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The Use of Language in International Agreements According to the 1969 Vienna Convention and its Implementation in Indonesian National Law

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Abstract
The use of language in international agreements is very important to establish international cooperation. It is also noteworthy that according to the Indonesian law, the international agreements related to several matters adopted by the government shall be translated to Bahasa Indonesia. However, the terms contained in Indonesian national law, in Bahasa Indonesia, often tend to be different from the meanings contained in international law, such as the 1969 Vienna Convention on the Law of Treaties. Thus, they often have multiple interpretations. As such, the use of language, especially relating to international agreements, can be a trigger for legal disputes. In this regard, using a legal research method by analyzing the international legal instruments and Indonesian national law, this paper digs into the use of language related to the adoption of an international agreement to an Indonesian Law, especially regarding the terms of "ratification," "accession," and others. It is argued that there is a difference of perspective within the "adoption of an international agreement" regarding the terms of "ratification" and "accession" under the 1969 Vienna Convention.
Keywords: Language; International Treaties; Indonesian National Law.

Introduction

The Republic of Indonesia has a national interest in every cooperation that is made. To carry out such international cooperation basically requires an international agreement, so that it can be binding on countries that cooperate with Indonesia. The main purpose of making international agreements is for the welfare of the people based on national interests. The national interest as a norm is contained in Article 4 paragraph 2 of Law Number 24 of 2000 concerning International Agreements ("Law No. 24/2000") stating that:

… in making international agreements, the Government of the Republic

> of Indonesia is guided by national interests and based on the principles of equality, mutual benefit, and taking into account both applicable national and international law.[1]

Indonesia has entered into international agreements with countries in the region, both with Southeast Asian countries and with other countries in the world. In establishing cooperation with a country, one aspect that has been a crucial issue so far is the ambiguity of the meaning of ratification of an international agreement in Indonesian national law. In Law No. 24/2000 concerning International Agreements in the Preamble it is stated:

> that the making and ratification of international agreements between the Government of the Republic of Indonesia and the governments of other countries, international organizations, and other subjects of international law is a very important legal act because it binds the state to certain fields, and therefore the making and ratification of an international agreement must be carried out on clear and strong foundations, using clear statutory instruments as well.[2]

The above statement states that the making and ratification of an agreement made must be carried out on a strong basis and using the regulatory instruments that exist in Indonesian national law. However, if the meaning of a definition is still debated or becomes a problem, it would be good to finish it as soon as possible so that it doesn't have multiple meanings or interpretations.

According to Article 3 of Law No. 24 of 2000, Indonesia binds itself to international agreements in the following ways:

a) Signatory;
b) Ratification;
c) Exchange of agreement documents/diplomatic notes;
d) Other methods as agreed by the parties in international agreements.

Based on the above provisions, Indonesia can bind itself to international agreements in several ways, one of which is ratification. Ratification is called ratification, while ratification itself is a procedure that progressively began in the middle of the nineteenth century.[3] One of the difficulties encountered in

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[1] Law Number 24 of 2000 concerning International Agreements, Article 4 (2).
[2] *ibid*.
[3] Boer Mauna, *Hukum Internasional, Pengertian Peranan Dan Fungsi Dalam Era Dinamika Global* (Alumni 2010).[117].

understanding this international agreement is that there are many terms that often have different meanings when adopted into the language of the participating countries,[4] such as the term equating ratification with ratification even though the two terms are not the same, even JG Starke QC stated: "Some States did not wish to use the term 'ratification,' as this might imply an obligation to submit a treaty to the Legislature for approval, or to go through some undesired constitutional procedure".[5]

While on Law No. 24/2000, the legitimation is "legal actions to be bound by the treaty in the form of ratification, accession, acceptance and approval".[6] Understanding the meaning of ratification according to the above provisions, it is clear that ratification cannot be equated with ratification because ratification is one form of ratification of several other forms, namely accession, acceptance, and approval. This opinion was also given by Mochtar Kusumaatmadja that:

> … regarding the ratification of this agreement there are several things that cause uncertainty or ambiguity. One of them is that the two stages in the ratification process are not distinguished, namely the granting of *approval* and the act of ratification or ratification itself. The word ratification is often used to cover the entire process that includes the two stages mentioned above.[7]

Along with the above opinion in international law literature it also defines ratification as an international and not internal conception, even Utrecht clearly distinguishes House of Representative (or *Dewan Perwakilan Rakyat,* "DPR") approval from ratification.[8] Likewise, the ratification law issued in 1951 still avoids the use of the term "ratification" to reflect the approval of the DPR and even uses the term "ratification" to mean ratification in an external sense. The emergence of the term ratification begins with the issuance of Law No. 8 of 1960 concerning the Making of Friendly Agreements between Indonesia and the Kingdom of Cambodia when Article 1 and Article 2 mention the term ratification, and even after the

[4] Mochtar Kusumaatmadja, *Pengantar Hukum Internasional* (Bina Cipta 1997).[85].
[5] JG Starke, *Introduction To International Law* (Butterworth & Co (Publisher) Ltd 1977 [477].
[6] Law Number 24 of 2000 concerning International Agreements, Article 1 (2).
[7] Kusumaatmadja (n 4).[94].
[8] Damos Dumoli Agusman, *Hukum Perjanjian Internasional,Kajian Teori dan Praktek* (Refika Aditama 2010).[75].

issuance of Law No. 24/2000 on International treaties it actually means ratification is the same as With ratification, even some experts question the term ratification as stated in Law No. 24/2000, this is because the notion of ratification should be interpreted as an internal action (inward) and not as an external action (out) to bind oneself to an international agreement. The term ratification as used in legislation is very different from ratification; the complications of this term began to occur after Article 11 of the 1945 Constitution and was stated in the format of a law that uses the logic of legislation and interprets the term ratification as a translation of ratification.[9]

The use of inappropriate terms can obscure and create different interpretations, according to Jeremy Bentham as quoted by Driedger, dividing two levels of imperfections in the use of such term, namely: the first level of imperfection, which includes the existence of multiple meanings, referring to terms that are ambiguous and too broad; while the second level includes the indeterminacy of words and expressions.

In this regard, using different words and expressions for the same thing may lead to inconsistency, such as the use of word "means" and "tools," which could also lead to different meaning.[10] However, using the same words for the different purposes can also be ambiguous. Meanwhile, it is also noteworthy that an agreement shall not be redundant and wordy.[11]

In fact the use of the term legitimation in the Law No. 24/2000 was adopted from the terms of ratification of the Vienna Convention 1969.[12] Thus, in the practice of international treaty law in Indonesia, the use of the term legitimation is the same as ratification. Actually, the use of these two terms is fine as long as it does not become

[9] *ibid*.[77].

[10] Romli Atmasasmita quoted Muchtar Kusumatmadja, *Politik Hukum Pidana* in'Pembangunan Nasional Seminar Nasional, Membangun Indonesia Melalui Pembangunan Hukum Nasional' (2011) 1.

[11] A.Hamid andS.Attamimi, in Maria Farida Indrati.S *Ilmu Perundang – Undangan, Proses Dan Teknik Pembentukannya* (Penerbit Kanisius 2007).[199].

[12] 1969 Vienna Convention, Article 2 (1) b stated: Ratification, Acceptance, Ratification and Accession shall in each case be interpreted as an international act whatever its name wherein an international level makes an agreement to be bound by a treaty.

a problem or does not obscure or mislead the problem.[13] Because by interpreting different meanings it can make different understandings because the meaning is very broad.[14] According to Article 14 of the 1969 Vienna Convention, ratification is a way to enter into a treaty and usually begins with signing.[15] Uniformity in understanding ratification is very necessary, because it will involve the legal systems of many countries with different legal systems (common law and civil law, including countries that are outside the system, such as Japan and China).

Differences in understanding about the meaning or definition of ratification have the potential to cause problems in the future between the parties, especially those related to the binding power. The 1969 Vienna Convention itself does not provide an understanding of the ratification and tend to equate ratification, acceptance, approval, and accession, although understanding of some terms there is not the same as the content / substance, but strangely in the Convention between ratification and accession precisely separated agreement procedures to bind themselves carried out in the agreement.[16] There appears to be an inconsistency between ratification, which was originally equated with accession, but was placed in two articles on the method of binding in the agreement. Whereas the main point between ratification and accession is different, ratification is the party that co-signs and the core participants (original members). On the other hand, accession is a participant who is not a participant in negotiations when an international agreement is being processed in an international conference, and then signs and only participates afterwards, even though there are opinions stating that the degree is the same.

Indonesia itself is also affected by the use of these definitions and tends to be used interchangeably, at certain times using the term ratification and other occasions using the term ratification even though there are clear technical differences between

[13] *Ratificare* in Latin means *confirmation*, or *approval*, while classic Latin uses the term "*ratum habere*", "*ratum ducere*", "*ratum facere*", and "*ratum alicui case*" by which all of them mean approval.

[14] Michael Bogdan, *Comparative Law* (Kluwer Law and Taxation Publisher 1994).

[15] 1969 Vienna Convention, Article 14.

[16] 1969 Vienna Convention, Article 14-15.

the two, and not just *nomenclature*/form and name because as stated earlier that the ratification in the treaty can be done by means of ratification, acceptance, approval and accession.

However, because basically these conventions are codifications of customary international law, they are still binding on Indonesia with or without ratifying them.[17] Even after it is accepted by a country, in many cases it takes a long time for that country to ratify.[18] Until now, Indonesia has not ratified the 1969 Vienna Convention, but Indonesia's attachment to this Convention through the mechanism of customary international law was carried out through an affirmation of the International Court of Justice in 2002.[19] Thus, there is no reason for Indonesia not to submit to the 1969 Vienna Convention because it is normatively binding on Indonesia.

The procedure for ratification of an international treaty is regulated by the provisions of the national law of each country. Indonesia explains the ratification (ratification) with other countries is contained in Article 11 of the 1945 Constitution.[20] Although in fact the article does not clearly state the sentence stating the existence of ratification. Besides, the article is too short and does not provide clarity on Indonesian legal doctrine or politics in the field of international treaties.[21] Thus, every law that is made must go through the ratification of the DPR. Ratification from the DPR is regulated in Article 10 of Law No. 24/2000,[22] and ratification by

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[17] Agusman (n 9).[4].

[18] GJH Van Hoof, *Rethinking The Sources of International Law(Pemikiran Kembali Sumber-Sumber Hukum Internasional)* (Alumni 2000).

[19] 'ICJ Case Concerning Sovereignty over Pulau Ligitan and Sipadan' 17 December 2002 in Damos Dumoli Agusman, *Hukum Perjanjian Internasional: Kajian Teori Dan Praktik Indonesia* (Refika Aditama 2017).[4].

[20] Indonesian Constitution 1945, Article 11 stated: President with the approval of House of Representative may declare war, make peace, and conclude treaties with other countries.

[21] Eddy Pratomo, *Hukum Perjanjian Internasional, Pengertian,Status Hukum,Dan Ratifikasi.* (Alumni 2022).[iii].

[22] Law Number 24 of 2000 concerning International Treaties, Article 10 stated: "The ratification of international treaty is done through the enactment of Law/Act if related to:

1. Political, peace, defense, and state security;
2. Changes to the territory or determination of the boundaries of the Republic of Indonesia;
3. Sovereignty and sovereign rights of the state;
4. Human rights and the environment;
5. Formation of a new rule of law;
6. Foreign loans and/or grants.

Presidential Decree is regulated in the next article (Article 11).

The fact is that there are several international agreements made by the Indonesian government with other countries that have been ratified through laws, but have not yet received approval from the DPR, including several international conventions on human rights. For example, national Conventions on civil or cultural and political rights (*International Convention on Cultural, and Political Rights* of 1966 as well as the International Convention on Social and Economic Rights).

Indonesia is still delaying the ratification of the international agreement on the International Court of Justice (*International Convention on Criminal Court*/ Rome Statute 1998) and the International Agreement between Indonesia and Singapore on Extradition.

Problems occur when the ratified International Agreement is rejected or does not get the DPR's approval. Meanwhile, according to Article 27 of the 1969 Vienna Convention, Indonesia cannot immediately cancel and withdraw from the international agreement. This condition often creates debate, considering that the DPR, in accordance with the mandate of the 1945 Constitution, is asked for its approval when the government (President) enters into an international agreement. Whereas the Vienna Convention states that all countries cannot justify not complying with an international treaty due to the difficulties of their national law.

Besides, according to Law No. 24/2000, particularly Article 1 point to 2 stated that the ratification of a legal action to attach themselves to an international agreement in the form of ratification and accession,[23] the same opinion was stated also by other international legal experts such as Starke.[24] However, the agreement declared through accession is not mentioned as contained in Article 15 of the 1969

[23] Mauna (n 3) stated that accession is a legal act in which a country that is not an initial participant in a multilateral agreement then agrees to be bound by the said agreement.[121].

[24] Starke (n 5) stated that in practice, when a State has not signed a treaty it can only accede or adhere to it.[484].

Vienna Convention,[25] in Law No. 24/2000 including its meaning or definition, both in the Convention and in Law No. 24/2000. Before the cancellation of Article 10 in Law No. 24/2000 by the Constitutional Court in Case No. 13/PUU-XVI/2018 only mentioned the scope of ratification carried out by law.[26] Whereas accession actually has a different meaning from ratification.[27] The absence of ratification stated by accession in Law No. 24/2000 can lead to legal issues, namely the Indonesian government's attachment to these international treaties. Unlike the time before Indonesia did not have national legislation on international treaties, as a result at that time in practice In effect, there were "miracles", deviations and diversity in various fields of international agreements held by Indonesia.[28] If there are no rules regarding declaration through accession, it means that Indonesia is not bound by the international agreement, then this has the potential to violate Article 27 of the 1969 Vienna Convention. Even though there are several international agreements, even though Indonesia did not participate in signing and ratifying, Indonesia is automatically bound by these international customs.[29] Accession only applies to international agreements that are multilateral, so not all agreements are[30] open to

[25] 1969 Vienna Convention, Article 15 stated: the consent of a State to be bound by a treaty is expressed by accession when:

1. the treaty provides that such consent may be expressed by that STate by means of accession
2. it is otherwise established that the negotiating States were agreed that such cosnent may be expressed by that State by means of accession; or
3. all the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

[26] Law Number 24 of 2000 concerning International Treaties, Article 10.

[27] Budiono Kusumohamidjojo, *Suatu Studi Terhadap Aspek Operasional,Konvensi Wina Tahun 1969 Tentang Hukum Perjanjian Internasional* (Bina Cipta 2006).[7].

[28] Eddy Damian, 'Beberapa Pokok Materi Konvensi Wina Tahun 1969 Tentang Hukum Perjanjian Internasional' (2003) 2 Jurnal Hukum Internasional.[219].

[29] Compare to the argument of F.Sugeng Istanto, *Hukum Internasional*,Penerbitan Universitas Atmajaya, Jogyakarta. 1998, quoting the Statement of the London Conference in 1831 which stipulated that international agreements remained in effect for State parties despite internal changesin the country

[30] 1969 Vienna Convention, Article 27 stated: a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is wihtout prejudice to Article 46.

While, Article 46 stated: a state may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

accession.[31] Even Mauna added that it must be remembered that accession should not be required by ratification, then accession means a statement of agreement to bind oneself definitively to a treaty. So if the depositary country accepts an accession but with the condition that it must wait for ratification first, then such accession is considered invalid, therefore before declaring accession the agreement must be ratified first.[32] Such a provision is not contained in Law No. 24/2000. In another form, there is actually a special form of accession, namely adhesion, which means accession to certain provisions of an international agreement. This means that adhesion has a legal effect that is more or less the same as a reservation, the only difference is that the reservation is stated at the time of affirmation of "*consent to be bound*", while adhesion is declared after an agreement "*enter into force*".[33] The 1969 Vienna Convention in its Article 17 also states that an agreement to bind oneself to certain parts of an agreement is made if the agreement allows it or the parties agree to it.

Indonesia must stipulate in national law the criteria for ratification of international treaties stated through accession. So that there can be no conflict between national law and international law in Indonesian national law. This assertion is also emphasized by international law experts who say that ratification is a statement to emphasize that international agreements that have been agreed do not conflict with National Law.[34]

Some of the important notes in international agreements that are often used as legal issues regarding international agreements which incidentally include the regulation of ratification and accession are the scope and legal domain of the international treaty itself, whether it is included in the scope of constitutional law or international law. Referring to Law No. 24/2000 states: "Any Agreement in the field of public law, governed by International Law, and made by the Government with a State, International Organization, or other International Law Subject".

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[31] RC Hingorani, *Modern International Law* (2nd edn, Oceana Publication, Inc 1984).[225].
[32] Mauna (n 3).[122].
[33] Kusumohamidjojo (n 28).[9].
[34] Hingorani (n 32).[19].

This understanding is interpreted and understood that an international agreement is a public legal agreement regulated by international law, so that it is clearer that this sentence emphasizes "regulated by international law" thus the interpretation is a domain / within the scope of international law because it is regulated by international law. The following sentence only states "made by the Government with the State", International Organizations, or other International Law Subjects. Textually, this sentence states that it was made by the government and the state, thus it can be interpreted that the government and the state only make, not regulate. In this understanding, the substance remains international law, while the formulation is carried out by the government and the state.

Use of Foreign Languages in International Agreements in Indonesia

In the current era of globalization, almost all countries in the world are bound by an international agreement. Through international agreements, all countries can cooperate in the fields of politics, economy, culture, science and technology with other countries. Indonesia is a country based on the rule of law, and thus, cannot escape this reality, because all countries in the world enter into agreements with other countries and there is not one country that is not regulated by international agreements in its international life.[35] Because the needs between nations are reciprocal in nature, in the interest of maintaining international relations, legal certainty is needed through international agreements.

International treaties are one source of international law which is a common will (the will of the state) and for a common goal. Along with the development of increasingly complex international law, international agreements also face new challenges. To avoid legal uncertainty for countries to conduct cooperative relations, the clarity of the rules related to international agreements is an urgent need.

The increasing number of international agreements between countries in the current era of globalization[36] is stated by Tunkin that:"... Proportionately,

[35] Mauna (n 3).[19].
[36] Yudha Bhakti Ardhiwisastra, *Hukum Internasional Bunga Rampai* (Alumni 2003).[105].

international agreements currently occupy a major place in international law as a result of the widespread emergence of international agreements".[37]

The Government of the Republic of Indonesia after the end of the New Order has entered into international agreements with many regional countries, both with Southeast Asian countries and with developed countries in the world. The purpose of the agreement is for the benefit of both parties, both Indonesia and the countries that make international agreements with Indonesia, as stated in the Preamble of the 1945 Constitution, the first paragraph which states:

> To protect the entire Indonesian nation and all of Indonesia's bloodshed, promote public welfare, educate the nation's life and participate implementing world order based on independence, eternal peace, and social justice, the Government of the Republic of Indonesia, as part of the international community, carries out international relations and cooperation embodied in international agreements.[38]

The preamble to the 1945 Constitution emphasizes that international agreements are intended to protect Indonesia's national interests, especially those related to cooperation between countries. The national interest referred to is contained in Article 4(2) of Law No. 24 2000 which states "In making international agreements, the Government of the Republic of Indonesia is guided by the national interest and based on the principles of equality, mutual benefit, and taking into account both applicable national law and international law".

The above statement emphasizes that it is important to pay attention to national interests, the principles of equality of position, mutual benefit and to pay attention to national and international law in making international agreements. The principle of equality before sovereign state is a basic principle in law and international relations. In line with the positive theory or consensualism which emphasizes the importance of approval from the states before a law can be enacted.[39] Besides, international

[37] I Waya Parthiana, *Hukum Perjanjian Internasional* (1st edn, Mandar Maju 2002).[3].

[38] See the Consideration of Law Number 24 of 2000 concerning International Treaties.

[39] Jawahir Thontowi and Pranoto Iskandar, *Hukum Internasional Kontemporer* (Refika Aditama 2006).[114].

agreements must be based on *good faith* based on agreed principles or rules.[40] However, in order for an international agreement to gain legitimacy and legal force, internal confirmation is required from the state that made the international agreement in accordance with the country's constitution.

As stated by Dixon and McCorquodale in *Cases and Materials on International Law,* "Generally a state will be legally bound by a treaty only once it has ratified. This usually occurs after a state internal political (sometimes legal) processes to approve the term of a treaty have been completed. State which were not signatories to the treaty indicating their consent to be legally bound by accession not ratification".[41]

There are three stages in making an international agreement, namely negotiation, signing, and ratification.[42] Schwarzenberger stated, "the dynamic character of the relation between the signature and the ratification of treaties emerges only in historical perspective".[43]

Kusumaatmaja expressed a different view that a country can bind itself to an international treaty without ratification if the participating countries agree to it.[44] While the 1969 Vienna Convention states ratification*,* acceptance*,* approval, and accession as international action in making an agreement to be bound by the treaty.[45] Meanwhile, some experts provide an understanding of ratification as follows:

1. Hingorani stated that ratification is a process which gives time to State functionaries to think over the pros and cons of the effect of treaty on the country.[46]
2. Brierly provides an understanding the ratification is not, however, a legal requisite in all cases. There are many agreements of minor importance in which

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[40] See 1969 Vienna Convention, Article 26 stated: Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

[41] Martin Dixon and Robert Mccorquodale, *Cases and Material on International Law* (2nd edn, British Library Cataloguing in Publication Data 1995).[65].

[42] Kusumaatmadja (n 4).[88].

[43] Georg Schwarzenberger, *International Law, Volume I International Law as As Applied by International Courts and Tribunal I* (Stevens & Sons Limited 1957).[434].

[44] Kusumaatmadja (n 4) [91 comparing to Ali Sastromidjojo cited in Syahmin AK, *Hukum Kontrak Internasional* (Raja Grafindo Persada 2011) states that an international agreement is deemed valid if mutual consent by all parties making the agreement has stated concretely, unless otherwise specified in the relevant agreement.

[45] 1969 Vienna Convention, Article 1 (1) b.

[46] RC Hingorani (n 32).[222].

it would be an unreasonable formality, and ordinarily the treaty itself shows, either expressly or by implication, whether it is to become binding on signature or not until it has been ratified.[47]

3. Korovin, gave the understanding that Ratification means the act by which the competent organ of a State (usually the supreme organ of power) confirms that a given treaty has binding force(when a government ratifies a treaty, the term "confirmation" is sometimes used). No amendments are permitted between the signing of an international treaty and its ratification, if ratification is required by law, or stipulated in the treaty itself.[48]
4. Kusumaatmadja gives the meaning of Ratification as: Approval in an agreement given by signing is temporary and still has to be ratified, ratified or strengthened.[49]
5. Lord McNair stated: The word "ratification" is used in several different senses, of which the following must be mentioned. It may mean:
   a. the act of the appropriate organ of the State, be it the Soverign or a President or a Federal Council, which signifies the willingness of a State to be bound by a treaty: this is sometimes called ratification in the constitutional sense;
   b. international procedure where by a treaty enters into force, namely the formal exchange or deposit of the instrument of ratification;
   c. actual document, sealed or otherwise authenticated, whereby a State expresses its willingness to be bound by the treaty;
   d. loosely and popularly, approval of the legislature or other State organs whose approval may be necessary : this is an unfortunate use of the word and should be avoided.

Furthermore, McNair also stated: Ratification is, however, a technical term of international law and must not be used by lawyers in its popular sense of confirmation, approval, holding good. Thus the expression "Parliamentary ratification, sometimes heard in the United Kingdom, is incorrect. It is the Crown which ratifies, no Parliament, though Parliament may be invited to approve and, where necessary, to legislate.[50]

The explanation of ratification is not clear in UU No 24/2000. However, in the general provisions of the Law, Article 1 point 2 states that ratification is a legal act to bind oneself to an international agreement in the form of ratification,

[47] JL Brierly, *The Law of Nations,An Introduction to the International Law of Peace* (5th edn, Oxford At Clarendon Press 1955).[246].

[48] FI Kozhevnikov, *International Law Translated From The Russian by Dennis Ogden* (Foreign Languages Publishing House).[266].

[49] Kusumaatmadja (n 4).[92].

[50] Lord McNair, *The Law of Treaties* (Oxford At The Clarendon Press 1961).[129-130].

accession, acceptance and approval. While the explanation of Law 24/2000 states that in practice the form of ratification is divided into four categories, namely: ratification: if the country that will ratify an agreement also signs the agreement text, accession: if the country that ratifies an international treaty does not also sign the text treaty, acceptance and approval: a statement of acceptance or approval from the countries parties to an international agreement on the amendment of the international agreement.

The provisions of Indonesian national law also stipulate that there is a need for the translation of the text of international treaties into Indonesian.[51] However, in practice there are often agreements made by the government including the private sector which are not or have not been officially translated into Indonesian. This can violate international agreements made by the Indonesian government (Article 12 of Law No. 24/2000). On the other hand, private parties can be considered to have violated legal principles, namely (1) the principle of the validity of the agreement such as Article 1320 of the Civil Code, namely (1) there is an agreement between the parties, (2) the requirements for the skills of the parties, (3) certain objects and (4) causes or object of a lawful agreement. Not only that, in trade law or contract law there is also the principle of freedom of contract, related to this there is freedom to choose the language to be used. Furthermore, in trade and investment transactions, the use of English as an international language has become commonplace because it has been seen as a "*linqua franca*" or as a recognized international language or one of the official languages of the United Nations (UN).[52] Besides that, in order to ratify international agreements concerning strategic issues, the DPR's approval is required so that negotiations, signing and ratification of an international agreement do not conflict with the public interest, morality and national law.[53] As stated in

[51] See Law Number 24 of 2000, Article 12 (1) stated: In ratifying an international agreement, the initiating institution consisting of state agencies and government agencies, both departmental and non-departmental, prepares copies of the text of the agreement, translations, draft laws or draft presidential decrees regarding ratification of the intended international agreement and other documents required.

[52] See: Huala Adolf SKH KOMPAS, 22 February 2017.

[53] Syahmin AK (n 46).[162].

Article 10 of Law No.24/2000, it is stated that the need for approval from the DPR before the government ratifies international agreements because it is related to matters of national interest.

For example, in some countries such as England, for example, ratification is carried out by ratification by the British throne (Queen, King) while, according to the United States constitution, ratification is carried out by the President after obtaining the approval *and consent* of two-thirds of the quorum of the members of the Senate.[54] In essence, ratification is a statement that is an official stipulation or ratification from the head of state,[55] and can be divided into two meanings, namely: ratification in the international sense and ratification in the constitutional sense (national law).[56]

Based on the above understanding, ratification is the ratification of a country based on the provisions of its constitution. Indonesia has its own rules regarding ratification which are different from the ratification procedures in other countries. Article 11 (1) of the 1945 Constitution states, that "The President with the approval of the DPR declares war and makes peace and treaties with other countries".

Although the above article does not contain the word ratification (ratification), the word "make" can be interpreted as having the same meaning as ratification (ratification). In addition, the provisions in the article also emphasize that ratification must be previously approved by the DPR. Provisions regarding the ratification of international treaties, apart from being contained in the 1945 Constitution, were also regulated in the Constitution of the United States of Indonesia (RIS) and the Provisional Constitution of 1950. Several rules regarding international treaties are regulated in the constitution, including Article 175 of the Constitution of the Republic of the United States of Indonesia which states:

a. President enters into and ratifies all agreements (treaties) and agreements with other countries unless otherwise stipulated by federal law, agreements or

[54] Ian Brownlie, *Public International Law* (6th edn, Oxford University Press 2003).[162].

[55] Budi Harsono cited Edi Suryono, *Praktek Ratifikasi Perjanjian Internasional Di Indonesia* (Remadja Karya 1984).[26].

[56] *ibid.*[27].

other agreements are not ratified, but after being approved by law.

b. Entering into and deciding on agreements and other agreements made by the President with the power of law.

While Article 120 of the Provisional Constitution of 1950 also makes rules regarding ratification/ratification and states:

a. President enters into and ratifies treaties and other agreements with other countries. Unless otherwise stipulated by law, the agreement or other agreement is not ratified, but after it has been approved by law.
b. Entering into and terminating other agreements and agreements, is carried out by the President with the power of law.

The above provisions of the RIS constitution and the 1950 Constitution are more explicit and detailed stipulating the President's authority in entering into and ratifying (ratification) international treaties, including matters relating to accession into and terminating (termination) an international agreement or agreement.[57] It's just that the two rules on ratification distinguish the meaning of treaty and agreement, even though the two rules agree that the ratification of international agreements/approvals must first be approved by the DPR. The 1945 Constitution does not mention the difference between a treaty and an agreement, while the RIS Constitution and the 1950 Constitution clearly distinguish them.

Furthermore, Law No. 24/2000 distinguishes the ratification of international agreements carried out by law and the ratification of international agreements through Presidential Decrees.[58] International law distinguishes the term treaty from agreement. Approval is only used in matters of a technical/administrative nature which tend not to require ratification.[59] The international legal basis for ratification is contained in Article 11 of the 1969 Vienna Convention which states "The consent of a state to be bound by a treaty may be expressed by signature, exchange of instrument constituting a treaty, ratification, acceptance, approval or accession or by any other means if so agreed".

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[57] *ibid.*[33-34].
[58] Pasal 10 dan Pasal 11 UU No 24/2000.
[59] Suryono (n 57).[35].

In addition to these provisions in international law, there is also a basis for ratification as stated in Article 43 sub 3 of the United Nations Charter which states "The Agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and groups of members and shall be subject to ratification, by the Signature State in accordance with their respective constitutional processes".

In addition, similar provisions are also contained in Article 120 of the ILO Convention, that "Conventions made under the administration of the ILO must obtain ratification from the governments of the countries participating in the Conference before this Convention comes into force for those States".[60]

Differences between Ratification and Accession to International Treaties

In the practice of international treaty law, generally every agreement that is substantial in nature is ratified through ratification, acceptance, and approval, in accordance with Article 14 of the 1969 Vienna Convention. This means that international treaties are bound by means of ratification, acceptance or approval. However, in practice, international treaties have entered into force on the date the agreement is signed even though it has not gone through the ratification, acceptance and approval process. This fact shows that it is not a legal obligation to ratify every international treaty. This difference can be seen in the cases of the Anglo Japanese Treaty of 1905 and the European Peace Treaties of 1947, where Finland, Bulgaria and Italy ratified, while Hungary and Romania did not ratify.[61] Even more controversial about this ratification is the provision in Article 94 of the International Civil Aviation Organization which "provides that, in recommending the adoption of an amendment, the Assembly may provide that a Member which has not ratified the amendment within a specified period shall cease to be a Member".

[60] *ibid.*[36].

[61] Chairul Anwar, *Hukum Internasional,Pengantar Hukum Bangsa- Bangsa* (Djambatan 1989).[76].

The provisions of the article will temporarily suspend member countries that have not ratified.[62] In certain circumstances, dismissal can be carried out, as stated by Bowwet:

> In the second category the dilemma is posed that the Member has not agreed to be bound except with its consent, and yet in practice it is unwise to admit that any one Member can either veto an amendment or remain a Member under the terms of constitution. In such a case withdrawal should be permitted, and probably compelled.

However, in fact, the Convention separates ratification, acceptance and approval from accession, and is separated in two different articles.[63] This separation in the Convention is due to reasons of different meaning and substance,[64] because the purposes of the two articles are very different as well as their implementation. Likewise, each country in ratifying has in mind the interests of their respective countries,[65] while the ratification of the Convention under Article 14 and Article 15 means a deal to be bound by the treaty expressed by ratification, acceptance, and approval under Article 14. An agreement to be bound by the treaty expressed by accession (participating) is regulated in Article 15. Both are, in principle, an agreement to bind themselves in an international agreement. However, the Convention does not specify the definition of each of these terms. So it is often equated only/together with the terms acceptance, agreement, and participation (accession).

Accession (to participate) as a party to the agreement is a translation of "becoming a party to an international agreement". The term "participation" is used, and the term "ratification" is not used. Because in international treaties it is known that there is a process of participating in international treaties with ratification and

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[62] DW Bowett, *The Law of International Institutions* (Steven & Sons Ltd 1967).[319].

[63] Vienna Convention on the Law of Treaties 1969.

[64] Hilman Hadisusuma, *Indonesian Legal Language* (Alumni 1992).[99] stated: The word 'valid' means that it is according to the applicable law, while 'invalid' means it is not according to law, 'validate' means to make legal or declare valid, 'ratification' means that the recognition is valid or the act legitimizes. Thus, the validity of the agreement means how or whether the agreement made according to the applicable law, while valid agreement means an agreement that is according to applicable law.

[65] Compare this with the Opinion of Parthiana (n 39).[117].

participating in international treaties without the need for ratification.[66]

However, in Law No. 24/2000 there is no provision for such a distinction or separation where there is participation with ratification and participation without the need for an act of ratification (known as accession). So that the potential is to create a legal (*vacuumvacuum recht*) regarding the agreement to bind oneself to the agreement stated by participating (accession). Although Indonesia has not ratified the 1969 Vienna Convention, in international practice it remains a guideline in making international agreements (ratification and accession).

Based on that, it is necessary to correct the implementation of the Convention into Law No. 24/2000 because it is not logical, considering the 1969 Vienna Convention distinguishes the legal conception between ratification and accession, both procedural, nomenclature, substance and legal concept. In accession, after a country sends its charter of accession to the depositary, the country immediately becomes a party to the treaty.[67] Not so with ratification; there are several stages starting from negotiation, signing, to ratification. Even a protocol accepted at the Berlin Congress in 1878 stated that, "Congress considers ratification and not only signatures that give legal force to treaties".

The views of several experts stated the definition of accession:

1. Brownlie gives the opinion that accession, adherence, or adhesion, occurs when a state which did not sign a treaty already signed by other states, formally accepts its provisions.[68]
2. Starke states that, in practice, when a State has not signed a treaty, it can only accede or adhere to it.[69]
3. Wayan Parthiana in his comments on Article 14 and Article 15 of the 1969 Vienna Convention, states that an agreement bound to a treaty is declared by

[66] Hikmanhanto Juwana inasjim Djalal's, *Archipelagic State Towards a Maritime State, Consequences of Indonesia's Participation in International Agreements* (Indonesian Marine Institute with Inn Hill Co 2010).[201].

[67] *ibid.*[122].

[68] Brownlie (n 56).[612].

[69] Starke (n 7).[484].

accession if:

a. First, the treaty itself stipulates that the treaty itself in one of its articles states that the agreement can be declared by means of accession;
b. Second, if on the contrary it is determined that the negotiating countries have agreed that the agreement to be bound is declared by that country by way of accession; and
c. Third, if all parties to the agreement subsequently agree that the agreement can be expressed by means of accession.

Tsani stated that accession and adhesion is a "way to declare the state's attachment to international treaties available to countries that do not participate in the making of international treaties".[70] Based on the above understanding, the notion of accession is a way of expressing relevance in an international agreement for a country that does not participate in signing an international agreement, thus the purpose of doing this accession method is so that every country, both not involved and involved in an international agreement, can be bound by a treaty. Agreements with countries in the world, he stressed, wanted to expand the implementation of international agreements.

As previously stated, the Indonesian government in its national law does not affirm that ratification is carried out by means of accession, so that the legal position (*vacuum recht*) has the potential to cause an international agreement made by the government (the President) which will have legal consequences in the future. Understanding this fact, it is better to explain the legal concept of ratification and accession.

Conclusion

There are differences in the concept of ratification in Law No. 24/2000 with the 1969 Vienna Convention. Under the concept in the 1969 Vienna Convention, in accordance with the original intent, ratification is only to confirm the participation

[70] Mohd Burhani Tsani, *Hukum Dan Hubungan Internasional* (Liberty 1990).[78].

of the state in international treaties. Differently, Law No. 24/2000 distinguishes between internal and external ratifications.

Law No. 24/2000 is also not in accordance with the intent in the 1969 Vienna Convention. Law No. 24/2000 which only explains the rules of ratification, while the 1969 Vienna Convention divides ratification, acceptance, approval and accession.

As such, this article suggests Law No. 24/2000 to retrace the basic concept or idea of ratification such as the meaning contained in the 1969 Vienna Convention. In this regard, ratification must be distinguished from accession because of its different procedures and nature (multilateral and bilateral).

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