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Indonesia and International Law

Negotiating National Interests and International Obligations

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Abstract

The relation and interaction between international and domestic law is one of the classic issues in international law and at the practical level it controversy remains. This is a subject of which many generations of international lawyers have wrestled, are wrestling and will continue to wrestle. In Indonesia, the relations and interaction of the two legal systems in both the theory and practice is far from clear. According to the Indonesian constitution, the President of the Republic of Indonesia has the authority to conclude treaties with other countries. It does not clearly and specifically govern the status and position of international law under the constitution. One of the consequences of that is the Indonesian approach to international law and international treaty in particular is rather pragmatic which is susceptible to some inconsistencies. Some have argued especially the Indonesian Parliament that Indonesia should put emphasize to the national interests when Indonesia take part in an international treaty. For a certain extent this approach is vulnerable to disregard international obligations in the name of national interests. There are several legislation notably in the field of international trade, which contains provisions that potentially put Indonesia as the party disregarding its international obligations. This paper argues that national interests and international obligations are mutually inclusive, and not mutually exclusive element. To this end, international law should have a clear status and position under the Indonesian constitution to ensure that national interest and international obligation are working in harmony.

Keywords: *International law, domestic law, Indonesia, national interests, international obligations.*

1. Introduction

Although international and domestic law has a number of differences either in theory or practice, they have some point of similarities, one of which is that state is the subject of the two legal systems. The theoretical question is whether the two legal systems is one unified legal system (monism) or separate legal system (dualism) and how the interaction between the two legal systems. This is subject to much of academic debate among international lawyers. At the practical level, many countries including Indonesia applied different forms and systems in the relations and interactions between international and domestic law.