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Treaty Law Agreement International in National Law

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Abstract. Source: Many formal laws are used by judges to decide a case. What just? The answer is that there are five sources of formal law that can be used by judges, i.e., laws, customs, treaties, jurisprudence, and doctrine. Usually, the judge decides a case based on laws, agreements, international law, and jurisprudence. If it turns out no, there is a source; that's what can be done to give an answer about the law, then searching for the opinions of scholars or knowledge of the law Knowledge law is source law, but no law like the Constitution has strength binding. So, you can just say that source law is many formal laws used by judges to decide a case, called laws, agreements, treaties, and jurisprudence. Treaty as Agreement International in the National Legal System Article 11 of the 1945 Constitution of the Republic of Indonesia only authorizes the president, with the authority of the DPR RI, to make agreements with other countries. creation and validation agreement internationally. Deep-gap regulation legislation in Indonesia causes diversity methods look to international law as well as inconsistency practice court national to application law international. Until moment this, there is not yet an explanation normative that can finish polemic practice inconsistency.

Keywords: Treaties, National Law, Legal Sources

I. INTRODUCTION

Source law is all that only (something) gives rise to existing rules of strength, binding, and binding force; those are the rules that, if violated, result in strict and real sanctions for the offender. Yang intended with all that is just something, i.e., influencing factors to emergence law, the factors that constitute source strength enactment law formally, from where law can be found, etc.

Peter Mahmud Marzuki explains in his book Introduction to Legal Science that source law is the material used as the basis by the court in a disconnect case (p. 255).

Different from what is explained Jimmy Asshiddiqie, in his book Introduction to Constitutional Law Science, sources law Actually, it originates from "basic law, “foundation law," or "umbrella law." [1]

Kansil, SH Source law is all that gives rise to rules that have the nature of strength and force, namely the rules that, if violated, result in strict and real sanctions. [2] Although understanding source law is understood in a way that is diverse, consistent with the approach used, and appropriate with background background and education, respectively, people use it in two meanings. First meaning to answer the question "Why law that tie?" This question can also be formulated as "what source (force) of law until tie or obeyed man?" Understanding source in this sense is named source law in a material sense. The word source is also used in another sense, viz., answer the question, "Where do we get it or find it? Rules, laws, that's right? Arrange life, We That?" Source in the meaning of this word is source law in a formal sense”. By simple definition, source law is all something that can give rise to rule law as well as the place he found rule law.

There are many formal laws used by judges to decide A case was called with What just? The answer is that there are five sources of formal law that can be used by judges, i.e., laws, customs,

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treaties, jurisprudence, and doctrine. Usually, the judge decides a case based on laws, agreements, international law, and jurisprudence. If it turns out no, there is a source. That's what can be done: give an answer about the law, then search for the opinions of scholars or knowledge of the law. Knowledge law is a source law, but no law like the Constitution has a strength tie. Although No have strength tie law, however knowledge law That Enough authoritative Because can support from scholars law (p . 208).

With that, you can just say that there are many formal laws used by judges to decide a case, called laws, agreements or treaties, and jurisprudence. Based on the background already outlined above, the writer formulates the problem: How Treaty as Agreement International in the National Legal System?

II. RELEVANT THEORY (HUALA ADOLF)

Definition agreement international in provision positive, there is in Article 2, paragraph (1), letter A of the Convention Vienna 1969, which mentions that:

For *the purposes of the present Convention, "treaty" means an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation;*

Chapter 1: Meaning that the agreement in question is an agreement held internationally between internal countries in written form and regulated by international law, both in the form of one instrument alone or in the form of two or more mutual instruments related without looking at what it's called. Understanding agreement International is also listed in order law Indonesian national, namely in Constitution Number 24 of 2000 concerning Agreement International Article 1 point a states that agreement international is agreement, in form and name certain, regulated in law created internationally in a way written as well as give rise to rights and obligations in the field law public.

Based on understanding that, we can then explain a number of elements or mandatory qualifications fulfilled in something agreement, which can be called an agreement international, namely: agreed words, subjects of international law, shaped writing, object certain, and subject to or regulated by international law. [1] The most important element, namely the parties' consent, is given in a way that is voluntary, as the case may be in civil law [2] or principle known as consensualism in the western civil law system. However, it is necessary remembered that agreement international must held by the subject law becoming international member public law international. So, included in agreement international is agreement between countries, treaties between countries and organization international, agreement between something organization international with organization international other. Beside that, **Huala Adolf** also stated that the contract was international. No can equalized with agreement international. The word "contract" is associated with something natural, something private (civil) such as, for example, an agreement between Indonesia and Australia that the governments of Indonesia and Australia signed. A framework agreement for cooperation known as security with designation The Lombok Treaty is the point at which both countries agreed to no war with each other.

Standard for determining whether an agreement is in the category of agreement in a public sense or private can be seen from the connection between the law governing it, namely law private or law public, no matter the status of the parties. An agreement international in nature must be public. There is subjugation to international law (public). By theory, when procedure investment involves political processes, the principles of freedom trade or freedom contract between the parties (incl. the government) will be disturbed. Principle freedom trading in principle, no can intervened by interests political or political process.

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III. RESULTS AND DISCUSSION

A treaty is an agreement entered into by two countries or more binding not just to each country but also to the citizens of the countries concerned. Miscellaneous Treaty:

1. Bilateral treaties, viz., treaties held by only 2 countries; for example, an agreement held internationally between the Indonesian government and the PRC government regarding "dual citizenship."
2. Multilateral treaties are international agreements that are followed by several countries. For example, an agreement about the joint national defense of European countries (NATO) is signed by several European countries.

Enhancement interpenetration law international and legal nationally in various aspect reflect increasing relationship complex between countries and community international. Applicability law international in a court forum national becomes an important issue in justifying legitimacy practice using international law. Typically, legitimacy using international law can be seen in the constitution of a country. Take example, *The Constitution of the Republic of South Africa* give authorization constitutional direct to court national for use law international and legal foreign in matter interpretation right basic man. This matter give hope for realization consistency and uniformity practice court national in apply law international level domestic. Different things are faced by Indonesia because the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) does not arrange about position law international in system law national. [1]

Law No. 24 of 2004 concerning Agreement Not even internationally, explain position law international (in this matter, this agreement international), but only explain mechanisms. 1 Malcolm N. Shaw, International Law: Sixth Edition (Cambridge University Press 2008), 129–130. Article 11 of the 1945 Constitution of the Republic of Indonesia only authorizes the president, with the authority of the DPR RI, to make agreements with other countries. creation and validation agreement internationally. Deep-gap regulation legislation in Indonesia causes diversity in the look to international law as well as inconsistency in the practice of the court from national to international law.

The 1945 Constitution of the Republic of Indonesia, in Article 11, paragraph (1), states, "The President, with the approval of the House of Representatives, states war and makes peace and agreements with other countries." In terms of agreement international the give broad and fundamental impact for related people's lives burden state finances and/ or require change formation of the law then agreement international the must with DPR approval. 13 Provisions more carry on about international agreements arranged in Law No. 24 of 2000 concerning international agreements governing internal aspects of the treaty-making process. On Terms That's constitutional—the 1945 Constitution of the Republic of Indonesia, in fact. No explain How does international law position national law? Constitution only explain about authority president and his relationships with the DPR within make agreement international. On issue of an applicability agreement internationally before a national court forum, the role of the judge becomes important. For observed. The perpetrator power of the judiciary in Indonesia is held by the Supreme Court (MA) and the Court Constitution (MK).

In running the power of the judiciary, Supreme Court and Constitutional Court judges are obliged to straighten up law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia. 15 However, there is a lack of explicit norms in the 1945 Constitution of the Republic of Indonesia regarding position law international, which creates an inner barrier to an applicability agreement internationally in court. UU no. Not even 24 of 2000 provide clear directions. How effect domestic from agreement internationally ratified by Indonesia. Debate theoretically around neither monism nor dualism can be avoided, so that gives rise to inconsistency in the way the judge looks at applicability law internationally in court. Simon Butt, in his research, concluded that practice use law internationally by the Supreme Court and MK still walk inconsistently. That matter appears in the Supreme Court's practice regarding the Saudi Arabian Embassy in Indonesia in 2006.

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In its decision, the Supreme Court applied the current 1961 Vienna Convention on Diplomatic Relations, which has already been ratified but not yet transformed into national law. 18 The Supreme Court's practice shows that courts consider agreements international and can enforce them directly (self-executing treaties). However, on the other hand, there are also contradictory MA practices that respond to international agreements. As for example, the 1982 United Nations Convention on the Law of the Sea (UNCLOS) is an international agreement in substance that arranges maritime in a general way. The Applicability Convention, obtained after the Convention, was transformed into Law No. 6 of 1996, more than ten years after the ratification of the Convention. This is Simon Butt, 'The Position of International Law Within the Indonesian Legal System' (2014) 28. Emory International Law Review 1, 6, 18 Ibid., 7, 19 Ibid., 20 See understanding the constitution put forward by Adam Tomkins, "notwithstanding its allegedly unwritten nature, much (indeed, almost all) of the [English] constitution is written, somewhere," shows that the English constitution spread to a number of sources, such as the Magna Carta, the Bill of Rights of 1689, the Parliament Acts of 1911 and 1949, and the Human Rights Act of 1998. Titon Slamet Kurnia, Human Rights Constitution: The 1945 Constitution of the Republic of Indonesia and the Court Constitution of the Republic of Indonesia (Student Center 2014) 11. 21 What is meant by Parliament includes the House of Commons, the House of Lords, and the Queen (as an integral part of Parliament). showing that these treaties are considered non-self-executing treaties.

Until moment this, not yet There is an explanation normative that can finish polemic practice inconsistency. In line with Simon Butt, Damos Dumoli Agusman also stated that the issue of the status of the international law national agreement in Indonesia is not yet resolved and that the issue is not developing in Indonesia.

IV. CONCLUSION

Article 11 of the 1945 Constitution of the Republic of Indonesia only authorizes the president, with the authority of the DPR RI, to make agreements with other countries. creation and validation agreement internationally. Deep-gap regulation legislation in Indonesia causes diversity in the look to international law as well as inconsistency in the practice of the court from national to international law. Until moment this, not yet There is an explanation normative that can finish polemic practice inconsistency. In line with Simon Butt, Damos Dumoli Agusman also stated that the issue of the status of the international law national agreement in Indonesia is not yet resolved and that the issue is not developing in Indonesia.

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Article 11 of the 1945 Constitution of the Republic of Indonesia only arrange authority president with the authority of the DPR RI to make agreement with other countries.

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