*Research Article*

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# Legal Views on the Development of International Law and the International Judicial System

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## Abstract

Current law enforcement efforts are useful for combating international crime, so that the international community is not enough to do extradition treaties. It is also necessary to review the tendency of countries in combating international criminals who prefer to use with other agreements that are not less important and closely related to the cases that occur in the present. In relation, international law is emerging and created because of an international society, therefore it is society that should be the basis for the establishment of international law. The international community is also used as a sociological foundation in the formation of international law. The

international community today comprises a number of equally independent and independent countries in the world that have interests to engage in international relations in a concerted and ongoing manner. This international relationship also arises because of the mutual need factor between countries in various interests, such as political interests, economics, culture, science, social and many more interests in the international community that can be used as a basis or can cause relations between countries . To be able to regulate international relations is required law that aims to ensure the existence of legal certainty in the international community. The law is also used as a basis for mentertibkan and mencipkatakan security in conducting relationships between countries so that no parties who feel harmed again.

**Keywords:** International Society, International Criminal Law, International Relations

## A. Introduction

The international criminal justice system is an approach which law experts in the United States have often introduced in reaction to dissatisfaction with the apparatus and law enforcement agencies. According to Frank Remington was the first person in the United States who had been able to introduce criminal justice administrative engineering through a system aproach and the idea of this system was found in a project report in 1958. This idea was then placed on criminal justice administrative justice mechanisms and later named criminal justice system. The term was later introduced and disseminated by "The

President't Crime Commission.[1] The Criminal Justice System (Criminal Justice System) is also a term that demonstrates mechanisms and systems of work in crime prevention using the basic system approach. According to Rusli Muhammad argued that the Criminal Justice System is a network of justice that cooperates in an integrated manner between its parts to achieve certain goals both short and long term.[2]

Likewise international law is to get an idea of international law not enough to know only the articles of the Convention or an International Treaty, but also to look at a set of rules that live in the association between people and the state. However, international law must be associated in the life of the international community. International law has also entered into an orderly and orderly international society. Although often heard of acts that do not cause a peace, the dispute between countries, even the rules of international law that actually used as justification for the actions of a country in order to fight other countries.[3] The number of violations against international law today is the same as what happens with national law. Despite the national criminal law, there are still many cases such as theft, rape, murder and so on. Against (international) legal violations should be regarded as an extraordinary phenomenon or an exception to the norms or norms of the international standard. The occurrence of Violations, in essence only concerning the effectiveness of the law, not only for legal validity.

Until now, the boundaries of the state are already very virtual and known to many countries, in the sense that this international relationship has been so dynamic that national boundaries seem to be easily penetrated in a very fast time. The international community in today's era of globalization is supported by increasing technological advances, especially in information technology, telecommunications, and transportation, making international crimes increasing both quantitatively and qualitatively. So to overcome it is not

[1] Agus Sudarsono and Agustina Wijayanti, "Pengantar Sosiologi Hukum," *Jurnal Sosiologi UNY*, 2016.
[2] Rusli Muhammad, "Pengaturan Dan Urgensi Whistle Blower Dan Justice Collaborator Dalam Sistem Peradilan Pidana," *Jurnal Hukum IUS QUIA IUSTUM* 22, no. 2 (2015), https://doi.org/10.20885/iustum.vol22.iss2.art2.
[3] Romli Atmasasmitha, "International Criminal Law and the Law of Human Rights," in *Pelatihan Hukum HAM*, 2005.

enough only done by the country individually, but it takes a unified cooperation both bilaterally and multilaterally. One of the legal institutions deemed to be able to cope with these international crimes is extradition. Therefore, extradition institutions will appear on the surface as if extradition as a powerful legal institution to solve it.[4]

Developments in the global world that now cross the boundaries of territorial territory in other countries very need clear rules and firm. The rule aims to create an atmosphere of harmony and mutually beneficial cooperation. Cooperation in international relations which also requires the rule of law that is international. Sources of international law in the form of international treaties, international customs, etc., have an important role in regulating the common problems facing international law subjects. And when it has been mutually agreed, therefore, whether or not honored international law depends on the commitment of each country in view and respect the nation or other countries. on behalf of certain countries. Because up to now the problems of inter - national disputes are still difficult to resolve through the International Tribunal when it is already involving the superpowers.

## B. Research Mehtod

In the framework of a scientific work, there is one component as a determinant that there are conditions used for a search data from the results of a scientific work, in this case that is used is research method. According to Sutrisno Hadi, this methodology is a method or method to provide careful lines and in proposing these harsh conditions, which is to preserve the knowledge gained from a research which can be of great imitative value. If the overall data has been obtained and has been collected, then the data processed and analyzed by qualitative descriptive analysis method or called qualitative analysis. Qualitative analysis is data obtained from several sources collected to obtain

[4] Dwi Melia Nirmalananda Dewi, I Made Sepud, and I Nyoman Sutama, "Ekstradisi Sebagai Upaya Pencegahan Dan Pemberantasan Kejahatan Internasiona," *Jurnal Analogi Hukum* 2, no. 1 (2020), https://doi.org/10.22225/ah.2.1.1610.17-21.

data relevant to the issues raised and then processed by analytical descriptive that is describing in full about certain aspects concerned with the problem and then analyzed the truth.

Then, for the data that has been collected will then be processed and then will be analyzed and studied using the comparative and theoretical approach. In the comparative approach is to make a comparison through the implementation of mediation penal in some countries with in practice that exist in Indonesia. The comparison then aims to obtain an overview of the ideal results of mediation of penal and to be integrated into the criminal justice system in Indonesia in the context of penal reform reform. Further to the nature of this research is descriptive empirical research. Descriptive empirical research is a form of research that is intended to describe a phenomenon that exists, both natural phenomena and man-made phenomena. The phenomenon can usually be the form, activity, characteristics, changes, relationships, similarities, and differences between phenomena with one another phenomenon. In general research it is distinguished between data obtained directly from the field called the primary data and data obtained from library materials or better known as secondary data.

## C. Result & Discussion

### 1. Dynamics of Progress in Indonesia's Position of International Law

Indonesia is one of the new countries that have gained independence from Dutch colonialism with a very sadistic and bitter struggle. As a result, Indonesia tended to be anti-colonialists and became unenthusiastic to adopt Dutch legal traditions that made it inclined to build its own legal system. For Indonesia, historically in international law is a pro establishement that provides legitimacy for colonial state to be able to continue colonizing its colonies. This international law at that time became very unfriendly to Indonesia. That is why this international law remains somewhat alien to the Indonesian system and has become a very new element in the architecture of Indonesian law. Consequently, how does the Indonesian legal system deal with the law of concern in this legal system.

Indonesia also can not separate itself from the Dutch Shackles in a revolutionary way and thus refuse to inherit the Dutch legal tradition which deals with international law. Indonesia builds its own legal system and can also set its own stance on international law. Even if to defend the Dutch civil law tradition, Indonesia has also formulated its own Constitution after independence. Since its independence, Indonesia has struggled to gain international recognition which was finally obtained in 1949 [9]. After that, Indonesia has also experienced three (3) periods of change of government, namely the first called the 'old order', which is marked by a system of democracy led by President Sukarno is very dominant in national politics. At first President Sukarno was also oriented towards democracy but gradually led to a power violation marked by the term of the President for life. Then came the economic crisis of the 1960s that led to the collapse of this regime and subsequently replaced by the 'new order' regime led by President Soeharto's military government. Reappear The same economic crisis occurred in 1998 and also forced the new regime to end its rule which was subsequently replaced by the third regime of the 'reforming' regime that prevailed to this day.

Indonesia also has an attitude similar to that of Asian countries in general against international law, namely by selective or by choosing the norms of international law that are very useful for its struggle and reject the norms that can harm it [11]. This harmonious attitude with its historical experience which sees international law as very beneficial to the colonizing countries and vice versa can also be detrimental in every country that wants to be independent because of its 'separatist' character, with this sentiment which has also encouraged the founders of the nation to be able to achieve that colonialism is a Western world as the creator of international law. This law merely justifies the Asian-African subjection to colonialism. On the contrary, the proclamation of independence by the Western world is accused of being unilateral in violation of international law. With the end of the war of independence marked by the establishment of The Netherlands-Indonesia Union in 1949 and since then the attitude of the Indonesian nation to international law only oriented to the Netherlands that is very friendly. But this friendly attitude is only a short

one because since the 1950s Indonesia has decided unilaterally in the Round Table Conference of 1949, which at that time was criticized as violating international law. Since then, along with Indonesia's worsening relations with the Netherlands, anti-Western attitudes have become stronger and tend to become synonymous with international anti-law attitudes. Indonesia's attitude became very anti-Western and tended to revive the spirit of the revolution that had been waged in the era of the war of independence.15 As a result, this sentiment affected the same attitude that is anti to international law.

In Indonesia's Resistance to international law which has greatly culminated in the time of the emergence of strategic threats caused by the law of the sea at that time. The width of the sea is only allowed 3 (three) miles that has resulted in Indonesia separated by free sea and open space for freedom of Dutch warships in the midst of the struggle for West Irian. As a result Indonesia sees the prevailing law of the sea at the time of great detriment to the survival of Indonesia as the territory of Indonesia becomes scattered and very vulnerable to disintegration by areas which at the time tend to strengthen. This threat can also lead to problems of state resilience and security and make increasingly negative sentiments that international law is very unfair. Thus, the apathy towards an international law is increasing now when there is an Indonesian foreign policy approaching the socialist bloc to Russia and China in the cold war era, and its escalation worsened in 1963 when President Soekarno conceived the controversial idea of 'new emerging forces' (NEFOS) representing Asian countries, Latin America, socialist countries and dealing with what he calls' old emerging forces' (OLDEFOS) referring to the capitalist countries. This movement was over when Sukarno was forced to step down from power in 1966. This resistance to international law has also reached a climax at the time of Indonesia through his letter dated January 20, 1965 which states will resign in the membership of the United Nations and all its organs on the basis of considerations as follows:

*"That in the circumstances that have been created by colonial powers in the United Nations so blatantly against our anti-colonial struggle and indeed against the lofty*

*principles and purposes of the United Nations Charter, the Government that has left Indonesia withdrawal from the United Nations*"

In this Indonesian attitude of hostility towards international law can also gain great support from Indonesian experts. In order to defend the position of Indonesia withdrawing unilaterally from the Round Table Conference Agreement in 1949 alleged as a violation of the sunt servanda pact, By Roeslan Abdulgani argues that it may also be justified on the basis of a boiled principle of sic stantibus [15] . In his statement at the 1956 London Conference on the Suez Canal Crisis, Abdulgani has also clarified Indonesia's position on international treaties by stating the following:"

*Mr. Chairman, I understand fully Sir Anthony Eden's remarks this morning about respect for the sanctity of international law. However Mr. Chairman, I should add one comment upon this, and that is that most of the international treaties are sanctity of men as equal human beings irrespective of their race, or their creed or locality. Most of the existing laws between Asian and African and the old-established western world are more or less outmoded and should be regarded as a burden of modern life. They should be revised and made more adaptable to modern international relations and the emancipation of all parts of mankind".*

Therefore, as an archipelagic state, the State of Indonesia is already in remote areas far from cross-border interactions. However, international relations are only seen as intergovernmental relationships rather than human relationships. This mindset encourages experts to be conservative about international law so that it only sees the international treaty as an inter-state document of exclusive affairs of the foreign ministry. The question of the domestic status of international treaties that do not involve public interest is thus not the concern of constitutional or inter-state experts or of international legal figures or experts.

Thus, when the Indonesian nation faces dynamic pressure from both directions simultaneously at First, the pressures of the dynamics of reform demanding democratic standards and the presence of force to enforce law and compliance include Indonesia's international obligations born out of law including international treaties. Second, the pressures of the age of

globalization are also the existence of systems within the international community which have called for minimum standards of posture of the national legal system in the performance of their international obligations.

According to the view of the traditional system, the power to make agreements in international relations as a whole is already in the hands of the King as an attribute of sovereignty. However, in the movement of constitutionalism and the existence of a separation of powers which today has encouraged the birth of a constitutional rule that can distinguish between which makes international treaties with those that can implement international agreements. As a consequence, the power of making the agreement has been allocated to the various organs of the state both horizontally and vertically. Horizontally there is a demand for parliamentary participation so that there is a division of power between the government and parliament and gives power to parliament the power to execute its agreement in the framework of the legislation function. Vertically also have been born local governments that have exclusive authority over some governmental affairs that may result in them having to participate if this exclusive affair is agreed only with foreign parties only.

## 2. The development of the International Judicial System in the Settlement of an International Dispute

In the Establishment of International Judicial Institutions, Jurisdictionally and historically, international jurisdiction established after the first world war. International courts established by and on behalf of the League of Nations (LBB), namely as follows: (1) International Arbitration, (2) International Court of Justice (International Court of Justice); (3) International Military Tribunal Nuremberg; (4) International Military Tribunal for the Far East in Tokyo, Japan. The International Criminal Tribunal for the Former Yugoslavia, established on May 25, 1993 and domiciled in the City of The Hague, based on resolution no. 827; (2) The International Tribunal for Rwanda, established on 8 November 1994, domiciled in Arusha, Tanzania, with resolution no. 995; (3) International Criminal Court of Justice based on the Rome statute of 1998.

In essence the issue of international disputes is a dispute that occurs in countries. The emergence of this dispute is actually not a new problem, because basically the international dispute has often emerged long before the birth of modern countries. To observe international disputes that have occurred so far, the source of the problems that led to the occurrence of an international dispute in general because triggered by several factors, namely: (1) The existence of ideological factors, namely the conflict in international disputes triggered by the existence of an ideological difference. Each party is trying to take over the influence of its ideology in the world. For example, the conflict between the state of supporters of liberal ideology and the state of socialist-communist ideology; (2) The existence of a Political Factor, namely by conflict or dispute between countries triggered by the existence of interest to control the territory of the state or the border of the state territory. For example, a dispute between Malaysia and Indonesia concerning the issue of Sipadan and Ligitan islands, then there is a dispute between Japan and Russia about the status of the Kuril archipelago, Israel wants to control the Palestinian territories, Iraq once occupied Kuwait, and so on; (3) The existence of Astawa Factor, namely International Law System and International Economic Court, namely the existence of a conflict or dispute between countries triggered by the seizure of natural resources. For example, when the United States wants to attack Iraq, many political observers indicate or (suspect) that in addition to political factors, there are also economic factors, namely to control oil in the Middle East region; (4) Socio-Cultural Factors, namely disputes that occur due to socio-cultural differences. For example the Arab cultural fanaticism of the non-Arab world so that the occurrence of a rebellion and terror (Egypt, Iran, Algeria, and Libya); (5) The existence of the Defense and Security Factor, namely by the conflict or dispute that occurs because of each of the parties trying to defend the region or its power. For example when Iraq occupied and defended the territory of Kuwait, which was later attacked by US troops with multinational forces from various countries.

The existence of a dispute or conflict between nations or between countries is often latens (or pseudo and covert) and manifest (open). Open conflict, the

most powerful is in the form of war. Through the settlement of disputes between countries can be done by peaceful means as well as war. War is also seen as a last resort to solve the conflict, which is win-lose or lose-lose. The International Society has made numerous international instruments to resolve international disputes. In Article 33 of the Charter of the United Nations which has determined various means of resolving international disputes in a manner that includes the settlement of international disputes through courts, arbitration, or other means of settlement elected by the parties to the dispute. Article 95 of the Charter of the United Nations stipulates that there is nothing in the Charter that prevents members of the United Nations from entrusting to the settlement of their disputes to other judicial bodies based on the spirit of existing or future consent to be made. From these provisions it can be understood that in the settlement of disputes can be done either through the judiciary, as well as institutions outside the judiciary. Then the parties to the dispute must determine the best way to resolve the dispute.

In the presence of international public law, by arbitration institutions as for the means and by means of settling disputes between countries that have been known since the Middle Ages to the present day. The parties agree that the dispute will be settled through an arbitration institution which may be set forth in the treaty or (Hague Convention: Pacifict Settlement of International Dispute). In the Agreement made by these persons, the parties may be made before and after the dispute. In the event that the agreement is made after a dispute, the review is only applicable to resolve the dispute concerned. In the Review for settlement of disputes made before a dispute is called mandatory arbitration. The Arbitration Agreement usually contains disputed matters, the terms of appointment of the arbitrator, the procedure of the proceedings, the arbitral powers, and the special conditions agreed by the parties listed in Article 52-53 of the Convention. The appointment of the Arbitrator is based on the agreement of the parties to the dispute. An arbitrator at an early stage must ensure that the appointment to perform the duty is in accordance with the procedures agreed upon by the parties, and will only answer questions asked to him in accordance with his or her authority. However, if there is someone as

an arbitrator who decides cases outside his or her authority, then his decision will be ruled out.

The International Court of Justice is one of the main legal organs of the United Nations. As such, this International Court of Justice is part of the United Nations and as we see that the Statute of the International Court of Justice is an integral part of the UN Charter. The procedural provisions in the activities of the International Court of Justice are entirely outside the power of the disputing States, since the terms already existed before the dispute arose. For the jurisdiction of the International Court of Justice The authority of the International Court of Justice pursuant to the ICJ statute is by: (a) establishing binding rules of conduct on a disputing state within (article 30 of the ICJ statutes); (b) to provide a decision on any dispute submitted by the parties to it contained in (Article 36 of the ICJ Statute); (c) to provide legal advice to discuss legal matters concerning the administration of bodies in accordance with Article 96 of the Charter of the United Nations and Article 65 of the ICJ Statute Under Article 34 Paragraph (1) that the Statute of the International Court of Justice, only States may parties in the cases before the International Court of Justice (Ratione Personae). Thus, the subjects of international law, which are not states, can not be parties to the proposed cases. Whereas, in accordance with Article 36 Paragraph (1) of the Statute of the International Court of Justice, the competence of the International Court of Justice includes all cases filed by the parties to the dispute and all matters, in particular in the Charter of the United Nations or in treaties and conventions - applicable convention (Ratione Materiae). In principle, an International Court of Justice's authority is highly facultative, meaning that in the event of a dispute between two countries, a new International Court intervention may take place when the disputing countries by consensus jointly take their case to the International Court of Justice. Without the consent of the parties to the dispute, the competence of the International Court of Justice shall not apply to the dispute. However, according to Article 36 paragraph (2) in the Statute of the International Court of Justice, States Parties may at any time declare to be able to accept the mandatory authority of the International Court of Justice without special consent in

relation to other countries which accept the same obligations, in Astawa, (1) the interpretation of a treaty, (2) any international legal matter, (3) the existence of a fact which, if proven to be a violation of international obligations, and ( 4) the type or amount of compensation to be performed for violation of an international obligation. The provisions contained in Article 36 paragraph (2) of the Statute of the International Court of Justice are an optional clause. From the State statement on how acceptance of this clause can be made unconditionally or on reciprocity by other countries or for a certain period of time. In such Statement which is deposited with the Secretary-General of the United Nations whose copy has been communicated directly to the States Parties and to the Clerk of the International Court of Justice. The intended clause will only apply to countries that have accepted the same.

## D. Conclusions

In international relations which is a rule that has been created jointly by member states that cross national borders. In the International Tribunal carried out by the International Court of Justice which is one of the UN equipment organ. In International Law Resources are the sources used by the International Court of Justice in deciding on a matter of international relations. In the Source of international law can be distinguished into legal sources in the material and formal sense. Furthermore, international law is a legal norm governing the legal relationship between a state and a state, a state with another legal subject not a state, or a non-state legal subject to each other. In general any national law that contains dimensions in international legal relations, as well as international law provides opportunities for entry into national law.

In international law, in addition to humans as legal subjects, which also includes legal subjects is the state and also legal entities. So that the International Code of Justice and International Judiciary that broadly speaking, international law can be divided into two, namely the International Civil Law and the International Public Law. By law every applicable in a country, including international law, both public and civil have clear and clear principles

or principles. Principles in international law include, Territorial Principle, Nationality Principle, General Interest Principle, Ne Bis In Idem, Pakta Sunt Servanda, Cogens Juice, Inviolability and Immunity. In the source of international law that can be divided into two, namely the source of material law and the source of formal law. The existence of Disputes or conflicts between nations and countries that are often latens (pseudo, disguised) and manifest (open).

The settlement of disputes between countries can be carried out in peaceful or warlike ways. From these provisions it can be understood that the settlement of a dispute can be conducted either through the judiciary, as well as outside the judiciary. Through the Settlement of Disputes through a judicial institution which may pass through the Court of Arbitration, the International Court of Justice and the International Criminal Court. As for the Settlement of Disputes outside the Judiciary includes negotiations and legal consultations.

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