



Legal Politics Legalization Convention In Perspective International Law

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ABSTRACT

Choice nomenclature Convention as a form of international agreement see the existence of the desire of countries that are bound by the agreement has a responsibility to implement and comply with the contents of the agreement because it is binding law post ratification and categorized as hard Law. Meanwhile, through analysis by using the concept of legalization seen that the form of legalization of the Geneva Convention is moderate where the level of obligation is high, the level of precision is high and the level the delegation is low. This means that although the responsibility of each country has been written with clear and detailed, but this agreement does not yet have a delegation of authority to third parties to implement, interpret, and apply regulations disputes; and also the possibility of creating new regulations. Without aspect third, the agreement tends to political aspects will be dominant over aspects law making it possible to be politicized even though the choice of legal form is hard law.

ABSTRAK

Pilihan nomenklatur Konvensi sebagai bentuk perjanjian internasional melihat adanya keinginan negara-negara yang terikat dalam perjanjian tersebut memiliki tanggung jawab untuk melaksanakan dan mematuhi isi perjanjian tersebut karena sifatnya yang mengikat secara hukum pasca ratifikasi dan dikategorikan sebagai Hukum Keras. Sementara itu melalui analisis dengan menggunakan Konsep Legalisasi dilihat bahwa bentuk Legalisasi Konvensi Jenewa adalah moderat dimana tingkat obligasinya tergolong tinggi, tingkat presisi tergolong tinggi dan tingkat delegasinya tergolong rendah. Artinya meskipun tanggung jawab setiap negara telah tertulis dengan jelas dan terperinci, namun perjanjian ini belum memiliki pendelegasian otoritas kepada pihak ketiga untuk mengimplementasikan, menginterpretasikan, dan mengaplikasikan peraturan-peraturan tersebut; menyelesaikan perselisihan; dan juga kemungkinan membuat peraturan baru. Tanpa aspek ketiga maka dalam perjanjian tersebut cenderung aspek politis akan dominan dibandingkan aspek hukum sehingga memungkinkan untuk dipolitisasi meskipun pilihan bentuk hukumnya adalah Hukum Keras.

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I. INTRODUCTION

Jawahir Thantowi and Pranoto Iskandar deciphering international law a set of rules aimed at made by countries exclusively sovereign (Daniati et al., 2020; Hasim & Hasanuddin, 2019; Sari, 2014). By quoting opinions Lasssa Oppenheim Pranoto goes on to say that international law it is not a rule that applied as well as a law that is owned by a country According to Mochtar Kusumaatmadja, law international (public) is the whole set and principles of governing law relationship or issue crossing

the borders of countries (international relations) which not civil (Evi Rosdiyanti, 2020; Ketut Pastika Jaya, Ketut Sudiatmaka, 2020; Utara & Rangka, 2019). From understanding given Mochtar Kusumaatmadja it appears that hu-bungan international is not limited the relationship made by between countries only, but can made by the state with non-state subjects to each other (Gumelar & Nachrawi, 2022; Sukmana & Susilawati, 2022).

Growth and development International Criminal Offences and needs setting begins a long history of war what has happened since the era Community Development traditional international up to the era of development of modern society. World War II gave birth various new criminal acts is a violation of the agreement- signed agreements the league of Nations member states- Nation (Sanjaya & Mangku, 2020; Turnip & Kbar, 2020). Violations in the form of cruelty peerless as well as violations of unequal laws of war Germany and its allies, these events have been strengthening the will to resubmitting ideas establishment of a Criminal Court International. In 1947 the problem establishment of the Criminal Court International submitted to The International Law Commission (ILC) which consists of a group of legal experts leading from across the country, the formed by the United Nations- Nation and duty develop a codification of law international (Sari, 2014).

Cases of international crimes that, when viewed in terms of the place where they occur are within the territory of a country, all the perpetrators and victims are citizens of the country in question (Kalalo, 2016; Sinaga, 2022; Sitepu, 2022). Likewise, the victim in the form of property entirely belongs to the country or citizen, so physically and visibly there is absolutely no international dimension. However, because the events are of such a nature, such as the victims who are so many and are innocent and do not know the problem, and have absolutely nothing to do with the motives, intentions, and goals of the perpetrators, the international community both countries and individuals from various countries regardless of differences in religion or belief, ethnicity, political understanding, language, and other, by denouncing and condemning it as a barbaric, inhuman act.

International Criminal Law is a set of legal rules and principles governing international crimes committed by the subjects of its law in order to achieve a specific goal (Kadek Gesa Ananda Jati Utama et al., 2022; Putri, 2021). This term indicates that the rules and principles of the law are truly international, so not national or domestic (Runtuwene et al., 2021). The rules and principles of truly international criminal law are the rules and principles of law that can be found in the form of international treaties whose substance (either directly or indirectly) regulates international crimes (Luhulima, 2018; Nasution, 2018). For example, the 1948 Genocide Convention, the 1973 Apartheid Convention, conventions on terrorism, such as the 1977 European Convention on Combating Terrorism, and others. While the term international crime indicates the existence of a crime event that is international, or that crosses national borders, or that concerns the interests of two or more countries (Arief, 2016). Crimes that can be classified as international crimes are crimes stipulated in conventions such as genocide, apartheid, terrorism, among others.

International treaties and international law there is often debate groups of pessimists and optimists against its existence. These doubts appears because, in practice, unlike other national laws have the highest authority that can force and impose sanctions on implementation of the rules of law there. In contrast, the system structure anarchy international it does not provide space for hierarchy among sovereign states. This means that there is no country that higher position within international structure, so there is no one supreme authority over sovereignty states that can force obedience or provide sanctions for countries who broke the rules in international law.

Through the legalization approach, skeptical views of the effectiveness of international law should revisited. Legalization Theory we believe that all legal products international will be affected by aspects law and politics. Effective or not a very international law influenced by both aspects. When an international agreement allows greater space for the political side of the agreement will fall into the legal category Soft, otherwise when the political side very narrow and legal aspects more

prominently, this agreement will it's called Hard law. Agreement tough international law, in general, more substantively legally binding. Therefore, review the problem of the effectiveness of international law should be started from the rational choice of the state in choosing the form of an international agreement what binds it, is the soft law or hard. Choice of country to tie on the type of agreement he chooses then is a reference reflection country in describing commitment to implementation the agreement.

II. RESEARCH METHOD

The research method used in collecting data for writing this thesis is as follows:

Types and Nature of Research

Based on the problems formulated, this type of research using the type of research normative law is to conduct studies based on legal materials from literature and is a process to find the rule of law, legal principles, and legal doctrines to address legal issues at hand. And also legal provisions in enforcing international criminal law against war crimes and crimes against humanity. Problem approach used is the legislation that is with reviewing the legislation is to examine the legislation related to the problem, the conceptual approach is an approach through the view-views and doctrines that develop in the science of law, and the case approach done by reviewing the cases related to legal issues faced

Types and Sources of Data

The Data collected in this study can be classified into two, namely: a). Secondary Data (library research) in the form of literature and other library sources, namely the IV Geneva Convention of 1949 on civilians in time of war; b). Tertiary Data in the form of material that provides explanations for primary and secondary data such as internet material, judicial varia magazine

Data Collection Techniques

This research source collection method consists of main data collection techniques and supporting data collection techniques. The main data collection technique is the technique of kepustakkan collaborated with the opinion of international legal experts related legislation and conventions

Data Analysis Techniques

Data analysis in this study was carried out qualitatively, namely from the data obtained and then compiled systematically, then analyzed qualitatively to achieve clarity of the problems discussed. Qualitative data analysis is a research method that produces descriptive data analysis, namely what is stated by the respondent in writing or verbally as well as real behavior, researched and studied as a whole. The meaning in the analysis here is intended as an explanation and interpretation in a logical, systematic manner with a sociological approach. Systematic logic shows how to think deductively by following the rules in writing scientific research reports. After the data analysis is complete, the results will be presented descriptively, namely by telling and describing what is in accordance with the problems studied. The results are then drawn a conclusion which is the answer to the problems raised in this study.

III. RESULTS AND DISCUSSIONS

Convention As A Form Of International Agreement

International agreements is one of the main sources international law. Thus, international law can not be separated from the existence of international agreements made by countries. The Vienna Convention 1969 Article 2 (1) (a) "an international agreement concluded between States in written form and international law, whether embodied in a single instrument or in two or more related instruments its particular designation".

Definition of agreement international can be interpreted as an agreement made between states in

written form and governed by international law, whether in a single instrument or two or more related instruments and whatever name is given to the agreement.

Based on this definition above, it can be concluded that international agreements are all agreements made by the state, as one of the subjects of law international law, which is regulated by law international and contains ties which have legal consequences. In this case, whatever form and name an international agreement, its strength largely depends on how big are countries committed to implement a agreement as a faith how great a country gives strength law to an agreement international.

Implementation of agreement making International today has given birth various forms of international agreements. The form of international agreements widely used by the state- countries in the world among other treaties (Treaty), Convention (Convention), Agreement, Charter, Protocol, Declaration (Declaration), Final Act, Agreed Minutes and Summary Records, Memorandum Regulatory understanding (Arrangement), Exchange Of Notes (Exchange of Notes), Process-Verbal, Modus Vivendi, and letters of Intent.

Further, in simple theory Legalization has also classified forms of international law become Hard Law and soft law. Shape Soft law in ordinary state practice known in the form of declarations, resolutions, recommendations and Action Plan (plan of action), while the hard Law usually in the form of a treaty, conventions, conventions and protocols. A terminology agreement international use based on problems are regulated and with demonstrate the will of the parties on the agreement and the impact politics against them. On general form and name of the agreement indicates that the material is regulated by the agreement has the weight cooperation of different levels. Nevertheless, legally, such differences do not diminish the rights and the obligations of the parties contained in in an international agreement. The use of specific terminology in there is also an international agreement done to show that the material of the agreement has a weight different levels of cooperatio with other international agreements.

The Geneva Convention of 1949 explicitly has given identity against him with this kind of agreement international conventions and forms international agreements that are Hard Law. In a general sense, convention terminology can be equated treaty terminology. Treaty terms it is usually used to refer to formal agreement on the issue fundamental and usually require confirmation/ratification. This shows that, if a the agreement was later ratified and effectively, the agreement it is legally binding. Further in a special sense, the term conventions used for agreements- Multilateral Agreements member of many countries. Convention usually law-making means formulate the rules of law for international community. The International device negotiated on initiative/patronage international organizations generally use the term convention.

In short, the choice of form The convention is simple there are consequences that each States Parties to the convention have responsibility to implement and comply with the terms of the agreement because its legally binding nature post ratification. But the choice not to clarify the issue effectiveness of international agreements this, because the effectiveness of a prior agreement is necessary analyzing the legalization approach in more detail.

Legislation In International Law

Legalization is one facilities used for measuring the character of an agreement International, both in relations between state or within the organization international. In Agreement internationally covered range of devices international with in it commitments made by a country in implementation that international agreement.

Legalization is a particular form of institutionalization which represents decisions in various different issues to show coercion of international law to government of a country or member an international organization that become a party to the agreement. According To Judith Goldstein,

Miles Kahler, Robert O. Keohane, Anne-Marie Slaughter in " Legalization and the World Politics", explained that legalization can be defined as "the degree to which rules are mandatory those rules, and the delegation of some functions of interpretation, monitoring, and implementation to a third party". From this definition can be known legalization has three characteristics affecting the degree legalization of an international law that is Bond, precision and delegation. A). Bond, means the state or other actor bound by a rule or commitment or by a group of commitments. it also means behavior and action is determined by a general rules, procedures, discourses- international legal discourse, and also domestic law; b).

Precision, means a set of rule it becomes (unambiguously) the mold for that behavior required, authorized/allowed or prohibited; c). Delegation, means the existence of parties the third is authorized to applying the rules resolve the dispute; ; and also the possibility of making new rules.

As has been explained previously, in its implementation, the three aspects of legalization will be define an international law as hard law or law Soft. A legalization will be classified as a hard law when aspects its bond, precision and delegation are high, or at least aspects of bonds and high precision. Whereas when the third aspect is low or not there at all then its legalization classified as soft law. Although the three aspects of legalization influence each other in determining degrees of legalization of international agreements, but in fact the three measures are independent; meaning affect the size of the other. it can be seen in the condition international has an element of bond, such high precision and delegation Agreement on Trade-Related Aspects Intellectual Property (TRIPs) Bond element and its precision is high but it's as low as The Treaty Banning Nuclear Weapons Tests the Atmosphere, in Outer Space, and Under Water 1963, but there are also legalization in which the three aspects the Helsinki Conference Security and Cooperation in Europe 1975.

Kenneth W. Abbot, Robert O. Keohane, Andrew Moravesik, Anne-Marie Slaughter, Duncan Snidal, in his book entitled "The Concept of Legalization " explained that the three aspects of legalization (bonds, precision, delegation) is a unitary network (continuum) affect the process of legalization of a international law. Dimensions of legalization related to the degree of variation and gradation of the three aspects of legalization such. In the following figure, the dimensions is sorted from the form of legalization the weakest on the left until on the order of the strongest on the right. It can also be said that the left side is a form of the non-ideal (less deal) of legalization while on the right as ideal form (ideal type). More details, the left side is the territory the political aspect of interaction while in the right side is the area interaction of legal aspects.

In international law, political and legal dimensions have such interrelations and interrelations very varied in each of its forms. Under certain conditions, when aspects law is more dominant than the aspect politics is the legalization of a law international classified as legalization Hard, or vice versa, when the aspect politics is more important than politics the law then belongs to the legalization as a soft legalization. Legalization of an international law greatly affect the likelihood countries involved in the agreement to negotiate and compromise. It can be seen that the law strongly related to the political aspect particularly affected by interestpolitics, power, and institutions.

Form of legalization of a law internationally strongly influenced by degree of each aspect of legalization (bond, precision, delegation). High or low degree of each aspect legalization is strongly influenced by the indicators contained there in Aspects of bond, precision, and appropriate delegation with the indicator then the three aspects of legalization included in bond, precision, and delegation are high. In contrast, when the three aspects of legalization is in accordance with the indicator on and so on then include in bond, precision, and delegation low. Third position aspects of delegation in the above mentioned indicators greatly affect the form of legal legislation international. Therefore, for determine the degree of legalization of a international law is classified in hard/soft legalization, it is important to notice the presence of the third aspects in the indicators.

Delegation refers to the existence delegation of authority to parties third to implement, and apply the rules resolving disputes; and also the possibility of making rules new. Aspects of delegation is part important because it is effective or not an international agreement influenced by the presence of actors authority to supervise implementation, interpretation and giver punishment for the infringing party agreed terms.

In Articles 10, 15, 23, 28, 31, 36, 37 and 52, Article 6 KJ please participating countries The convention may enter into an agreement special about everything so far this agreement cannot reduce or restrict rights that the convention gives to people the person. The agreement only requires internal approval the parties are willing to be bound in inside. As far as the parties agreed, this is also not with strictly for bidding consent among the party participants whose contents harm people who are protected

The convention calling on participating countries convention together responsible for the implementation of and restrictions on violations of Convention as stated in Article 49-50 Convention I, 50-51 Convention II, 129-130 Convention III, and 146-147 Convention IV. See also Article 50, 51, 130, and 147 conventions I, II, III and IV beturut-also make rules about administrative, disciplinary and criminal offences gross violation. The articles the world's attention will be drawn to a number of serious breaches of the Convention and Protocols that are still not convicted, as a harbinger of deterioration of values humanity and the decline of the whole concept of humanity.

Articles 49, 50, 129 and 146 Conventions I, II, III and IV respectively laying obligations to the government national to make rules necessary legislation to provide effective sanctions for those who do or ordered to commit an offense that; the necessity of finding people who is accused of doing or order an act of infringement this includes those who causes of failure to act where they are obligated do that. These articles also require military commanders to prevent violations of the above Conventions and protocols, act on them and when to report them to authorized ruler. This rule clearly stated that giving punishment to the party violation of the provisions of the convention depends to their respective domestic laws state of the participating countries.

Explicitly, the Geneva Convention it does not mention the existence authorized third parties to implement , interpretation, applying the rules resolving disputes; and also the possibility of making rules new. This can be seen in explain some of the things that have been mentioned. Thus then it can be stated that the level of delegation The convention is classified as low.

IV. CONCLUSION

Forms of legalization of international law is a combination of bond rates, precision, and its obligations. The level obligations are high, the level high classified precision and level the delegation is low. With using the concept of legalization it can be concluded that the 1949 Geneva Convention has a degree Legalization is relatively high, which this means that the convention has the form Hard Law. This form of legalization means that the provisions convention detail / detail so very little once the space States to give an ambiguous interpretation. Violation of articles conventions should be avoided due to differences in state interpretation- participating countries can be minimized. More further, a high form of legalization provide a larger space the legal aspects compared political aspects. This means that the convention give no chance to multi-interpretation of participating countries because of its legal provisions been pretty clear. But this is no directly describe the effectiveness an international agreement because whether or not an agreement is effective depending on the commitment of the countries participants to implement the provisions.

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