



## AN INTERNATIONAL TREATY ACCORDING TO THE CONVENTION OF VIENNA 1969 AND CORRELATION WITH INTERNATIONAL TRADING COOPERATION IN INDONESIA

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### ABSTRACT

The international cooperation is an important in interstate relation aspect. It is required an international agreement. The agreement in international law was established in Convention of Vienna 1969. The Convention 1969 is the regulation of internal law was agreed by the states including Indonesia. Even though have not ratifying yet the Convention of Vienna 1969, however, Indonesia persists oblige to the custom of international law. The national law of Indonesia is regulating how to implement the international agreement. It is described on Act No.24 of 2000 on International Agreement. Ironically, however, the regulation of international trading cooperation of the Act No.7 of 2014 contravene to the provision as was agreed by all the state, i.e. Convention of Vienna of 1969. One of article is No.85 the Act No.7 of 014. The national law of Indonesia has contravened the “*pactasuntservanda*” principle. Moreover, there is an inappropriate provision to the national law of Indonesia. There is must be a modification of international law in correlation of international trading.

**Keywords :** Treaty, Vienna Convention, International Cooperation, International Trading.

### INTRODUCTION

The national independence that proclaimed in 1945 makes Indonesia has become the state with similar right and duties to another state in the world. As the state with any concern, Indonesia is looking for international cooperation or agreement with the states in around the world. The main purpose of the state in international cooperation is domestic interest of related states.

Indonesia was performs the international agreements with many states whether in South East Asia and another. In carry out the cooperation, the unconcerned aspect by government of Indonesia is clarity of status the authentication mechanism of international agreement. In Act No.24 of 2000 on International Agreement (Act No.24/2000) was described that: Establishment

and authentication of international agreement between the government of Republic of Indonesia and other states, international organization, and subject of other international law is an absolutely important legal action as it obliges the state in particular aspect, thus the establishment and authentication of international agreement must be arranged by certain and powerful principles, by using of regulation instrument of obvious legislation as well.

It is clear that the statement above declares an establishment and authentication of agreement that must be arranged by powerful principle and use an existing regulation instrument in the national law of Indonesia. The term of authentication is always synonymous with the ratification even if both of them in particular context often have the differential meaning also. The use of authentication terminology in the Act No.24/2000 adopted from the terminology of ratification of the Vienna Convention of 1969. Thus, practically the law of international agreement in Indonesia, the use of authentication terminology is similar with the ratification. Actually, there is no matter how to use of both terminologies as long as it does not become the problem or obscures or misleading the matter. By understanding the differential meaning, it also will bring the differential perception because there are so many connotations.

Based on Article 14 of Vienna Convention of 1969 the ratification is compelling method in an agreement and usually started by marks the signature. The uniformity in understanding of ratification is required as it will be correlated to the law system of the state with differential law system (common law and civil law including the state with differential system, like Japan and China). The differential perspective and system is potentially resulting in problem in the future to the parties. The international law has provide any regulation on international agreement like Convention of Vienna of 1969, even though any states until present do not ratifying yet including Indonesia, but it is does not bring into effect as in principle the convention is a codification of international custom law thus will still compelling the Indonesia with or without the ratification.

Even if it had been accepted by a state but it still requiring long-term period for ratification. Though Indonesia do not ratify the Convention of Vienna of 1969, but there is affection for Indonesia by mechanism of international custom law as was depicted by International Court of Justice of 2002. Moreover, it can use the Vienna Convention of 1969, Article 3 point b, i.e. implementation of rules that described on convention, for all that becomes the subject according to the international law that distinct to the convention. There is no reason for Indonesia disobeys to the Convention of Vienna of 1969 as normatively it is obliges to the Indonesia.

Next, the procedure of ratification an international agreement regulated according to the national law provision of the states. The government of Republic of Indonesia in implement the agreement with other state has depicted on Article 11 of Constitution of 1945. Thus, every single the established Act must have approval by House of Representatives, while the approved category adjusted in Article 10 and the ratification by Decree of President depicted on Article 11.

However, it is does not mean that there is no problem in law of international agreement that regulated by the government of Indonesia. The problem considered in Act No.24/2000 is ratifications; it is implemented by Act and Decree of President, because there are any categories

of ratification by the Act in Article 10. The category is about the strategic problem such as politic, peaceful, defense, and national security, as well as human right, and environment. Moreover, the category of exclude problem in Article 10 is depicted on the Decree of President. There are regulations that was ratified by Indonesia, however, have not consistent yet and disarranged as well according to the requirement of applicable regulation.

Even though Indonesia is was bond into the international agreement by these methods. Because after ratification in Act; it will bring the differential interpretation. It is supposed to be that the international agreement implemented by Act is similar and equal in binding power. If correlated to the Article 7 of Act No.10 of 2004 on establishment of legislation related to the type and hierarchy of regulation, however, it will obscure an absolute status and position of the international agreement in the national legal system of Indonesia. Implementation of international agreement that was binding the Indonesia must be clear in regulations order. It is cannot be unconsidered the position in national law at present that without the clarity.

Another problem that will bring the legal matter is international agreement that was discussed and participation in put the signature on international agreement. Without the approval of House of Representatives, however, it is questionable on Indonesia can withdrawal from the international agreement. Moreover, how the ratification whether in regulation-based as was adjusted in Article 10 and Decree of resident in Article 11 if correlated to the Article 46 of Act No.10/2004 that was adjusted in Gazette of Republic of Indonesia just considered as the Decree of President. Beside the ratification of international agreement in Act No.24/2000, especially in Article 1 point 2 describes that ratification could be in other model like accession, but how the agreement in attach to the agreement that depicted by accession do not exist in the Act No.24/2000 as in Article 15 of Vienna Convention of 1969. The Article 10 of Act No.24/2000 is depicting only the scope of ratification that implemented by regulation. Without the ratification method under accession, it will bring the legal consequences. Whether existing or no the provision in regulation of international agreement on accession method, Indonesia do not binding on the agreement. When it happen, Indonesia is absolutely breaking the Article 27 of Vienna Convention of 1969.

Indonesia, in any international agreements, do not involved to put the signature and ratifying but bund to the international habit as if has complete the provision in international custom law, then Indonesia must follows as it does not ratification the Convention of Vienna of 1969. It is similar with the accession condition of international agreement with multilateral characteristic only even without all agreement open to be accessed. It is include to locating the international agreement in the order. In the last years since Indonesia issuing the Act No.7 of 2014 on trading, the contents of Article especially Chapter XII on cooperation of international trading started in Article 82 to 87, there is mistakes on attachment of national in international agreement. In any article, however, the contravene concept of "*pactasuntservanda*" is Article 85. Moreover, there is also any other article that opposite to the Article 11 of the Constitution of 1956. Some of the articles related to the Constitution 1945 are Article 83 and 84 of Vienna Convention 1969. The mistakes has happen is really dangerous to the existence of national law

of Indonesia. It could be when any conflict with the international law, especially the Convention of Vienna of 1969.

By the reasons, observer put an interest for research with given title “THE INTERNATIONAL AGREEMENT ACCORDING TO THE VIENNA CONVENTION 1969 AND CORRELATION WITH INTERNATIONAL TRADING COOPERATION IN INDONESIA.”

By the subject above, the formulation of problems as follows: How the national interest in international agreement according to the Convention of Vienna of 1969 and international trading cooperation of Indonesia?

## **RESULTS AND DISCUSSION**

### **National interest to the Convention of Vienna 1969 and correlation with the international trading cooperation of Indonesia**

Practically, in the globalization era, the states in the world bound in international agreement. By the treaty all the states can made the cooperation in politic, economy, culture, science and technology, etc. Almost all of the states in the world carry out the agreement with other one and no one of them disengaged by agreement in international living.

The international agreement is a resource of international law and it collective will (national will) for collective purpose. Accompanied by the complicatedly development of international law, international agreement encounter the new challenge as well. In avoid the uncertainty law of the states in arrange the cooperation, the improbability of related regulation to the international agreement has becomes the emergently requirement.

Total increasing international agreement between the states in globalization era has described by G.I. Tunkin as follows:

At present, proportionally the international agreement was occupy the major position in international law as the result of international agreement spreading widely.

After new order era collapsed, Indonesia was implement the international agreement with many states whether in South East Asia or developed countries in this world. The objective of agreement is to obtain an interest for both of parties whether in Indonesia or the state who implement the international agreement with Indonesia, as depicted in the Constitution 1945 in first paragraph: ...protect the whole people of Indonesia and the entire homeland of Indonesia and I order to advance general prosperity, to develop the nation's intellectual life, and to contribute to the implementation of a world order based on freedom, lasting peace and social justice, the government of Republic of Indonesia, as a part of international society, carry out the relation and international relation that implement in international agreement.

The state is an institution, i.e. the system that regulating an established connection by among of human as the instrument to attain the main purpose, such as order system that protecting human in activity. There is no understanding on state in the regulation of international law, but Convention of Montevideo 1933 was conditioning an existence of the state.

In progress, however, there is differential assessment and interpretation on understanding of the absolute state and non-absolute state. The state as the subject of main international law is an assembly of individual community with absolutely, freedom and equality to the other states in the world. It means that the state had autonomy without intervention in domestic business of other state. In other word, the state usually considered as freedom and sovereign only toward or on their territory. The state is sovereign as it had highest power, even if it had restrictions. The power restricted by border of the state, which it means that the state had the highest power inside the territory.

The sovereign is a highest power owned by the state in free to do many activity according to the interest as long as without contravene to the principle of the existing international law. The sovereign is highest power of the state as other did even in the equal position before the states. Moreover, in the UN Charter insists that: “the equal right of ... nations large and small”. In other chance at Article 21 the UN Charter described that: “t(he) organization is based on the principle of the sovereign equality of all its members.” The principle reflected by voting for a member of General Assembly of United Nation, that the principle sustained again by Declaration on Principle of International Law of 1970 arguing that: “Each of the state has a similar sovereignty, equal in right and duty, equal as the member of international organization, without considering any differential economy, social, politic, other characteristic.”

The principle above is represent the parity and equality of each the states in implement the right and duty in international law. Moreover, among of them, there is the state cannot perform their international relation with other one thus it cannot be considers as sovereign state, because in international law the sovereignty had 3 (three) main aspects, i.e. external, internal, and territorial. The most important aspect, however, in relation of internal cooperation especially in international trading cooperation is connection of powerful state and conform with the international law.

Therefore, in order to the state can connecting in free at the international world and capable in establish the international agreement, thus the state must be sovereign, not in domestic only but international also. In this case, the sovereign state is:

1. Deserve to appoint (assign) the representative (ambassador) to (in) other state (active) in accept the other representative (ambassador) state (passively).
2. Establish the agreement with other states.
3. Declare and make a war as well as create the peaceful with other states (the Constitution 1945, Article 11 and 13).

However, the most important thing is how the state can do all of the capabilities above and powerful to implement the rights liberally, as if does not satisfied it is means that the state incapable as the sovereign state. Beside the sovereignty, especially Indonesia must conform to the Convention of Vienna of 1969.

Almost, the international agreement established by state without accomplish the conditions above only as the reason that they are inopportune for national interest. For the future, an analysis toward the objective situation in correlation with the state sovereignty must be

improved in avoid the damage for Indonesia, even if in the regulation was describe the statement in consider the applicable national and international law. Comprehensively, the Act No.24 of 2000 Article 4 (2) describes that: “In establish the international agreement, the government of Republic of Indonesia guided by national interest and principle of equal position, win-win solution, and put an interest whether in national or applicable international laws.”

The statement above firms an importance of national interest and principle of equal position, win-win solution, and put an interest whether in national or applicable international laws. The principle of equality before sovereign state is based on central point of legal or international law. It is can be seen clearly for positive theorists or concensualism that emphasize on importance of agreement of the state before the law applicable. Moreover, the existing principle of international agreement universally was agree and implemented as well as possible with good intention based on principle or agreeable regulation.

The principle does not only applicable since agreement has begun as started by negotiation, implementation, but also until dispute settlement when the concerned parties with dispute in agreement. Without the principle, an agreement will experience any problems. Even though there are two legal systems like the state with “civil law and common law” systems, but all of them had similarities on importance of good intention in agreement. Both of legal system, however, is different in understanding.

Moreover, in create the international agreement any interpretation firmly defines that importance of established agreement is related to the acceptable consequences by the state whose create the agreement, as was described that the international agreement is: “...an agreement that was performs between the states and intend to bring consequences of the law.”

Dissimilar with the understanding above, Vienna Convention of 1969 on international agreement describes that: “Treaty means an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”

Meanwhile, Oppenheim-Lauterpatcht precisely firms that agreement is inter-state agreement, bring into the right and duty between the parties. The party is a state as the main subject of international law.

Thus, generally it can be said that the characteristics of international agreement is that it is create by the subject of international law and the establishment regulated by international law and the consequence bound into the subject as the party.

Moreover, in accordance with this case at point d of Preamble of the Act No.24 of 2000 describes that: “Establishment and authentication of international agreement between the government of Republic of Indonesia and other states, international organization, and subject of other international law is an absolutely important legal action as it oblige to the state in particular aspect, thus the establishment and authentication of international agreement must be arranged by certain and powerful principles, by using of regulation instrument of obvious legislation as well.”

Every single international agreement requires the mark of signature and ratification of the state with agreement, but before discuss of the problem, there is must be consider what the meaning of international agreement in opinion of scholars as follows:

1. G.Schwarzenberger: "Treaties agreements between subjects of international law creating binding obligations in international law. They may be bilateral (i.e. concluded between contracting parties) or multilateral(i.e. concluded more than contracting parties)".
2. Oppenheim-Lauterpach: "International treaties are agreement of contractual charter between states, creating legal rights and obligation between the parties".
3. Ian Brownlie: "Treaties as an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation".
4. A.S Hershey: "between International treaties or convention are agreements or contracts two or more states, usually negotiated for the purpose of creating, modifying or extinguishing mutual and reciprocal obligations."
5. MochtarKusumaatmadja: "an agreement is arranged between members of the states with intend to bring into effect of particular law consequences."
6. Convention of Vienna of 1969 in Article 2 describes the international treaties: "The agreement established between states in document, regulated by the international law, whether in single or dual as well as multiple instruments related to the and named given on it."
7. D.P.O' Connell: "A treaty is an agreement between states, governed by international law is distinct from municipal law, the form and manner of which is immaterial to the legal consequences of the act".
8. The Act No.24 of 2000: "The agreement in model and particular name, regulated by the international law establish in document and bring a consequence in right and duty of common law."
9. D.W. Greig presenting criteria of international treaties:
  - a. A written instrument between two or more parties.
  - b. Treaty must be between parties endowed with international personality.
  - c. The agreement must be governed by international law
  - d. The agreement should create a legal obligation.

By the opinion above it can be emphasized that understanding of international treaties is an agreement of inter-states with intend to bring a consequences to the parties on it. the international treaties is an authentic evident of the state in establish the cooperation with other one, accompanied by written form, as Article 2 of Vienna Convention describes that: "Treaty means an international agreement concluded between states in written form and governed by international law, whether embodied in a single instruments and whatever its particular designation"

By the statement it has depicted that treaty is an international agreement arranged among the states in written form. The convention describes that international agreement in written form

thus the oral one excluded into the treaty, even though the written agreement results in international duties. The international law has not regulating yet firmly the form of agreement introduced, whether in oral or written. The Permanent Court of International Justice (PCIJ) have release the decision on accept the settlement between Norway and Denmark in case of Greenland known as “Ihlen Declaration” of 1919 and receive the oral agreement as treaty that binding the state with the agreement. Contrarily, the international treaty in international law of Indonesia exactly weakening and tend to fault or mistake in understanding the state attachment in international treaty. It can be seen when the legislation on trading especially to the cooperation of international trading of Chapter XII of Article 85 using the reasons on national interest in international treaty. As for Article 85 declares that:

(Paragraph 1) The government with approval of House of Representative can re-review and cancelation the agreement of international trading that the agreement arranged by legislation based on consideration of national interest.

(Paragraph 2) The government can re-review and cancelation the agreement of international trading that the ratification arranged by Decree of President based on consideration of national interest.

(Paragraph 3) The further provision on procedures of re-review and cancelation of agreement of international trading as mentioned in paragraph (1) and (2) of government regulation.

The provision of the Act No.7 of 2014 as depicted above it related to the Article 26 of Vienna Convention of 1969 is contravene to the “*pactasuntservanda*” principles firms that each effective agreement is binding on the parties in agreement and must be implement by them with good intention.

The provision above absolutely inappropriate to the Article 4 of Act No.24 of 2000 on International Treaty as depicted in Paragrah (1) that the government of Republic of Indonesia establish an international treaty with a state or more, international organization or other subject of international law based on agreement, and the parties obliged to implement the agreement in good intention.

Paragraph (2) on establish international agreement, the government of Republic of Indonesia guided by national interest and based on equal principle of position, win-win solution and considering applicable national or international laws.

By pay an attention to the provision of Article 4 of the Act No.24 of 2000, it is certain that national law of Indonesia on international treaty considering the Convention of Vienna 1969. However, it is different with the Article 85 of the Act No.7 of 2014 on trading that not only breaking the regulation on national law but also international one; i.e. Article 46 of Vienna Convention of 1969. The disobedience was found in Article 46 (1) of Convention 1969 declaring that: the state could not express that the agreement to bind them in international treaty is breaking the provision of national law, on authority to establish the agreement, except if the infringement occurred obviously and related to the important and principle regulation of national law. By this Article 46 (1) of Convention, Article 85 of the Act No.7 of 2014 considered has infringed the provision of law of international treaty.

## CONCLUSION

The international treaty is requiring a national commitment to accomplish the regulation in international law especially the Convention of Vienna of 1969. Since the Convention of Vienna took effect as depicted on Article 84, it is be valid universally. No matter what the reasons have been made, Indonesia should not infringe to the valid provision in international law. Thus, the national law of Indonesia, especially the Act No.7 of 2014 on trading in Chapter XII of Article 85 should not infringe to the Convention of Vienna of 1969. By understanding the content of Article 46 of Vienna Convention of 1969, it is clearly declared that national law of Indonesia should not contravene to the international law by considering the national interest.

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