation, and state. Therefore, in the context of legal politics, the law (as a common property) cannot be ridden by the interests of certain parties to serve their interests. At this point lies the difference between legal politics and law and politics. Satjipto Raharjo [29] formulates legal politics as an activity of choosing and the method to be used to achieve a certain legal, and social goal in society, the scope of which includes answers to several basic questions, namely:

1. What are the objectives to be achieved through the existing system;
2. What methods and which are considered the best to be used in achieving these goals;
3. When and by what means the law needs to be changed;
4. Can a standard and established pattern be formulated to assist in deciding the process of selecting goals and ways to achieve these goals properly

Mahfud MD formulates legal politics as follows: "*Legal policy or official line (policy) on law that will be enforced either by making new laws or by replacing old laws, in order to achieve the goals of the State.*" [30].

Thus, legal politics is a choice of laws to be enacted and laws to be repealed or not enforced, all of which are intended to achieve the goals of the State as stated in the Preamble to the 1945 Constitution. As a directive, legal politics contains an ideal law that guides and guides the making, implementation, and enforcement of laws to realize the ideals of law. Mahfud MD said that Pancasila could guide national legal politics in various fields. [31] Mahfud MD said that Pancasila as a legal development paradigm, has at least four guiding principles that must be used as guidelines in the formation and enforcement of Indonesian law, namely:

a. The law must protect the entire Indonesian nation and ensure the integrity of the nation; therefore, there should be no law that threatens the seeds of integration.
b. The law must ensure social justice by providing special protection for the weak so as not to be exploited in free competition against the strong.
c. The law must be built democratically and in a nomocratic democracy (state of law).
d. The law must not be discriminatory based on any primordial ties and must encourage the creation of religious tolerance based on humanity and civility.

Based on this understanding, the politics of international treaty law as part of the foreign relations policy contains policy lines on foreign relations that embody the legal ideals of the Indonesian people. Law Number 37/1999 Article 1 number 2 states that foreign policy is the policies, attitudes, and steps taken by the government of the Republic of Indonesia in dealing with other countries, international organizations, and other international legal subjects in the context of dealing with global problems in order to achieve national goals. The legal politics that guide this international agreement is a legal ideal as mandated in the 1945 Constitution.

The 1945 Constitution mandates that the power of the President as Head of State is not explicitly stated in the articles of the 1945 Constitution. With the stipulation of the state form as regulated in Article 1 (1) of the 1945 Constitution that the Indonesian state is a republic, as a consequence, there will be a President as the head of the state.

The explanation regarding the Head of State issue is listed in number VII of the state government system and the explanation of Articles 10 to 15. The power of the President as the executor of government, the legal basis, is in Article 4 (1) of the 1945 Constitution, which states that the President of the Republic of Indonesia holds government power according to the Constitution. The explanation of this article states that the President is the head of the executive power in the state to carry out the law. Based on the fact that the presidential power, according to the 1945 Constitution, also includes the power of the head of state in addition to the legislative and executive powers, actually in using the powers regulated in Articles 10 to 15, there are also executive and legislative elements. [32].

The making of international agreements, as formulated in Article 11 of the 1945 Constitution, has never been the President's sole authority based on the UUDS and the RIS Constitution. It has become a common feature in the constitutions of many countries that treaty matters with other countries are not only matters of executive power. The Constitution and the RIS Constitution clearly state that the President's ratification of an international agreement is only possible after the agreement is approved by law. Thus, the President, in exercising his powers based on Article 11 of the 1945 Constitution, is not only the Head of State but also acts as the holder of executive and legislative powers. [33].

Kekuasaan Kepala Negara secara teoritis diperlukan dalam pembuatan perjanjian internasional dalam tahap: [34].

1. The president as an organ/representative of a sovereign state in an international community, represents the state in the early making of a collective agreement;
2. The President as an organ that has the authority to exit declares Indonesia as a sovereign state bound by an agreement, namely by way of ratification.

The regulation of international agreements as legal norms through the approval of the DPR in the form of laws or presidential regulations is an internal procedure of international agreements. In the study of international treaty law, this internal procedure is material for reviewing the status of international treaties in national law, especially those that place international treaties binding on their status as legal norms or presidential regulations.

However, legal politics, which means the attitude of the official lines that guide the making and ratification of international treaties, dictates that international agreements in the form of presidential decrees must be submitted to the DPR for evaluation. The line of legal politics towards this international agreement places the function of checks and balances on the functions of government duties by the DPR as a supervisory and regulatory agency for the making and ratifying of international agreements, especially concerning agreements that concern the lives of the people and are basic. Article 46 of the 1969 Vienna Convention states that an international agreement can be invalidated if it violates the "internal law of fundamental importance." Article 18 letter h of Law Number 24/2000 states that international agreements will end if things are detrimental to national interests.

B. Theory of the Relationship of International Law with National Law

The study of the relationship between domestic contract law and international contract law is the study of the relationship between domestic law and international law. Theoretically, the two laws' relationship is explained in the theory of monism and the theory of dualism.

Monism is based on the idea of a unity of all laws that govern human life. From this point of view, international law and domestic law are his two parts of a larger entity: the law regulating human life. These two legal instruments have a hierarchical relationship. Mochtar Kusumaatmadja stated that there are several points of view. Some think that the main The relationship between domestic law and international law is domestic law, known as monism, with the primacy of national law. In this view, International law is an extension of domestic law, or nothing other than national law for foreign affairs or *auszeres staatsrecht.* In Mochtar Kusumaatmadja's view, the view of monism with the primacy of national law essentially assumes that international law is rooted in national law. It impacts the existence of international law on the will of the state to be bound or not to international law. This thinking has a meeting point with the theory of dualism, which is based on the presence or absence of the will of the state toward international law.

On the other hand, the view of Monism in favor of international law assumes that domestic law is rooted in international law. In this case, domestic law is governed by international law, and commemorative authorization is essentially based on a delegation of authority under international law.

Monism places international law and national law as part of a unified legal system. International law applies within the scope of national law without undergoing a transformation process. A state's binding to a treaty (e.g., by ratification) is the incorporation of the treaty into national law, and it does not require the same national legislation to enforce it in national law. Even if there are domestic laws regulating the same issue, the law in question is only an implementation of the international legal principles mentioned. In this case, the international law applicable in the domestic legal order remains international law. Given that it is a unified system, there is the possibility of a conflict between national and international law. For this reason, this school is divided into two: those that prioritize national law (prime of national law) and those that prioritize international law (primate of international law).

The ideology of dualism places international law as a separate Legal system from domestic law. In this case, there is no hierarchy between these two legal systems. As a result of this trend, there will be a need for a "transformation" legal body to transform international law into national law, with legislation governing the transformation process.. The binding of a country to a treaty (e.g., through ratification) must be followed by a transformation process through the making of national legislation. By converting these rules of international law into national law, these rules will change their character into products of national law and apply as domestic law, comply with and incorporate domestic law. Because the systems are separate, there is no possibility of conflict between these two laws.

The view of monism with the primacy of international law or national law in Mochtar Kusumaatmadja's view is unsatisfactory. However, he concludes that the submission of national law to international law must inevitably be accepted if we recognize the existence of international law. However, suppose we understand the construction outlined in the Preamble to the 1945 Constitution of the Republic of Indonesia, which mentions participating in a world order based on independence, eternal peace, and social justice. In that case, it can mean that the involvement of national law in world order (international law) is built based on independence, eternal peace, and social justice. Consequently, harmonization of international agreements is conditional on state objectives that have been mandated.

The strategic position of international agreements is to make international agreements for a country to realize the legal politics of a country. The existence of state goals formulated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia also forms the basis for Indonesia's involvement in international relations. In particular, the formulation that mentions participating in a world order based on freedom, eternal peace, and social justice also contains legal politics, which must also be used in international agreements. The direction of legal politics in international agreements has been instrumentally described in Article 11 of the 1945 Constitution of the Republic of Indonesia, as stated on the previous page.

The constitutional politics of international agreements in the 1945 Constitution of the Republic of Indonesia, which involves the DPR, is also contained in President Soekarno's Letter No. 2826/HK/1960 but is only limited to the most important agreements, namely those containing "political issues and which are usually desired in the form of a treaty with material on political issues or questions that may affect the direction of the State's foreign policy, such as friendship agreements, alliance agreements, agreements on changes in territory or the determination of boundaries; ties of such a nature as to affect the direction of the State's foreign policy, it may occur that such ties are included in economic and technical cooperation agreements or money loans; questions which according to the Constitution or according to our statutory system must be regulated by law, such as questions of citizenship and questions of the judiciary." The contents of international agreements that are basic concerning the lives of the Indonesian people and our strategy require the approval of the DPR. Meanwhile, Law Number 24 of 2000 requires the ratification or ratification of international agreements in the form of laws or Presidential Decrees. [35].

Article 14(1) of the 1969 Vienna Convention on the Law of Covenants states as follows: The consent of a State to be bound by a treaty is expressed by ratification when:

(a) The treaty provides for such consent to be expressed by ratification;
(b) If it is not specified that the negotiating countries agree that ratification should be requested;
(c) State representatives have signed the agreement for ratification; or
(d) The State's intention to sign a treaty for ratification arises from the full power of its representatives or is expressed during negotiations.

The existence of requirements for ratification or ratification in the form of laws or Presidential Decrees shows that legal politics is in the form of internal procedures.

Annex:
The 1969 Vienna Convention on Treaty Law is a source of international law governing international treaties. This agreement is Law Making Treaties (agreements that give rise to law) so that countries around the world submit to this convention, even though they do not participate in ratifying it. As a subject of international law, the State of Indonesia also submits to the convention, although Indonesia has not ratified it. Indonesia adopted the 1969 Vienna Convention based on customary law.

4 Conclusion

The legal politics of international treaties is realized through various functional ways, such as the necessity of having the DPR's approval of international agreements that are basic and have a broad impact as stipulated in the body of the 1945 Constitution of the Republic of Indonesia, namely Article 11, or must go through a law on international treaties relating to international treaties. With matters such as political issues, peace, defense, and national security; change of territory or determination of the territorial boundaries of the Republic of Indonesia; sovereignty or sovereign rights of the state; human rights and the environment; establishment of new legal rules; foreign loans and/or grants. Technically, international agreements can also be in the form of Presidential Decrees as long as they do not involve matters regulated in Article 10 of Law Number 24/2000.

The existence of requirements for approval by the DPR on international agreements that are basic and concern the livelihoods of the people through legal products are mandated by Article 11 of the 1945 Constitution of the Republic of Indonesia, as follows:

1. The President, with the approval of the House of Representatives, declares war and makes peace and treaties with other countries.
2. The President, when making other international agreements that cause broad and fundamental consequences for people's lives related to the burden of state finances and/or require amendments or the formation of laws, must be approved by the House of Representatives.

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9. Konklusi Putusan MK No. 33/PUU-IX/2011 adalah : 1.Mahkamah berwenang untuk mengadili permohonan a quo; 2.Para Pemohon memiliki kedudukan hukum (legal standing) untuk mengajukan permohonan a quo; dan 3.Dalil-dalil para Pemohon tidak beralasan menurut hukum. This decision was accompanied by a dissenting opinion from Hamdan Zoelva and Maria Farida Indrati, which basically stated that the Court should not have the authority to review the law as the DPR's approval of an international agreement that will have a direct impact on the sovereignty of the State.
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