ACCESSION TO THE RATIFICATION CONCEPT BASED ON THE 1969 VIENNA CONVENTION ON INTERNATIONAL AGREEMENT LAW AND ITS IMPLEMENTATION IN LAW No. 24/2000 ON INTERNATIONAL TREATIES

Firman Hasan, Andalas University
Jean Elvardi, Andalas University

ABSTRACT

The Indonesian state has a vested interest in the implementation of international relations as the nation opens up for international cooperation with several countries. This international cooperation will be applied through the ratification of international treaties and conventions. However, one aspect that has so far received less attention in Indonesia is the vague meaning of ratification of international conventions and treaties in Law No. 24/2000 on International Treaties. The purpose of this study is to help understand the ratification concept for a better international cooperation between Indonesia and other countries. This paper seeks to address the question whether there are differences in legal concepts regarding the meaning of ratification and accession according to the 1969 Vienna Convention of and Law No. 24/2000 on International Treaties, which carries out the reciprocity of values or norms regarding ratification and accession that exist in the 1969 Vienna Convention. This study reveals that due to the ambiguity in its meaning, the term accession is not properly applied by the Indonesian government. The study also shows that despite numerous reforms, much Indonesian legal term related to international law remain ambiguous and have multiple interpretations, which leads to confusion and ambiguity.

Keywords: Accession, Ratification, International Treaties, the 1969 Vienne Convention, and International Agreement Law.

INTRODUCTION

Indonesian national law contains it in Article 4 section 2 of Law No. 24/2000 which states that in making international agreements, the Government of the Republic of Indonesia is guided by the national interest and based on the principles of equality, mutual benefit, and taking into account both national law and international law. Article 3 of this law says that Indonesia is binding itself to international treaties in form of signatories, ratification, exchange of agreement documents/diplomatic notes, and other means as agreed by the parties in the international agreement. Based on the above provisions, Indonesia can bind itself to international agreements in several ways, including ratification. Ratification is what is called ratification, whereas ratification itself is a procedure that progressively began in the middle of the XIX century

(Mauna, 2010). One of the difficulties encountered in understanding international treaties is the number of terms that often have different meanings when adopted in the languages of international treaty participating countries (Kusumaatmadja, 1997). Sometimes, the term ratification is confused with endorsement, though both terms are different. This is pointed out by Starke QC who argues that some states did not wish to use the term "*ratification*", as this might imply an obligation to submit a treaty to the legislature for approval or to go through some undesired constitutional procedure (Starke, 1977). Article 1 section 2 of Law No. 24/2000 defines ratification as the legal actions to bind oneself to an international agreement in the form of ratification, accession, acceptance, and approval.

In international law literature, ratification is defined as an international concept and not a national concept. Likewise, the ratification law issued in 1951 still avoided using the term "ratification" to reflect the approval of the parliament. It even uses the term ratification in an international sense. The use of inappropriate terms can blur and make perceptions different. According to Jeremy Bentham, there are two imperfections: the first one includes double, obscure, and broad meanings, while the second includes impermanence of words and expressions, for the same thing different words or expressions are used and expressions for different purposes. This creates redundancy and confusion. The definition of the term ratification in Law No. 24/2000 on International Treaties follows that of the 1969 Vienna Convention. In the application of international treaties in Indonesia, the assimilation of the definition of ratification to the term endorsement needs to be reviewed. Uniformity in understanding the term ratification is very necessary as it will not only help improve the legal system in many countries but also enhance international cooperation.

However, because these conventions are codifications of customary international law, they remain binding on Indonesia with or without ratification. Although the 1969 Vienna Convention has been widely accepted, it took a long time for many countries to ratify it, and Indonesia is among the countries that have not yet ratified the convention. But even so, Indonesia's commitment was carried out through the affirmation of the International Court of Justice in 2002. Thus, there is no reason for Indonesia not to commit to the 1969 Vienna Convention. The ratification of an international treaty is governed by the provisions of respective national laws. The Indonesian Government's commitment to international law is expressed in Article 11 of the 1945 Constitution though the word ratification does not appear. Besides, the article is too short and does not provide clarity on the doctrine or politics of Indonesian law in the field of international agreements. Thus, every law made must be ratified by the House of Representatives and presidential decree as regulated in the article 10 and 11 of Law No. 24/2000.

However, several international conventions have been agreed to by the Indonesian Government that have not yet been ratified. These include the 1966 International Convention on Cultural, and Political Rights and the International Convention on Social and Economic Rights. Indonesia is still postponing the ratification of the international agreement on the 19998 International Convention on Criminal Court/Rome Statute and the International Treaty between Indonesia and Singapore on Extradition. The delay or postponement of the ratification of these conventions and treaties is due to disagreement between the government and the House of Representatives. For example, a convention is rejected by the House of Representatives after being approved by the government and vice versa. Article 27 of the 1969 Vienna Convention prevents any agreeing country to immediately withdraw from the convention. This condition

often creates debate, considering that the House of Representatives, based on the 1945 Constitution, is asked for approval if the government enters into an international agreement. Whereas the Vienna Convention states agreeing countries have no excuse for not complying with an international treaty due to difficulties in their national laws.

Besides institutional disagreement on the ratification of international conventions, there is also an ambiguity in the definition of the terms used in international conventions by Indonesia. For example, the term accession is not mentioned in Law No. 24/2000 as contained in Article 15 of the 1969 Vienna Convention. Article 10 in Law No. 24/2000 only mentions the scope of the ratification carried out by law. As argued above, both ratification and accession are different in meaning. This creates not only legal issues but also weakens Indonesia's commitment to international law. But, despite the existence of these difficulties, it is important to note that Indonesia's commitment to international law has significantly improved in comparison to both the Old and New order regimes (Damian, 2003). The lack of the term accession within the above-mentioned law implies that Indonesia is prone to violate Article 27 of the 1969 Vienna Convention. Many conventions remain binding on Indonesia though it has not ratified them. Boer Mauna argues that that accession must not be required by ratification. He also claims that accession means a statement of consent to a decision. So if a country accepts an accession on the condition that it has to be ratified first, then such accession is considered invalid. Therefore before declaring the accession the agreement must be ratified first.

Law No. 24/2000 on International Treaties says that treaties in the field of public law, which are governed by International Law, are made by Governments, International Organizations, or other International Law Subjects. This means that international treaties are public law treaties governed by international law. Point b of the Preamble to Law No.24/2000 on International Treaties stipulates that international treaties shall be ratified by the parliament after the government has signed the international treaty agreement. This means that the parliament cannot act without government authorization. This does not give any real supervisory power to the parliament. It seems as if its only role is to ratify international agreements. Strangely however, Law No. 24/2000 does not even mention necessary ratification contained in six groups of international treaty materials, which often harm Indonesia's national interests and are not included in the ratification of both bilateral and multilateral agreements that should involve the parliament. For example, the ratification of the ASEAN-China Free Trade Agreement (ACFTA), the International Trade Organization (WTO), and the ASEAN Free Trade Area (AFTA) by Indonesia has had a bad effect on the interests of the Indonesian people.

Furthermore, Article 11 of the 1945 Constitution says that the President, in making other international agreements having broad and fundamental consequences for the lives of the people such as declaring war on a country, making peace with another or other countries, and entering into international agreements, must obtain the approval of the parliament. In the international agreement-making stage, the DPR as a legislative institution is not involved because the process solely rests in the hand of the executive. After the government's approval, the agreement heads to the parliament for either ratification or rejection/cancellation. However, this process is illogical because once a treaty is approved by the government, interactions between agreeing countries begin and it is no longer possible for the parliament to cancel the treaty, which could raise legal issues between parties.

RESEARCH METHODS

This is a socio-legal research drawing on a text-based approach as the main data collection method. Data involved in the this study are secondary data that include national laws such as in the 1945 Constitution, the Constitution of the United Republic of Indonesia (RIS) and the Provisional Constitution of 1950, Law No. 24/2000 on International Treaties, Article 120 of the 1950 Provisional Basic Law, and international treaties such the 1969 Vienna Convention, the ASEAN-China Free Trade Agreement (ACFTA), the International Trade Organization (WTO), and the ASEAN Free Trade Area (AFTA), the ILO Convention and the UN Charter. Data were collected from Andalas University Library and the websites of related institutions.

Legal Basis and Importance of International Agreements

In the current era of globalization, almost all countries in the world are bound by international agreements allowing them to cooperate in the fields of politics, economy, culture, science, and technology. Indonesia as a rule of law country cannot escape this reality. Because of the mutual nature of the needs between nations, legal certainty through international agreements is required for international relations (Ardhiwisastra, 2003). International treaties are one of the sources of international law which is a common will (the will of the state) and for common goals. As the development of international law is increasingly complex, international treaties also face new challenges. To avoid legal uncertainty for countries to carry out cooperative relations, the clarity of the rules related to international agreements is urgent. International agreements occupy a major place in international law as a result of the widespread emergence of international agreements (Parthiana, 2002).

After the end of the New Order Regime or Orde Baru (1966-1998), the Government of the Republic of Indonesia entered into international agreements with many countries including Southeast Asian countries. The government claimed that these agreements were intended to protect the country and the Indonesians by promoting public welfare and education and to participate in implementing world order based on independence, peace, and social justice. The preamble to the 1945 Constitution emphasizes that international agreements are aimed at protecting Indonesia's national interests, especially those related to cooperation between countries. The national interest referred to is contained in Article 4 (2) of Law No. 24/2000, which says that in making international agreements, the Government of the Republic of Indonesia is guided by the national interest based on the principles of equality; mutual benefit and taking into account both national law and applicable international law.

The above statement emphasizes that it is important to pay attention to national interests, the principles of equality, mutual benefit and to pay attention to national and international law in making international agreements. The principle of equality or equality (equality before sovereign state) is a basic principle in international law and relations. This is in line with positive theorists or consensualism, which emphasizes the importance of the consent of states before a law can take effect (Thontowi & Iskandar, 2006). Although international agreements must be based on good faith for an international treaty to gain legitimacy and legal force, internal confirmation from the country that interred into the international agreement is required under the country's constitution. There are 3 stages in making an international agreement, namely negotiation, signature, and ratification (Kusumaatmadja, 1997).

Ratification in the Indonesian Context

The meaning of ratification is not clearly stated in Law No. 24/2000. Article 1 point 2 states that ratification is a legal action to bind itself to an international treaty in the form of ratification, accession, acceptance, and approval. The elucidation of Law No. 24/2000 says that in practice the form of ratification is divided into four categories, namely: ratification: if the country which is going to ratify an agreement also signs the treaty text, accession: if the country ratifying an international treaty does not participate Signing a text of the agreement, acceptance and agreement: a statement of acceptance or approval from a state party to amendments to an international treaty. In England, for example, ratification is carried out by ratifying the throne of England (Queen, King) while according to the United States constitution, ratification is carried out by the President after obtaining the approval (advice and consent) of two-thirds of the quorum of the senate. Ratification is an official stipulation or endorsement by the head of state and can be divided into 2 meanings: the international meaning and the constitutional meaning (national law).

Indonesia has its own rules regarding ratification that are different from the ratification procedures in other countries. Article 11 of the 1945 Constitution says that the president with the approval of the House of Representatives declares war and makes peace and agreements with other countries. Even though the article above does not contain the word ratification, the word "make" can be interpreted to mean the same as ratification. Besides, the provisions of the article also emphasize that the ratification must be approved in advance by the House of Representatives. The provisions regarding the ratification of international treaties, apart from being contained in the 1945 Constitution, have also been regulated in the Constitution of the United Republic of Indonesia (RIS) and the Provisional Constitution of 1950. Several rules regarding international agreements are regulated in the 1945 Constitution, especially in Article 175 which says that the President enters and ratifies all treaties and agreements with other states unless otherwise stipulated by federal law, agreements or other agreements are not ratified, but after being approved by law. Article 120 of the 1950 Provisional Basic Law also makes rules on ratification/ratification by stating that the President enters and ratifies treaties and other agreements with other countries.

Of the provisions above, the RIS Constitution and the 1950 Constitution are more explicit and detailed about the authority of the President to enter into and ratify international treaties including matters relating to accession into and terminating international agreements or treaties (Suryono, 1984). The 1945 Constitution does not mention the difference between a treaty and an agreement, while the RIS Constitution and the 1950 Constitution clearly distinguish between them. Furthermore, Law No. 24/2000 distinguishes between ratification of international treaties by law and ratification of international treaties through Presidential Decrees. International law distinguishes between the terms treaty and agreement. Approval is only used in matters of a technical/administrative nature that do not require ratification. The international legal basis for ratification is contained in Article 11 of the Vienna Convention of 1969 which says that the consent of a state to be bound by a treaty may be expressed by signature, exchange of instrument constituting a treaty, ratification, acceptance, approval, or accession or by any other means if so agreed. Apart from these provisions in international law, there is also a basis for ratification as stated in Article 43 sub 3 of the UN Charter which stipulates that:

> *"The Agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and groups of members and shall be subject to ratification, by the signing states under their respective laws."*

In addition, a similar provision is also provided in Article 120 of the ILO Convention which says that conventions made under the administration of the ILO must be ratified by the governments of the participating countries of the Conference before this Convention applies to these states. In the practice of international treaty law, generally, any agreement with a substantial nature is ratified based on Article 14 of the 1969 Vienna Convention which states that international treaties are bound through ratification, acceptance, or approval. However, in practice, international agreements have come into force on the date the agreement was signed even though it has not gone through ratification. This fact shows that it is not a legal obligation to ratify every international treaty. This difference can be seen in the cases of the Anglo-Japanese Treaty in 1905 and the European Peace Treaties in 1947, where Finland, Bulgaria, and Italy ratified, while Hungary and Romania did not ratify.

The Concept of Accession and its Implementation

Accession (participating) as a party to an agreement is a translation of *"becoming a party to an international agreement"*. The term participation is used and is not "*ratified*", because in international treaties there is a process of participating in international treaties by ratifying and participating in international treaties without requiring ratification. However, in Law No. 24/2000 there is no distinction or separation between where there is participating with ratification and participating without requiring an act of ratification (known as accession) so that it has the potential to create a legal vacuum (vacuum recht) regarding the agreement to bind oneself. On the agreement stated by participation (accession). Although Indonesia has not yet ratified the Vienna Convention in 1969, in international practice it remains a guideline for conducting international treaties (ratification and accession). It is proven that in a few years after the birth of the Vienna Convention in 1969, Indonesia did several times through accession, among others:

1. The Protocol of Space Requirements for Special Trade Passenger Ships, July 13, 1973.
2. The Final Act of the International Conference of Bauxite Producing Countries.
3. The 1971 Psychotropic Convention.
4. The Agreement on Commonwealth Agricultural Bureau International (C.A.B) 1986.
5. The Berne Convention for the Protection of Literary and Artistic Works, 1886.

It is important to note that ratification and accession are not the same. Accession is the ratification given by a country without participating in negotiations to form an agreement, while ratification of a country is involved in the negotiation process until the agreement is formed. Likewise, accession can only be carried out in multilateral international treaties and does not always require ratification, unless specified in the agreement. A critical opinion was also expressed by Boer Mauna who argues that it must be remembered that accession must not be required by ratification. Accession means a statement of agreement to be bound definitively to an agreement. So if the depositing country accepts an accession but with the condition that it has to wait for ratification first, such accession can be considered invalid.

Based on this, it is necessary to implement the Convention into Law No. 24/2000 because it is illogical if Indonesia does not make a separate article on accession rules in Indonesian national law as stipulated in the Vienna Convention in 1969. Given the difference in legal conception between ratifications with accession its nomenclature, substance, and legal concept. In accession after a country sends its charter of accession to the depositing country, that country immediately becomes a party to the agreement, this is not the case with ratification which has several stages starting from negotiation, signing, to ratification. Even a protocol adopted at the Berlin Congress of 1878 stipulates that the Congress considers that it is the ratification and not only the signature that gives legal force to the agreements.

Accession is a way of expressing linkages in international treaties for countries that do not participate in signing an international treaty, thus the purpose of this method of accession is so that every country, either not involved or involved in an international treaty, can be bound by an agreement with the state - countries in the world, he stressed, wanted to expand the enforcement of international agreements. As previously stated, the Government of Indonesia in its national law does not emphasize ratification through accession, so that the legal vacuum (vacuum recht) has the potential to lead to an international agreement by the government (President) which will have legal consequences in the future. Understanding this fact, it is better to explain the proper legal concepts of ratification and accession. Before understanding the concept of ratification and accession law, it is better to first understand the conceptual meaning. Scholars and dictionaries have their own definitions of a conceptual understanding. H.L.A. Hart in his book "*Concept of Law"* states that the conception of law is basically a matter of orders accompanied by threats and conflicting characters from the rules regarding international law with the rules regarding city law.

Based on the above opinion, it turns out that the legal concept put forward by Hart is clearer, namely the problem of orders which is accompanied by threats and contradictions of character and besides being useful for legal certainty. When connected with the legal concepts of ratification and accession, such as the 1969 Vienna Convention and Law No. 24/2000, there is no compatibility between the two. Even though Indonesia has not yet ratified the 1969 Vienna Convention, in reality, Indonesia has implemented several provisions of the Convention. It is unclear Indonesia's reasons for this because it could be that the two legal concepts between the Convention and Indonesian national law are different, just as the Continental European legal system (Civil Law) and the Anglo American legal system (Common Law) are in line with Romli Atmasasmita's opinion when he argues that the second situation regarding the legal system, namely the real difference from the effect of the legal system with all the variants of influence above, causes an understanding of the concept of law to be significantly different" as an example of how big the difference in legal concepts is in the Common Law legal system and the Civil Law legal system (Atmasasmita, 2012).

Indonesia does not regulate both ratification and accession in separate articles as in the Convention which has two separate articles i.e., 14 and article 15. A wrong concept can lead to a misperception. The misconception may lead to misguided lines of reasoning and misleading conclusions if exemplified: the legal concept of ratification with accession. Thus ratification is interpreted as legalization especially with accession can lead to misleading conclusions in Indonesian national law. The Indonesian literature is not sharp and lacks vocabulary including

the use of terms. The term ratification which simply means legalization is wrong. Often the term legal seems to be equated with terms in a foreign language.

CONCLUSION

It can be concluded that the use of the term is often not in the right context. Likewise, as the concept behind the term accession is not understood in depth, it is not properly applied by the Indonesian Government. Despite numerous reforms, much Indonesian legal term related to international law remain ambiguous and have multiple interpretations, which leads to confusion and ambiguity. For this reason, in the future, in the language of international agreements, Indonesia must be careful in adopting foreign terms into the language of Indonesian international agreements. It seems that the International Treaties Law No. 24/2000 needs to re-examine the use of the term in Indonesia. Many terms such as corruption and incumbent can be used in international treaties. Even though these two terms were previously unknown, they are now widely used. Indonesia can only use regional languages in international agreements so that the terms do not overlap, and also enrich the Indonesian language. The use of the term must be based on the concept of the term itself. Ratification must be based on the concept as well as accession. So that Indonesia in applying the term into an international agreement is in accordance and true to its initial idea (according to the original script). It seems that the 1969 Vienna Convention separates and makes two articles, namely Article 14 for ratification issues and Article 15 for accession issues. Because the two concepts and procedures are different.

CORRESPONDING AUTHOR

Firman Hasan, Department of International Law, Faculty of Law, Andalas University Padang, Indonesia.
Email: firmanhasan@law.unand.ac.id

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