Legal Means to Ratification of International Agreements for the Development of International Economic Law in Indonesia

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Abstract

Globalisation has affected all nations' ability to build relationships with others. Treaties or agreements made that attract global attention are ready to adopt through national acts. Indonesia, however, requires ratification of signed treaties. The intensity of international trade is impacted by globalisation. Mostly countries need each other to improve their economies. Therefore, it is clearly essential to set an international economic law that regulates it. Regarding the stability of economic relations, it is recommended to harmonise and unify its national law by providing legal processes. The implementation of such international economic law by the state of Indonesia aims to improve national development through effective policies. This article discusses both the existence and the system of unification to harmonise our national acts with treaties made between international law and constitutional law.

Keywords: *Treaty or Agreement, National Act, Legal Means, Ratification, Economic Law*

I. INTRODUCTION

Acceleration in various aspects of life has turned "a distant life" into a "unified life." The implication of this unified life is what is now referred to as globalisation. In every corner of the world, are now connected, uplifted, co-opted into one pattern of life. Satjipto Rahardjo, borrowing Wallerstein's expression,[1] states that globalisation is the process of forming a worldwide capitalist system that brings the nations of the world into a capitalist economic division of labour. Globalisation is a characteristic of the relationship between the inhabitants of the earth that goes beyond conventional boundaries such as nations and states. In the process, the world has become compressed, and there has been an intensification of awareness of the world as a unified whole.[2] Therefore, the boundaries made by each country

[1] Satjipto Rahardjo, "Pembangunan Hukum di Indonesia dalam Konteks Situasi Global," *PERSPEKTIF* 2, no. 2 (1997).
[2] *See* Zangin M. Awdel, Naji M. Odel, Wzhar F. Saadi, "The Rise of the Globalization and Its Effect on the Autonomy of

seem to have dissolved and integrated with every activity carried out between one country and another. This happens because of the interdependence and potential differences in each country. So that makes each country work together to meet each other's needs. Surely in these relationships, there will be social friction that must relate to a mutual agreement in the form of a joint or international legal units.

Thus, the law as one of the social sub-systems cannot be isolated from the changes that occur in the international community, including economic, social, cultural, political, and legal changes.[3] Changes are caused by the occurrence of various international agreements signed bilaterally, regionally, and multilaterally. Meanwhile, Satjipto states that the law develops by following the stages of community development.[4] In the international world, this stage moved rapidly after the end of World War II. Many international agreements were born to re-strengthen the global economy after the war and provide preventive efforts in the form of an international working group to prevent war from reoccurring.

The Government of the Republic of Indonesia, in carrying out its foreign policy, always makes various efforts to fight for its national interests, including making international agreements with other countries, international organisations and other legal subjects. Treaty development usually goes through several stages, namely negotiation (negotiation), signing (Signature) and Ratification. Entry into force is divided into four categories, namely Ratification, Accession, Acceptance or approval, and the results of international agreements that are self-executing (in effect at the time of signing).[5]

Ratification is an absolute requirement for countries that have agreed to international agreements in the name of solidarity and agreement, so there must be rules that will be adopted through national legislation. For Indonesia, the International Agreement is a framework for the Globalisation of International Relations which has further increased the contact and interaction between International Law and National Law. The interaction of these two fields of law further sharpens the question of the meaning of the institution of "ratification" (ratification, accession, acceptance, approval) with the status of international agreements in the national law of the Republic of Indonesia. From a theoretical and practical level.[6]

The definition of the institution of ratification/ratification is understood differently by experts in constitutional law and by experts in international law. The institution of ratification or ratification itself essentially comes from the concept

State and Political Economy," *Journal of Critical Reviews* 7, no. 6 (2020).

3 *See* David J. Bederman, *Globalization and International Law*, (New York: Palgrave Macmilan, 2008).

4 Rahardjo, "Pembangunan Hukum di Indonesia".

5 Indonesia, Law No. 24 of 2000 on International Treaty.

6 Damos Dumoli Agusman, "Dasar Konstitusional Perjanjian Internasional Mengais Latar Belakang dan Dinamika Pasal 11 UUD 1945," *Opinio Juris* 4 no. 1 (2012): 3.

of treaty law, which is always interpreted as an act of 'confirmation' from a state against the legal actions of its officials who have signed an agreement as a sign of agreement to be bound by the agreement.[7]

In terms of treaty law, ratification is essentially a confirmation of all actions of the international relations of each country. This confirmation was needed in the early era of the development of international treaties due to communication problems and geographical distance among countries which required each country to confirm every agreement that had been signed by its official. However, this institution in subsequent developments has also begun to be recognised and developed in the constitutional laws of each country, which is used for the same object, namely international agreements. The institution of ratification or ratification in constitutional law is always interpreted as an act of approval by a state organ against the government's actions to make an agreement or confirmation of that organ against the signing of an agreement by its government.[8]

International agreements that are ratified are very much needed in the intensity of international relations to impact aspects of life such as the economic field as a determinant of world life. The economic dependence of one country on another is very much felt by various international agreements made in a series of bilateral, regional, and multilateral. In the discussion of international conferences, an important part of the discussion of several countries is how to perpetuate the economic relations of various countries by eliminating the barriers. Either by simplifying policies, bureaucracy, tax rates, and others. Therefore, it is necessary to have a legal institution that ensures certainty and order in economic relations. This institution is known as international economic law. International economic law has developed in the 12th century. This was marked by the familiarity of the most-favoured-nation (MFN) treatment and reciprocity clauses in that century. Another influence was economics, namely the birth of Adam Smith's The Wealth of Nations in 1776. He stated that specialisation will create efficiency in the use of resources which then results in economic growth and prosperity.[9]

Adam Smith's theories were later complemented by David Ricardo by adding that specialisation needs to support a global division of labour. The two opinions of economic scientists are now known as the theory of comparative advantage. The theory states that each country has its advantages so that it rationally allows trade (economic) relations to occur. The influence of the thoughts of these two scholars led to liberalisation in the economic field.[10]

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7 Malcolm N. Shaw, *International Law 8th Edition* (Cambridge: Cambridge University Press, 2017).

8 Robert Kolb, *The Law of Treaties: An Introduction* (London: Edward Elgar Publishing Limited, 2016).

9 Adam Smith, *An inquiry into the Nature and Causes of the Wealth of Nation* (London: Methuen & Co. Ltd, 1776), 3.

10 See David Ricardo, *The Principles of Political Economy and Taxation* (Canada: Batoche Books, 2001).

Economic liberalisation requires that a market must be free from state intervention. Adam Smith, for example, believes that the market has its mechanism in case of distortion in the market. He called it the "invisible hand." In the liberal era, the usual clauses contained in international economic law were contained in bilateral agreements on trade and navigation. Aside from that, there were not many agreements formed by international organisations. After the Second World War, the international community learned many valuable lessons to avoid war. The first was to harmonise the strengths of each country, maintain international peace and security by building friendly relations between countries and enhance international cooperation. The implementation is to, "promote … higher standards of living, full employment and conditions of economic and social progress and development."[11]

Legal development is a job that is as old as the work of developing the state. The presence of law as written law through legislation and in the judicial process as jurisprudence (judge-made law) has also long been known in the legal world, as well as the part of Indonesian law that is currently increasingly important and influential, namely Indonesian economic law. the validity of which is not only national but also international. The relevance of economic law has become increasingly prominent since trade has entered a world without borders. The formation of institutions such as the WTO (World Trade Organization), economic cooperation forums such as APEC (Asia Pacific Economic Cooperation), Europe united in the EEC (European Economic Council), and what Indonesia will experience as CAFTA (China ASEAN Free Trade Area) are some examples of the tendency to unite. a pattern of life in a capitalist economic order. It cannot be denied how the territorial boundaries of a state are now no longer barriers to various economic activities that are rapidly increasing.[12] Likewise, the area where legal work operates is increasingly global.

For Indonesia, precisely after ratifying international agreements in the trade sector in an international organisation known as the World Trade Organization (WTO), Indonesia must comply with all provisions that apply to all WTO member countries with all the consequences. This reality mandates that Indonesia to truly and seriously "follow and develop" international economic law, especially in its implementation or law enforcement, where all law enforcers and law actors are in cross-national and international business. This means that mistakes in its management will result in harm to Indonesia in international trade or free trade, and the impact will not only affect the parties to international agreements, but also the Indonesian people.

The above phenomenon is evident from the growing use of terms that indicate the transcending of a country's traditional and national territorial boundaries, such as the term transnational corporation, transnational capitalist class, transnational

[11] *Ibid.*

[12] Bela Balassa, *The Theory of Economic Integration* (Greenwood Press, 1961).

practices, transnational information exchange, the international managerial bourgeoisie, trans-state norms. Dissolution of these limits will make each subject free to move and interact with each other. Later, it will lead to market interaction better known as the free market.

The free market has a long history of free-trade politics, which is nothing but the antithesis (read: opposite) of mercantilism economic politics. An understanding that believes that the welfare of a country is only determined by the number of assets or capital in reserves. Economic assets can be described by the amount of capital (precious minerals, especially gold and other commodities) owned by the State. This capital can be increased by increasing exports and preventing imports as much as possible so that the trade balance with other countries will always be positive. Mercantilism teaches that a country's government must achieve this goal by protecting its economy, encouraging exports (through incentives) and reducing imports (usually by imposing heavy tariffs and taxes). Economic policies that work by such mechanisms are called mercantilism economic systems.[13]

In its development, however, true mercantilism is an ineffective economic system. This was caused by the intervention of the state, which was considered too large, thus stagnating the trading system. One critic of the politics of mercantilism is Adam Smith. Smith said that the law of the market should not be restrained, rather, the market must be opened as wide as possible by marginalising the role of the State, which tends to limit individuals (private). In his work entitled "An Inquiry into the Nature and Causes of the Wealth of Nations" he was later abbreviated as "The Wealth of Nations," Smith described the history of industrial and trade development in Europe and the basics of free trade and capitalism. Adam Smith himself is known as one of the pioneers of the capitalist economic system.

One of the main points of The Wealth of Nations is the free market. Smith believed that if human motives would follow their inherent selfish and greedy nature, competition in a free market would aim to benefit society by forcing prices to remain low while building in incentives for production of various goods and services. Smith strongly criticised the efforts of the state monopoly which limited the expansion of industry. For Smith, the state is too far to intervene in the economic process, one of which is in imposing tariffs. This tariff-based intervention creates inefficiency and high prices in the long run. This theory became known as "laissez-faire", which means "let them do it" without restrictions and intervention from the state.

Adam Smith initially conceptualised the free market and free trade, then developed by David Ricardo in 1887. Ricardo was one economist who did not agree with the policy of the state through the government in terms of trade restrictions.

[13] Eman Suparman, *Makalah Perjanjian Internasional Sebagai Model Hukum Bagi Pengaturan Masyarakat Global (*Menuju Konvensi ASEAN Sebagai Upaya Harmonisasi Hukum*)* (Bandung: Fakultas Hukum Universitas Padjadjaran, 2000), 20

According to Ricardo, one of the fundamental reasons that push the necessity of international trade towards a free market is the difference in comparative advantages between countries in producing certain commodities. A country will export commodities produce cheaper goods, and import commodities that use more resources.

The atmosphere of change towards the life of the people of the nations that are increasingly integrated the various implications as described above, of course, affects the model of legal institutions that must be prepared. If the preparation of legal institutions carried out by a state such as Indonesia solely uses the codification model as has been going on so far, it is feared that such a model will be difficult to adapt to various processes of change that take place too quickly will continue and cannot be stopped.

Whether we realise it or not, transnational activities will affect the direction and development of the laws of nations. This influence appears in the form of: (i) the fact that the field of transnational law is increasingly undergoing a process of nationalisation, (ii) on the other hand, the transnational arena for legal practices is increasingly wide open, and (iii) it is increasingly felt how the forces and logics of the logic that works in the fields of economy, state and international order have had an impact on the legal field.

In this regard, Satjipto Rahardjo pointed to Max Weber as a pioneer who saw the close relationship between the emergence of modern law and capitalism which means that Weber saw capitalism as the cause of a change in the type of law from traditional to modern.

Many forms of transnational activities are a new threat to Indonesia in the form of various international agreements. These international agreements and agreements related to free trade are being executed by the Government without ever trying to see the impact it will have. Indonesia itself has agreed on free trade, including ASEAN Free Trade Agreement (AFTA), Indonesia - Japan EPA, ASEAN - China FTA, ASEAN - Korea FTA. Meanwhile, those still in the negotiation stage are ASEAN – India FTA, ASEAN – EU FTA, ASEAN – Australia – New Zealand FTA. Meanwhile, the free trade zone between Indonesia-US FTA and Indonesia-EFTA (Switzerland, Liechtenstein, Norway, and Iceland), is still in the process of pre-negotiation and joint study.

One that has caught a lot of attention today is the free trade zone agreement between the ASEAN countries (including Indonesia) and China. we often call it the China-ASEAN Free Trade Agreement (CAFTA). The agreement was executed by the Government in Bandar Seri Begawan, Brunei, on 6 November 2001 ago. However, its birth is feared to clash with other International Trade Organizations such as GATT/WTO. This concern was conveyed by Rafiqul Islam that the tendency to form regional groups, on the one hand, has a positive impact. On the other hand, these regional organisations raise concerns from the international community because the

existence of these trading blocs gave birth to exclusive regional regulations which turned out to deviate from the general provisions contained in the GATT/WTO.[14] Therefore, legal means in the ratification of international treaties are important to help member countries to make the right choice of law so that the competition between regional and international will be returned to their respective countries. However, in practice conflicts of interest prevent legal means from being enforced.

II. LEGAL RATIFICATION TO NATIONAL LAW

The issue of ratification is an important and interesting issue to discuss because it is integral to international treaties. This is because international treaties are one of the main sources of international law from the sequence of sources of international law. This can be seen from Article 39 paragraph (1) of the Statute of the International Court of Justice which states: "The Court, whose function it is to decide under international law … shall apply: a. International Convention, whether general or particular stabilising rules expressly recognised by the contesting states." According to Mochtar Kusumaatmadja,[15] consent to a treaty given by signing is temporary and still needs to be approved by the people through their representatives; this is called ratification.

Countries that ratify international treaties are directly bound to protect the agreed points. This is very much felt in the development of international economic law. For example, the provisions of the World Trade Organization (WTO) in the Trade-Related Aspects of Intellectual Property Rights (TRIPS) which protect Intellectual Property Rights (IPR) such as the Patent Regime, Trademarks or Copyrights and by standards. TRIPS requires each country to provide a "legal means" to protect the regime. Legal Means or legal ways consist of two processes that develop international agreements related to issues of economic cooperation.

First, the process is left to the contracting countries. This is an opportunity for member countries to choose the protection system considered the most appropriate nationally, on the assumption that as a field of law, international law is part of the law in general.[16]

1. Dualism which is based on the theory that the binding force of International Law comes from the will of the State and International Law and National Law are two systems or legal instruments that are separate from one another.
2. Monism is based on the idea of the unity of all laws that govern human life. In the framework of this thought, International Law and National Law are two parts of a larger unity, namely the law that regulates human life.

[14] Huala Adolf, *Hukum Perdagangan Internasional* (Jakarta: Raja Grafindo Persada, 2005), 28.
[15] Mochtar Kusumaatmadja & Etty R. Agoes, *Pengantar Hukum Internasional*, (Bandung: PT. Alumni, 2003).
[16] J. G. Starke, *Pengantar Hukum Internasional*, Edisi X, (Jakarta: Sinar Grafika, 2006).

Accordingly, it is possible to have a hierarchical relationship. which one will take precedence whether the national interest (Primacy of National Law) or International (Primacy of International Law)

When analysed through the dualism school related to the implementation of TRIPS into National provisions, it can be observed that Indonesia applies it with its awareness, without intervention from international law and employs appointment (renvoi) only so that the provisions of International Law require transformation into legal products in the form of Indonesian laws and regulations. as positive law. For example, the ratification of the WTO through Law No. 7 of 1994 concerning the ratification of the Agreement Establishing the World Trade organisation followed by the ratification of other IPR regimes such as Law No. 30 of 2000 on Trade Secrets, Law No. 31 of 2000 on Industrial Design and Law No. 32 of 2000 on Layout Design of Integrated Circuits. Law No. 14 of 2001 on Patents was then replaced by Law No. 13 of 2016. Furthermore, marks and geographical indications were transformed into Law No. 15 of 2001 and then replaced by Law No. 20 of 2016 on Marks and Geographical Indications. As well as copyright which was ratified in Law No. 19 of 2002 on copyright and then replaced by Law No. 28 of 2014.

Meanwhile, from the side of the flow of monism, the application of TRIPS can be seen from two interests. From the national interest (Primacy of National Law) and international interest (Primacy of International Law). This is proven in the TRIPS provisions which require every WTO member to ratify it into the legal instruments of each state. So that national legal products are formed based on mutual agreements (*pacta sunt servada*) which are framed by international law.

However, from the description of the two schools above, it can be concluded that the two theories do not provide a satisfactory answer. Because the practice of international law provides enough material or examples for all countries in the world, that international law has enough authority and influence national law. In general, international law is obeyed immediately and national law is essentially subject to international law. This is evident in the development of international economic law which encourages IPR, embracing the interests of developed countries are forced to live in developing countries by implementing TRIPS into their national legal products, due to economic dependence. Therefore, developing countries try to comply with international law by using the legal options available under various theories of international law.

The choice in implementing TRIPS in its member countries including Indonesia relates to legal unification and harmonisation. These countries include international trade law rules in their national laws. Accordingly, the rules of national law in the field of international trade become a source of law that is quite important in accessing International Economic Law in the development of Indonesian law as the ratification of the WTO through Law No. 7 of 1994 on the ratification of the Agreement Establishing the World Trade Organization. However, the existence of various national laws is more or less likely to differ from one another. This difference is then feared to also affect the trade relation itself.

In the UN General Assembly Resolution No 2102 (XX), the United Nations stated that "conflicts and divergences arising from the laws of different states in matters relating to international trade constitute an obstacle to the development of global trade". To deal with this problem, three techniques can be done, namely:

> First, countries agree to subordinate national laws. On the contrary, they apply international trade law to regulate their legal trade relations. Certain countries can be used. The method of determining the national law that will apply can be used through the application of the principle of choice of laws. Choice of laws is a clause agreed upon by the parties as outlined in the (International) contract they made. It is not mandatory but is only used when there is a dispute, and resolution is expected. Third, the technique that can be taken to unify and harmonise the legal rules of the substantive international trade law. This technique is considered quite efficient which avoids conflict between the legal systems adopted by each state.

Unification and harmonisation have the same meaning, but some differences need to be noted. Both words mean the effort or process of conforming the substance of the regulation of existing legal systems. The uniformity includes the integration of previously different legal systems. Legal unification includes the abolition and replacement of a legal system with a new legal system such as the implementation of the TRIPS/WTO Agreements. With the introduction of the substance in the areas of the TRIPS/WTO agreement which includes provisions regarding copyrights, trademarks, industrial designs, patents and especially regarding the discussion of this paper, namely geographical indications. Therefore, each member country is obliged to implement and make its national IPR rules by the substance of the TRIPS/WTO agreements.

This adjustment can also be seen in the legal systems of the participating countries. Indonesia as a former Dutch colonial country adheres to a substantive European legal system or also called the European continental legal system. While the Anglo-Saxon legal system known as the Common Law System is adopted by the United Kingdom and its former colonies. In the field of Intellectual Property Rights, the developed legal system in each country, including Indonesia, is strongly influenced by international law and the law of other countries.

The principle of minimum standard protection (The Minimum Standard Protection Principle) is this principle that requires member countries to fully comply with the provisions of international agreements as provisions that are the lowest standard of protection. or stronger than that stated in an international agreement, but not less.[17] For example, the Indonesian legal system regarding the application of the geographical indication regime as intellectual property rights is the same as the law applied by the United States which codifies it in the trademark law, although Geographical Indications cannot be equated with brands. especially regarding the quality of an item or product originating from a particular area.

[17] Jerome H. Reichman, "Universal Minimum Standards of Intellectual Property Protection under the TRIPS Component of the WTO Agreement," *International Lawyer* 29, no. 2 (1995): 345.

III. THE POSITION OF INTERNATIONAL TREATIES IN NATIONAL LEGISLATION

International law is a system of rules used to govern sovereign states. International law consists of a collection of laws, most of which consist of principles and rules of conduct that bind states and are therefore adhered to in relations among states, which also include:

- Legal regulations concerning the implementation of the functions of international institutions and organisations and the relationship between states and individuals.
- Certain legal regulations concerning individuals with non-state entities, if the rights and obligations of individuals within these entities are a matter of international cooperation.
- The application of international law is based on 2 principles:
- *Acta Sunt Servanda*, namely the agreement must and only be obeyed by the parties who agreed.
- The primacy of international law, namely international treaties have a higher position than the national laws of a participating country.

However, in the development of international relations today, there is a doctrine known as the Doctrine of Incorporation.[18] This doctrine assumes that international agreements are part of binding national law, and take effect immediately after signing, except for international agreements that require the approval of the legislature and can only be binding after being regulated in the national legislation of a country. This doctrine was embraced by Britain and other Anglo-Saxon countries. America also adheres to this doctrine, but distinguishes it in self-executing treaties, and non-self-executing Treaties.

International treaties that do not conflict with the American constitution and are self-executing, will immediately apply as federal law. Meanwhile, non-self-executing international agreements can only bind courts in America after the laws and regulations that make them apply to national law. The difference between self-executing and non-self-executing treaties does not apply to agreements that are included in the executive agreement category because they do not require the approval of the Legislative Body (Parliament) and will take effect immediately. In the legal systems in Germany and France, a new international treaty can enter into force if it is by the provisions of national law concerning the Ratification of the treaty and is officially announced. Indonesia adheres to a substantive legal system.

[18] *See* Farooq Hassan, "The Doctrine of Incorporation: New Vistas for the Enforcement of International Human Rights?" *Human Rights Quarterly* 5, no. 1 (1983): 68-86.

National Legal Systems. As an independent sovereign state, Indonesia has actively played a role in international relations and entered into international agreements with other countries, both bilateral and multilateral. This is in sync with Article 14 of the 1980 Vienna Convention which regulates when ratification requires approval to be binding. The authority to accept or reject ratification is inherent in state sovereignty. International law does not require a country to ratify an agreement. However, if a country has ratified an International Treaty, then that country will be bound by the International Treaty. Consequently, the country that has ratified the international agreement will be bound and subject to the signed international agreement if the material or substance of the agreement is through the provisions of national laws and regulations, except in bilateral agreements, ratification is required. In our National Law system, the ratification of International Treaties is regulated in Law No. 24 of 2000 on International Treaties.

In the internal implementation of international agreements, Indonesia adheres to the primacy of national law in the sense that national law has a higher position than international law. The basis of the president's authority in executing international treaties is regulated in Article 11 of the 1945 Indonesian Constitution which regulates international agreements 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 in making other international agreements that cause broad and fundamental consequences for people's lives related to the financial burden of the State, and/or requires amendments or the formation of laws must be approved by the House of Representatives.
3. Further provisions on international treaties are regulated in the Act.

Based on Article 11 paragraph (3) of the 1945 Constitution, the President's letter No: 2826/Hk concerning Ratification of International Agreements has been issued which contains the following provisions:

- If the International Treaty regulates agreements on issues related to the politics and policies of the Republic of Indonesia, it is ratified by law; and
- If the International Treaty regulates technical issues and immediately, it will be ratified by a Presidential Decree.

In the 2000 President's letter No: 2826 was abolished with the issuance of Law No. 24/2000 concerning International Agreements which also contained provisions as regulated in Presidential Letter No. 2826.

Meanwhile, according to Boer Mauna,[19] if there is a conflict between the agreement and domestic law, the general attitude of the federal judge is to always try

[19] Boer Mauna, *Hukum Internasional: Pengertian, peranan dan Fungsi dalam Era Dinamika Global* (Bandung: PT Alumni, 2005).

to reconcile the two main principles he faces, namely the primacy of international law and respect for the law. However, in implementing this, it is not easy to do because there must be someone who gives in to national law and international law. In general, this tendency is won by international law, usually, this is defeated by foreign policy interests. International Agreements are not included in the composition of the types of laws and regulations as regulated in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the establishment of Legislations as follows:

1. The 1945 Constitution of the Republic of Indonesia;
2. Decree of the People's Consultative Assembly;
3. Laws / Government Regulations in lieu of Laws;
4. Government regulations;
5. Presidential decree;
6. Provincial Regulations; and
7. Regency / City Regulations

Regarding the position of international agreements in the system of national laws and regulations, in Law number: 10 of 2004 concerning Regulations, legislation is not included as a type of legislation, international agreements are also recognised for their existence and have binding power as ordered by the superior legislation. This is related to the constitution, namely Article 11 of the 1945 Constitution concerning the President's authority to make treaties with other countries. Philosophically, the Republic of Indonesia also participates in imposing regulations in terms of human rights which must be guaranteed protection. Take, for example, the Universal Declaration of Human Rights which was ratified by Law 39 of 1999 on Human Rights.

IV. TREATY RATIFICATION PROCEDURES

Based on the differences in legal disciplines regarding the ratification mentioned above, Traditionally, the ratification of international treaties is always viewed from two separate but related procedural perspectives, namely internal procedures (domestic) and external procedures (international).

From the perspective of internal procedures, the ratification/ratification of international agreements is a matter of constitutional law, namely Indonesian National Law which regulates the executive and legislative powers in entering into international agreements and regulates what legal products must be issued to become the basis for Indonesia to carry out external procedures.

Meanwhile, from the perspective of external procedures, the ratification of the Treaty is a legal act to bind oneself to an international treaty in the form of ratification, accession, acceptance, and approval. (The international act so named whereby a State establishes on the international plane its consent to be bound by

a treaty) which is governed by International Treaty Law. The drafters of the 1969 Vienna Convention on International Treaties (International Law Commission) recognised this difference and even acknowledged that the two perspectives have always been confusing. The Commission expressly stated that "Since it is clear that there is some tendency for the international and domestic procedures to be confused and since it is only international procedures which are relevant to the international law of treaties, the Commission thought it desirable in the definition to lay heavy emphasis on the fact that it is purely the international act to which the terms ratification relate in the present article."

However, despite differences, the relationship between these two procedures was quite clear to the Commission. On the other hand, the Commission emphasises that the internal procedures must be complied with for the external procedures to be implemented. The Commission further asserts that the validity of a treaty against a state is determined by external procedures, not internal procedures.

If in the external procedure the definition of ratification/ratification is "confirmation" from the state, then in the internal procedure this definition can be in the form of:

1. "Confirmation," namely state organs such as parliament confirming the actions of the government which has signed an agreement; or
2. "Approval," i.e., state organs such as parliament giving prior approval of the agreement to be signed by the government.

Constitutional law of the Republic of Indonesia unconsciously interprets the institution of ratification as "DPR approval" not "confirmation" and this is reflected in Article 11 of the 1945 Indonesian Constitution. 24 of 2000 concerning International Agreements, the meaning of this agreement shifted to "DPR confirmation" rather than "DPR approval". That is why this article still leaves a fundamental question about "should the DPR be involved in agreeing before it is signed or only involved after the agreement is signed by the Government?" In this case, the difference between the meaning of "approval" and "confirmation" in the institution of ratification becomes very relevant. This problem is closely related to the issue of the authority to make agreements, whether the executive's exclusive authority or not.

Law No. 24 of 2000 on International Agreements only regulates ratification from the perspective of external procedures so that they have a "confirmation" character, namely legal acts to bind themselves to an international treaty in the form of ratification, accession, acceptance, and approval. However, this Law also regulates internal requirements (ratification/ratification by Law or Presidential Decree) as the constitutional basis for ratification:

1. The President with the approval of the House of Representatives declares war, makes peace and treaties with other countries;

2. The President in making other international agreements that give rise to broad and fundamental consequences for people's lives related to the state's financial burden, and/or require that amendments or the enactment of laws must be approved by the House of Representatives; and
3. Further provisions on international treaties are regulated by law in an external perspective. Under Indonesian law and practice, External Procedures (i.e., issuance of notification or instrument of ratification/accession/acceptance/approval by the Ministry of Foreign Affairs) can only be carried out after the internal procedures are fulfilled. As a result, essentially this Law has given an interpretation that what is meant by "DPR approval" in Article 11 of the 1945 Constitution is "confirmation" which means that the role of the DPR is to accept or reject the ratification/ratification of agreements that have been made by the Government, not to approve the agreement to be made by the government. From this confusion, it can be concluded that there has been a tug of war to define the meaning of ratification/ratification between constitutional law and international treaty law. Article 11 of the 1945 Constitution as a product of Constitutional Law is in friction with Law No. 24 of 2000 which is strongly influenced by International Treaty Law. In this regard, the views of Bagir Manan that "the authority to conduct foreign relations including making and entering into international treaties is the exclusive power of the executive" becomes very relevant. In this case, the meaning of "DPR approval" under Article 11 of the 1945 Constitution must be interpreted as "DPR confirmation" of the executive's legal actions.

Another fundamental issue is determining the outputs of the "DPR approval" as referred to in Article 11 of the 1945 Constitution. Mohammad Yamin as one of the drafters of the 1945 Constitution once stated that "it is not applied in Article 11 other juridical forms than the approval of the DPR, so that the approval of the DPR itself in any form has included the formal requirements according to Article 11 of the Constitution," From Muhammad Yamin's view, actually the "approval of the DPR" can take any form and is only a formal condition for the entering into an international agreement. However, in the development of Indonesian constitutional practice, the output of this "DPR approval" has taken the form of a law. This development is reflected in the practice that emerged following Presidential Letter No. 2826/HK/1960 to the Speaker of the DPR, who always puts "DPR approval" into the format of the Law and in practice this term is then always interpreted by default as "ratification".

This understanding was then crystallised in Law No. 24 of 2000 on International Agreements which intentionally interpreted the word "DPR's approval" in Article 11 of the 1945 Constitution as "ratification in the form of a law". However, unintentionally Law No. 24 of 2000 defines the term "ratification/ratification" as

a legal act to bind oneself to an international treaty in the form of ratification, accession, acceptance, and approval. Even though it uses an external definition, this Law also turns out to mean ratification as it is known in the Internal Procedures (for example the use of the term "ratification by Law/Presidential Decree" so that they have accidentally used the same term for a different meaning.

Furthermore, identifying the consequences of the Law or Presidential Regulation that ratifies an Agreement on National Law (internal aspect) has also caused debate both among academics and practitioners This issue has sparked a debate within the framework of the struggle for the theory of substantive dualism regarding the relationship between international law and National Law. The proper construction of this matter has not been reflected in the Indonesian Constitutional Law. Law No. 24 of 2000 on International Treaties was also not intended to touch the substance of the internal aspects of this ratification.

The promulgation of "DPR approval" in the format of a Law/Presidential Regulation has spawned a new discussion about what the Law/Presidential Regulation that ratifies, is by "arrangement" or "stipulation". With its format as a Law/Presidential Regulation, National Law today tends to treat this Law/Presidential Regulation as a product of legislation that is thus subject to statutory rules. In this connection, Bagir Manan speak out of very interesting statement:

> So, there is a kind of scientific contradiction. On the one hand, international agreements are placed as independent sources of law, on the other hand, international agreements are given the form of statutory regulations (Laws or Presidential Decrees/Presidential Regulations).

From a practical level, giving the form of legislation for the ratification of international agreements has raised various questions, including:

1. Can an international agreement ratified by a law/Presidential Regulation be annulled by a higher law?
2. Can a law not recognise the existence of an international treaty because it has only been ratified by a Presidential Regulation?
3. Can international agreements ratified by law not be directly implemented by Government Regulations or Presidential Regulations?
4. Can the Law/Presidential Regulation ratifying international agreements be judicial reviewed?

If identified and mapped, in general, there are at least two views that dynamically live in the academic world and practitioners regarding the meaning of Laws/ Presidential Regulation ratification, namely:

a. First, the view that the Law/Presidential Regulation that ratifies an Agreement is a product of National Law which transforms the agreement material into National Law so that the status of the agreement changes

to National Law. This Law/Presidential Regulation has had a substantive effect. The norm applied in the National Law is in its character and format as the material of the Law/Presidential Regulation and not in its character as a treaty norm. This group considers that there is no need for new legislation to enact treaty norms into National Law. This approach seems to be reflected in Law No. 39 of 1999 on Human Rights which in Article 7 paragraph (2) states "the provisions of international law that have been accepted by the Republic of Indonesia concerning human rights become national law".

b. Second, the view that the Law/Presidential Regulation that provides fo ratification of an agreement is procedural in nature, that is, it is only the approval of the DPR/President in the guise of a Law/Presidential Regulation. This Law/Presidential Regulation does not have a public effect because it is only a stipulation, not a regulation. This view at the next stage will be divided into two, namely:

    1) First, the view that considers the Law/Presidential Regulation that provides for ratification an Agreement is "incorporating" the Agreement into the National Legal system. With this incorporation, international treaties in their character as norms of international law have had a substantial and binding effect in national law. The attachment of law enforcers to the resulting norms is sourced from the agreement itself and not from the ratifying Law/Presidential Regulation. This view is reflected in the practice of state administration, for example in the implementation of the 1961/1963 Vienna Convention on Diplomatic/Consular Relations which was ratified by Law No. 1/1982. This convention has become the legal basis for the Government to grant tax exemptions and other diplomatic facilities to the diplomatic corps in Indonesia. In this case, there is no need to transform the conventions into national law and even now there is no national legislation containing the conventions.

    2) Second, the view that the Law/Presidential Regulation that ratifies an Agreement is only a cloak of approval from the DPR/President to the Government of the Republic of Indonesia to bind itself to the level of International Law and not yet binding to the level of National Law. For this reason, separate national legislation is still needed to convert agreements material into National Law material. Without this national legislation, Indonesia as a subject of international law is only bound to the international level, while its citizens are not bound.

The practical problems that arise today stemming from the tug-o-war between the different views are the idea of increasing the status of Presidential Decree No. 36 of 1990 (which ratified the Convention on the Rights of the Child 1989) became law

under the pretext that its position as a Presidential Decree has made it difficult for the issuance of Laws or Government Regulations to implement this Convention. Law-level products (such as Law No. 23 of 2002 on Child Protection) cannot refer to or base on the Convention on the Rights of the Child because this Convention had the status of a Presidential Decree. This thinking represents a view that sees Presidential Decree 36 of 1990 as a substantive product befitting a Presidential Decree so that a hierarchical logic of legislation is applied. The juridical implications of increasing the status of ratification will appear in international law. In terms of international law, ratification is a statement of "consent to be bound by a treaty" which is "*eenmalig*" (one time only/final) and does not see how constitutional law regulates this statement. In other words, when Indonesia has expressed its consent to be bound by this Convention through ratification, at that time this Convention will also enter into force for Indonesia. Increasing the status of ratification (from Presidential Decree to Law) will not influence the status of a Convention vis a vis Indonesia. In this case, the upgrading of the Presidential Decree to Law cannot proceed with the submission of new ratification to the Secretary-General of the United Nations because the "increase in the level of ratification" is not recognised in International Law.

On the other hand, the second view rejects the idea of increasing the status of presidential ratification. According to Presidential Decree No. 36 of 1990 is procedural which led Indonesia to be bound by the Convention on the Rights of the Child. The view that this Presidential Decree is only procedural is based on the legally significant fact that the entry into force of this Convention against Indonesia is not directly caused by this Presidential Decree but is caused by the "instrument of ratification" submitted by Indonesia to the Depository (Secretary-General of the United Nations). The entry into force of the Presidential Decree, except on the date the "instrument of ratification" is submitted to the depository.

Based on this second view, Law No. 23 of 2002 on Child Protection should not need to refer to this Presidential Decree but directly to the Convention. According to this view, there should be no problem to issue legislation products (Laws or Government Regulations) to implement the Convention on the Rights of the Child (as a norm of International Law that has applied to Indonesia) not Presidential Decree No. 36 of 1990 as a product of legislation.

V. LEGAL DEVELOPMENTS IN INTERNATIONAL ECONOMIC LAW

A.F.K. Organski stated that the countries which are now called modern countries have gone through three stages of development, namely unification, industrialisation, and social welfare.[20] At the first level, there is serious problem with how to achieve political integrity to create national unity and integrity. The second level is the struggle for economic development and political modernisation. Finally, in the third stage, the main task of the state is to protect its people from

[20] A.F.K. Organski in Wallace Mendelson, "Law and The Development of Nations," *The Journal of Politics* 32, no. 2 (1970): 223.

the negative side-effects of industrialisation, and to correct mistakes in the previous stage, by emphasising the welfare of the people. These levels are passed sequentially (consecutively) and take a relatively long time. National unity is a prerequisite to enter the stage of industrialisation, and in turn industrialisation is a way to achieve a welfare state.[21]

Every human activity needs to be regulated by law. Here, law is reduced to the meaning of legislation made and implemented by the state.[22] The ideals of national law are one thing to be achieved in terms of the application, realisation, and implementation of certain values in the life of the state and society based on Pancasila and based on the 1945 Constitution, specifically in the field of life and economic activities in general. In the context of welcoming the global community, the ideals of national law urgently need more serious study and development to be able to participate in the global economic life responsibly, in the sense of not harming and being harmed by other parties. Responding to and anticipating the impact of international trade in the twenty-first century, there is no other way but to place "International Business Law Enforcement Management" as a strategic mission in realising national economic resilience amid economic globalisation that has been and is currently taking place. The better strategy is a legal state it functions, the higher the level of valid legal certainty. On the other hand, if a country does not have a legal system that functions autonomously, the level of legal certainty will be smaller.

Developments in technology and patterns of economic activity cause people worldwide increasingly impact each other, need each other, and determine each other's fate, but also compete with each other. This is particularly dramatic in world trade activities, both in trade in goods and in trade in services. This interrelationship requires agreement on the applicable rules of the game. The rules of the game that are applied to international trade are the rules of the game that have developed in the GATT/WTO system.[23]

When the economy becomes integrated, harmonisation of laws must follow. The formation of the WTO (World Trade Organization) was preceded by the formation of regional economic blocks such as the European Community, NAFTA, AFTA and APEC. There is no contradiction between regionalisation and globalisation of trade. On the other hand, global economic integration requires the creation of new trading blocs. Trade with the WTO and regional economic cooperation means developing democratic institutions, reforming market mechanisms, and functioning of the legal

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21 Erman Rajagukguk, "Peranan Hukum dalam Pembangunan pada Era Globalisasi: Implikasinya bagi Pendidikan Hukum di Indonesia," (Pidato Pengukuhan Guru Besar di ucapkan pada upacara penerimaan guru besar bidang hukum di fakultas Hukum Universitas Indonesia), Jakarta, 4 Januari 1997.

22 Hikmahanto Juwana, *Bunga Rampai Hukum Ekonomi dan Hukum Internasional* (Jakarta: Lentera Hati, 2002), 27.

23 H.S. Kartadjoemena. *Substansi Perjanjian GATT/WTO dan Mekanisme Penyelesaian Sengketa: Sistem, Kelembagaan, Prosedur Implementasi, dan Kepentingan Negara Berkembang* (Jakarta: UI Press, 2000), 1.

system. It also underlies the adoption of the principles of International Economic Law by various countries that are contaminated in international trade, namely:[24]

1. Principles of Minimum Standards;
2. Principles of National Treatment;
3. The principle of the same treatment (identical Treatment);
4. Basic Principles or "Most Favored Nation" Clauses;
5. The principle of refraining from harming other countries;
6. Principles of Safeguard Action: Safety Clauses (Safeguard and Escape Clause);
7. Principles of Preference for Developing Countries;
8. Principles of Peaceful Dispute Resolution;
9. The principle of state sovereignty over natural wealth, prosperity and economic life; and
10. Principles of International Cooperation.

The ten principles above are guardians for states engaged in international economic relations. There is protection under these principles for developed countries as well as for developing countries. The independent development of multinational corporations is often foreshadowed as the development of a truly nationalistic, truly self-sufficient entity. The emergence of civilisation which later became international law also influenced the development of national law and the economic system of developing countries. Economic globalisation today is a new manifestation of the development of capitalism as an international economic system. As an ideology, globalism offers a set of ideas, concepts, beliefs, norms, and values regarding the aspired world order and how to make it happen.

Whatever the characteristics and obstacles, economic globalisation has had a huge impact on the legal field. Economic globalisation has also led to legal globalisation. The globalisation of law is not only based on international agreements between and among nations, but also the understanding of legal and cultural traditions between the west and the east.

Globalisation in the field of international contracts has been going on for a long time because developed countries bring new transactions and investments to developing countries, their partners from developing countries will accept these international contract models. This could also be due to a weak bargaining position. Therefore, it is not surprising that joint ventures, franchise agreements, license agreements, agency agreements have almost the same format and substance in

[24] Huala Adolf, *Hukum Ekonomi Internasional: Suatu Pengantar* (Jakarta: PT.Raja Grafindo Perkasa, 1997), 28.

various countries. Legal consultants of one country easily work on such agreements in other countries. According to Lord McNair and James N. Hyde, these international economic law contracts have the special characteristics of these agreements.

1. Such agreements are entered into between a government and a foreign company.
2. These agreements usually regulate the exploitation of natural resources for a long period, including the construction of installations and last for a long time.
3. Often these agreements provide rights that are not merely contractual but also provide property rights, such as ownership of a small part of a country's territory.
4. Usually, these agreements provide special treatment to private parties (in this case multinational companies) in the form of tax breaks and on the other hand are given the responsibility to maintain order and security.
5. Agreements such as these are governed partly by civil law and partly by public law.
6. It is often regulated regarding protection from the country where the parent company is located.
7. Usually, there are not many similarities between the legal system of the receiving country and the legal system of the country where the company is located.
8. Often disputes arising out of these agreements are resolved by an arbitration body which overrides the jurisdiction of the national courts of both parties.

The special characteristics above are usually described in regulations (self-regulating) made by the parties in international trade. Therefore, it is necessary to unify and harmonise laws by each ratifying country in a treaty. Usually adopted by country through laws and regulations. -National invitation of the country. So that later in the relationship there will be no more obstacles because the laws that govern are the same.

Equality of legal provisions across various countries can also occur because a country follows the developed country model concerning legal institutions to accumulate capital. Limited Liability Company laws in various countries, both from Civil Law and Common Law countries contain similar substances. Likewise with capital market regulations, most everywhere are no different from one another. This is because the funds flowing into these markets are no longer restricted by time and national boundaries. The demands for greater transparency, the development of international crimes in money laundering and insider trading encourage international cooperation. Despite the hard work toward globalisation of law, there is no guarantee that the same law will produce the same results everywhere. This is due to political,

economic, and cultural differences. The law is not the same as a horse, people will not call a donkey or a zebra a horse, although the shape is almost the same, a horse is a horse. The law is not like that, what is called the law depends on the perception of the people.[25]

Friedman, states that the enforcement of legal regulations depends on the legal culture of the community. The legal culture of society depends on the legal culture of its members which is influenced by educational background, cultural environment, position, even interests.[26] In dealing with such things, it is necessary to establish "checks and balances" in the state. "Checks and balances" can only be achieved by a strong parliament, an independent judiciary, and public participation through its institutions. In this case, particularly in matters of supervision and law enforcement, two things are inseparable components of the rule of law system. There will be no law enforcement if there is no supervision system and there will be no rule of law if there is no adequate law enforcement.

E.C.W. Wade and Godfrey Philips articulated three concepts regarding the "Rule of Law" namely The Rule of Law prioritising law and order in society which in the view of western tradition was born from the realm of democracy; The Rule of Law shows a legal doctrine that government must be carried out by the law; The Rule of Law shows a political framework that must be specified by legal regulations, both substantive and procedural law.[27] The various elements of the meaning of the Rule of Law must be implemented as a whole, not in pieces, and at the same time. Exclusion and suspension of any of its elements destroys the entire system.

At the level of normative ideas in the GBHN, the law is firmly ensconced as a driver of development, especially for economic growth. Based on this mandate, the law needs support consisting of professional and ethical personnel, capable and efficient organisations, and a free and effective judiciary. All are needed conceptual prerequisites to the contemporary Indonesian context. Unfortunately, when entering the sociological-implementation level, in addition to clearly showing various encouraging things, there is also a "marginalisation" of the role of law in the effort to achieve the declared progress of a nation. In various areas of community life struggle, sometimes it is easy to see or feel the barrenness of the role and function of law. it is still very relevant what was stated by Mochtar Kusumaatmadja who stated that to build national law that applies to all nations and can anticipate progress and interaction with the international world, we must hold fast to the boundaries and distinctions between civil law and public law and between civil law and criminal law which is generally accepted by the world community.

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25 Rajagukguk, "Peranan Hukum dalam Pembangunan," 18-19

26 *Ibid.,* 19.

27 Gunarto Suhardi, *Peranan Hukum Dalam Pembangunan Ekonomi* (Yogyakarta: Universitas Atmajaya, 2002), 77.

VI. CONCLUSION

In an era of globalisation, all countries are integrally bound. Therefore, the boundaries made by each country fade away and integrated into every activity carried out between one country and another. The attachment was born from an international agreement that was agreed and approved and "practiced" in the national law system of each state in the form of ratification.

Ratification, present in every country by using legal means (Legal Means) agreed in an agreement. Some use the principle of minimum standards and those who adapt to the principles of dualism and monism are then more flexible in regulating them into the laws of their respective countries. Although international agreements are not clearly stated in the making of laws and regulations, however the Indonesian Constitution and Law 24 of 2000 are well regulated in the technical aspects of making international agreements.

Based on our national law system, by ratifying a convention, both regional and multilateral, bilateral agreements, the state is bound to comply with the provisions of the convention or agreement. A convention or international agreement that has been ratified can only be implemented if it has been included in law in the Indonesian national law system, even though an international agreement has been ratified by the Law on Ratification, but the agreement cannot be implemented if it is not by the provisions of the content of national laws and regulations governing the same material as those specified in the ratified treaty.

Legal means in ratifying international agreements in the globalisation of the world will improve the dynamics of international economic relations. The increasing international economic relations have caused several countries to compromise their nationalism. Therefore, to protect the interests of the countries, various principles of International Economic Law were agreed upon. These principles are guardians for the parties involved. For this reason, a rescue concept is needed for countries, especially Indonesia, by carrying out legal development effectively and being able to protect themselves. of the International Economic Law movement

With its various positive and negative consequences, economic globalisation is not something that cannot be controlled, changed, or stopped. One of the steps is to continue to give authority to the state to carry out its function as a market controller through various economic regulations, fully surrendering national economic activities to market mechanisms which are believed to be "self-regulating" will cause injustice to many parties in the country and on the contrary to open opportunities. transnational to exploit the economic resources of the Indonesian nation. The implementation of the wheels of government in a democratic manner and using the law as an instrument to plan and implement a comprehensive development program, hopefully will bring this country towards a society with the level of welfare that it aspires to.

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