STATUS OF INTERNATIONAL LAW IN INDONESIAN NATIONAL LAW: REVIEW OF INTERNATIONAL CONVENTIONS IN INDONESIAN LEGAL SYSTEM¹

Hamza Baharuddin

Faculty of Law, Universitas Muslim Indonesia

Email: hamza_baharuddin@yahoo.com

Achmad Zulfikar

Master of Law, Universitas Muslim Indonesia

Email: apa@kabarfikar.com

ABSTRACT

Objective:

The purpose of this paper is to analyze the status of international conventions as the part of international law in Indonesian legal system. A theoretical study was conducted to bring together the views of legal and political experts in relation to the harmonization of the law that an international treaty must take before becoming an Indonesian national law.

Methodology:

This study is a normative legal research. The types of materials and legal sources in this study are divided into primary, secondary and tertiary. The data collection in this research is done by library research. Data analysis techniques in this study using qualitative data analysis.

Results:

Agusman argues that Indonesian law, doctrine and practice on the status of international agreements in Indonesian national law have not developed and often raises practical issues at the level of implementation of international treaties within the framework of the national legal system. This lack of clarity is part of the absence of law and doctrine in the Indonesian legal system of international law and national law. Confusions arose in the world of practitioners to answer questions about the status of international agreements in the Indonesian legal system. In this study, a comparison of the three international conventions endorsed by the Indonesian government before and after the enactment of Law No. 24 of 2000 on the International Treaty.

The first case, the endorsement of the Agreement between the Indonesian Government and the Russian Government on Military-Technical Cooperation 2003. The Indonesian government considers that this agreement entered into the category of Article 10 of Law No. 24 of 2000 on the International Treaty as it relates to defense issues. However, the Commission I of House of Representatives believes that even when it comes to defense issues, this agreement is very technical because it only contains the activities of production, purchase and maintenance of military equipment. After a lengthy discussion, the government

¹ Presented in 2nd International Research Conference on Economics, Business and Social Sciences organized by Center for Sustainability Research and Consultancy, Pakistan and Universitas Muslim Indonesia on November, 25th - 26th 2017.

and the House of Representatives agreed that this agreement does not include the agreement passed through the Act, but simply passed through the Presidential Regulation.

The second case, the endorsement of Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was passed through the initiative of the House of Representatives through Law No. 5 of 1998. The insistence on the right of initiative of the House was triggered by the political situation at that time (before the reformation era) when the abduction and torture of reformist activists by state officials took place. In the final process of ratification of this Convention at the Plenary Session, government representatives declare that the use of such House of Representative initiative rights is for the first and last because the authority to make international treaties is not within the legislature, but by the executive body.

The third case, the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. This Convention was signed by the Delegation of the Republic of Indonesia in New York on 22 September 2004. In relation to the Convention relating to human rights and public interest, in accordance with Law No. 24 of 2000, the Convention is ratified by Act/Law. However, an 8-year process for the Convention is required to be ratified by the House of Representatives through the Meetings on 9 April 2012 and the Plenary Session on 12 April 2012 and ratified by Law No. 6 of 2012 on 9 May 2012. Although it has been ratified by law, this Convention has not been able to apply immediately, but still needed harmonization with the laws and regulations in Indonesia in this case the Law of Placement and Protection of Indonesian Migrant Workers Overseas.

The results of this study indicate that Indonesia has not established a clear position towards international law in Indonesian national law. This causes the status of international law enforcement such as international convention in Indonesian legal system also has some difference between one convention with another convention.

Implication:

This study has implications for the effort by the Indonesian government to begin to deeply examine the international law position in the hierarchy of Indonesian national law. This needs to be done because the dynamic development of the world's countries requires a rapid response and the national law must be able to respond well to international dynamics.

Keywords: *International Law, Indonesian National Law, International Conventions, Indonesian Legal System*

Bibliography

Agusman, Damos Dumoli. 2010. *Hukum Perjanjian Internasional: Kajian Teori dan Praktik Indonesia*. Bandung: Refika Aditama.

Agusman, Damos Dumoli. 2014. *Treaties Under Indonesian Law: A Comparative Study*. Bandung: Remaja Rosdakarya.

Pratomo, Eddy. 2016. *Hukum Perjanjian Internasional: Dinamika dan Tinjauan Kritis terhadap Politik Hukum Indonesia*. Jakarta: PT. Elex Media Komputindo.