

International Law Discourse in Southeast Asia

Volume 1 Issue 2 (July-December 2022), pp. 217-242

ISSN: 2830-0297 (Print) 2829-9655 (Online)

<https://doi.org/10.15294/ildisea.v1i2.58385>

Published biannually by the Faculty of Law, Universitas Negeri Semarang, Indonesia and managed by Southeast Asian Studies Center, Universitas Negeri Semarang, INDONESIA

Available online since July 31, 2022

Differences in the practice of binding international law in Southeast Asian countries: How will it affect the stability of law enforcement?

Antonio Marcos Joseph

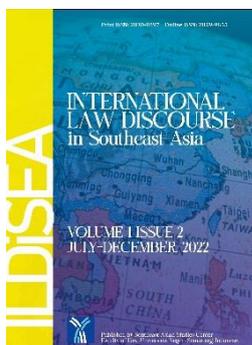
Mapúa University, The Philippines

Nur Shivana

Paralegal at Legalindo Law Firm, Jakarta, Indonesia

Layina Shaiza*

Faculty of Law, Universitas Negeri Semarang, Indonesia



ABSTRACT: Differences in the practice of binding international law in a sovereign state have different forms which are based on various theories of international law. As a result, each country has different perceptions even in terms of law enforcement. The study uses the library research method where the author refers to legal journals and certain books as well as the opinions of experts. However, in practice, the author prefers to refer to journals and books, because the sources from journals and books can be accounted for. The author also cites sources that have been mentioned through

* Corresponding author's email: layinashaiza@gmail.com

Submitted: 22/12/2021 Reviewed: 11/02/2022 Revised: 24/05/2022 Accepted: 10/06/2022

footnotes or footnotes. This study aims to analyze different legal practices in binding international law in Southeast Asian countries and their impact on law enforcement.

KEYWORDS: Treaty in International Law, Binding, Law Enforcement, International Law Practices

HOW TO CITE:

Joseph, Antonio Marcos, Nur Shivana, and Layina Shaiza. "Differences in the practice of binding international law in Southeast Asian countries: How will it affect the stability of law enforcement?". *International Law Discourse in Southeast Asia* 1, No. 2 (2022): 217-242. <https://doi.org/10.15294/ildisea.v1i2.58385>.



Copyright © 2022 by Author(s). This work is licensed under a Creative Common Attribution-ShareAlike 4.0 International License. All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions.

I. INTRODUCTION

Law is a system made by humans to limit human behavior so that human behavior can be controlled, law is the most important aspect in the implementation of a series of institutional powers, law has a duty to ensure legal certainty in society. Therefore, every community has the right to get a defense before the law so that it can be interpreted that the law is a written or unwritten rule or provision that regulates people's lives and provides sanctions for violators. The purpose of law has a universal nature such as order, tranquility, peace, prosperity and happiness in the order of social life. With the law, each case can be resolved through a court process with an intermediary judge based on the applicable legal provisions.¹

¹ Hardini, Sri. "Introduction to the Law of Indonesia." *Anthropos: Jurnal Antropologi Sosial dan Budaya (Journal of Social and Cultural Anthropology)* 2, No. 1 (2016): 91-100; Sumadi, Ahmad Fadlil. "Hukum dan Keadilan Sosial dalam

The definition of the law in general is the law that applies in a country or national law which has the aim of providing order to its citizens. Besides that, there is also international law which has a wider scope or which regulates relations between countries or in international territory. International law itself has its own definition; namely international law is a part of international law governing the activities of scalable entities international. Initially, international law was only defined as behavior and relations between countries, but in the development of increasingly complex patterns of international relations, this understanding has expanded so that international law also deals with the structure and behavior of international organizations and to some extent, multinational companies and individuals. International law is the law of nations, the law of nations or the law of nations. The law of the nations is used to refer to the customs and legal rules that prevailed in the relationship between ancient kings. International law or international law refers to the complex of rules and principles that govern relations between members of the community of nations or nations country. Due to the fact that there are also international cases which cannot be resolved using national law, for this reason, international law is made or established to create world order for the international community.²

Perspektif Hukum Ketatanegaraan." *Jurnal Konstitusi* 12, No. 4 (2016): 849-871; Nasution, Bahder Johan. "Kajian Filosofis tentang Hukum dan Keadilan dari Pemikiran Klasik Sampai Pemikiran Modern." *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 11, No. 2 (2016): 247-274.

² Villalpando, Santiago. "The legal dimension of the international community: how community interests are protected in international law." *European Journal of International Law* 21, No. 2 (2010): 387-419. See also Glahn, Gerhard, and James Larry Taulbee. *Law among Nations: An Introduction to Public International Law*. (London: Routledge, 2015); Clapham, Andrew. *Brierly's Law of Nations*:

An international agreement (treaty) is an agreement between two or more countries which is formally stated on the terms and conditions that stipulate the rights and reciprocal obligations of each party participating in the agreement. An international agreement is very meaningful in international law, especially in relations between countries, both in peace and war situations. International treaties in international law in the era of modern countries occupy a very important position as a source of law. Sources of law that apply in the past such as natural law and the opinions of writers have been displaced by international treaties.

II. METHOD

This study uses the library research method where the author refers to legal journals and certain books as well as the opinions of experts. However, in practice, the author prefers to refer to journals and books, because the sources from journals and books can be accounted for. The author also cites sources that have been mentioned through footnotes or footnotes.

III. HOW INTERNATIONAL LAW BINDS THE INTERNATIONAL COMMUNITY?

International law is based on the idea of an international community consisting of a number of sovereign and independent states in the sense that each stand alone, one is not under the power of the other. In this framework of thought there is no body that stands above states, whether in the form of a world state or other supremacist bodies. In other words, international law is an orderly coordination

An Introduction to the Role of International Law in International Relations. (Oxford: OUP, 2012).

between equal members of the international community.³ According to Austin international law is not real law because to be said to be law, according to Austin, it must meet two elements, namely that there is a legislative body that makes rules and that these rules can be enforced. Austin did not find these two elements in international law, so he concluded that international law cannot be said to be law, only positive morality. Observing Austin's opinion, it appears that Austin sees the law from a very narrow perspective. According to Austin law is synonymous with laws, orders from the authorities (legislative bodies). In modern analysis, Austin's opinion is no longer appropriate because it will eliminate the function of the court as one of the law-forming bodies.⁴

In addition, Austin also ignores that in society there are living laws, the existence of which is not determined by the existence of an authorized body (legislative body) or authorities such as customary law or customary law. In contrast to Austin, Oppenheim, another legal expert, argues that international law is real law. There are three conditions that must be met to be said to be law according to Oppenheim. The three conditions in question are the existence of the rule of law, the existence of the community, and the existence of guarantees for implementation from outside (external power) of these rules. The first requirement can be easily found, namely with the many rules of international law in our daily lives, such as the 1982 United Nations Law of the Sea Convention, International treaty on the moon and other celestial bodies (Space Treaty 1967). The second

³ Mochtar Kusumaatmadja & Ety R. Agoes, *Pengantar Hukum Internasional*. (Bandung: PT. Aumni, 2015). p. 9.

⁴ D'Amato, Anthony. "Is International Law Really 'Law'?" *Northwestern University Law Review* 79 (1984): 10-71.

condition for the existence of an international community is also fulfilled according to Oppenheim. The international community is the countries in the scope of bilateral, trilateral, regional and universal.

According to Oppenheim, the third condition for implementation guarantees is also fulfilled. Implementation guarantees can be in the form of sanctions that come from other countries, international organizations or international courts. The sanctions can take the form of demands for an apology (satisfaction), compensation (compensation/pecuniary), and restoration of the situation to its original condition (repartition). Besides that, there are also sanctions in the form of violence such as severance of diplomatic relations, embargoes, retaliation, to war. Although stating that international law is a real law, not just a moral, Oppenheim admits that international law is weak law. International law is weak in terms of law enforcement, not validity. International law is sometimes very primitive and selective. In line with Oppenheim, modern international law experts claim that international law is a real law not just a moral. The majority of the international community recognizes the rule of law that binds them. As stated above in International Law, there is no supranational body that has the authority to make and enforce an international rule, there is no law enforcement apparatus authorized to take direct action against countries that violate international law, and the relationship is based on a coordinating relationship, not sub-ordinating.⁵

⁵ Oppenheim, Lassa. "The science of international law: its task and method." In *The Nature of International Law*. (London: Routledge, 2017), pp. 93-356. See also Kingsbury, Benedict. "Legal Positivism as Normative Politics: International Society, Balance of Power and Lassa Oppenheim's Positive International Law." *European Journal of International Law* 13, No. 2 (2002): 401-437; Jennings,

However, it turns out that in practice the international community is willing to accept international law as a real law, not only as a positive morale. The essence of international law is as real law. The number of violations that occur is much smaller than the existing obedience. This of course raises further questions, what makes the international community willing to accept international law as law? Where does international law derive its basis of binding strength? In terms of the philosophy of law, there are several theories or schools that appear in several periods or stages, which try to answer the questions above as follows. At stage ancient and primitive international law, namely the ancient Roman centuries to the Middle Ages, for example, where the flow of natural law dominated the thinking of scientific experts at that time it was said that the international community obeyed international law because international law was part of natural law. Natural law is a semi-theological school of thought, always referring to a higher law that comes from God. International law (*jus gentium*)⁶ is seen as part of natural law, coming from God so that it applies to all human beings. International law is binding because this law is part of the natural law applied to the society of nations. In other words, it can be said that states are willing to be bound by international law because their relations are governed by a higher law, namely natural

Robert Y. "International Law. By L. Oppenheim. by H. Lauterpacht, QC, LL. D., FBA Vol. I—Peace.[London: Longmans, Green & Co. 1955. lvi and 1029 and (index) 42 pp.£ 4 10s. net.]" *The Cambridge Law Journal* 14, No. 1 (1956): 112-113.

⁶ Sherman, Gordon E. "Jus Gentium and International Law." *American Journal of International Law* 12, No. 1 (1918): 56-63; Trindade, Antônio Augusto Cançado. "International law for humankind: towards a new jus gentium." *International Law for Humankind*. (Leiden: Brill Nijhoff, 2010).

law⁷. As stated by the positive law school, the basic binding force for IR is the will of the state. Although it is more concrete than what is put forward by the flow of natural law, what is put forward by this school also has a weakness, namely that not all IR has binding power because of the will of the state. There are many rules of IR which have the status of customary international law or general law principles that existed before the birth of a country. Without ever giving a statement of their will to agree or disagree with the rules, the newly born countries will be bound by the international rules⁸.

One of the international fields that can be exemplified is the linkage of human rights in international law, namely the issue of upholding human rights, not only legal and moral issues. In relation to the international obligations of each State or other actors of international law in the enforcement of Human Rights, it is not solely based on obligations under a law but also based on morality to uphold human dignity. The obligation to respect and promote and uphold human rights is a fundamental obligation for every actor in international relations, both on a national and international scale.⁹

IV. INTERNATIONAL LAW PRACTICE IN INDONESIA

The discussion of legal sources is a very important issue in the field of law, not only at the level of National Law but also International Law. An understanding of this is absolutely necessary because in

⁷ Sefriani Sefriani "Ketaatan Masyarakat Internasional terhadap Hukum Internasional dalam Perspekti Filsafat Hukum", *Ius Quia Iustum* 18, No. 3 (2011): 405-427

⁸ Sugeng Istanto, *Hukum Internasional*. (Yogyakarta: Penerbitan Atma Jaya, 2001).

⁹ Anis Widyawati, "Kajian Hukum Internasional terhadap HAM", *Pandecta Research Law Journal* 2, No. 1 (2008).

solving various legal problems, legal sources are the place where the legal basis is found which is used as a guide. Today there is a tendency to re-discuss the sources of law in international law, due to the development of the international community. very fast and international law itself. Sources of international law are different from national law. IR has its own uniqueness, especially the absence of a statement that explicitly states what sources of international law itself are used as sources of law in deciding international disputes.

The discussion of the place or position of international law in the legal framework as a whole is based on the assumption that as a type or field of law, international law is part of law in general. International law as an effective set of provisions and principles that live in the community and therefore has an effective relationship with other legal provisions or fields, the most important of which is the legal provisions governing human life in their respective national environments known as national law. The national law of each country has an important meaning in the political constellation of today's world and international society. so that it will raise the question of how the various national laws relate to international law and the position of international law in the overall legal system from a practical point of view. Discussions on the relationship between international law and national law can be viewed from the point of view of theory and practical needs.

Applicability of international law in the national judiciary of a country refers to the doctrine of "*incorporation*" and the doctrine of "*transformation*". According to the doctrine of incorporation, that international law can directly become part of national law. If a country signs and ratifies any treaty or agreement with another country, the agreement can be directly binding on its citizens without

any prior legislation. Examples of countries that apply this doctrine are the United States, Britain, Canada, Australia and several countries with the AngloSaxon system. The doctrine of transformation states otherwise, that there is no international law in national law before the transformation process is carried out in the form of a prior statement from the country concerned. So that international treaties or treaties cannot be used as a source of law in national courts before 'transformation' into national law. The doctrine of incorporation assumes that international law is an automatically integrated part of national law. This doctrine is closer to the theory of monnicism which does not separate between national law and international law.

Meanwhile, the doctrine of transformation demands positive action from the state concerned, so that it is closer to the dualism theory. Examples of countries that apply this theory include Southeast Asian countries, including Indonesia. The doctrine of incorporation assumes that international law is an automatically integrated part of national law. This doctrine is closer to the theory of monnicism which does not separate between national law and international law. Meanwhile, the doctrine of transformation demands positive action from the state concerned, so that it is closer to the dualism theory. Examples of countries that apply this theory include Southeast Asian countries, including Indonesia. The doctrine of incorporation assumes that international law is an automatically integrated part of national law. This doctrine is closer to the theory of monnicism which does not separate between national law and international law. Meanwhile, the doctrine of transformation demands positive action from the state concerned, so that it is closer to the dualism theory. Examples of countries that apply this theory include Southeast Asian countries, including Indonesia.

Implementation in Indonesia in principle recognizes the supremacy of international law, but it does not mean that we simply accept international law. Our attitude to international law is determined by our awareness of our place in a developing international society. As part of the international community, Indonesia recognizes the existence of international law, but that does not mean that national law must be subject to international law. In practice, Indonesia does not adhere to the theory of transformation, but is more inclined to the system of continental European countries, which directly considers us bound by the obligation to implement and obey all agreements and conventions that have been ratified without the need to re-enact implementing legislation.

Therefore, the making and ratification of an international agreement is carried out based on the law. 24 of 2000 concerning International Agreements, the authority to make international agreements as stated in Article 11 of the 1945 Constitution, states that the President has the authority to make international agreements with the approval of the House of Representatives. Article 11 of the 1945 Constitution requires a further elaboration of how an international treaty can apply and become law in Indonesia. For this reason, through Presidential Letter No. 2826/HK/1960 tries to elaborate further on Article 11 of the 1945 Constitution. Arrangements regarding international agreements so far have been described in the form of Presidential Letter No. 2826/HK/1960, dated 22 August 1960, addressed to the Chairman of the House of Representatives, and has been a guide in the process of ratifying international treaties for many years. The ratification of international agreements according to this Presidential Letter can be carried out through laws or presidential regulations, depending on the material regulated in international agreements. However, in

practice the implementation of this Presidential Letter has many deviations so that it needs to be replaced with a law that specifically regulates international agreements.

This then became the reason for the need for international agreements regulated in Law no. 24 of 2000. In general, the ratification of international agreements is divided into four categories, namely: (1) Ratification, ie if the country that will ratify an international agreement also signs the text of an international agreement; (2) Accession, namely if the country that will ratify an international treaty does not participate in signing the agreement text; (3) Acceptance or approval, namely a statement of acceptance or approval from the state parties to an international agreement on the amendment of the international agreement; and (4) international agreements that are self-executing (in effect upon signing). In the ratification of an international agreement, the signing of an agreement does not necessarily mean the binding of the parties to the agreement. The signing of an international treaty requires ratification to be binding.

International treaties will not be binding on the parties until they are ratified. A person who represents the government with the aim of accepting or signing the text of a treaty or binding the country to an international agreement, requires a Power of Attorney (Full Powers). Officials who do not need a power of attorney are the President and the Minister. However, the signing of an international agreement concerning technical cooperation as the implementation of an existing agreement and whose material is within the scope of authority of a state institution or government agency, both departmental and non-departmental, is carried out without the need for a power of attorney. The ratification of an international agreement

by the government is carried out as long as it is required by the international agreement. The ratification of an international agreement is carried out based on the provisions agreed upon by the parties. International treaties that require ratification come into force after the ratification procedures stipulated in the law have been fulfilled. The ratification of international agreements is carried out by law or Presidential Regulation. Legislation requires the approval of the DPR. Ratification by Presidential Regulation only requires notification to the DPR.

The ratification of international agreements is carried out through law when it relates to matters of politics, peace, defense, and state security; changes in territory or the determination of state boundaries; sovereignty or sovereign rights. state; human rights and the environment; establishment of new legal rules; foreign loans and/or grants. In the mechanism of function and authority, the DPR can ask the Government for accountability or information regarding international agreements that have been made. If it is deemed detrimental to the national interest, the international agreement can be canceled at the request of the DPR, in accordance with the provisions contained in Law Number 24 of 2000 concerning International Agreements. With this arrangement, Indonesia can be said to be a country that adheres to dualism, this can be seen in Article 9 paragraph 2 of Law Number 24 of 2000, which states that: "The ratification of international agreements as referred to in paragraph (1) is carried out by law or presidential decree." Thus, the implementation of international treaties into Indonesian national law and used as a guide in the national judiciary does not necessarily occur. This also shows that Indonesia views national law and international law as two different and separate legal systems.

International treaties must be transformed into national law in the form of legislation. This also shows that Indonesia views national law and international law as two different and separate legal systems. International treaties must be transformed into national law in the form of legislation. This also shows that Indonesia views national law and international law as two different and separate legal systems. International treaties must be transformed into national law in the form of legislation.

International agreements in accordance with Law Number 24 of 2000 concerning International Agreements, ratified through laws and presidential decrees (Based on Law Number 12 of 2011 concerning the Establishment of Legislation, Article 7 Paragraph (1) letter e, states that the presidential decree is amended become presidential regulations). In the ratification law, it does not automatically become an international agreement into Indonesian national law, the ratification law only makes Indonesia a state bound to the international agreement. For the international agreement to take effect, it is necessary to make more specific laws regarding ratified international agreements, for example Indonesia ratified the International Covenant on Civil and Political Rights through law.

International agreements that do not require ratification in their application, usually contain material of a technical nature or a technical implementation of the master agreement. An international agreement like this can take effect immediately after the signing or exchange of agreement documents/diplomatic notes, or through other means agreed in the agreement by the parties. Agreements included in this category include agreements whose material technically regulates cooperation in the fields of education, social, culture, tourism, health information, agriculture, forestry and

cooperation between provinces or cities. The international agreement enters into force and binds the parties after fulfilling the provisions stipulated in the agreement.¹⁰

V. COMMENCEMENT OF INTERNATIONAL AGREEMENTS UNTIL CANCELLATION AND EXPIRATION OF INTERNATIONAL AGREEMENTS

1. Coming into force of the International Agreement

The entry into force of an agreement, whether bilateral or multilateral, is generally determined by the closing clause of the agreement itself. In other words, it can be stated that the parties to the agreement will determine when the agreement comes into effect effectively. This principle is also clearly explained in the 1969 Vienna Convention on the Law of Covenants. Article 2 of the Convention states, among other things, that a treaty shall enter into force by following the method and date specified in the treaty or in accordance with an agreement between the negotiating States, and it is also possible that an international treaty shall enter into force as soon as all the negotiating States agree to be bound by the treaty. agreement.¹¹

In addition, the convention also regulates the temporary application of an international agreement if it is agreed by the negotiating parties. Article 25 of the Vienna Convention on the Law of International Covenants states, among other things, that a treaty or part of a treaty

¹⁰ Sunyowati, Dina. "Hukum Internasional Sebagai Sumber Hukum dalam Hukum Nasional (Dalam Perspektif Hubungan Hukum Internasional dan Hukum Nasional di Indonesia)." *Jurnal Hukum dan Peradilan* 2, No. 1 (2013): 67-84.

¹¹ Boer Mauna, *Hukum Internasional, Pengertian Peranan dan Fungsi dalam Era Dinamika Global*. (Bandung: PT. Alumni, 2013)., pp. 124-125.

is put into effect temporarily pending its entry into force, if so determined in the treaty or the States negotiating otherwise agree to it. In its day-to-day implementation, in general terms the agreement of the parties can be divided into two categories, namely agreements that can take effect immediately after signing,¹² In the following, it will be seen one by one how and when a noble agreement applies and the clauses that are generally used in certain agreements.

- 1) Enter into force of the International Treaty Immediately after the Signing Date
- 2) If there is no provision or agreement, the treaty enters into force as soon as the agreement is bound and declared by all negotiating countries.
- 3) If the consent of a country to be bound by a treaty occurs after the treaty comes into force, the treaty shall enter into force for that country on that date, unless the treaty provides otherwise.
- 4) The provisions of the treaty governing the ratification of the text, a statement of the consent of a country to be bound by a treaty, the manner and date of its entry into force, requirements, storage functions, and other issues that arise that are necessary prior to the entry into force of the treaty, are effective from the time the text is approved. that agreement.

2. Cancellation and Expiration of an International Agreement

In the end, an international agreement must be terminated, or forced to end its existence. Like the delay and invalidity of an international treaty, the termination of the existence of an international treaty also

¹² Mochtar Kusumaatmadja & Ety R. Agoes, *Op. cit.* pp. 125-126.

has its causes, which in some respects are the same as the issue of delay or invalidity.¹³

According to the 1969 Vienna Convention, an International Treaty can be void for the following reasons:

- 1) There is a violation of the provisions of international law
- 2) by one of the participants of the International Agreement → Articles 46 and 47
- 3) If there is an element of error regarding a fact or condition at the time the agreement was made → Article 58
- 4) If there is an element of fraud by one of the participants of the International Agreement against another participant → Article 49
- 5) If there is abuse or fraud (corruption) through cunning or bribery against those who are the full power of the State party to the International Treaty → Article 50
- 6) If there is an element of coercion to a participant, it is full of threats and force → Article 51 and 52
- 7) If at the time of making the agreement there are provisions that are contrary to a basic rule of general international law (the *ius cogens* principle) → Article 53

Mochtar Kusumaatmadja emphasized that a treaty ends because of the following:

- 1) The objectives of the international agreement have been achieved.
- 2) The validity period of the international agreement has expired.
- 3) One of the parties to the agreement disappears or the object of the agreement becomes extinct.
- 4) There is agreement from the participants to terminate the agreement.

¹³ Boer Mauna, *Op. cit.*, pp. 126-127.

- 5) There is a new agreement between the participants which then nullifies the agreement the former.
 - a. The terms of the termination of the agreement in accordance with the terms of the agreement have been fulfilled.
 - b. The agreement is unilaterally terminated by one of the participants and that termination accepted by the other party.

The party who can propose to end the existence of an international treaty is the party who feels aggrieved or the party who views that the agreement no longer needs to be maintained and must be terminated. Furthermore, this termination will also cause legal consequences such as delays or invalidity which must be resolved by the parties themselves. The question of how to end the existence of an international treaty and the settlement of all its legal consequences, first of all depends on whether or not there is an arrangement in the treaty itself.¹⁴ In addition, it is also determined by the type of agreement, whether it is a bilateral, multilateral agreement, an agreement whose validity period is determined or not, an open or closed agreement, an agreement which is a codification and progressive development of international law, and so on. International agreements are, at root, an exchange of promises among states. This is true whether they are full-blown treaties or merely statements of intent; whether they require wholesale changes to domestic practices or merely reflect existing behavior; and whether or not they include provisions for enforcement.¹⁵

¹⁴ Tahar Abdul Muthalib, *Hukum Internasional dan Perkembangannya*. (Bandar Lampung: Universitas Lampung, 2019), pp. 125-127.

¹⁵ Guzman, Andrew T. "The design of international agreements." *European Journal of International Law* 16, No. 4 (2005): 579-612; Dür, Andreas, Leonardo Baccini, and Manfred Elsig. "The design of international trade agreements:

Termination of the Existence of an International Treaty according to the 1969 Vienna Convention. Article 42 paragraph 2 of the 1969 Vienna Convention emphasizes that regarding the termination of an international treaty, one must first look at how the regulations are in the international treaty itself, if the treaty expressly regulates it. Meanwhile, if there are no arrangements, the termination is carried out in accordance with the provisions of the Convention. Furthermore, Article 44 paragraph 2 emphasizes that in principle a will to end the existence or entry into force of an international treaty should be for the whole. However, it is also possible to terminate part of the agreement, if there is a clause that allows it to be terminated in part or for some of its provisions, as confirmed in paragraph 3.¹⁶, that is:

a. Created a New International Treaty

Article 59 paragraph 1 regulates the termination of an international agreement (old/previous) due to a (new/later) agreement being made. In this case, all the participating countries in the old/previous agreement then make a new/later agreement, and indeed the parties intend to implement the new/later agreement to replace the old/previous agreement; and also, because the substance of the two treaties is so different and even contradictory that it is impossible for them to be applied simultaneously.

Introducing a new dataset." *The Review of International Organizations* 9, No. 3 (2014): 353-375.

¹⁶ I Wayan Parthiana, *Pengantar Hukum Internasional*. (Bandung: Mandar Maju, Bandung, 2001)., pp. 130-131.

b. Violation by one of the parties

As emphasized in Article 60 paragraph 1, a violation of the substance of the agreement by one of the parties can be used as a reason to terminate the validity of the agreement, either in whole or in part. Or as emphasized in paragraph 2, the violation of an international agreement by one party can be used as a reason for the other party to agree unanimously to terminate the validity of the agreement, (i) both in the relationship between them on the one hand and the party who violated the agreement. the other party, or (ii) between all parties.

c. Impossible to execute

According to article 61 paragraph 3, one of the parties can declare to terminate the validity of the agreement on the grounds that the agreement is no longer possible to be implemented and the impossibility is permanent, or the impossibility is caused by damage and its object which turns out to be inseparable from the implementation of the agreement.

d. There is a fundamental change of circumstances

The Convention regulates the occurrence of fundamental changes in negative circumstances, in the sense that this cannot be used as a reason to terminate the entry into force of an international treaty. Apart from that, if there are parties who use it as an excuse, it is also accompanied by very strict restrictions on its use, so that it is very narrow or very few opportunities that can be used as an excuse to end the existence or entry into force of an international agreement.

TABLE 1. South China Sea Dispute Case Analysis Table

No	Case	Information
1	The one on trial	<ol style="list-style-type: none"> 1) In 2013, the Philippines filed an objection against China's claims and activities in the South China Sea to the Court of Arbitration in The Hague, Netherlands. 2) The Philippines accuses China of interfering in its territory by fishing and reclamation to build artificial islands. 3) The Philippines argues that China's claims in the territorial waters of the South China Sea marked by the 'nine-dash-line' are in contravention of the Philippines' territorial sovereignty and international law of the sea. 4) The arbitral tribunal said its ruling would determine at least seven of the 15 demands filed by the Philippines.
2	Decision	<ol style="list-style-type: none"> 1) The verdict produced by the five judges will determine the status of a number of areas in the South China Sea over the Philippines' lawsuit against China. 2) In a ruling issued today as reported by the BBC, the Court also stated that China's reclamation of islands in these waters does not give the Chinese government any rights. 3) The arbitral tribunal also ruled that China had violated the Philippines' sovereign rights. It also said China had caused "severe damage to the coral reef environment" by building artificial islands.

-
- | | | |
|---|---|---|
| 3 | The influence and binding of the decision | <ol style="list-style-type: none"> 1) The decision made by the arbitral tribunal is binding, but the court does not have the power to enforce. 2) Whatever the court ruling, China has said it will not "accept, acknowledge or enforce". 3) However, if the court ruling favors the Philippines, China's reputation risks being damaged and being seen as a country that ignores international law. |
|---|---|---|
-

From the examples of cases that have been described, it can be seen that international law is binding on the international community, especially the actors in related cases or disputes. This international law is also intended to resolve cases related between countries or whose scope is in the international world.

VI. CONCLUSION

International law can bind the international community. States are bound to international law because their relationships are governed by a higher law, namely natural law. As stated by the positive law school, the basic binding force for IR is the will of the state. Ppractice of international law in Indonesiain principle recognizes the supremacy of international law, but it does not mean that we simply accept international law. Our attitude to international law is determined by our awareness of our place in a developing international society. As part of the international community, Indonesia recognizes the existence of international law, but that does not mean that national law is subject to international law. The entry into force of an agreement, whether bilateral or multilateral, is

generally determined by the closing clause of the agreement itself. In other words, it can be stated that the parties to the agreement will determine when the agreement comes into effect effectively. The party who can propose to end the existence of an international treaty is the party who feels aggrieved or the party who views that the agreement no longer needs to be maintained and must be terminated. Furthermore, this termination will also cause legal consequences such as delays or invalidity which must be resolved by the parties themselves.

ACKNOWLEDGMENT

None

CONFLICT OF INTEREST

None

REFERENCES

- Clapham, Andrew. *Brierly's Law of Nations: An Introduction to the Role of International Law in International Relations*. (Oxford: OUP, 2012).
- D'Amato, Anthony. "Is International Law Really 'Law'?" *Northwestern University Law Review* 79 (1984): 10-71.
- Dür, Andreas, Leonardo Baccini, and Manfred Elsig. "The design of international trade agreements: Introducing a new dataset." *The Review of International Organizations* 9, No. 3 (2014): 353-375.
- Glahn, Gerhard, and James Larry Taulbee. *Law among Nations: An Introduction to Public International Law*. (London: Routledge, 2015).

- Guzman, Andrew T. "The design of international agreements." *European Journal of International Law* 16, No. 4 (2005): 579-612.
- Hardini, Sri. "Introduction to the Law of Indonesia." *Anthropos: Jurnal Antropologi Sosial dan Budaya (Journal of Social and Cultural Anthropology)* 2, No. 1 (2016): 91-100.
- Istanto, Sugeng. *Hukum Internasional*. (Yogyakarta: Penerbitan Atma Jaya, 2001).
- Jennings, Robert Y. "International Law. By L. Oppenheim. by H. Lauterpacht, QC, LL. D., FBA Vol. I—Peace.[London: Longmans, Green & Co. 1955. lvi and 1029 and (index) 42 pp.£ 4 10s. net.]." *The Cambridge Law Journal* 14, No. 1 (1956): 112-113.
- Kingsbury, Benedict. "Legal Positivism as Normative Politics: International Society, Balance of Power and Lassa Oppenheim's Positive International Law." *European Journal of International Law* 13, No. 2 (2002): 401-437.
- Mauna, Boer. *Hukum Internasional, Pengertian Peranan dan Fungsi dalam Era Dinamika Global*. (Bandung: PT. Alumni, 2013).
- Mochtar Kusumaatmadja & Etty R. Agoes, *Pengantar Hukum Internasional*. (Bandung: PT. Aumni, 2015).
- Muthalib, Tahar Abdul. *Hukum Internasional dan Perkembangannya*. (Bandar Lampung: Universitas Lampung, 2019).
- Nasution, Bahder Johan. "Kajian Filosofis tentang Hukum dan Keadilan dari Pemikiran Klasik Sampai Pemikiran Modern." *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 11, No. 2 (2016): 247-274.
- Oppenheim, Lassa. "The science of international law: its task and method." In *The Nature of International Law*. (London: Routledge, 2017), pp. 93-356.
- Parthiana, I Wayan. *Pengantar Hukum Internasional*. (Bandung: Mandar Maju, Bandung, 2001).
- Sefriani, Sefriani "Ketaatan Masyarakat Internasional terhadap Hukum Internasional dalam Perspekti Filsafat Hukum", *Ius Quia Iustum* 18, No. 3 (2011): 405-427

- Sherman, Gordon E. "Jus Gentium and International Law." *American Journal of International Law* 12, No. 1 (1918): 56-63.
- Sumadi, Ahmad Fadlil. "Hukum dan Keadilan Sosial dalam Perspektif Hukum Ketatanegaraan." *Jurnal Konstitusi* 12, No. 4 (2016): 849-871.
- Sunyowati, Dina. "Hukum Internasional Sebagai Sumber Hukum dalam Hukum Nasional (Dalam Perspektif Hubungan Hukum Internasional dan Hukum Nasional di Indonesia)." *Jurnal Hukum dan Peradilan* 2, No. 1 (2013): 67-84.
- Trindade, Antônio Augusto Cançado. "International law for humankind: towards a new jus gentium." *International Law for Humankind*. (Leiden: Brill Nijhoff, 2010).
- Villalpando, Santiago. "The legal dimension of the international community: how community interests are protected in international law." *European Journal of International Law* 21, No. 2 (2010): 387-419.
- Widyawati, Anis "Kajian Hukum Internasional terhadap HAM", *Pandecta Research Law Journal* 2, No. 1 (2008).

Insofar as international law is observed, it provides us with stability and order and with a means of predicting the behavior of those with whom we have reciprocal legal obligations.

J. William Fulbright