



National Law and International Law in Indonesian (Between Monism or Dualism)

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Abstrak: Rangkaian sejarah panjang perdebatan hubungan hukum nasional dengan hukum internasional menunjukkan tidak mudahnya mentransformasikan hukum nasional yang mengakomodir keduanya. Monisme dan dualisme di Indonesia dipraktikkan secara bergantian sesuai dengan kebutuhan dalam peradilan dalam memutuskan suatu perkara. Prakteknya disesuaikan dengan keyakinan dalam menilai suatu peristiwa hukum perlu ditransformasikan menjadi hukum nasional atau tidak, walaupun secara doktrin Indonesia menganut monisme sebagaimana diamatkan oleh Pasal 11 Undang-Undang Dasar 1945. Kontradiksi dari keduanya menyebabkan Indonesia belum secara tegas dan konsisten dalam melaksanakan konstitusi. Metode deskriptif historis dengan periodisasi: Orde Lama, Orde Baru dan Orde Reformasi digunakan untuk memberikan gambaran dan pemahaman bahwa dengan rangkaian sejarah dapat menunjukkan secara jelas mengenai hubungan hukum nasional dengan hukum internasional di Indonesia. Ketegasan sikap pemerintah Indonesia menjadi titik tolak penting dalam menentukan pilihan demi terwujudnya kepastian hukum, perlindungan terhadap hak asasi manusia dan menguatkan lembaga peradilan dalam memutuskan suatu perkara terhadap sengketa yang melibatkan entitas internasional.

Kata kunci: hukum nasional, hukum internasional, Indonesia

Abstract: *The long history of the debate on the relationship between national law and international law shows that it is not easy to transform national law to accommodate both. Monism and dualism in Indonesia are practiced alternately according to the needs of the judiciary in deciding a case. The practice is adjusted to the belief in assessing a legal event needs to be transformed into national law or not, although doctrinally Indonesia adheres to monism as stated by Article 11 of the 1945 Constitution. The contradiction between the two causes Indonesia to not firmly and consistently implement the constitution. Historical descriptive method with periodization: Old Order, New Order and Reform Order is used to provide an overview and understanding that with a series of history can show clearly about the relationship between national law and international law in Indonesia. The firmness of the Indonesian government's stance is an important benchmark in making choices for the realization of legal certainty, protection of human rights and strengthening the judiciary in deciding a case against disputes involving international entities.*

Keywords: *national law, international law, Indonesia*

INTRODUCTION

Both monism and dualism have an impact on how state law and international law interact. The first school of thought maintains that national law, which is applied consistently and institutionally in different states on the basis of "delegation," is the source of international law. The second school of thought contends that national law supersedes international law in terms of its enforceability based on subjects, sources, and principles. (Miftakhul Nur Arsita, Ach. Fajruddin Fatwa, 2020: 370)

Article 1 of the 1933 Montevideo Convention addresses the attachment of rights and obligations to state or individual accountability on any action that results in an event or consequence (Arcelia & Adriano, 2015:101-118). The source refers to the collective will of the state (John Butler, et.all, 2016: 7) or the will of each de facto or de jure sovereign state (Riyanto, 2012: 5-14). This is dependent upon specific legal occurrences. The concept takes the shape of a treaty (Vienna Convention on the Law of Treaties 1969) that is regulated by the same interests in every nation, or a constitution (grundnorm) (T. C. Hopton, 1978: 72-91).

Monism views both domestic and international law as components of one cohesive legal framework. Even if national law already exists, it does not need to change in order for international law to apply within its bounds and remain the

realization of international law. Conversely, the dualism school views international law as distinct from domestic law and mandates a conversion process for its application, meaning that international law is only applicable once it has been transformed (Juladies H. S. Watupongoh, 2016: 127-128) into national law subject to and entered the hierarchy of national laws and regulations (Damos Dumoli Agusman, 2014: 489-490), such as the first is the 1982 United Nations Convention on the Law of the Sea (“UNCLOS”) Law No. 17 of 1985 (Simon Butt, 2014: 9).

The influence of religion, philosophical perspectives, circumstances, and the political, economic, and security stability in the European region during the Middle Ages of colonialism all had an impact on the formation of both schools (Gardiner, 2008: 746-809). Imperative structures of worldwide law were mapped amid the European Renaissance, with the taking after vital figures: a). Bartolo da Sassoferrato (1313/14–1357); b). Baldo degli Ubaldi (1327–1400); c). Francisco de Vitoria (1486-1546); d). Francisco Suárez (1548-1617); e). Alberico Gentili (1552–1608); f). Hugo Grotius (1583-1645); g). Samuel von Pufendorf (1632–1694); h). Richard Zouche (1590-1661); i). Cornelis van Bynkershoek (1673-1743); j). German Christian Wolff (1679-1754); h). Emerich de Vattel (1714-1767) (Pitts, 2015: 541-552).

These people were the first to start and grow both schools in the connection between a country's laws and the international laws based on European ideas. This characteristic is used to measure if something is valid in countries outside of Europe, like Indonesia, which hasn't clearly decided between monism or dualism. Cassese said that national and international laws work together and make each other stronger (Aprianto, 2022: 584). Indonesia became a new country after fighting hard for its freedom from Dutch rule. Because of this, Indonesia didn't want to follow Dutch laws and instead created its own legal system. In the past, international law has supported colonial countries like Indonesia, allowing them to keep controlling colonized countries (Agusman, 2015: 2).

The laws made by other countries were not friendly to Indonesia. Indonesia's legal system was not very familiar with international law and it was a new part of the country's laws. So we don't know how the Indonesian legal system

follows international laws and agreements. This hasn't been looked at much in the national legal system (Agusman, 2015: 2).

Indonesia is having a hard time deciding between monism and dualism because they haven't ratified the convention yet. Monism suggests that national laws and international laws should be combined and treated as the same. It means that the laws of a country should also apply to its international relations and the relationships between states and their citizens. The words "incorporation", "reception", or adoption have two meanings, but the words above don't have a general meaning (Aprianto, 2022: 584). For example, when dealing with a lawsuit about a landslide in West Java, the court followed a rule from the Rio Declaration on Environment and Development, even though it wasn't part of the national law. The rule is not in the country's laws. This was done to avoid having no laws, especially because environmental laws follow international rules to match global rules (Aprianto, 2022: 582).

In Indonesian courts, they use two different legal systems. This happened in a land dispute between the Malaysian Embassy and the Saudi Arabian Embassy. Saudi Arabia is a country in the Middle East. Indonesia gives special protection and benefits to foreign diplomats according to the Vienna Convention on Diplomatic Relations 1961 and the Vienna Convention on Consular Relations 1963. These are international agreements that Indonesia has agreed to follow (Aprianto, 2022: 582).

The president in Indonesia has more power than the parliament when it comes to making decisions about monism and dualism. However, there has been a conflict between the president and the parliament, which was resolved by a decision from the Constitutional Court. The 13/PUU-XVI / 2018 is when a convention is officially approved by making it into laws and presidential regulations (Sinaga & Claudia, 2022: 679).

The power of the Constitutional Court to interpret Article 10 and Article 11 of the 1945 Constitution can affect how laws are understood and applied. This is because there are differences in how laws are seen in formal and substantial ways, and in how regulations are carried out. In Indonesia, the laws and rules are seen as having a controlling nature with the effects of being made by lawmakers or setting

norms (law in the material sense) or just as an order (law in the formal sense) (Dumoli Agusman, 2016: 74-75).

Furthermore, in the 1945 Constitution Article 11 talks about international treaties and laws. This is supported by other laws like Law No. The Law on Foreign Relations, passed in 1999, controls how a country interacts with other countries. These two rules of law mean that he has to follow international laws and that those laws are important (Hutagalung, 2017: 85-86). This paper attempts to elaborate to show the relationship established between two different legal systems to the development of national law. Both in doctrine and in practice carried out within the scope of justice in Indonesia.

METHODS

This paper is put forward as an effort to provide an appropriate understanding and meaning, how the relationship between national law and international law at the constitutional / state level in Indonesia through the view and understanding of monism and dualism. The method put forward in this paper is a historical descriptive method with an analytical approach that focuses on a comparison of the use of doctrine and practice in Indonesia in each time series starting from the old order, new order, and reform order. Historical descriptives with periodicity: Old Order, New Order and Reformation Order are used to show an overview of the relationship of national law with international law in Indonesia, as two inseparable parts within the scope of the Continental European system. The analytical approach is aimed at unraveling more deeply the essence contained in both.

RESULTS AND DISCUSSIONS

The Relationship between National Law and International Law in the Old Order

The period of the Indonesian revolution was the most important time in the relationship between national law and international law. The relationship was built based on the awareness of the importance of protecting the human rights of the

Indonesian people, which sought to break away from the influence of foreign nations in every scope of the rule of law including international law that prioritized the interests of the Dutch Colonial Government. The changes in the era of revolution that are desired for the protection of human rights in international law cannot be realized in national law. The inability of realization was due to the emergence of unilateral arbitrariness from the Dutch Government which took advantage of Indonesia's situation as a poorly armed country, in resisting allied military aggression led by the Netherlands.

The action, which was later justified by the Indonesian government as a violation of international law, was revealed at a conference in New Delhi and urged that the Netherlands end its ambition to regain control in Indonesia. It should be noted that the Dutch made the attacked territories dummy states, such as the State of East Indonesia, the State of East Java, the State of Pasundan, etc., with *the Bijeenkomst voor Federaal Overleg* (Conference for Federal Consultation) as the main institution in managing the federated states (Ruben Barink, 2020).

The justification of the Dutch government's violation of international law did not lead to a shift in the focus of the independence period away from national law which prioritized preserving and defending the newly gained independence from European colonialists, by showing a strong image to the outside world. The effort to defend independence was part of the reflection of August 17, 1945, and the ceremony of the proclamation of independence.

Proclamation as a tool of sovereignty of an independent Indonesia against the return of allies spearheaded by the Dutch and British in the period 1945-1950 known in Indonesian history as the period of the war of independence. The war ended with an agreement held in The Hague, Netherlands. This agreement is known as the Round Table agreement - the term is used to refer to the table shape used in the treaty - which is round (Nasution, 2018: 209).

During the period of Guided Democracy, expressions of nationalism were manifested most succinctly in Sukarno's foreign policy, particularly in the increasingly militant policy of the Indonesian state's struggle, or confrontation against imperialism, colonialism, and neo-colonialism, which enjoyed strong support from the PKI. Nationalist discourse suggests that this policy was rooted in

Indonesia's traumatic emancipation from Dutch colonial rule (Meng & Silva, 2022: 97).

Trauma that forces Indonesia to; a) defend the freedom of Indonesian citizens and protect the country itself; b) obtain a standard of living; c) obtain capital equipment to reconstruct things that have been destroyed; d) to make the principles of international law much stronger and to obtain assistance in achieving social justice at the international level; e) help citizens stay alive and gain freedom from the colonial system; f).to place special emphasis especially on initiating better relations with neighboring countries (Fadlan Muzakki, 2017: 18).

Hatta further revealed the Indonesian people had just been free from colonialism, Slogans such as liberation, humanity, social justice, brotherhood of the nation and lasting peace which were supporting forces in the Indonesian national movement, were seen as ideals to be translated into practice. The ideal of seeking friendship is based on respecting each other's independence. In the process of strengthening such friendship, Indonesia is ready to accept intellectual, material, and moral assistance from any country, provided there is no reduction to, or threat to, its dependence and sovereignty (Hatta, 1953: 442-447). The slogan free from colonialism that was put forward after independence to show the values of nationalism contained in the 1945 Constitution as recognition of pure Indonesian national law, cannot necessarily be said that international law was not recognized during that period.

This argument can be seen from the view expressed by Eka An Aqimuddin that since August 18, 1945 Indonesia is a subject in the sense of international law. Indonesia gained recognition as an independent country from other countries. The practice of acceptance by the international community can also be seen both explicitly and implicitly, which can be seen in the Indonesian Government signing the Linggadjati agreement with allied forces on 25 March 1947 during the Dutch aggression. That is, even having unstable conditions, as an effective government that controls the area, Indonesia is recognized as a subject to take part in the agreement to restore a safe situation (Aqimuddin, 2020: 261).

The above reality shows that the law will serve as a manifestation of the values that have been expressed in the sense that its presence is a protector and will show a value that is highly valued and must be obeyed by the people themselves (Astutik & Trisiana, 2020: 87). National law is formed as a guideline for the realization of a good national legal system and will serve the interests set by the Indonesian nation since the beginning of the preparation of a legal material that as a whole jumped from Pancasila and the Constitution of the Republic of Indonesia Year 1945, and especially in the preparation of new legal laws and regulations requires support from the public in general and from of course the government itself so that the national development of national law can be realized (Astutik & Trisiana, 2020: 87).

The above facts show that Indonesia recognizes in practice international law originating from the revolution in the Middle Ages in terms of the *nation state*. The term that is arranged to indicate the recognition of a nation is not only related to nationalism in a national legal environment that prioritizes the interests of its people, but also in it there is an awareness of interaction with international behavior derived from customs between states that have been institutionalized.

The nation state that adheres to Article 1 paragraph (3) of the 1945 Constitution by stipulating Indonesia is a state based on law (*Rechtstaat*), in which it represents the thoughts of Friedrich Julius Stahl, namely: (Natamiharja et al., 2021: 21-22)

1. Protection of Human Rights.
2. Separation or distribution of powers to guarantee such rights.
3. Government based on regulations, and
4. The state administrative court is in dispute.

Another fact that emerged with the scope of Indonesia's international affairs in the revolutionary era was the emergence of threats to sovereignty which in question can be exemplified in the policy of confrontation, Ganyang Malaysia to oppose the traces of British neo-colonialism and neo-imperialism in Southeast Asia. Sukarno believed that the Federation of Malaysia opposed the 1963 MALPHILINDO agreement in Manila by not granting referendum rights to the people of Sabah and Sarawak. (Hidayatullah, 2017: 6)

These issues increased after Indonesia entered the era of democratization, transparency, and revolution, these three being the reasons why all elements of the Dutch East Indies at that time accepted to unite under the newly formed Indonesia were the same fate they experienced. In this context, there is a spirit of "common prosperity and welfare" that must be upheld by the central government. The main motive of the various anti-Indonesian movements is very concerned about issues of justice and welfare that they cannot experience with other communities as happened in the colonial era (Sulistiyono, 2018: 3-4).

The emergence of Indonesian nationalism stemmed from the consolidation of Dutch colonial empires in Southeast Asia in the late 19th century. Ideas of progress began to emerge in the first decade or so of the twentieth century about progress and modernity taking hold among many local elites, facilitating the emergence of what is generally regarded as the first modern "pribumi" organisation, Budi Utomo (Noble Endeavour) in 1908. (Aspinall & Berger, 2001: 1005)

Periods of liberalism, nationalism, socialism, and communism mixed with Islamic and more traditional ideas, giving rise to various political organizations and mass-based anti-colonial movements, notably the Sarekat Islam (Islamic League) founded in 1912, and the Indonesian Communist Party (PKI), its predecessor founded in 1914. In the late 1920s and early 1930s nationalism emerged as the dominant theme of the era of explicitly nationalist politics such as the Indonesian National Party (PNI), with the emergence of nationalist movements as political organizations effectively suppressed by the Dutch colonial state, but Indonesian nationalism continued to develop and spread as a widespread cultural movement (Aspinall & Berger, 2001: 1005).

After securing Indonesia's independence and sovereignty from allied military aggression, the next important milestone in Indonesian diplomacy was the task of securing international recognition through the concept of the "Unitary State of the Republic of Indonesia," under which the international community recognized Indonesia's territorial integrity as an archipelagic state. The international recognition that championed the concept of an Indonesian archipelagic state took about 25 years, starting with the Djuanda Declaration in 1957 which was later

adopted by the United Nations Convention on the Law of the Sea (UNCLOS) in 1982 (Iskandar Pranoto, 2014: 1068).

Relations between National Law and International Law in the New Order

Suharto as the leader of the new order regime changed Indonesia's approach to international law from hostile to a more open, critical, and accommodating approach to international law to create a balance between national interests and international obligations. This new orientation was formulated by Mochtar Kusumaatmadja by developing Indonesia's responsive attitude towards international law in line with national interests (Latipulhayat & Dwi Harijanti, 2022: 208).

Indonesia's responsiveness to international law in the form of ratification of international treaties. The government has issued different regulatory policies to enforce international law as a translation of Article 11 of the 1945 Constitution on policies in the period 1945-1960 with three different constitutions: the 1945 Constitution, the 1949 Constitution of the United States of Indonesia and the 1950 Constitution; (2) Policy in the period 1960 - based on Presidential Letter No. 2826 of 1960 (Bisariyadi, 2018: 253).

Indonesia is still a sovereign state and has the right independently to terminate agreements with international treaties that have been made or to which the Indonesian state is bound, after internally considering the advantages or disadvantages of either remaining bound or not bound by considering the risk of the decision to leave the international treaty (Gunawan et al., 2022: 23).

The structure of national law in the new order was divided into the following periods (Prasetyo, 2021: 14-16):

1. Transition Period (1960-1970)

Law in Indonesia is oriented towards legal formalism oriented towards the adjustment of law to reality that develops over time, as the abstraction of reality in the name of written legislation is a representation of legal positivism thinking.

2. Reinforcement Period (1970-1990)

Law in Indonesia is oriented towards modern legal thinking. This is evidenced by the tendency of legal thinking to be more reformed. That

is, this kind of legal thinking is not only sociological, normative, and positivism, but also this law has transformed law into a phenomenon of society philosophically.

3. Static Period (1990-1998)

Law in Indonesia is only oriented towards the development of laws and regulations. It is based on strengthening the principles of Pancasila ideology and the 1945 Constitution of the Republic of Indonesia. This can be seen from the constitutional ideals of completing and reorganizing statehood due to the world economic crisis.

This periodization influenced by political changes that became conflicts during the Old Order was divided into three periods: religious conflicts from 1950 to 1955, ethnic conflicts from 1956 to 1961, and class conflicts from 1961 to 1965. During its first term, the political and public elite were obsessed with the prospect of the first general elections—held in 1955 after several delays—in Indonesia's independent history (Liddle, 1992: 445).

The three main conflicts above are political realities in the era of revolution (old order) with fluctuations or instability, so as to demand a change in national leadership after 1965 marked the emergence of a new regime in the management of the Unitary State of the Republic of Indonesia. The regime known as the New Order and considered authoritarian by exercising control over politics, economy, government (local and central) and laws aimed at maintaining the power of the supporters of this regime (Agustino & Agus Yusoff, 2014: 13-24).

Specifically, within the scope of national law, the New Order placed restrictions on freedom of expression in relation to criticisms arising from various elements of society. Strictly speaking, censorship of information deemed detrimental to the existence of the regime is prohibited from being displayed. Actions that then influence national legal politics are related to the functions of the three branches of power, namely executive, legislative, and judicial power (Aspinall & Fealy, 2010: 2).

The influence was motivated by the military life of Suharto who was described by the British military attaché Rouse, as 'an important military and political figure of the army', he went on to say that: 'Suharto was regarded as a strong, efficient, and decisive officer. He lived a simple life, was notoriously incorruptible, and was famous for his intelligent appearance (Edward Aspinall, 2010: 25). Suharto's power and influence in the New Order regime in relation to national law and international law was judged by Robert Cribb as the legitimacy of managed elections and the extensive sources of funds from resource rents and foreign aid (Aspinall & Fealy, 2010: 69).

Anderson sees the New Order as facilitating Suharto's desire to build his personal interests through legalization and legal justification for his actions, playing a central role in this replication as his career had begun in the colonial security apparatus. Anderson asserts that: Suharto consciously established the New Order as a new incarnation of the colonial state, asserting his power over society and its access to resources for its own officials (Aspinall & Fealy, 2010: 69).

During Suharto's rule, the power of colonial and foreign companies was strengthened, along with the centralization of government power in Jakarta. On 7 January 1967, Suharto also signed the Indonesia-US Investment Guarantee Agreement in Jakarta, Indonesia's first Bilateral Investment Agreement [BIT] with a foreign country. The US establishes strict protection of its investments in Indonesia, evident in the paragraph stating that "the (US) Guarantor Government, however, has the right to assert claims in its sovereign capacity in the event of a denial of justice or other question of state responsibility as defined in International Law", referring to the International Law on the Protection of Foreign Investment (Kadir & Murray, 2019: 307).

The negative views that emerged against the New Order regime did not then deny the development of national law driven by international law, through the facilitation of freedom of expression in the press as an integral part of the guidelines of a democratic state. With the press as a counterweight to the power and authority that must be controlled by the civil power (society). Freedom of the press with the slogan "The media is considered a partner of the government in the process of

nation-building, although then the right to freedom of speech in the media is significantly restricted (Staples, 2016: 57).

Freedom in the sense of democracy related to a political system based on the constitution is sovereign over the interests of the people. Democracy that contains contextual content inherent in a particular social system or cultural relativism, by implementing Pancasila and the Constitution purely and consistently as a strong and relatively autonomous force (Wisnaeni & Herawati, 2020: 39 & 41).

Autonomy towards the continuation of independence over every nation, humanity and justice, and the struggle of Indonesia has reached a successful stage, and the Indonesian people are on the verge of an independent, united, sovereign, just and prosperous Indonesian State. The establishment of a national Indonesian Government is to nurture the Indonesian people and its territory; to promote the welfare of society; to raise living standards, and for participation in the establishment of a world order, based on freedom, lasting peace and social justice. (Hans Thoolen, 1987: 37)

National independence is embodied in the Indonesian State Constitution, which is designated as a republic with sovereignty in the hands of the people. We believe in an all-embracing God, in true and moral humanity, in the unity of Indonesia. We believe in democracy, guided wisely, and led by close contact with the people through consultation to produce social justice for all Indonesians (Hans Thoolen, 1987: 37).

Relations between National Law and International Law in the Reformation Order

Post-European colonization of Asian peoples caused a trap in the legal system adopted and practiced when they tried to introduce Western legal traditions that were different from the laws in force in their territories dominated by tradition or religion or sometimes both as happened in Indonesia (Isra et al., 2017: 118). This confusion then continued to occur until the stage of political, economic, social, and legal saturation until the emergence of reforms in 1998.

The instability of social, political, and economic life during the New Order period, initiated by the economic crisis in 1998 helped to rapidly change the constitutional life of Indonesia, which was marked by the emergence of reforms as

the forerunner of the Reformation Order period. The Order in which the New Order challenges the meaning of the *trias politica* in the form of executive, legislative and judicial branches of power to the protection of society in which there are structural, cultural and interactional dimensions (Dharmasisya et al., 2022: 321-334).

The lawsuit then has implications for national and international legal relations related to legal harmonization in relation to adjustments between laws and regulations within a country, treaties or conventions applicable to countries, as well as between the laws of a country and treaties/conventions between countries. Harmonization of international and national law is (Abdul Chalim, 2017: 191) :

1. Pluralism, harmonization of legal systems in the international legal system. It is designed to harmonize the legal system that all countries can agree on in implementing international treaties.
2. Urgent needs must be made to achieve harmony, balance, and consistency in the national legislation system that ensures legal certainty and protection based on justice and truth.
3. Legal certainty and protection of justice and truth in a progressive legal paradigm.

The reform order views Indonesia's legal relationship with international law only on international treaties focusing on the process of entering into treaty negotiations, with the only reference to international treaties found in Article 11 of the 1945 Constitution, (Simon Butt, 2014: 3). with indications on dualism: a) referring to Article 13 of the International Treaty Act, (b). appoint Article 7 of Law No. 39 of 1999 concerning Human Rights, c). pointed to the Truth and Reconciliation Commission Case, in which the Constitutional Court referred to "universal customary international practice and law" in taking its decision (Simon Butt, 2014: 7-9).

The second indication of monism to which many scholars point is a Supreme Court Directive issued in 2006, in which the Court applied the 1961 Vienna Convention on Diplomatic Relations ("Vienna Convention"). The Vienna Convention had been formally ratified by Indonesia's National Parliament through Law No. 1 of 1982, but the Convention's provisions had not yet been transformed into national law. Yet in its Directive, the Indonesian Supreme Court applied the

diplomatic community principle in Article 31 of the Convention to a domestic land dispute involving the Saudi Arabian embassy in Indonesia (Simon Butt, 2014: 7).

The three indicators are motivated using terms and types of international agreements that have their own characteristics. Some commonly used terms are treaty, convention, declaration, charter, protocol, pact, treaty, statute, treaty, and others (B. Maryati, 2017: 30-39). According to Myers, there are about thirty-nine names used for international treaties, among which are treaty, pact, constitution, charter, convention, agreement, exchange of notes, declaration, notes verbal's, arrangement, accord, additional articles, aide-memoire, code, communique, compact, contract, instrument, lease, mandates, measures, minute/agreed, modification, modus vivendi, optional clause, plan, process-verbal, provisions, recommendation, resolution, regulations, rules, scheme, statutes, understandings, and undertakings (Natamiharja et al., 2021: 196-197).

Based on Article 11 of the 1945 Constitution, national law has clearly recognized that international law (including customary international law) is binding and the source of law. However, the above regulation does not explain how Indonesia will declare its consent to be bound to certain international laws and what legal procedures must be carried out at the domestic level in relation to such agreements (Critical Review Towards Act No.24 Year 2000 on International Agreement).

The meaning of the Indonesian constitution on national law with international law in the reform era was only attached to international treaties that were ratified. This reality can be found in the clear legal rules governing international agreements formulated in Law No. 24 of 2004 which regulates the qualifications of international agreements that can be applied and enforced within Indonesian territory.

Explanation of Law of the Republic of Indonesia No. 24 of 2000, states that international agreements regulated in this law are any agreements in the field of public law, regulated by international law, and made by the Government with States, international organizations, or subjects of international law. Thus, international treaties are included in the study of public international law. Public international law aims to distinguish the scope of study from private international

law. The term public international law is also often referred to as international law, while private international law is often also referred to as private international law (Arief & Purnomo, 2023: 601).

However, this law still does not explain in detail the position of international law in the Indonesian legal system. Like the 1945 Constitution, the Law on International Treaties focuses more on which institutions are authorized to represent Indonesia in the treaty negotiation process and how the agreement should be signed and ratified (Satrio, 2021: 2).

With regard to international law against national law, the practice in Indonesia follows Dionisio Anzilotti that there is a basic difference in validity between national law and international law. State law is based on the obligation to comply with legal and legislative instructions, while international law is based on the principle of *pacta sunt servanda*. Therefore, international law is binding individually only after it has been adopted into national legal norms or through the country's legislative policy to transform international law into national law (S.H and Sugiyono 2023).

Based on existing data, according to the Ministry of Law and Human Rights, as of July 29, 2011, 296 international agreements have been ratified by Indonesia. Indonesia's participation in this international agreement is a means of increasing cooperation to provide benefits for both Indonesia and other participating countries in international agreements. With a note, it must also be ensured that the content of international agreements ratified is in line with the 1945 Constitution and in line with the values and lives of the Indonesian people. Therefore, juridically, and conceptually (Huda, Heriyanto, and Wardhana 2021).

For Indonesia, the door for further dissemination of international law is through the transfer of its principles and provisions into domestic law, thus enabling practitioners, judges, and all relevant stakeholders to use it in domestic legal proceedings. Since 2007 in Indonesia, the National Law on Law Making and Regulations provides the government with the obligation to disseminate information about laws, regulations, presidential decrees, and other legal instruments, before, during and after promulgation (Statement By Delegation of the Republic of Indonesia to the United Nations, New York, 5 October 2016).

Damos Dumoli Agusman explained that there are several factors that cause doubts in the International Treaty Law, namely (Tandungan, Parinussa, and Ndoen 2022):

1. legislators were influenced by the growing thinking of the time which indicated that Indonesia embraced monism with the primacy of international law.
2. This law is only a codification of the Indonesian state's practice regarding making international treaties which was previously based on the Presidential Letter of the Republic of Indonesia No. 1826/HK/1960.
3. The academic world at that time did not or did not provide answers / doctrines regarding the relationship between international law and national law.
4. Indonesian jurisprudence has not contributed to the identification of this issue, so it is hardly a juridical issue of concern.

The absence of explicit norms in the constitution regarding the position of international law creates obstacles in the issue of application of international treaties in national courts. The Law on International Treaties also does not provide clear direction on how the domestic impact of international treaties ratified by Indonesia will be (Tandungan, Parinussa, and Ndoen 2022).

It is certain that globalization, with its impact in various areas of people's lives, will affect the judicial system in every nation, including Indonesia. The impact of globalization demands that Indonesia's national legal system can adapt to various legal standards that also develop in other countries (Wardhani et al., 2022: 12). At the same time, this exposes Indonesia to a range of legal issues that need to be resolved as quickly as possible. However, the values of nations and states, as outlined in the constitution, should not be changed by globalization. These ideals include safeguarding all of Indonesia's heritage, teaching the nation's life, and advancing the general welfare of the population. As a result, the formulation of Indonesian national legislation must be carried out in Indonesia itself (development from within). Therefore, Indonesian National Law needs to be improved in

substance and procedures so that it can follow the flow of globalization and the dynamics of society (Wardhani et al., 2022: 12).

CONCLUSIONS

The complexity of national law that intersects with a series of political, social, economic changes ranging from the colonial era to reforms, is an unaffirmable reason in placing the position of international law in Indonesia, as an integrated law or needs to be integrated in the formalist-juridical Indonesian legal system in a stipulation of the rule of law. Furthermore, the relationship built from the two at the Indonesian level is more attached to dualism, focusing on private international agreements and not on public international law.

This private nature is addressed by the attitude of the state in the 1945 Constitution, which gives authority to the president and DPR only to give approval to international agreements with ratification mechanisms that are considered as a form of "incorporation", "reception", or adoption as part of the interpretation of the transformation of international law to national law which is interpreted as the submission of the Indonesian legal system to the flow of dualism.

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