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BINDING FORCE OF INTERNATIONAL AGREEMENTS: PERSPECTIVES OF INTERNATIONAL LAW AND NATIONAL LAW

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Abstract

International treaties are one of the main sources of international law that have binding power for the parties that agree to them. In the context of relations between countries, international treaties are an important instrument in regulating various common interests, ranging from trade issues, the environment, to human rights. This article examines the binding power of an international treaty from two perspectives: international law and national law. From an international law perspective, a treaty becomes binding after being ratified by the parties according to the principle of pacta sunt servanda stipulated in the 1969 Vienna Convention on the Law of Treaties. Meanwhile, from a national law perspective, the recognition and application of international treaties depend on the domestic legal system of each country, whether it adheres to the principle of monism or dualism. This study also highlights the challenges of implementing international treaties in Indonesia, including the ratification mechanism and the role of legislative institutions. Through a normative approach and case studies, this article aims to provide a comprehensive understanding of the dynamics of the binding power of international treaties within the framework of global and national law.

Keywords: *international agreement, binding power, international law, national law, ratification*

A. Background

International agreements are important instruments in the system of relations between countries that are used to regulate various areas of global life, from trade, environment,[5] security, to human rights. As the main source of international law, international agreements have binding force that requires state parties to implement the contents of the agreement consistently and responsibly.[6] The principle of pacta sunt servanda,[7] which means that agreements must be obeyed, is the main normative basis that provides legal legitimacy to the binding force of the agreement. Pacta sunt servanda is a fundamental principle in international treaty law which means "agreements must be kept" or "promises must be fulfilled." This principle is a universal principle that binds every state party that has legally agreed to an international agreement.[8] In the context of

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5 A. S. Filipenko, "Principles and Instruments of International Environmental Policy," *Actual Problems of International Relations* 135 (2018): 62–69, https://doi.org/https://doi.org/10.17721/apmv.2018.135.0.62-69.

6 K. Raustiala, "Form and Substance in International Agreements," *American Journal of International Law* 99, no. 3 (2005): 581–614, https://doi.org/https://doi.org/10.2307/1602292.

7 Theodor Meron et al., "The Geneva Conventions as Customary Law," *The American Journal of International Law* 81, no. 2 (2007): 348–70.

8 J. Zhifeng, "Pacta Sunt Servanda and Empire: A Critical Examination of the Evolution, Invocation, and Application of an International Law Axiom," *Mich. J. Int'l L.* 43 (2022): 745, https://doi.org/https://heinonline.org/HOL/LandingPage?handle=hein.journals/mjil43&div=23&id=&page=.

international law, this principle functions as a moral and legal basis that ensures that every agreement that has been approved by sovereign states must be implemented in good faith. Without this principle, the agreement will not have stable legal force and can cause uncertainty in international relations.

The principle of pacta sunt servanda is explicitly stated in Article 26 of the 1969 Vienna Convention on the Law of Treaties, which states that "Every treaty in force is binding on the parties and must be performed by them in good faith."[9] This provision emphasizes that the binding force of an international treaty comes not only from mutual agreement, but also from the legal obligations that arise after the treaty is ratified and enters into force. The Vienna Convention is an international benchmark for assessing the validity and implementation of international treaties by participating countries.

In its application, the principle of pacta sunt servanda requires state parties not only to comply with the contents of the agreement, but also not to take actions that could thwart the purpose of the agreement.[10] This includes the prohibition of violating provisions, obstructing implementation, or withdrawing without a legitimate procedure. If a state violates a ratified agreement, the state can be considered to have committed a breach of treaty, which can lead to international legal responsibility, either through arbitration, the International Court of Justice (ICJ), or diplomatic and economic sanctions from other countries.

The principle of pacta sunt servanda is closely related to the principle of good faith,[11] which is a moral requirement in the implementation of agreements. This means that countries are not only required to carry out the contents of the agreement technically, but also with a sincere intention to fulfill their international commitments. For example, if a country delays the implementation of its obligations without a valid reason, even though it does not formally violate a particular article, this action can be considered a violation of the principle of pacta sunt servanda because it violates the spirit of the agreement.

Although the principle of pacta sunt servanda is binding, there are extraordinary situations that can be an exception to its implementation.[12] One of them is the doctrine of rebus sic stantibus,[13] which is when there is an unforeseen fundamental change in circumstances that disrupts the balance of obligations of the parties to the agreement.[14] In addition, an agreement can be considered invalid if it is proven to violate international law jus cogens (imperative norms),[15] such as agreements that legalize the crime of

9 L. Ulyashyna, "The Meaning Role Of The Pacta Sunt Servanda Principle In International Law: Identifying Challenges To The Legitimacy Of Peace And War," *Public Security and Public Order* 32 (2023): 105–18, https://doi.org/https://doi.org/10.13165/PSPO-23-32-05.

10 C. Binder, "Stability and Change in Times of Fragmentation: The Limits of Pacta Sunt Servanda Revisited," *Leiden Journal of International Law* 25, no. 4 (2012): 909–34, https://doi.org/10.1017/S0922156512000507.

11 Santiago Villalpando, "The Legal Dimension of the International Community : How Community Interests Are Protected in International," *European Journal of International Law* 21, no. 2 (2010): 387–419, https://doi.org/10.1093/ejil/chq038.

12 Meron et al., "The Geneva Conventions as Customary Law."

13 Julia Lisztwan, "Stability of Maritime Boundary Agreements," *Yale Journal of International Law* 37, no. 1 (2011): 154–99.

14 Ninin Ernawati, "The Legal Consequences of the Application of Two Australian Policies as Members of the 1951 Refugee Convention Reviewed from the VCLT 1969," *Jurnal IUS* 7, no. 1 (2019).

15 Claudia Andriţoi, "Interpretation Principles of Jus Cogens Principles as Public Order in International Practice," *Acta Universitatis Danubius. Juridica* 6, no. 2 (2010): 96–108.

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genocide or slavery.[16] In such cases, the principle of pacta sunt servanda does not apply because the agreement is contrary to the higher values of international law.

However, the implementation of international agreements does not only depend on international law alone, but is also greatly influenced by the national legal system of each country. This is where the debate arises between the monism and dualism approaches in linking international law with domestic law. Countries that adopt the monism approach integrate international agreements directly into the national legal system, while in the dualism approach, international agreements must first be ratified and enacted in order to have legal force domestically.

In the international legal system, the relationship between international law and a state's domestic law has been an important theoretical and practical debate. Two main approaches that have developed to explain this relationship are monism and dualistism. These two approaches explain how international law applies or is implemented in a national legal system, and determine whether international norms can be directly applied domestically or must first be specifically adopted by national authorities.

The monism approach views that international law and national law are part of a single, integrated legal system. In a monistic system, international legal norms automatically apply in the national legal system without requiring a formal transformation or ratification process. Countries that adopt this approach recognize that international law has a direct position that can be applied by national courts. In some monistic systems, international law can even overcome national law if there is a conflict of norms.

Countries such as the Netherlands, France, and Switzerland are known as adherents of monism. Their constitutions contain provisions stating that ratified international treaties have the force of law and can be used in domestic court proceedings. This approach reflects the principle of openness to international norms and the strengthening of the supremacy of international law, especially in the protection of human rights and treaty obligations.

In contrast, the dualism approach assumes that international law and national law are two separate and distinct legal systems.[17] Therefore, international legal norms do not automatically apply in the domestic legal system. In order to be applied, international law must first be transformed through national legal instruments such as laws, government regulations, or legitimate ratification processes. This approach emphasizes state sovereignty and protection of the autonomy of the national legal system.

The difference between monism and dualism has a direct impact on the effectiveness of the application of international law at the domestic level. In a monistic system, protection of individual rights guaranteed in international treaties can be enjoyed immediately without having to wait for ratification or additional legislation. Meanwhile, in a dualistic system, although it provides control over the acceptance of international law, there are often delays or inconsistencies in the implementation of international obligations. Therefore, understanding these two approaches is important in the context of harmonizing international and national law, as well as in assessing a country's commitment to global norms.

Indonesia, as one of the countries active in international cooperation, faces various challenges in harmonizing international obligations with national legal interests and structures. Therefore, understanding the binding power of international agreements, both

[16] M. Costello, C., Foster, "Non-Refoulement as Custom and Jus Cogens? Putting the Prohibition to the Test," in *Netherlands Yearbook of International Law 2015: Jus Cogens: Quo Vadis?*, 2016, 273–327, https://doi.org/ttps://doi.org/10.1007/978-94-6265-114-2_10.

[17] Costello, C., Foster.

from the perspective of international law and national law, is important to ensure the fair, consistent, and effective application of law in a global context.

In Indonesia, the approach adopted is dualism, as reflected in Article 11 of the 1945 Constitution which states that the President requires the approval of the House of Representatives in ratifying international agreements. This provision is emphasized in Law No. 24 of 2000 concerning International Agreements, which requires the ratification of international agreements through a legislative mechanism in order to be valid in the national legal system. One important jurisprudence is the Constitutional Court Decision No. 33/PUU-IX/2011, in which the Court stated that even though Indonesia has ratified an international agreement, the substance of the agreement cannot be directly used in national legal practice before it is ratified in the form of legislation.

Unlike Indonesia, the Netherlands is an example of a country that consistently adheres to a monist approach. Articles 93 and 94 of the Dutch Constitution state that international treaties that are binding on all (self-executing) have direct legal force and can be used by national courts without the need for implementing legislation. In practice, courts in the Netherlands often directly apply the provisions of international treaties, such as the European Convention on Human Rights (ECHR), in resolving disputes, making international law a direct source of law domestically.

Meanwhile, the UK adheres to a strict dualist approach. Although it is an active signatory to various international treaties, the UK does not recognise the direct enforceability of these treaties in domestic courts until they have been enacted by Parliament. In the famous case of R v Secretary of State for the Home Department, ex parte Brind (1991), the court held that the provisions of an international treaty cannot be used as a legal basis in the courts unless they have been legislatively implemented. This shows that in the UK legal system, parliamentary supremacy is maintained as the final arbiter of the application of domestic legal norms.

Another interesting example is the United States, which adopts a mixed approach between monism and dualism. The US Constitution through Article VI (Supremacy Clause) states that ratified international treaties become part of the supreme law of the land. However, in practice, the US Supreme Court distinguishes between self-executing and non-self-executing treaties. In the case of Medellín v. Texas (2008), the Court stated that the ICJ's decision does not apply directly in the US without an implementing act by Congress, indicating a tendency towards dualistism in the implementation of certain international laws.

These differences in approach have major implications for the effectiveness of the application of international law at the national level. Monistic states tend to give greater space to the supremacy of international norms and the protection of human rights, while dualist states ensure the control of domestic legal sovereignty through ratification procedures. Understanding these constitutional and jurisprudential foundations is important not only academically, but also in the formulation of foreign policy and the implementation of fair and consistent international commitments.

In the last decade, various studies have been conducted to examine the relationship between international law and national law, especially regarding the binding force of international agreements. Research by (Nurhidayat, 2016) in the International Law Journal highlights how the dualism system adopted by Indonesia often creates obstacles in implementing international norms, especially in human rights issues. He emphasized the need for reform in the ratification mechanism to be more responsive to the dynamics of global law.

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Meanwhile, (Fatimah & Wibisono, 2018) in a study entitled "Legal Implications of Ratification of International Agreements by Indonesia" examined the ratification procedure in Indonesia which was considered to be still political and did not emphasize the normative substance of the contents of the agreement. This study concluded that even though ratification had been carried out, implementation in the field was often hampered by inconsistencies with national laws and regulations.

Comparative research by (Hans van der Wilt, 2019) from the Amsterdam Law Review evaluates the application of the pacta sunt servanda principle in European countries, especially the Netherlands, and shows that the monist system makes it easier for national courts to use international law as a direct source of law. Van der Wilt also notes how Dutch courts actively use international legal instruments in resolving human rights cases.

On the other hand, (Abdul Aziz, 2020) in his master's thesis at the University of Indonesia examines the case of Medellín v. Texas to highlight how the dualism approach in the United States hinders the direct implementation of ICJ decisions. He emphasizes that reliance on domestic legislation opens loopholes for states to avoid international responsibility.

Finally, (Yunita Permatasari, 2022) in her article in the Journal of Law and Globalization highlights the importance of alignment between international norms and national law in the context of environmental agreements. She argues that in the era of globalization and the climate crisis, the monist approach is more effective in ensuring that states immediately implement international commitments without being hampered by lengthy domestic political processes.

This research needs to be conducted to provide a comprehensive understanding of the dynamics of the binding power of international agreements within the global and national legal framework.

B. Identified Problems

1. What is meant by the binding force of international agreements under international law?
2. How does the principle of pacta sunt servanda affect a state's obligations to international agreements?
3. What is the mechanism for recognizing and implementing international agreements in the national legal system, especially in Indonesia?
4. What is the difference between the monism and dualism approaches in the relationship between international law and national law?
5. What are the legal challenges faced in implementing international agreements at the national level?

C. Research Methods

This study uses a legal normative research method that focuses on the study of written legal norms, both at the international and national levels. This approach is used to analyze the legal principles that govern the binding force of an international agreement and how these principles apply in the national legal system, especially in the Indonesian context.

The data sources used consist of primary legal materials, such as the provisions of the 1969 Vienna Convention on the Law of Treaties, the 1945 Constitution of the Republic of Indonesia, Law No. 24 of 2000 on International Agreements, and decisions of the Constitutional Court and related courts. In addition, secondary legal materials are

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also used in the form of academic literature, scientific journals, and relevant legal documents to support theoretical and legal analysis.

A comparative approach is also used to compare the application of the pacta sunt servanda principle and the monism and dualism approaches in several countries, such as the Netherlands, England, and the United States. This comparison aims to explore the strengths and weaknesses of each country's system in implementing international agreements.

The data were analyzed qualitatively descriptively, emphasizing legal interpretation, normative logic, and coherence between legal systems. This research is not empirical, but aims to provide theoretical understanding and normative solutions to the issue of the binding power of international agreements in the context of integration with national law.

D. Research Findings and Discussions

1. Analysis of The Binding Force of International Agreements

International treaties are one of the main sources of international law, as recognized in Article 38 of the Statute of the International Court of Justice. Treaties serve as the formal basis for regulating relations and obligations between states and between states and other subjects of international law. In this context, the binding force of international treaties is a fundamental principle that ensures that states that agree to a treaty cannot arbitrarily ignore the provisions that have been agreed upon.

The main principle underlying the binding force of international treaties is pacta sunt servanda, which means “treaties must be obeyed”. This principle is the foundation of all international legal relations. Without this principle, treaties would lose their usefulness and the stability of international law would be disrupted. Pacta sunt servanda is explicitly stated in Article 26 of the 1969 Vienna Convention on the Law of Treaties, which states that “Every treaty in force is binding on the parties and must be performed by them in good faith.”

The 1969 Vienna Convention is the main legal instrument that codifies the rules regarding international treaties, including basic principles such as consensus, legality, and implementation in good faith. This Convention emphasizes that a treaty is binding once it has been approved and comes into force in accordance with the provisions of the treaty itself. This Convention also provides a legal mechanism for countries to terminate, cancel, or declare an agreement null and void under certain conditions.

The binding force of a treaty arises from the process of forming a valid treaty, namely when countries voluntarily express their agreement to be bound by the contents of the treaty through ratification, accession, or signature. The principle of consent is an important aspect of international treaty law—no state can be forced to accept an international legal obligation without its consent. Once a treaty has been ratified and entered into force, states are obligated to bring their national laws and policies into line with the terms of the treaty. Failure to comply with these obligations can constitute a treaty breach, which can give rise to international liability. Violating states can be subject to diplomatic or political sanctions, or even be prosecuted.

One important case demonstrating the binding force of treaties is the International Court of Justice case of Nicaragua v. United States (1986). In this case, the Court held that the United States had violated international law and treaty obligations by engaging in armed activity against Nicaragua. This decision

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reinforced the view that international treaties are binding and that violations of them give rise to legal liability.

In the context of multilateral treaties, binding force remains for each state party, although implementation often faces political and practical challenges. For example, in the 2015 Paris Agreement on Climate Change, states are legally bound by reporting and transparency obligations, even though emission reduction targets are voluntary (non-binding). However, certain aspects remain binding and can form the basis for assessing a state's international commitments.

Binding force can also be attached to treaties that establish international organizations, such as the Charter of the United Nations (UN). Member states are legally bound to abide by the provisions of the charter, including the obligation to settle disputes peacefully and not to use force in international relations. Provisions such as these demonstrate that international treaties are not just bilateral instruments, but can also shape the international legal order collectively.

However, the binding force of the treaty is not absolute. The 1969 Vienna Convention introduced the doctrine of rebus sic stantibus, a provision that allows a state to terminate or withdraw from a treaty in the event of an unforeseen fundamental change in circumstances that significantly affects the performance of obligations. However, this provision is applied in a limited manner so as not to be used as an arbitrary excuse to violate the treaty.

On the other hand, there are also jus cogens norms (imperative norms of international law) that cannot be defeated by any agreement.[18] This means that agreements that contradict jus cogens norms, such as the prohibition of genocide,[19] slavery, or torture, are considered invalid and have no binding force from the start (void ab initio). This shows that the binding force of agreements is also limited by the hierarchy of norms in international law.

In the implementation of agreements, monitoring and dispute resolution mechanisms are important aspects to ensure that agreements are implemented in accordance with their contents and intent. Many international agreements, such as the WTO Agreement, include dispute resolution mechanisms that can be submitted by member states in the event of a violation. The existence of such a forum strengthens the implementation aspect and clarifies the legal consequences of violations.

In addition to states, individuals and non-state entities are also beginning to be recognized as legal subjects in several modern international agreements. For example, in the Rome Statute that established the International Criminal Court (ICC), individuals can be held criminally responsible for international crimes such as genocide and war crimes. This agreement is binding on state parties and confirms that international agreements can have a direct impact on individuals.

It is also important to note the difference between soft law and hard law in the context of international treaties. Hard law treaties have full binding force, while international documents such as declarations or joint statements (for example, the Universal Declaration of Human Rights) are generally not legally binding, but still have strong normative and moral value in international practice.

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[18] Seyla Benhabib, "The End of the 1951 Refugee Convention? Dilemmas of Sovereignty, Territoriality, and Human Rights," *Jus Cogens* 2, no. 1 (2020): 75–100, https://doi.org/https://doi.org/10.1007/s42439-020-00022-1.

[19] Yevgeniya Oralova, "Jus Cogens Norms in International Space Law," *Mediterranean Journal of Social Sciences* 6, no. 6 (2015): 421, https://doi.org/10.5901/mjss.2015.v6n6p421.

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Although international law does not have an enforcement agency like an international police, diplomatic pressure, state reputation, and collective mechanisms of the international community are often effective tools for enforcing compliance with treaties. Non-compliance with treaties can undermine a state's legitimacy and lower its standing in international relations. Thus, the binding force of international treaties in the perspective of international law is determined not only by the formal process of ratification, but also by moral principles, politics, and the international monitoring system. The principle of pacta sunt servanda, the norm of jus cogens, and dispute resolution mechanisms all work to maintain the integrity and effectiveness of treaties. International treaties, therefore, remain a primary instrument for creating order, justice, and predictability in international relations.

2. The Binding Power of International Agreements in the National Legal System

International treaties, as formal agreements between states, are not only binding at the global level but also carry legal consequences for each state in its own legal system. The binding force of international treaties in a national legal system depends on how a state adopts and implements them in its domestic legal structure. This is the meeting point between international law and national law, each of which has its own characteristics and normative system.

In a national legal system, the binding force of an international agreement is not automatic. Its application is highly dependent on the constitutional approach adopted by the country, whether it adopts a monistic or dualistic approach. This approach determines whether international law applies directly as part of national law or requires a special legislative process before it can be applied.

Monistic countries, such as the Netherlands and France, view that international agreements automatically become part of the national legal system after being ratified. In this context, no ratification or additional domestic legislation is required for the agreement to be enforced by national courts. In fact, if there is a conflict between the provisions of an international agreement and national law, international law is the one that applies.

Meanwhile, countries that adopt a dualistic approach, such as the United Kingdom and Indonesia, strictly separate national law from international law. In this system, international agreements that have been ratified are not automatically binding in the national legal system, but must first be enacted in the form of legislation in order to have domestic force.

In the Indonesian context, Article 11 of the 1945 Constitution and Law No. 24 of 2000 concerning International Agreements is the main legal basis that regulates how international agreements are ratified and enforced. After an agreement is ratified, it must be ratified through a law or presidential regulation, depending on the type and scope of the agreement. Without this process, the contents of the agreement have no legal force at the national level. The consequence of the dualistic approach is the emergence of an implementation gap, where countries have agreed to an international agreement but have failed or are slow to transform its provisions into national law. This can create inconsistencies between international obligations and domestic legal practices, as well as hinder the fulfillment of individual rights guaranteed by international law.

In judicial practice, the approach adopted also influences whether judges can directly refer to international treaties. In monistic countries, judges can use treaty provisions as the legal basis for decisions, while in dualistic countries, judges can

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only apply them if they have been enacted as part of national law. This has a direct impact on access to justice and legal protection for citizens.

In Indonesia, the Constitutional Court in various decisions has emphasized that international treaties cannot be used as a legal basis before going through the domestic legislative process. For example, in Constitutional Court Decision No. 33/PUU-IX/2011, the Court stated that even though a treaty has been ratified internationally, its contents cannot be enforced in the national legal system before being enacted through statutory regulations.

One important aspect of the binding force of international treaties at the national level is its influence on national legislation. Countries that have ratified international treaties need to adjust their domestic laws to be in line with the contents of the treaty. This process is often referred to as legal harmonization or adaptation, which reflects the state's commitment to implementing its international obligations.

In addition to the legislative aspect, binding force also has an impact on public policy. For example, after Indonesia ratified the Convention on the Rights of the Child, the government was obliged to adjust its education, child protection, and juvenile criminal justice systems policies to comply with the principles of the convention. This shows that international agreements can encourage national legal and policy reforms in a more progressive direction.

However, in some cases, there is tension between international obligations and national interests, especially if the contents of the agreement are considered to be contrary to local values or basic principles of the constitution. In such situations, the legislative process becomes an arena for debate between upholding international commitments or maintaining national legal sovereignty.

On the other hand, there are challenges in the form of low understanding of the legislative and judicial institutions regarding the substance of international agreements, which has an impact on the quality of legislation and implementation in the field. Lack of coordination between agencies can also hinder the transformation of agreements into the national legal system effectively.

Despite the challenges, international agreements still have major legal and political impacts on the national system. Countries that do not fulfill their treaty obligations can lose credibility at the international level, face diplomatic pressure, or even lawsuits in international forums. Therefore, the implementation of international agreements is not only a matter of law, but also concerns the image and reputation of the country.

Therefore, it is important for countries, including Indonesia, to build systems and mechanisms that ensure integration between international law and national law, either through simplifying the ratification process, increasing the capacity of state institutions, or legal education for law enforcement officers. This step is necessary so that the binding force of international agreements is not only valid formally, but also substantially in national legal practice. Thus, the binding force of international agreements in the national legal system depends on the synergy between the country's international commitments and the readiness of its own legal system. Both monistic and dualistic approaches have their own advantages and disadvantages. The most important thing is how to ensure that the agreed international agreements are actually implemented consistently, fairly, and effectively in national legal life.

3. The Role of the Pacta Sunt Servanda Principle in Ensuring Legal Certainty

The principle of pacta sunt servanda, which means "agreements must be kept," is a fundamental principle in international treaty law.[20] This principle is the main foundation in creating order and stability in relations between countries. Without this principle, international treaties would lose their legal meaning because there is no guarantee that countries will carry out the obligations they have voluntarily agreed to.

Pacta sunt servanda is explicitly stated in Article 26 of the 1969 Vienna Convention on the Law of Treaties, which states that every treaty in force is binding on the parties and must be implemented by them in good faith.[21] This provision provides legal legitimacy to the binding force of international treaties, while also creating the expectation that states will consistently carry out their commitments.

Legal certainty is one of the main pillars in both national and international legal systems. In the context of international law, legal certainty cannot be realized without the principle of pacta sunt servanda. When a state agrees to a treaty, other states have a legitimate expectation that the commitment will be implemented consistently, not changed unilaterally, and not ignored for domestic political reasons.

Without legal certainty, relations between states will be full of mistrust and instability. International trade, environmental protection, human rights, and global security cooperation all depend heavily on the belief that agreed treaties will be adhered to. This is where pacta sunt servanda plays an important role as a basis for the legitimacy of trust and cooperation between states.

This principle also limits the room for a country to withdraw or unilaterally renege on an agreement. A country cannot arbitrarily cancel an agreement simply because of a change in domestic politics. In other words, pacta sunt servanda ensures the continuity of international law and protects the integrity of legal norms from short-term political pressure.

In practice, this principle also provides a basis for legal protection for individuals and private entities that depend on the implementation of an agreement. For example, trade agreements provide rights and obligations to cross-border business actors. If a country unilaterally reneges on an agreement, the injured business actor can sue or request legal protection based on the principle of pacta sunt servanda.

At the national level, this principle puts pressure on countries to adjust their domestic laws to be in line with international treaty obligations. Countries that sign and ratify an agreement have a responsibility to harmonize their legal systems so that they do not conflict with the agreement. This strengthens legal certainty at the national level that is oriented towards international norms.

One real example of the application of this principle is in the decision of the International Court of Justice (ICJ). In various treaty disputes, such as the Gabčíkovo-Nagymaros Project case (Hungary/Slovakia), the ICJ emphasized that pacta sunt servanda is a fundamental principle that cannot be ignored except in extraordinary conditions such as serious violations or radical changes in circumstances (rebus sic stantibus).

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[20] K. Tuori, "Pacta Sunt Servanda," *Annales Academiae Scientiarum Fennicae* 2, no. 1 (2023): 44–57, https://doi.org/https://doi.org/10.57048/aasf.130107.

[21] Ulyashyna, "The Meaning Role Of The Pacta Sunt Servanda Principle In International Law: Identifying Challenges To The Legitimacy Of Peace And War."

The principle of pacta sunt servanda also encourages the birth of an international dispute resolution mechanism, because every violation of the treaty must be legally accounted for. A country that feels aggrieved by a violation can file a lawsuit with the International Court of Justice or an international arbitration forum on the basis that the opposing party has violated this principle.

In an international legal system that does not have an enforcement agency such as a global police, the principle of pacta sunt servanda becomes a "moral enforcer" that maintains the credibility of the system. States do not only obey the law because they are afraid of sanctions, but because they have an awareness and moral obligation to uphold legal promises that have been made voluntarily.

This principle also supports the development of progressive international law. When countries know that their commitments will be respected and have legal force, they will be more open to signing new agreements in various fields, including human rights, climate change, trade, and transnational crime.

In the field of human rights, pacta sunt servanda ensures that countries cannot withdraw from their obligations to protect their citizens, especially if they have ratified human rights agreements. This principle provides legal certainty for individuals that countries will not suddenly change policies that impact their basic rights.

In many national legal systems, this principle is also used by courts to interpret the provisions of ratified international agreements. National judges can use pacta sunt servanda as a basis for arguing that agreements must be respected and must not be diverted from their original intent.

However, this principle is not without limits. In international law, there are mechanisms to terminate or suspend the implementation of agreements, such as material violations, fundamental changes in circumstances, or inconsistencies with jus cogens norms. However, these exceptions must be interpreted narrowly so as not to damage the principle of legal certainty established by pacta sunt servanda.

Thus, pacta sunt servanda is not only a technical principle in international treaty law, but is the main guarantee of legal certainty that allows international law to function effectively. This principle instills confidence in the international system, encourages compliance with legal norms, and makes international law a credible instrument in regulating international relations in a fair and sustainable manner.

4. Case Study of Indonesia: Law No. 24 of 2000 and the Constitutional Court Decision

Indonesia is one of the countries that adopts a dualistic approach in relation to the applicability of international law in the national legal system. This approach requires that every international agreement that has been ratified by the government does not automatically apply in the national legal system, but must first be ratified through a domestic legal instrument.

To regulate this, Indonesia issued Law No. 24 of 2000 concerning International Agreements, which is the main legal reference in the process of making, ratifying, and implementing international agreements in Indonesia. This law aims to provide legal certainty and clarify the division of authority between the executive and legislative branches in ratifying an agreement.

In Law No. 24 of 2000, it is stated that international agreements relating to strategic matters such as politics, defense, security, state sovereignty, human rights, and state finances must obtain the approval of the House of Representatives before being ratified. This shows that Indonesia places ratification as a process that requires political control from the legislative institution.

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Ratification of agreements is carried out through the issuance of laws or presidential regulations, depending on the scope of the agreement. Agreements that are important and have a wide impact must be ratified by law, while those that are technical and administrative are sufficient to be ratified through presidential regulations. This is a concrete manifestation of the dualistic approach in the Indonesian legal system.

In practice, the existence of Law No. 24 of 2000 does not immediately resolve all legal issues regarding the validity of international agreements. There is still confusion and ambiguity in implementation, especially in terms of whether international agreements can be used as a direct legal basis by national judges without being explicitly enacted.

This issue has begun to emerge in various court decisions, including the Constitutional Court (MK). One important decision is the Constitutional Court Decision No. 33/PUU-IX/2011, which was submitted regarding the judicial review of Law No. 24 of 2000. The applicant in this case questioned whether ratification through a presidential regulation has sufficient legal standing to realize binding force in national law.

In its decision, the Constitutional Court emphasized that international agreements cannot apply and do not have binding legal force domestically before being ratified in accordance with the provisions of applicable laws and regulations. The Constitutional Court stated that every agreement that has been ratified, in order to be enforced at the national level, must undergo a legal transformation process.

This Constitutional Court decision strengthens the principle of dualism adopted by Indonesia and rejects the view that international agreements can be directly enforced without legal transformation. Thus, national law remains the main filter in adopting international provisions, and not all international norms can be directly accessed by citizens or judicial institutions.

One implication of this ruling is that judges in national judicial systems cannot use provisions in international treaties (even if they have been ratified) as the legal basis for decisions if there are no implementing regulations at the national level. This could hamper legal protection for individuals that are actually guaranteed by international instruments.

On the other hand, the Constitutional Court's decision also emphasizes the importance of the House of Representatives's role in maintaining national legal sovereignty. Every international agreement that has a major impact on the life of the nation and state must obtain legitimacy from parliament as a representation of the people. This reflects the principle of checks and balances in the law-making process.

However, this approach raises challenges in the implementation of international obligations, especially if the ratification or implementation process is slow or hampered by political interests. This can create a gap between Indonesia's international commitments and their implementation in national legal practice.

In the context of human rights, for example, although Indonesia has ratified various international conventions such as the ICCPR or CEDAW, there are still many obstacles in the application of their substance because they have not been fully integrated into national regulations. As a result, the principles that are already internationally binding have not provided optimal legal protection for citizens.

This Constitutional Court decision also provides an important lesson that there is a need for synchronization between national law and international law. The

government together with the House of Representatives must be active in drafting implementing laws or revising regulations that are adjusted to the contents of ratified agreements, so that their implementation is not hampered.

One long-term solution is to strengthen the capacity of state institutions, including the judiciary and the House of Representatives, in understanding the substance of international law and the urgency of its implementation at the national level. This also includes legal education for judges and policy makers, so that they not only understand the principle of dualism procedurally, but also understand the normative values of international agreements. Thus, the case study of Law No. 24 of 2000 and Constitutional Court Decision No. 33/PUU-IX/2011 shows that although Indonesia has a legal basis for regulating international agreements, the implementation of the principle of dualism still faces serious challenges in ensuring effectiveness and legal certainty. Harmonization between international law and national law must continue to be carried out so that international agreements are not only formal documents, but actually provide real legal benefits for the country and its citizens.

Comparison of International and National Legal Systems in Various Countries

One country that firmly adheres to a monistic approach in integrating international law into its national legal system is the Netherlands. In a monistic system, international law and national law are considered as one unified legal system.[22] This means that international agreements that have been ratified by a country can apply directly in domestic jurisdictions without requiring a transformation process or additional legislation. This allows international legal norms to become a source of law that can be used directly by judicial institutions in resolving domestic legal disputes. The Dutch monistic approach is explicitly stated in the Dutch Constitution, especially Articles 93 and 94. Article 93 states that provisions in international agreements and decisions of international organizations that are binding on everyone will apply after being officially announced. Meanwhile, Article 94 states that provisions of national law that conflict with provisions of international law that are binding on everyone will not apply. Thus, self-executing international law has a higher position compared to conflicting national laws.

One of the strengths of this system is the ease of implementing international law. When the Netherlands ratifies an international treaty, the treaty can immediately be applied by national courts, as long as its provisions are clear enough, normative, and binding on everyone (not just the state). This minimizes bureaucratic or political obstacles in the process of adopting treaties into national law. Therefore, the Dutch monistic system is considered more responsive in enforcing international legal norms.

A concrete example of the application of this principle can be seen in the human rights courts in the Netherlands. In several cases, such as those related to the right to housing, Dutch courts directly use the European Convention on Human Rights (ECHR) as the legal basis for deciding cases. In the case of Benthem v. Netherlands, the European Court of Justice stated that the Netherlands violated the right to a fair trial, and Dutch courts then adjusted their national practices in accordance with the ruling. This shows that international court decisions and human rights treaties have a direct effect on the domestic legal system.

[22] E. B. Beenakker, "The Implementation of International Law in the National Legal Order: A Legislative," *Practice (OUP 2013)* 34, no. 45 (2018): 40–41, https://doi.org/https://hdl.handle.net/1887/63079.

In addition, in the context of immigration and asylum law, Dutch courts also use international legal principles such as the 1951 Refugee Convention and the International Covenant on Civil and Political Rights (ICCPR) as a direct legal basis for assessing the legality of government policies. If national legal provisions are deemed to be in conflict with international norms that are binding on all, then these national provisions can be ignored or annulled by the judge. This provides greater protection for individuals, especially vulnerable groups such as refugees and minorities.

The monistic approach in the Netherlands also strengthens state accountability in implementing international obligations. Governments cannot argue that international provisions are not yet applicable because there is no national law, since ratification of the treaty is sufficient to make it domestically binding. This puts healthy pressure on governments to be more careful in negotiating and acceding to international treaties, since the consequences are immediate and binding.

However, this system also has its own challenges. One is the risk of conflict between national legislative sovereignty and international obligations. In a parliamentary democracy like the Netherlands, parliament has the authority to make laws, but these laws can be overridden if they conflict with ratified international treaties. This can trigger political and legal debates about who holds the supremacy in lawmaking, and how to balance international obligations with domestic aspirations.

Furthermore, not all provisions in international treaties are considered self-executing. Dutch courts must still assess whether a norm is sufficiently clear, targeted, and directly enforceable. If a provision requires additional policies or legislative measures to implement it, then the provision is considered non-self-executing and cannot be directly enforced. Therefore, while monism opens the door to the supremacy of international law, its implementation remains subject to judicial interpretation. Overall, the Dutch monistic system reflects a strong commitment to the supremacy of international law, particularly in the areas of human rights and refugee law. By providing direct space for international treaties to apply in domestic law, the Netherlands is an example of a country that effectively bridges global norms and national legal systems. This creates legal certainty, strengthens the protection of individuals, and enhances the Netherlands' credibility in international forums.

By adopting a monistic approach, the Netherlands provides an example of how a country can maintain the rule of law while respecting and implementing international obligations directly and consistently. In an increasingly interconnected global context, this model is an important reference for other countries seeking to effectively harmonize national and international law.

Unlike the Netherlands, which adopts a monistic system, the United Kingdom is a classic example of a country that adopts a dualistic approach to the relationship between international law and domestic law. In this system, international law and national law are considered as two conceptually and operationally separate legal systems. Therefore, international treaties do not automatically have legal force domestically after being ratified by the government. A national legislative process is required for these international norms to be applicable and used in domestic courts.

The basic concept of British dualism comes from the principle of parliamentary sovereignty, which states that only the British Parliament has the authority to make and change domestic law. Thus, even though international treaties have been ratified by the government (through the executive), they are not directly binding unless they have been enacted in the form of national laws by Parliament. This makes the process of

transformation of international law a prerequisite for international norms to be enforced in UK jurisdiction.

A well-known example of the UK's dualistic approach is the case of R v Secretary of State for the Home Department, ex parte Brind [1991] 1 AC 696. In this case, the House of Lords held that the provisions of the European Convention on Human Rights (ECHR), although ratified by the UK, could not be used as a direct legal basis in UK courts because they had not been incorporated into domestic law. The courts would only recognise and apply the norms once there was explicit domestic legislation to do so.

A significant change in the UK's approach to international law began with the passing of the Human Rights Act 1998, which incorporated most of the provisions of the ECHR into UK domestic law. This legislation allowed UK courts to refer to and apply international human rights principles in their judicial processes. However, this did not change the dualistic principle as a whole, as other international law still requires a legislative process to be enforced nationally.

The UK's dualistic system is also evident in its relationship with international court decisions. The case of Medellín v. Texas, which originated in the US but is widely cited in the UK literature, is an important reference to the fact that even ICJ decisions are not automatically binding domestically unless they have been enforced by legislative authority. The same is true in the UK, where decisions of the International Court of Justice or other arbitral bodies have no legal force in UK courts without confirmation in domestic law.

The UK's dualistic approach gives it greater political control over the application of international law. The government and parliament can choose to adapt or even reject international provisions that are deemed inconsistent with the national interest. However, this approach also poses challenges in ensuring consistency and compliance with international commitments, especially on pressing and universal issues such as human rights, environmental protection and humanitarian law.

In practice, this dualistic system has led to a normative gap between the UK's international commitments and their domestic implementation. For example, the UK may be a party to an international climate change treaty, but its domestic implementation will only come into effect if and only if parliament passes the relevant legislation. This opens up the possibility of delays or even failure of implementation, which in turn could damage the country's credibility in the eyes of the international community.

However, this approach is maintained because it is considered to guarantee legislative sovereignty and democratic transparency, by ensuring that every legal norm applicable in the UK must go through a political process in parliament. This system provides space for popular control through their representatives, but on the other hand can slow down the integration of international law that urgently needs to be implemented.

It should also be noted that the UK's exit from the European Union (Brexit) further emphasizes the dualistic attitude of this country. Previously, as a member of the European Union, European community law had supremacy over UK national law in many areas. However, with the end of its membership period, the UK returned to the basic principle of pure dualism, where all forms of international cooperation must go through domestic legislative mechanisms before they can be officially implemented.

Thus, the UK legal system still adheres to the principle of dualism, although in some aspects there has been an opening of space for the direct application of international norms, especially in human rights issues through the Human Rights Act. This system shows the importance of balance between international commitments and domestic legal

authority, and illustrates how a country maintains its sovereignty in the context of increasingly complex legal globalization.

The United States is one of the countries that adopts a hybrid approach in terms of the relationship between international law and domestic law. The United States Constitution, specifically in Article VI Section 2 (Supremacy Clause), states that "This Constitution, and the Laws of the United States... and all Treaties made... shall be the supreme Law of the Land." This provision provides a constitutional basis that ratified international treaties have a high and binding position in the national legal system. However, in practice, not all international treaties can automatically be directly enforced by federal or state courts.

In the U.S. legal system, a distinction is made between self-executing and non-self-executing international treaties. Self-executing treaties are those that can be directly enforced in the national legal system upon ratification, without the need for additional legislation. In contrast, non-self-executing treaties require implementing legislation from Congress in order to be used in domestic legal proceedings. This distinction is characteristic of the United States' hybrid approach, which follows neither strictly monist nor strictly dualistic principles.

For example, the UN Convention on the Rights of the Child (CRC) has not yet been ratified by the U.S. Senate, although it has been signed by the President. Even if ratified, U.S. courts must first assess whether the provisions of the convention are self-executing. In many cases, even when a convention has been approved by the executive branch, its effect on domestic law remains subject to judicial review and legislative intervention.

The most prominent case that illustrates this hybrid approach is Medellín v. Texas, 552 U.S. 491 (2008). In this case, the U.S. Supreme Court ruled that the International Court of Justice's (ICJ) decision in the Avena Case (which required the review of death sentences against Mexican nationals) was not legally binding in state courts because the treaty on which the ICJ decision was based was considered non-self-executing. Although the U.S. was a party to the treaty, the Court held that the treaty could not be enforced domestically without specific legislation from Congress.

The Medellín decision set an important precedent that under the U.S. legal system, ratification of an international treaty is not sufficient to give it immediate domestic effect. It also emphasized the importance of the legislature's role in translating international obligations into legal norms that are operative in national jurisdictions, and illustrated how the U.S. hybrid approach balances global obligations with domestic rule of law.

This hybrid approach is also evident in the U.S. treatment of customary international law. In some cases, federal courts have recognized customary international law as part of the federal common law, as in Filártiga v. Peña-Irala (1980) and Sosa v. Alvarez-Machain (2004), particularly when it concerns serious violations of humanitarian law or human rights. However, this recognition is limited and highly dependent on interpretation by the Supreme Court and federal appellate courts.

However, there is a unique strength in the US legal system, namely the ability of individuals to bring claims under international law through the Alien Tort Statute (ATS). The ATS allows federal courts to accept civil cases brought by foreign nationals alleging violations of international law, although its use has been significantly curtailed by the Supreme Court in recent years, including in Kiobel v. Royal Dutch Petroleum (2013).

The US legal system also gives states broad latitude to form their own policies, but they must not conflict with nationally recognized international obligations. This can create friction, as in cases where states refuse to enforce international judgments because they are not considered to have domestic legal force. Coordination between the federal

government and state governments is therefore essential in the implementation of international law in the US.

Overall, the hybrid approach adopted by the United States reflects an effort to balance adherence to international law with domestic constitutional principles, including the separation of powers and the rule of law. This system shows that the influence of international law in the United States is highly dependent on legislative will and judicial interpretation, and cannot be separated from the country's political and constitutional dynamics.

With this hybrid approach, the United States shows that a country can be actively involved in the international legal system, but still maintain domestic control over the implementation of the law. This is an important lesson for developing countries, including Indonesia, in building a national legal framework that is adaptive to global commitments without sacrificing the principles of constitutional sovereignty.

The binding force and implementation of international law differ significantly between countries that adopt a monistic, dualistic, and mixed approach. This difference is rooted in how a country positions international law in its legal system—whether international law is considered a direct part of national law, or requires formal adoption through the national legislature first.

In a monistic system, such as that adopted by the Netherlands, international law has binding force immediately after the agreement is ratified and officially announced. Its implementation does not require additional legislation. Articles 93 and 94 of the Dutch Constitution state that self-executing international law is directly applicable and even trumps conflicting national law. This allows Dutch courts to use international treaties as a direct legal basis, especially in issues of human rights, refugees and social justice.

In contrast, in a dualistic system such as the UK, the binding force of international law is recognized only after the treaty has been enacted through the national legislative process. In other words, even if a treaty has been ratified by the government, its contents do not enter into force in domestic law until Parliament passes it into law. This approach places international law as an external entity that does not automatically apply and can only take effect after being processed through the national legal system. As a result, the implementation of international law in the UK is often delayed or incomplete, depending on the political will and national interests of the time.

The United States sits somewhere in between, adopting a mixed approach. Under Article VI of the US Constitution (Supremacy Clause), international treaties are part of the supreme law of the land. In practice, however, the Supreme Court distinguishes between self-executing treaties, which are directly applicable, and non-self-executing treaties, which require implementing legislation. The case of Medellín v. Texas (2008) is a notable example where the Court refused to enforce an ICJ ruling in the absence of supporting legislation from Congress. This shows that in the US, the binding force of international law is largely determined by legislative and judicial judgments.

In terms of implementation efficiency, the monistic system is relatively faster and more consistent in implementing international obligations because it does not rely on additional political processes. However, this also raises criticism that monism can reduce the space for national deliberation, especially if the international treaty contains politically or socially sensitive provisions. In contrast, the dualistic system provides greater space for national oversight and adaptation, but at the cost of delays or legal uncertainty.

In terms of individual rights protection, the monistic system is superior because it allows citizens to access international norms directly in national courts. In dualistic

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countries such as the UK or Indonesia, this right depends on the readiness of the government and parliament to adopt international norms into national law. In mixed systems such as the US, the results can vary, depending on the classification of the treaty and the Supreme Court's decision on whether or not a norm is self-executing.

Thus, this comparison shows that the choice of approach is not only a matter of legal technicalities, but also reflects the political orientation of a country's law—whether it prioritizes global engagement or maintains domestic control. In the context of globalization and increasingly close international cooperation, it is important for countries to reorganize the relationship between international law and national law harmoniously so that there is no dualism of norms that weaken the position of the country on the international stage or violate the rights of citizens at the domestic level.

E. Conclusions

International agreements have an important position as a source of international law that binds the parties who agree to them. The principle of pacta sunt servanda is the main basis that guarantees that agreements must be obeyed and implemented in good faith. From an international legal perspective, agreements that have been approved and ratified create legal obligations that are binding and cannot be denied unilaterally, except under certain conditions that are expressly regulated in the 1969 Vienna Convention.

However, the binding force of international agreements in the national legal system is highly dependent on the approach adopted by each country. Countries with a monistic system, such as the Netherlands, recognize the direct applicability of international law in national law without the need for a transformation process. In contrast, countries with a dualistic system, such as the United Kingdom and Indonesia, require a process of ratification or transformation through national legal instruments so that agreements can be enforced domestically.

Indonesia, through Law No. 24 of 2000 concerning International Agreements, clearly states that new international agreements can only be enforced in the national legal system after being ratified through legislation. This approach is emphasized by the Constitutional Court Decision No. 33/PUU-IX/2011, which states that international agreements do not have binding legal force in Indonesia before being ratified according to applicable legislative procedures.

The principle of pacta sunt servanda in the national context plays an important role in ensuring legal certainty, but its implementation depends on the state's commitment not only to ratify the agreement, but also to actively harmonize national law with international provisions. Failure to implement the agreement can create a gap between international legal commitments and domestic legal protection, which ultimately harms citizens and Indonesia's position in the eyes of the international community. Thus, although Indonesia has a legal framework to regulate the application of international agreements domestically, challenges remain, especially in terms of harmonization of norms, effectiveness of implementation, and consistency between state institutions. Therefore, strong synergy is needed between the executive, legislative, judiciary, and civil society to ensure that international agreements are not only symbolic, but truly function as legal instruments that guarantee justice, order, and legal certainty at the national level.

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