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The Courts and Treaties: Indonesia's Perspective

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Abstract

This article discusses the enforceability of treaties under Indonesian legal system. The purpose of this article is to explore and provide answers to the following questions: (i) whether or not international law may be directly invoked and enforceable under domestic legal system (ii) how and to what extent Indonesian courts are using international law especially the treaties. In providing analysis to the above questions, this article discusses the notion of courts and judicial competence and judicial attitude towards treaties. This article suggests that there is no doubt that the courts may apply treaty provisions to the case at hand without and by virtue of national legislations. However, the attitude of the courts towards treaties as demonstrated in a number of cases above does not reveal any clear indication on the question of the status of treaties under domestic law especially with regard to the method on how the legal system incorporates treaties under domestic law. The Court decision has therefore not yet contributed to the attempt for seeking a legal determination of the domestic status of a treaty as well as the mode for granting its domestic validity.

Keywords: domestic validity, Indonesian perspective, monism and dualism, status of treaties, treaty practices.

Pengadilan dan Perjanjian Internasional: Perspektif Indonesia

Abstrak

Artikel ini membahas mengenai pemberlakuan perjanjian internasional dalam sistem hukum Indonesia. Tujuan dari artikel ini adalah untuk mengkaji dan memberikan jawaban atas pertanyaan-pertanyaan berikut ini: (i) apakah hukum internasional dapat secara langsung dijadikan rujukan dan berlaku dalam sistem hukum domestik; (ii) bagaimana dan sampai mana pengadilan Indonesia menggunakan hukum internasional khususnya perjanjian internasional. Dalam memberikan analisis terhadap pertanyaan-pertanyaan diatas, artikel ini membahas perihal pengadilan dengan kompetensi yudisialnya, dan perilaku yudisial terhadap perjanjian internasional. Artikel ini berkesimpulan bahwa pengadilan dapat menerapkan langsung perjanjian internasional terhadap perkara. Namun demikian praktik pengadilan dalam beberapa perkara yang

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terkait dengan perjanjian internasional belum memberikan indikasi yang jelas tentang kedudukan hukum perjanjian. Putusan Pengadilan oleh karena itu belum berkontribusi dalam upaya untuk mencari determinasi hukum terkait status domestik dari suatu perjanjian internasional dan cara pemberlakuan suatu perjanjian internasional dalam hukum domestik.

Kata kunci: *monisme dan dualisme, praktek perjanjian internasional, perspektif Indonesia, status perjanjian internasional, validitas domestik.*

A. Introduction

Are Indonesian Courts bound by a treaty to which Indonesia is a party? Are its judges free to apply international rules? These simple questions are unfortunately encountered with legal difficulties. Although Indonesia inherits the monist-tradition of the Dutch colonial power (the tradition of which all binding treaties are always domestically applicable before the courts), the question of enforceability of treaties is still open under the current Indonesian legal system, which is far from certain. Neither constitutional provisions nor legal doctrine is yet satisfactory in dealing with this compelling question.

It has been traditionally argued that domestic courts find obstacles in the way of direct application of international law because of the notions of state sovereignty, separation of powers and the principle of legality[1] under dualist pretext over the relationship between international law and domestic law. Nevertheless, using international law in domestic courts under modern legal jurisdiction has widely been accepted. Even in that dualist legal system, where international law is relatively isolated from domestic law, the use of international in deciding the case, albeit in various modes, has been a common practice.[2]

Constitution of 1945 as recently amended including existing legislations, state practices, as well as legal doctrines, are still silent on the question whether or not international law may be directly invoked and enforceable under domestic legal system. Therefore this article attempts to explore whether the answer to the question is there and available in Indonesian judicial attitudes. How and to what extent Indonesian Courts make use of international law especially treaties in deciding cases before it would be the central focus with a view of finding the general trend, if any, with regard to mentioned-above question.

B. Courts and the Judicial Competence

On the basis of the *Rechtsstaat* principle, judicial powers are set up distinct from other state powers. Article 24 A of the 1945 Constitution of the Republic of Indonesia rules that the judicial powers shall be independent with the authority to organize the judicature in order to uphold law and justice. Under the present Constitution, the judicial powers are vested in two distinct courts and one commission:

(a) The Supreme Court
(b) The Constitutional Court
(c) The Judicial Commission

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[1] Ferdinandusse, Ward, *Direct Application of International Criminal Law in National Courts,* Assers (2006), 221-268.

[2] Under dualist legal system, international law should be transformed into domestic law in order to be available before the Courts. Nevertheless, some juridical techniques have developed so that the Courts may apply international law as if international law was directly applicable, see Fatimah, Shaheed, *Using International Law in Domestic Courts*, Oxford (2005).

It is just recently that the courts are becoming independent as well as impartial. The present independent and impartial status of judicial institutions is also encouraged by a strong public call following the political reform since 1998. Before the reform, as envisaged by the previous Law No. 14 of 1970 on Justice, the courts were under administrative control of the Ministry of Justice (executive) thus leading to the so-called 'two hat' controversy[3] whereby judges had two authorities they had to answer to, i.e. to the Minister of Justice for administrative matters and to the Supreme Court for substantive matters. This created doubts on their independence and impartiality. Following the constitutional reform in 2000, as affected by the Law No. 48 of 2009 on Judicial Powers, the Supreme Court and the newly set-up Constitutional Court in 2004 have become independent judicial institutions and take care of their own organization, administrative matters as well as budget.

As Indonesia is rooted in the civil law tradition, and apparently prefers to remain in that tradition, the courts are not bound by the previous decisions of the courts (precedence). However, consideration to the courts' decisions are very significant to be paid for, as it can explains how the norms are operating and applied in a concrete case.

C. Attitude towards Treaties

1. Introductory Remarks

Cases arising directly from the question of the domestic status of treaties in Indonesia are still rare, partly because the domestic law relating to treaties is not yet well developed and there was small legal interest in the Indonesian legal system to have it being developed. Consequently, the courts have not yet been enthusiastic to express their perception towards the domestic status of treaties and therefore have hardly indicated any direction and trend with regard to the question.

From the various interviews with the Indonesian judges and legal practitioners, a small group of judges have held an approach that treaties have been transformed into domestic law by virtue of the laws approving the treaties and will treat them as binding laws.[4] No trend in the case law however convincingly supports this approach. Most judges apparently show indifference towards treaties. The acknowledgement in the legal theory as taught in Indonesia, that treaties are sources of law, apparently does not have any effect to the manner the courts treat and give weight to treaties. According to the prevailing law, treaties are still outside the recognized sources of law in Indonesia and are hardly acknowledged as what the theory dictates. Even to the judges that have good knowledge of international law, treaties are not more important than the laws.[5] Another group of judges recognize the binding force of treaties but in the same vein their application is contingent to the implementing legislations, and will only refer to the treaty provisions if the domestic legislations are not sufficiently clear.[6]

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[3] Timothy Lindsey, 'Indonesia, Reinventing a Legal System, Too Much, Too Little, Too Late', in Alice Tay (ed.), *East Asia, Human Rights, Nation-Building, Trade* (1999), 519.

[4] Hadhyono, Suparti, 'Praktek Penerapan Perjanjian Internasional dalam Putusan Hakim (Treaties under National Court)', *Focus Group Discussion,* Ministry of Foreign Affairs of Republic of Indonesia-Law Faculty of University Airlangga Surabaya (2008).

[5] Interview with Judge Nameandriani Nurdin, Chief of District Court of Central Jakarta, 7 May 2011 (unpublished, on file with author).

[6] Inteview with Supreme Court Justice, Professor Mieke Komar Kantaatmadja, 28 February 2011 (unpublished, on file with author).

However, there are recently a growing number of court decisions that touch upon and make either direct or indirect reference to treaties. Jurisprudence making reference to treaties is in most cases closely related to globalization related treaties, such as trade and human rights. The Supreme Courts and the Constitutional Courts have recently used provisions of treaties for various purposes, ranging from merely supporting their legal arguments, seeking clarification for interpreting unclear legal principles and provisions, to more authoritative one by invoking them as legal norms. Treaties to which Indonesia is bound have been invoked in most cases before the courts not only as a tool of interpretation for domestic legislation but also for their application to the particular cases. Likewise, the respective party to the case has also attempted to explore and develop arguments on the basis of the provisions of treaties and made necessary references to all resources available within the province of international law.

The establishment of the Constitutional Court has contributed to a growing number of cases relating to international law because it deals mostly with the judicial review of statutes/laws against human rights provisions of the Constitution in which many relevant treaties are closely involved. Although the Constitutional Court does not directly deal with the conflict between the provisions of domestic laws and treaties, it seeks reference from treaties as aids to interpretation to ensure that the constitutionality of the law shall also conform to international law. The Court therefore interprets laws before it in the manner that they are not in conflict with the rule of international law.

To date no case has been reported concerning claims in whole or in part based directly and independently on the provisions of treaties, or reviewing the legality of national acts in the light of treaty obligations or concerning interpretation and application of treaty rules. The Supreme Court as well as the Constitutional Court at the present stage generally apply provisions of a treaty in the context of, and connected with, the application of domestic provisions. They normally use treaties as tools of interpretation to the issue arising from the provisions of domestic legislations. The mainstream approach still puts emphasis on domestic provisions and will refer only to treaties if the domestic law is not clear with regard to the given case or an additional clarification is still required to clarify a vague domestic legal concept.

2. Survey of Judicial Practice

a. Guiding Principle in the Constitutional Court *(Mahkamah Konstitusi)*

The Constitutional Court has established a guiding principle underlying the use of international law in deciding a case. In a case concerning judicial review of the blasphemy law involving religious freedom, the Constitutional Court holds that the compliance of Indonesia to international law including treaties is characterized by, and shall be in accordance with, the philosophy of the state as well as the Constitution.[7] It impliedly suggests that the Constitution is supreme to international law.

b. Treaty Rules applied as authoritative

There is a number of cases that are directly concerned with the application of the provisions

[7] MK, case No. 140/PUU-VII/2009, 275.

of a treaty to a dispute. The Supreme Court, which mostly deals with private cases, encountered cases relating to intellectual property rights, for which appropriate treaties are relevant. In its decisions in 1990 the Court invoked international obligations of Indonesia arising from the Paris Convention for the Protection of Industrial Property of 1883 to which Indonesia is a party.[8] The Court made a ruling by applying the provisions of the Convention. In a number of similar cases, the Supreme Court has applied the provisions of treaties particularly concerning the protection of so-called well-known trademarks as stipulated in the Paris Convention and the Agreement on Trade Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS) to which Indonesia is a party. In a trademark dispute,[9] where the Court was requested by a party to annul a registration of a well-known trademark by another party, the Supreme Court applied Article 6 *bis* of the Paris Convention for the Protection of Industrial Property which led to a decision in favour of the requesting party.

As an archipelagic state comprising a huge economic exclusive zone, Indonesia encounters an increasing number of cases on illegal fishing in the zone. The cases before the courts mostly involve the relevant provisions of the UNCLOS 1982 which are applicable in the zone. In a number of cases, the Supreme Court cites Article 73 (3) of the UNCLOS 1982 concerning the prohibition of imprisonment for the violations of fisheries law in the zone.

In *Yu Yuen Jun*[10] and *Lao Chong*[11], decided respectively in 2007 and 2009, albeit contended by the defendant on the basis of Article 73 (3) of the UNCLOS 1982, the Supreme Court ignored the prohibition contained in the Convention and kept imposing imprisonment without any legal clarification why the Court was not bound by the treaty provision. The compliance to the provision has been increasingly held in the subsequent cases. In the *Bui Ngoc Sanh* case decided recently in 2012, a captain of a Vietnamese fishing ship was arrested on the allegation of illegal fishing within the economic exclusive economic zone of Indonesia in Natuna Sea. The Court of first instance (District Court) endorsed a punishment with 6 month in jail. The defendant brought the case to the Higher Court by invoking Article 73 (3) of the UNCLOS 1982. The Higher Court then held:

According to Article 73 (3) of the UNCLOS 1982 or Article 73 (3) the Law No. 17 of 1985, it is prohibited to impose imprisonment for violations of fisheries law in the exclusive economic zone…therefore the Judgment of the Court in the first instance should be corrected to the extent of the penalties imposed to the defendant…[12]

The Compliance to the provision of the UNCLOS in a similar case in 2012 continues to be held, where fines were imposed to the defendant without involving imprisonment by making reference to the provision of the Convention.[13]

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[8] Supreme Court Cases on Knirps (1991), Gucci (1992), Giordano (1994), see Sudargo Gautama and Rizawanto Winata, *Pembaharuan Hukum Merk Indonesia: dalam Rangka* WTO, TRIPS (Reform of Trademark Laws in Indonesia with Respect to WTO, TRIPS) (1997), 372.

[9] MA, *Subway case,* No. 736 K/Pdt.Sus/2009, 12-13.

[10] MA, *Yu Yuen Jun,* No. 893 K/Pid/2007.

[11] MA, *Lao Chong,* No. 1596 K/Pid.Sus/2009.

[12] PT Pekanbaru, Bui Ngoc Sanh, No. 66/Pid-Sus/2012/PTR, 7.

[13] PT Pontianak, Le Van Thong, No. 104/Pid.Sus/2012/PT.PTK, 11; PT Pontianak, Nguyen Van BE, No. 195/PID.SUS/2012/ PT. PTK, 11/. However, in a similar case, the Higher Court of Pekanbaru while acknowledging the prohibition of imposing inprisonment

Apart from cases concerning violations of fishing law in the economic exclusive zone, there was also a case arising from the application of provisions of the UNCLOS 1982 concerning the right of innocent passage in territorial sea. In the *Chen Guo Ping case*, a captain of a Chinese fishing ship who was accused of illegal fishing in the territorial sea of Indonesia in the Aru sea, was released by the District Court in Timika on the account that there was no evidence to prove that the defendant was only exercising innocent passage and nor prove that the defendant violated the fishing law. In the appeal proceeding, the prosecutor built up arguments invoking the relevant provisions of the UNCLOS 1982 and arguing:

> "*The Court of first instance has wrongly understood the meaning of innocent passage. It should have considered other relevant rules pertaining to the issue and in this regard what it should mean according to the UNCLOS 1982 which has been ratified by the Law No. 17 of 1985 and the Law No. 6 of 1996 concerning Indonesian Waters. One of the activities that is prohibited by Article 19 (2) the Law No. 17 of 1985 concerning Ratification of the UNCLOS 1982 is fishing. According to the Convention, ships while exercising innocent passage shall stow their fishing gear and equipment. It is evidenced from the witnesses that upon the arrest the fishing gear and equipment were not stowed, and one ton of fishes were found in the vessel.*"[14]

Unfortunately the Supreme Court did not reach the merits of the case where it could otherwise pronounce some ruling concerning the meaning of innocent passage under the Convention because it rejected the appeal on the ground of procedural constraint, under which the prosecutor could not bring the case for appeal because in the Court of first instance, the defendant was unconditionally released from the charge. Under the procedural law, the Supreme Court could only accept the appeal if the judgment of the Court of first instance does not amount to unconditional release. Had the Court of first instance released him under specific conditions, the Supreme Court should have dealt with the merits of the case.

The Court of first instance in Jayapura gave due regard to treaties in general in a case concerning the imprisonment of a 15 year old child that committed a crime. The Prosecutor charged the child for criminal offence and asked the Court to impose imprisonment. The Court held that:

> *In deciding the sentence, the Court should take into consideration international conventions concerning the rights of child as well as the laws concerning child protection. In this regard, taking into account that the defendant is still teenager and attending junior school, especially having due regard that prison devoted for children is not yet available in this region, the imprisonment sentence will*

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has pronounced that a sort of short detention *(pidana kurungan)* may also be applied. The Court argued that accroding to the classification under article 10 of Indonesian Criminal Code (KUHP), pidana kurungan is another kind of penalties and is not *pidana penjara* ('inprisonment") meanwhile the prohibition envisaged by the Fisheries Law confines only to *pidana penjara*. It appears that the Court has interpreted the Criminal Code in a manner so that the outcome would be incompatible with the article 73 (3) of the UNCLOS because pidana kurungan is also a form of corporal punishment, which is prohibited by the Convention, se PT Pekanbaru, *Tran Huu Tuyen,* No. 52/PID.SUS/2012/PTR.

[14]MA, *Chen Guo Ping*, No. 232 K/Pid.Sus/2007, 5-7.

negatively affect the physiological development and the future of the defendant…. The Court therefore, while finding that the defendant is guilty, decides to return the defendant to his parent.[15]

The Supreme Court directly applied the Vienna Convention on Diplomatic Relations to cases involving and affecting foreign embassies. In two separated cases concerning the land title of the diplomatic premises used by the Embassy of Saudi Arabia[16] and Malaysia[17], private persons brought claims that the lands used by the two embassies belonged to them and asked the Court to annul the land certificates that had been issued by the Government for these embassies. In the two cases, the Supreme Courts rejected the claim of the applicant on the ground of diplomatic immunity and inviolability of diplomatic premises as stipulated in Articles 29 and 30 of the Vienna Convention on Diplomatic Relations 1961.

Although the judgments are not free from criticism on a different ground,[18] the Supreme Court appears to apply directly the provisions of the Convention without necessarily having examined whether or not there exists domestic legislation that give domestic effect to the Convention. Until today, Indonesia has no domestic law or regulation concerning diplomatic immunities apart from Law No. 1 of 1982[19] approving/ratifying the Vienna Convention and has granted such immunities on the basis of that Convention.

The question of self-executing provisions of a treaty has been raised in a number of cases. In a case concerning intellectual property rights,[20] the requesting parties asked the Supreme Court to apply the Paris Convention by arguing that the Convention in this regard is self-executing. Although the Court decided in favour of the requesting party by which the outcome of the decision confirmed such protection on the basis of a well-known trademark, it failed to address the question whether the Convention itself is self-executing. The decision of the Court was made merely on the technical ground that the Court of first instance has made a wrong measure in the proceeding by rejecting the copy of evidences, a legitimate proof before the Court, although it had been properly legalized. The Court did not consider it necessary to address questions such as whether it is bound to apply treaties ratified by Indonesia nor has it determined whether the Paris Convention is self-executing.

In the recent case concerning the constitutionality of the ASEAN Charter, the Constitutional Court identifies that Article 1 (5) of the Charter, which establishes an ASEAN free trade area and which is claimed by the

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[15] PN of Jayapura (Court of first instance Jayapura), *Yanuar Kayoan Umaf case*, No. 65/Pida.B/2012/PN-JPR.

[16] MA, *Arabic Saudi case,* Fatwa No. WKMA/Yud/04/2006.

[17] MA, Malaysia Embassy case, No. 111K/TUN/2000.

[18] It has been argued that the Court should have distinguished between the question on land title, which pertains land law, and the enjoyment of diplomatic immunity. The question whether or not an embassy acquires a good title to land is exclusively determined by land law and has nothing to do with, and shall be distinguished from, the question of diplomatic inviolability. The good title to land of an embassy must be presumed as enjoying diplomatic inviolability, see Agusman, Damos Dumoli. Hukum Perjanjian Internasional, Kajian Teori dan Praktik di Indonesia (Law of Treaties, Theories and Practice in Indonesia). Bandung: Refika Aditama (2010), 6.

[19] Law No. 1 of 1982 concerning Vienna Convention on the Diplomatic Relations and Vienna Convention on Consular Relations, 25 April 1982, LN (Official State Gazette No. 2/1982).

[20] MA, *Lexus case,* No. 194 K/Pdt.Sus/2011, 6-14.

applicants as violating the Constitution, could not be automatically effective[21] because the next paragraph of the Article (Article 1 (6)) stipulates that: *Member States shall take all necessary measures, including the enactment of appropriate domestic legislation, to effectively implement the provisions of this Charter and to comply with all obligations of membership.* It may be implied from this particular decision that a treaty norm is non-self executing if the wording of the norm so indicates. It confirms that the Court does not invoke a dualist pretext to deny the self-executing nature of a treaty norm.

On the other hand, the Supreme Court has also applied a provision which is clearly non-self-executing by virtue of its merits. In a case concerning industrial design[22] where the Supreme Court was requested to revoke the registration of an industrial design on the ground that the design was not new, a provision of the TRIPS Agreement that is clearly non-self executing[23] was apparently invoked. It held that:

According to Article 2 (2) of the Law No. 31 of 2000, Industrial Designs are regarded new when on the date of registration it was not similar to ones that existed before. According to Article 25 (1) of the Agreement on Trade Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods designs are not new or original if they do not significantly differ from known designs or combinations of known design features.

Contrary to the cases above, in some exceptional cases the Supreme Court has denied the application of a treaty to which Indonesia is a party. The Court of first instance in the *Apriliany Case*[24] concerning the liability of air carriers for luggage lost, which was eventually confirmed by the Supreme Court, declined to apply the provisions on liability of the Warsaw Convention 1929 for the Unification of Certain Rules Relating to International Carriage by Air on the account that the application of the provisions of the Convention to this particular case would create unfairness in Indonesia. The Court, while acknowledging the provisions of the Convention as applicable rules to the case, preferred to apply domestic rules in order to obtain a more fair outcome.

The case of *PT. Nizwar v. Navigation Maritime Bulgare* (NMB) in 1981 is a controversial landmark case, which involves directly a question of domestic status of a treaty, i.e. the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, which the Supreme Court declined to directly apply. The case concerned the enforcement of foreign arbitral award in Indonesia where NMB, the winning party, attempted to seek its execution under Indonesian jurisdiction. The Court of first instance on 10 June 1981 granted the request for the enforcement of the arbitral award on the ground that Indonesia was bound by the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 by virtue of

[21] MK, No. 33/PUU-IX/2011, Judicial Review of Law No. 38 of 2008 concerning ASEAN Charter, 189.

[22] MK, *Industrial Design case*, case No. 022 K/N/HaKI/2006, 20.

[23] Article 25 (1) TRIP's Agreements states that Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations. By the wordings of the provision is clearly non-self-executing because it only recommends member states to provide that designs are not new or original by which domestic legislation for that effect is inevitably necessary.

[24] MA, *Apriliany case* No. 970 K/P-dt/2002, 13.

state succession principle from Dutch colony.[25] The Supreme Court overruled the decision of the Court of first instance and rejected the assertion that Indonesia was bound by the Geneva Convention of 1927 by holding that in principle and according to Indonesian jurisprudence foreign court judgments cannot be enforced in Indonesia unless there is agreement between Indonesia and the foreign state concerning the enforcement of foreign judgments. The Court further rejected the state succession principle by arguing that despite Indonesia being bound by the state succession agreement by virtue of Article 5 of the 'Round Table Agreement 1949' between Indonesia and the Netherlands, this did not necessarily mean that Indonesia is bound by treaties to which the Netherlands was a party. The reason invoked by the Court was that the treaty was concluded when the world was dominated by colonial powers and therefore the state succession principle was a product of the situation. Apart from these rulings, the Supreme Court also endorsed its views concerning the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, which was ratified by Indonesia by means of Presidential Decree No. 40 of 1981 on 5 August 1981 when the Court examined the case. The Court, however, deemed it necessary to express it in order to render certainty towards the New York Convention. The Court held that:

The denial to the request for the recognition of enforcement of foreign arbitral award is due to the fact that the implementing legislation concerning foreign arbitral award is not yet enacted. Therefore, the Supreme Court should wait for the enactment of the implementing legislation in order to recognize and enforce the foreign arbitral award.[26]

The Supreme Court judgment on this case immediately invited criticism from various scholars. Some scholars indicated that the Court attitude towards the New York Convention reflects the dualist approach.[27] The prominent scholar on private international law, Sudargo Gautama, argued, *inter alia*, that implementing legislation is not necessary because the fact that Indonesia is bound by the Convention by the enactment of Presidential Decree No. 40 of 1981 sufficed to provide legal basis for the enforcement. In this regard he further argued that the Presidential Decree ratifying the Convention renders it self-enforcement effect.[28] T.M. Radhie tried to explain the Court's rejection on the basis of the non-self-executing nature of the Convention but finally he found the Convention was self-executing.[29] The scholarly debate on the self-executing status of this question was not properly developed and unfortunately acquired no further response from other scholars. The controversy over the status of the Convention was resolved after the

[25] The succession arrangements were agreed upon under Article 5 of the 'Round Table Agreement' 1949 between Indonesia and the Netherlands, under which all rights and obligations to the Netherlands arising from treaties to which it was a party continue to be applicable to Indonesia, see Ko, Swan Sik, The Indonesian Law and Treaties 1945-1990, Dordrecht, Boston, Norwell: Kluwer Academic Publishers (1994), 20.

[26] MA, *PT. Nizwar v. Navigation Maritime Bulgare;* The overview concerning the case may be found in Noah Rubins, 'The Enforcement and Annulment of International Arbitration Awards in Indonesia', 20 *American University International Law Review* (2005) 2, 359-401.

[27] Fifi Junita, 'Experience of Practical Problems of Foreign Arbitral Awards Enforcement in Indonesia', 5 *MqJBL* (2008), 384-385.

[28] Gautama, Sudargo, *Hukum Dagang dan Arbitrase Internasional* (Trade Law and International Arbitration), Bandung: Citra Aditya Bakti (1991), 2.

[29] Radhie, T.M, "Konvensi New York tentang Pengakuan Pelaksanaan Putusan Arbitrase Luar Negeri (New York Convention on Enforcement of Foreign Arbitral Awards)", *Working paper delivered at Dispute Resolution through Arbitration Seminar,* Jakarta (1990), 24.

Supreme Court endorsed the Supreme Court's Regulation No. 1 of 1990, which laid down administrative procedures on how the foreign arbitral award was enforced by the Court. It prescribed that the exequatur was required from the Supreme Court for the foreign arbitral award to be enforced and it might be requested through the District Court in Central Jakarta. Since then, the debate on this particular issue in light of monist-dualist perspective is fading away.

The legal reasoning of the Supreme Court did not properly address the question why it still required implementing regulations. It was not clear whether the implementing regulations was required in order to make the Convention become part of Indonesian law (question of domestic validity of the Convention) or just to enable the provision of the Convention executable (question of non-self executing provisions). However, in the preamble paragraph of the regulation it was stated that the existing procedural law was still absent concerning execution of foreign arbitral awards. The fact that the merely administrative procedure could enable the Convention to be domestically enforced suggests that the problem underlying the non-enforceability of Convention at that time was merely the lack of administrative procedures as required by Article III of the Convention.[30] If it is the case, it became closely related to the doctrinal problem associated with the controversy of self-executing or non-self-executing question debated in the United States and the states of the European Union. It might be presumed that the Supreme Court did not actually deny the domestic validity of the Convention by virtue of Presidential Decree but simply could not execute the foreign awards because of the lack of procedural rules. In terms of legislation, the Supreme Court's regulations are hardly carrying legislative weight and therefore could not be regarded as giving effect to transformation/ adoption of the Convention into domestic law.

The suggestion that the Supreme Court does actually not deny the domestic validity of the New York Convention finds clearer expression in a number of cases[31] involving the Convention concerning the request for the annulment of the arbitration award. In the recent case, the Supreme Court applied directly the provision of the Convention concerning the annulment of foreign arbitral awards, by stating:

> *"The New York Convention of 1958, which has been ratified by the Presidential Decree No. 34 of 1981 and therefore has become the norm of national law, has stipulated that the annulment of the arbitral awards may only be done in the state or according to the law where the award was granted."*[32]

In a number of cases the courts have encountered questions concerning the application of treaties to the given cases to which they have not delivered clear judgments. The parties to the various disputes have attempted to raise important legal arguments which have given the courts the opportunity

[30] Article III New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958: 'Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles.'

[31] PN of Jakarta (Court of Jakarta District), *Karaha Bodas vs Pertamina case* No. 86/PDT.G/2002/PN.JKT.PST, 21-22; MA, *PT Raya Nusantara v. PT Jambi Resources Ltd,* 64 K/Pdt.Sus/2010, 43.

[32] MA, P*T Raya Nusantara v. PT Jambi Resources Ltd,* 64 K/Pdt.Sus/2010, 43.

to reveal their attitude towards the status of treaties under Indonesian law. Unfortunately, the courts have not yet used the opportunity for making any ruling in this regard. Instead, the courts have commonly escaped from addressing the question by invoking procedural matters. In the case concerning religious freedom mentioned above, the independent expert from the requesting party asked the Constitutional Court to make a ruling that the Constitution shall be adjusted if it is in conflict with treaties. The Court, however, declined to make such a ruling by arguing that the power to amend the Constitution is vested in the People's Consultative Assembly. The Court argued that it was only empowered to review the laws against the Constitution and not authorized to review the Constitution.[33]

In a case concerning judicial review of the status of Circular Letter of the Cabinet of 1967, which stipulates the changing terminology used for China, from the word 'Tionghoa' to be 'Cina', the requesting party asked the Court to hold that the Letter violated the Law No. 29 of 1999 approving/ratifying the International Convention on the Elimination of all Forms of Racial Discrimination. The Court, however, declined to make a ruling on this question on the procedural ground by arguing that the time limit for the application of such judicial review had elapsed because the prevailing rule of procedure of the Court prescribes that the date line for a law to be submitted for judicial review shall be not longer than 180 days from the date of its issuance.[34]

The Supreme Court has also been silent on the public controversy involving the question of the application of treaties. The question on the legality of using one of the accused as a 'crown witnesses' against another accused under the same criminal charge was one of the issues in public debate[35] which has been brought to the Court as violating the provision of the ICCPR. Albeit not expressly prohibited under the current criminal procedure code, the practice of examining crown witnesses has been allowed by the Supreme Court and received severe criticism because it amounted to self-incrimination whereby the unfortunate situation compels a person to testify against himself or to confess guilt. In a number of cases[36] it was submitted before the Supreme Court that the use of one of the accused as a crown witness to testify against another accused in the same criminal charge was in violation to Article 14 (3) (g) of the ICCPR to which Indonesia has already been a party. The Supreme Court, however, was reluctant to address the issue and as result the practice continued unchallenged in various subsequent cases.

The courts are also ambiguous in determining the legal weight of treaties. In a case on judicial review concerning the Law No. 3 of 1997 concerning Child Court,[37] the Constitutional Court dealt with the question of the binding nature of treaties. In this case, the applicant requested the Court to annul, *inter alia*, Article 4 (1) of the Law No. 3 of

[33] MK, case No. 140/PUU-VII/2009, 275, 293.

[34] MA, *Circular Letter of the Cabinet* 1967, case No. 42 P/HUM/TH. 2006.

[35] Setiyono, *'Eksistensi Saksi Mahkota sebagai Alat Bukti dalam Perkara Pidana'* (Existence of Crown Witness as Evidence in Criminal Cases), 5 Lex Jurnalica (2007) 1, 29-37; Adi Andojo Soetjipto, *Menyongsong dan Tunaikan Tugas Negara Sampai Akhir: Sebuah Memoar* (Carry Out and Exert State's Tasks till the End: A Memoir) (2007), 167.

[36] MA, *Ferry case,* case No. 72 PK/Pid/2010, 43; MA, JUN HAO case, case No. 143 PK/Pid.Sus/2011, 50.

[37] MK, case No. 1/PUU-VIII/2010, Judicial Review of Law No. 3 of 1997 concerning Child Court, 113.

1997, which determined that eight years old is a minimum age for a child to be eligible to be tried before the court. The applicant argued that such minimum age is not compatible with the minimum age determined by international legal instruments and a number of the UN recommendations. In the proceedings, the Government made the following proposition:

> *"One of the competences of the Constitutional Court is judicial review on norms contained in a law including the Law No. 3 of 1997 concerning Child Court. The Constitutional Court shall use the Constitution as a pillar for the review, while the Court may use treaties as reference 'ad-informandum'."*

The Constitutional Court did not, however, specifically address the government view but it held:

> *"The Court is of the view that treaties, recommendation of the UN Committee on the Rights of Childs and other international legal instruments stipulate that 12 year-old may be used as a comparative tool in order to determine minimum age for a child to be responsible before the law. Nevertheless, the Court holds that international legal instrument and recommendation 'as such' could not be used as a tool of review in examining the constitutionality of minimum age for child.[38]"*

The Constitutional Court was unfortunately ambiguous. While it held in the beginning that treaties may be used as comparative tool, it made on the subsequent paragraph an ambiguous statement by stating that international legal instruments and recommendations (not included 'treaties') could not be used as a tool of review *'as such'*. There is no clear indication from the judgment whether or not the Court deliberatively excluded the term 'treaties' on this view so that it might induce that treaties may be used as a tool of review. The ambiguity has left the question about the legal weight of treaties before the Court unanswered.

The Constitutional Court in various cases frequently referred to some international instruments to which Indonesia is party but left them undecided in terms of their domestic status. The Court has made reference to the International Covenant on Civil and Political Rights (ICCPR) of 1966[39], the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984,[40] the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988,[41] and the Convention on the Rights of the Child, 1989.[42] The Constitutional Court has hardly made a determination on the domestic status of those treaties due to the nature of its competence whereby it is only authorized to deal with the question of the legality of a law under the case against the Constitution.

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[38] Ibid., 151.

[39] MK, case No. 065/PUU-II/2004, Judicial Review Law No. 26 of 2000 concerning Human Rights; MK, case No. 013-022/PUU-IV/2006, Judicial Review of Law of No. 27 of 2004 concerning Commission on the Truth and Reconciliation; MK, case No. 2-3/PUU-V/2007, Judicial Review of Law No. 22 of 1997 concerning Narcotics (2007); MK, case No. 5/PUU-VIII/2010, Judicial Review of Law No. 11 of 2008 concerning Information and Electronic Transactions.

[40] MK, case No. 21/PUU-VI/2008), Judicial Review of Law No. 2/Pnps/1964 concerning the Methods of Capital Punishment.

[41] MK, case No. 2-3/PUU-V/2007, Judicial Review of Law No. 22 of 1997 concerning Narcotics.

[42] MK, case No. 1/PUU-VIII/2010, Judicial Review of Law No. No. 3 of 1997 concerning Child Court.

It seems that references to those treaties are mainly intended to support the arguments concerning the provisions of the laws, which were deemed unclear. The courts, therefore, are not expected to endorse the authoritative nature of the treaties under domestic law. It is interesting to note, however, that the Court has hardly addressed the question whether these treaties are already incorporated into domestic law. The very legal fact that Indonesia is bound by theses treaties and that Indonesia has ratified them at international level was apparently sufficient to regard these treaties as relevant to be invoked. At any case, there was no legal argument of the courts in these cases which rules out the binding force of these treaties to Indonesia on the account of their non-incorporated status.

On the other hand, Indonesian courts have even moved forward to use treaties that are not binding Indonesia. Despite the fact that Indonesia is not party to the Vienna Convention on the Law of Treaties of 1969, it invoked Article 27 on internal law and Article 31 on interpretation in order to ensure that Indonesia had not violated its obligations under a treaty.[43] Unfortunately, the Court neither makes any argument explaining why it applies conventional provisions that are not binding Indonesia nor does it suggests that Indonesia is bound by them by virtue of customary international law.[44] However, the application of Article 31 of the Convention to interpret the provisions of the ICCPR and the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, suggested that the courts may interpret treaties employing rules recognized by international law instead of domestic rules of interpretation.

On a human rights case, the Supreme Court in its decision in 2007[45] makes reference to treaties that Indonesia is not yet a party to. In identifying the crimes against humanity, it invokes reference as envisaged in Article 7 (3) of the Rome Statute of International Criminal Court of 1998 by which Indonesia is not yet bound. In the *Teuku Bantaqiah* case[46] in 2000, the Court dealt with a crime that amounted to a crime against humanity conducted by 24 military personnel and one civilian against *Teuku Bantaqiah* and 56 of his pupils that were first wounded and later shot dead. The prosecutor charged the defendants with an ordinary crime under the criminal code because crimes against humanity were not yet included in the Code. The Court, however, interpreted the criminal code with the aid of Article 7 (1) Rome Statute and pronounced that such crime amounted to a crime against humanity.

c. Treaties as Tools of Interpretation

The courts have also used treaties as a tool of interpretation. In the *Teuku Bantaqiah* case as cited above, although not directly intending to apply to the case at hand, the Court consulted provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 which had not yet been included in the Criminal Code. The Court stated that states parties are obliged to

[43] MK, case No. 2-3/PUU-V/2007, Judicial Review of Law No. 22 of 1997 concerning Narcotics, 420-425.

[44] It is worth noting that, as mentioned above, the ICJ in the Case of Pulau Ligitan and Sipadan, before applying the rules of the said Convention to the case, it needed first to address question arising from the status of Indonesia as a non-party to the Convention before suggesting that Indonesia is bound by the rules of the Convention as customary rules.

[45] MA, Eurico Guterres case No. 34 PK/PID.HAM.AD HOC/2007, 34-35.

[46] PN of Banda Aceh, Teuku Bantaqiah Case, No. 11/Pid.B/Koneks/2000/PN-BNA.

include all of the acts of torture as a criminal act in their laws, which also applies to anyone who commits, tries to commit, gives assistance to, or is involved in the act of torture. The Court further stated that the states parties are also obliged to ensure that perpetrators of the criminal acts can be punished with a penalty appropriate for that criminal act. In the meantime, the Indonesian Criminal Code has not yet included the act of torture as envisaged by the provisions and, therefore, the Court could only rely on the ordinary criminal law. The Court did not explain the purpose of citing this provision but it appears that the provision was used merely to clarify the meaning of the act of torture and to ensure that the perpetrator was punished by virtue of ordinary criminal law in the absence of the implementing legislation.

Treaties used as aid to interpretate are also developed in the Case on Judicial Review of the Law No. 26 of 2000 concerning Human Rights Court.[47] In this case the Constitutional Court was requested to invalidate Article 43 of the Law, which allows the application of the non-retroactive principle by which the Court is authorized to try those perpetrators who committed crimes specified in the Law before the date of its enactment. It had been claimed by the applicant that the Article is in breach of Article 28I (1) of the Constitution.

The Court finally reached a conclusion that the non-retroactive principle is not absolute and subject to restrictive exception, i.e. the principle may be excluded for the sake of recognition and respect of human rights of others. In order to justify this far-reaching assertion, the Court cited provisions of legal instruments to which Indonesia is not a party. The Court, however, put all instruments, whether or not Indonesia is a party, on the same foot without any difference in treatment. The Court cited Article 29 (2) of the Universal Declaration of Human Rights as well as Article 15 (2) of the ICCPR and Article 7 of the European Convention on Human Rights, which provides provision similar to that of ICCPR.

In a case on judicial review of the Law No. 22 of 1997 concerning Narcotics, the Constitutional Court addressed the important point raised by the Applicant, which argued that the death penalty stipulated in the Law violates the ICCPR which prohibits it. The Court held that the Law No. 22 of 1997 is the implementation of Indonesia's obligations arising from the UN Convention on against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 and the crimes referred to in the Law are crimes that are according to the Convention particularly serious.

The Court then concluded that by virtue of the Convention as interpreted in accordance with its ordinary meaning to be given to the terms of a treaty pursuant to Article 31 of the Vienna Convention on the Law of Treaties, the stipulation of death penalty under the Law No. 22 of 1997 is an implementation of treaty obligation under the Convention and the crimes referred to are the most serious crimes for which ICCPR does not prohibit the application of death penalty. The Constitutional Court in this case interpreted domestic law in a manner presuming the law did not constitute a violation of an international obligation of Indonesia arising from a treaty. But it is worth noting that the Court did not examine whether or not the provision of the ICCPR has been incorporated into domestic law before it considered whether there was a conflict between the Law and ICCPR.

[47] MK, case No. 065/PUU-II/2004, 47-68.

The Court only acknowledged that there is an international obligation arising from ICCPR but did not clearly confirm whether such obligation is binding in domestic law.

3. Evaluation

The growing number of judicial decisions that cite treaties recently demonstrates that treaties have become well-recognized legal instruments for Indonesian courts. There is no doubt that, on the one hand, the courts may apply treaty provisions to the case at hand without and by virtue of national legislations. On the other hand, the attitude of the courts towards treaties as demonstrated in a number of cases above does not reveal any clear indication on the question of the status of treaties under domestic law especially with regard to the method on how the legal system incorporates treaties under domestic law.

It appears from the judicial attitude that there is no consistency with regard to the courts treatment accorded to treaty norms. Neither the law nor the courts could provide clarification as to whether treaties they have invoked are applicable law of the forum and, if not, to what extent judges are allowed to apply such treaties. Nor it is clear whether by making such treaty references, treaties as referred to are regarded by the courts as legal sources of law in the sense that they are authoritative applicable law and are allowed by the courts as of right; or whether they are simply used as evidences to an existing statutory norm without authoritative weight and perceive them simply as non-formal sources of law due to their significance in terms of their legal consideration. It might be the case that the courts resort to treaties on the account that the provisions of Constitution and laws reveal ambiguities and uncertainties and take alternative courses of interpretation possible for the purpose of arriving at a solution most conductive to reason and justice. Transformation and adoption modes are interchangeably presumed under the judicial practices.

The fact that Indonesian courts also make reference to treaties to which Indonesia is not a party may raise legal questions related to the treatment of treaty norms. There is no clear indication from the arguments of the courts whether the legal weight of these non-binding treaties shall be distinguished from those that bind Indonesia, even for the purpose of providing aid to interpretation, since such a distinction is not always taken into account. Consequently, the answer to questions such as what the legal basis would be and to what purpose the invocation of a non-binding treaty provision should be is still unclear.

It is, however, quite clear that the courts have neither prescribed that the validity of a treaty in question shall depend on transforming legislation nor stipulated that such a treaty shall be transformed in a national legislation to be applicable in the given case as envisaged by a strict dualist system.

The decision of the Constitutional Court in the recent case concerning the ASEAN Charter, which is expected to clarify the domestic status of treaties, also failed to make a legal determination on this very subject matter.[48]

[48] Further comments on the ASEAN Charter case before the Constitutional Court may be found in Agusman, Damos Dumoli, Apakah MK bisa Menguji Piagam ASEAN? (Can Constitutional Court review ASEAN Charter?), ANTARA News (25 July 2011), accessible at http://www.antaranews.com/berita/268734/apakah-mk-bisa-menguji-piagam-asean, last visited on 9 April 2013; Agusman, Damos Dumoli, Arti Judicial Review Piagam ASEAN bagi Sistem Hukum Indonesia (Significance of Constitutional Court's Judicial Review of ASEAN Charter to the Indonesian Legal System), Opinio Juris, Foreign Ministry, Vol. 13 Tahun 2013.

While indicating that the Charter forms part of domestic law, the Court is still ambiguous in explaining how and by what means the Charter becomes domestically valid. Instead of clarifying the means, the Court even made a controversial argument stating that:

> *'…since the ASEAN Charter is embodied in the Law No. 38 of 2008, which approved/ ratified it,… and as a law it shall be binding the Parties to it, therefore State Parties to ASEAN Charter are bound by the Law'.*[49]

Although the Court finds that such an interpretation does reflect the reality since other states are never subject to any domestic law, the Court implies that it is bound to interpret it in that manner because of the undeniable fact that the Charter has been embodied in the Law No. 38 of 2008. Consequently, the Court has for this particular reason recommended that the use of the form law for approving/ratifying should be abandoned.

The Court has not indicated whether or not the Charter has acquired its domestic status by means of the Law, nor has it even declared whether such a domestic status is necessary. Having interpreted the existing constitutional order, the Court has simply stated that the Law No. 38 of 2008 serves as a legal basis for the validity of the ASEAN Charter without making a distinction as to its validity between domestic law and international law. This would erroneously mean that the Law No. 38 of 2008 grants validity to the Charter either in domestic law or international law.

The Court is fully aware that such a conclusion is fallacious. The Court invokes the fact that the Charter embodied in the Law as forcing it to take such a fallacious outcome. In the next paragraph it argues its own conclusion by stating that:

> *Treaty obligations are not derived from the fact that the treaty is ratified by the law of the Parties but arise because the Parties agree to them by virtue of the legal principle of pacta sunt servanda.*[50]

D. Closing

From this view, it appears that the Court is actually reluctant to subscribe to the idea that the Law No. 38 of 2008 grants validity to the Charter but is compelled to come to such conclusion because the Law is intended to provide a basis for such validity. The assertion that the Law grants validity to a treaty does not automatically bring about a conclusive view that it would also constitute the incorporation of the Charter into domestic law. It seems that the Court does not hold the common idea of distinguishing between the entry into force of a treaty at international level and that of domestic level by means of incorporation. It is to suggest that the Court uses a monist line of thinking, by which it holds that once a treaty enters into force to the state, the treaty would automatically be binding in domestic law. The Court decision has therefore not yet contributed to the attempt for seeking a legal determination of the domestic status of a treaty as well as the mode for granting its domestic validity.

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[49] MK, case No. 33/PUU-IX/2011, 194-95; The Court states: *Karena Undang-Undang berlaku sebagai norma hukum, maka Negara Indonesia dan negara lain, dalam hal ini negara ASEAN wajib terikat secara hukum oleh UU 38/2008.*

[50] Ibid., 195; The Court states: *Kewajiban yang dibebankan kepada suatu negara oleh perjanjian internasional tidaklah lahir karena perjanjian internasional bersangkutan telah disahkan sebagai Undang-Undang oleh pihak negara lain tetapi kewajiban tersebut lahir karena para pihak dalam hal ini negara-negara sebagai subjek hukumnya telah menyetujui bersama suatu perjanjian. Hal demikian sesuai dengan asas pacta sunt servanda.*

References

Books

Adi Andojo Soetjipto, *Menyongsong dan Tunaikan Tugas Negara Sampai Akhir: Sebuah Memoar* (Carry Out and Exert State's Tasks till the End: A Memoir), 2007.

Damos Dumoli Agusman, Hukum Perjanjian Internasional, Kajian Teori dan Praktik di Indonesia (Law of Treaties, Theories and Practice in Indonesia), Refika Aditama, Bandung, 2010.

Fatimah, Shaheed, *Using International Law in Domestic Courts,* Oxford, 2005.

Ferdinandusse, Ward, *Direct Application of International Criminal Law in National Courts,* Assers, 2006.

Ko, Swan Sik, *The Indonesian Law and Treaties 1945-1990,* Dordrecht, Kluwer Academic Publishers, Boston, Norwell, 1994.

Sudargo Gautama, *Hukum Dagang dan Arbitrase Internasional* (Trade Law and International Arbitration), Citra Aditya Bakti, Bandung, (1991.

Sudargo Gautama and Rizawanto Winata, *Pembaharuan Hukum Merk Indonesia: dalam Rangka WTO, TRIPS* (Reform of Trademark Laws in Indonesia with Respect to WTO, TRIPS), 1997.

Tay, Alice (ed.), *East Asia,* Human Rights, Nation-Building, Trade (1999).

Journals

Damos Dumoli Agusman, "Arti Judicial Review Piagam ASEAN bagi Sistem Hukum Indonesia" (Significance of Constitutional Court's Judicial Review of ASEAN Charter to the Indonesian Legal System), *Opinio Juris,* Foreign Ministry, Vol. 13 Tahun 2013.

Fifi Junita, "Experience of Practical Problems of Foreign Arbitral Awards Enforcement in Indonesia", 5 *MqJBL*, 2008.

Noah Rubins, "The Enforcement and Annulment of International Arbitration Awards in Indonesi", *American University International Law Review*, Volume 20.

Setiyono, "Eksistensi Saksi Mahkota sebagai Alat Bukti dalam Perkara Pidana" (Existence of Crown Witness as Evidence in Criminal Cases), *Lex Jurnalica*, Volume 5 Number 1, 2007.

Other Documents

Damos Dumoli Agusman, "Apakah MK bisa Menguji Piagam ASEAN?" (Can Constitutional Court review ASEAN Charter?), ANTARA News, 25 July 2011, accessible at http://www.antaranews.com/berita/268734/apakah-mk-bisa-menguji-piagam-asean.

Suparti Hadhyono, "Praktek Penerapan Perjanjian Internasional dalam Putusan Hakim" (Treaties under National Court), *Focus Group Discussion,* Ministry of Foreign Affairs of Republic of Indonesia-Law Faculty of University Airlangga Surabaya, 2008.

T.M. Radhie, "Konvensi New York tentang Pengakuan Pelaksanaan Putusan Arbitrase Luar Negeri" (New York Convention on Enforcement of Foreign Arbitral Awards), *Working paper delivered at Dispute Resolution through Arbitration Seminar,* Jakarta, 1990.

Legal Documents

New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

Law No. 1 of 1982 concerning Vienna Convention on the Diplomatic Relations and Vienna Convention on Consular Relations, 25 April 1982, LN (Official State Gazette No. 2/1982).

Law No. 38 of 2008 concerning Ratification of Charter of ASEAN.

Mahkamah Agung, *Malaysia Embassy case,* No. 111K/TUN/2000.

Mahkamah Agung, *Apriliany case* No. 970 K/P-dt/2002.

Mahkamah Agung, PT. Nizwar v. Navigation Maritime Bulgare, 2005.

Mahkamah Agung, *Arabic Saudi case,* Fatwa No. WKMA/Yud/04/2006.

Mahkamah Agung, *Circular Letter of the Cabinet 1967,* case No. 42 P/HUM/TH. 2006.

Mahkamah Agung, *Eurico Guterres case* No. 34 PK/PID.HAM.AD HOC/2007.

Mahkamah Agung, *Chen Guo Ping,* No. 232 K/Pid.Sus/2007.

Mahkamah Agung, *Yu Yuen Jun,* No. 893 K/Pid/2007.

Mahkamah Agung, *Subway case,* No. 736 K/Pdt.Sus/2009.

Mahkamah Agung, *Lao Chong,* No. 1596 K/Pid.Sus/2009.

Mahkamah Agung, PT Raya Nusantara v. PT Jambi Resources Ltd, 64 K/Pdt.Sus/2010.

Mahkamah Agung, *JUN HAO case,* case No. 143 PK/Pid.Sus/2011.

Mahkamah Agung, *Lexus case,* No. 194 K/Pdt.Sus/2011.

Mahkamah Konstitusi, case No. 065/PUU-II/2004, Judicial Review Law No. 26 of 2000 concerning Human Rights.

Mahkamah Konstitusi, *Industrial Design case,* case No. 022 K/N/HaKI/2006.

Mahkamah Konstitusi, case No. 013-022/PUU-IV/2006, Judicial Review of Law of No. 27 of 2004 concerning Commission on the Truth and Reconciliation.

Mahkamah Konstitusi, case No. 2-3/PUU-V/2007, Judicial Review of Law No. 22 of 1997 concerning Narcotics.

Mahkamah Konstitusi, case No. 21/PUU-VI/2008, Judicial Review of Law No. 2/Pnps/1964 concerning the Methods of Capital Punishment.

Mahkamah Konstitusi, case No. 140/PUU-VII/2009.

Mahkamah Konstitusi, case No. 1/PUU-VIII/2010, Judicial Review of Law No. 3 of 1997 concerning Child Court.

Mahkamah Konstitusi, case No. 5/PUU-VIII/2010, Judicial Review of Law No. 11 of 2008 concerning Information and Electronic Transactions.

Mahkamah Konstitusi, No. 33/PUU-IX/2011, Judicial Review of Law No. 38 of 2008 concerning ASEAN Charter.

Pengadilan Tinggi Pekanbaru, *Tran Huu Tuyen,* No. 52/PID.SUS/2012/PTR.

Pengadilan Tinggi Pekanbaru, *Bui Ngoc Sanh,* No. 66/Pid-Sus/2012/PTR.

Pengadilan Tinggi Pontianak, *Le Van Thong,* No. 104/Pid.Sus/2012/PT.PTK.

Pengadilan Tinggi Pontianak, *Nguyen Van BE,* No. 195/PID.SUS/2012/ PT. PTK.

Pengadilan Negeri of Banda Aceh, T*euku Bantaqiah Case,* No. 11/Pid.B/Koneks/2000/PN-BNA.

Pengadilan Negeri of Jakarta, *Yanuar Kayoan Umaf case,* No. 65/Pida.B/2012/PN-JPR.

Pengadilan Negeri of Jakarta, *Karaha Bodas vs Pertamina case* No. 86/PDT.G/2002/PN.JKT.PST.