

## The Influence of International Law in 1945 Constitution Amendments of the Republic of Indonesia

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### ABSTRACT

*As a country that is active in international relations, Indonesia often creates relations about the relationship between international and national law, which also raises questions about the influence between the two. The linkages between international law and national law give rise to each other, including in the process of drafting amendments to the constitution of a country, one of which is Indonesia. This paper discusses the influence of international law in the amendments to the 1945 Constitution of the Republic of Indonesia. The method used is normative juridical in the form of library research. The results of the research are that there is a link between national law and law that influence each other, including in the process of amending the 1945 Constitution of the Republic of Indonesia. Although not all articles are affected by international law, at each stage of the amendment there are several articles that have a positive effect on the whole. directly or indirectly.*

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## 1. INTRODUCTION

Indonesia is a country that is quite active in pursuing an international legal order even since Indonesia's independence, thus showing the existence of Indonesia as an international community in its association. In addition, the existence of Indonesia in a political stance based on foreign relations, which is a problem regarding the relationship between international law in Indonesia's national legal system. The problems that have arisen have led to a debate about Indonesia's influence on the world of international law and vice versa, the influence of international law on the national legal system, because in essence the relationship between international law and national law is interrelated in various ways. The development of international law

and relations between countries is carried out to promote the rule of law between countries for the maintenance of international peace and security.

If you look at the position of international law in the national legal system, Indonesia is not a country that contains specifically in its constitution regarding that position, but in the 1945 Constitution of the Republic of Indonesia Post Amendment indirectly there is a pervasive influence of the principles of international law. This is because a country cannot avoid in the preparation of its constitution or in the process of changing its constitution, the influence of international law can be absorbed, especially for countries that are former colonial colonies, one of which is Indonesia, based on the dissemination of the teachings of international law through colonialism which is usually carried out by the colonizers by the way in which colonial policies were implemented, which resulted in the teachings of international law being embedded or introduced by the colonizers to the community in various ways. Influences from outside the country are also found in the process of drafting a country's constitution, such as Japan and the Netherlands. The constitutions in the international community in these countries were influenced by foreigners which later after the 1600s became international law. So that the development of international law greatly affects national law.

International law also has an important role in the Indonesian Constitution, especially through Constitutional Amendments because it has the benefits desired by Indonesia, especially in terms of equality or equality in international relations and to increase cooperation, especially in the economic field as an effort to build the nation's economy. So that it is felt necessary to absorb international law into the Indonesian Constitution, namely the 1945 Constitution of the Republic of Indonesia. The Indonesian Constitution, based on the period of its implementation, experienced ups and downs in accordance with political policies with the condition of the nation based on the historical dynamics that took place at that time and changing interests also became because of the change in the constitution, so that its implementation resulted in various changes, but all of the changes had the same goal, namely towards the law that was aspired to (*Ius constituendum*). Even the 1945 Constitution was never used and replaced with another constitution. However, in the end, the 1945 Constitution of the Republic of Indonesia is still being used even though it has undergone an amendment process which occurred in stages four times, namely in 1999, 2000, 2001 and 2002. international law based on Books 1-10 Comprehensive Manuscripts on Amendments to the 1945 Constitution of the Republic of Indonesia Background, Process, and Discussion Results 1999-2002.

Based on the above background, the problem raised in this paper is How was the influence of International Law in the Amendment of the 1945 Constitution of the Republic of Indonesia in 1999-2002?

The purpose of this research is the purpose of the problems presented, in order to achieve the expected goals, the objectives should be in line with the problems that have been determined. The purpose of this study is: to determine the extent of the relationship of international law in Indonesian national law and how the influence of international law in the Amendment of the 1945 Constitution of the Republic of Indonesia in 1999-2002.

The importance of questioning and reviewing and understanding research related to the Influence of International Law in the Amendment to the 1945 Constitution of the

Republic of Indonesia is due to the following: explicitly or implicitly so that this research will map the influence of international law and find out how much influence international law has in Indonesian national law. Second, that the research that has been done by other researchers in this discussion is only limited to the position of international law in the national legal system and within the scope of international agreements, or limited to the 1945 Constitution of the Republic of Indonesia. This research will complement the research that has been done. exists by focusing on articles that have undergone changes through amendments to the first, second, third, and fourth amendments.

## **2. METHOD**

The research method used in this writing is a normative juridical writing method, which is in the form of library research, which is a writing method used by studying literature books, laws and regulations. In addition, this writing specifically refers to the Comprehensive Manuscript of Amendment to the 1945 Constitution of the Republic of Indonesia Background, Process, and Discussion Results 1999-2002. And this writing uses a systematic and directed method by using the 1945 Constitution of the Republic of Indonesia as a legal basis as well as a guide for analysis. The data for this study were obtained through primary legal materials, legislation, and secondary legal materials, namely in the form of textbooks by legal experts.

## **3. RESULTS AND DISCUSSION**

### **3.1. Relations of International Law and National Law**

The existence of interests between the two laws is certainly different, giving rise to various debates that raise the question of whether international law and national law are a legal entity or separate from each other, and conflicts of interest arise between the two legal systems. Regarding the following issues, in adopting international law, there are two major schools that view the existence of international law and national law in a different way, namely Monoism and Dualism.

The flow or theory of monism is based on the idea of the unity of all laws that govern human life, which considers that international law and national law are two parts of a larger unity, namely the law that regulates human life. As a result of this thought raises the issue of the hierarchy between international law and national law. Regarding the hierarchy in the theory of monism, there are two different opinions in determining which law is more important between national law and international law.

#### **a. The Primacy of National Law Monism**

This theory tends to be more concerned with national sovereignty and the interests of the state which of course will be based on the argument that state sovereignty must be defended after all, national interests must take precedence and therefore the national legal system must be prioritized. So that it can be said that the application of international law is only the will and agreement of states to comply with the law and then the sovereign state selectively chooses which international legal norms to apply in international relations and to regulate domestic life.

#### **b. The Primacy of International Law Monism**

This understanding tends to state that international law should be prioritized and subordinate to national law because it is felt that national law originates from international law which has a higher hierarchy, then the rule of law must be shared with more than the status of countries in the world with different systems. So from the understanding above, it can be said that the acceptance of the assumption that international law is autonomous because it contains norms whose validity cannot (fully) depend on the will of the state. On the contrary, international law can force sovereign states to adjust, change and even cancel parts of the national legal system which are considered to be contrary to the mutually agreed 'international legal norms'.

Meanwhile, dualism argues that international law and national law are two systems or legal instruments that are separate from one another. As a result of this dualistic view, the principles of one legal instrument cannot be sourced or based on other legal instruments. This means that the dualism theory states that there is no relationship with each other between the two legal systems (national-international), so that the two systems can be considered as autonomous legal systems that can be studied separately from each other. Because these two systems are unrelated domains, because they work at different levels. In other words, the international legal system only has the power to apply outwardly, one after another, because it is intertwined with the regulation and arrangement of international relations. On the other hand, the national legal system is more internally regulating. The national legal system is based on the principle of state sovereignty and is the embodiment of independence to regulate the life of the nation state without interference from other countries (the right of self-determination).

### **3.2. The Influence of International Law in 1945 Constitution Amendments of the Republic of Indonesia**

#### **1. The First Amendment**

This amendment was carried out at the general assembly of the MPR from 14 – 21 October 1999, resulting in 9 articles being amended. The debates contained in the first amendment process certainly do not escape considerations regarding international relations and international law, although not all articles are affected by this. The following articles have an influence on the first amendment:

#### **Article 13**

This article regarding the appointment and placement of ambassadors reflects on international relations such as the United States in the implementation process, which convinces Indonesia that the appointment and placement of ambassadors is considered to have a positive side for good relations and cooperation with other countries. The debate in the comprehensive text does not explicitly discuss the influence of international law in this article, but there is an implicit influence that can be seen in the comparison of implementation systems that can be used as a reference for Indonesia to add this article in the process of amending its constitution.

#### **Article 17**

The article that discusses the appointment of ministers is deemed necessary to be added to the Indonesian Constitution because at that time Indonesia was facing international pressures due to the economic crisis and problems such as the East Timor

problem, so a minister was needed to assist the President. Although there are concerns that there will be differences in the implementation of ministers by Indonesia and globally, international protocols become difficult. So, with international challenges as a form of influence from international law, Indonesia has firmly added this article to its constitutional amendments.

## **2. The Second Amendment**

This amendment was ratified on August 18, 2000 with a discussion process from August 7-18, 2000, which contained the results of the amendment in the form of 5 chapters and 25 articles. Among these amendments, the following articles have the influence of international law in the second amendment:

### **Article 25**

The article which contains the affirmation that the Unitary State of the Republic of Indonesia is an archipelagic country characterized by the archipelago is quite widely discussed in the conference text because an important matter for Indonesia concerns the territory of the country. Confusion regarding the inclusion of Indonesian territory in the Constitution has even become a matter of debate in this article. The discussion starts from the territory of the country such as land, sea, air; the territory of the state after the case of Timor-Timor was released; opinion that there is a need for confirmation in accordance with international agreements; and it is deemed necessary to include the principles of international law that already exist in the constitution related to the territory of the country; and various other matters under discussion. This debate in conclusion refers to whether it refers to Indonesian legislation or refers to international relations/international law.

Some figures such as Prof. Dr. Bagir Manan also argues that although in the theory of the state in international law it is said that territory is one of the constitutional elements of the state, in practice the constitution does not always have to exist. This opinion shows the debate about the relationship between international law and national law which is mutually questioned which is more important, and there is a concern that there will be problems with international law because national law will be weak on the grounds that the law cannot stand alone outside international life. Until finally these concerns were resolved by referring to the Indonesian territorial waters that were internationally recognized in the UN law of the sea in October 1982. Territory is an important element for the fulfillment of the requirements for the establishment of a state based on the teachings of constitutional law and international law and every country is subject to international recognition. because the country in this world is one, it is impossible for every country to make its own rules without international approval. This article also explicitly in the process there is influence from international law.

### **Article 28A-J**

The article that discusses human rights is even specifically contained in a chapter in the Indonesian Constitution and is one of the most basic in the amendments. The Indonesian nation certainly respects the human rights enshrined in the UDHR (Universal Declaration of Human Rights), as well as various other international instruments regarding human rights. However, Indonesia also has views and attitudes towards human rights based on religious teachings, universal moral values and cultural values and based on Pancasila and the 1945 Constitution. full or complete human rights are not guaranteed. Seeing this backwardness, Indonesia needs to amend and adopt international law with reference to the UDHR and other international treaties on human rights. The amendment process is also not easy, because it raises debate whether all of these provisions should be included in the constitution or limited to mentioning that it recognizes international ones and then the details are regulated in law. Until finally the policy that was drawn up was to continue ratifying international treaties in accordance with the needs and interests of the nation. in the form of a law, which will result in a derivative law that regulates in detail. So it is undeniable that this article has an explicit influence from international law.

#### **Article 30**

This article discusses the separation of the structure and functions of the TNI and Polri, which in the amendment process was debated that if public international law was applied within the scope of legal counsel, it would limit the authority of the police. As well as the concern that if defense is said to be the responsibility of all citizens, then in the context of international relations, Indonesia will be trapped in this, because it has signed the 1949 Geneva Conventions and the 1907 Hague Convention which shows the influence of the principle of *pacta sunt servanda* which in this case is related to that context. must be harmonized so as not to harm Indonesia for violating the international agreement.

#### **Articles 36A, 36B, 36C**

Article 36A about the state language, Article 36B about the state symbol, while Article 36C about the national anthem. These three articles need to be included in the amendments to the Constitution because even though they are only symbolic, they play an important and influential role in showing identity, sovereignty, and strengthening the position of a country in international relations. This shows the influence of international legal thought through the position and sovereignty of a country, so this article needs to be included in the 1945 Constitution.

### **3. The Third Amendment**

The third amendment was implemented on November 1-9 2001 which was later stipulated on November 9, 2001. The articles that have the influence of international law are as follows:



#### **Article 1**

Article 1 discusses the form and sovereignty, internationally, Indonesia has been recognized as the Unitary State of the Republic of Indonesia, which generally means that international recognition plays an important role. And the Unitary State of the Republic of Indonesia is a state of law, which makes it internationally recognized so that it cannot be disputed. If this changes, then the Constitution will change from its basic principles, and not only constitutionally, but internationally. So that international recognition in this matter affects the process of amendment to this article.

#### **Article 6**

This article discusses the presidential citizenship requirements, one of which is to be physically and mentally healthy, the vocabulary is considered international. Because internationally WHO decided there must be a healthy word. So that there is an influence both explicitly and implicitly in this third amendment article.

#### **Article 11**

This article is one that is quite important in relation to international law, namely on declarations of war, peace and international treaties. The debate in this article is quite complicated in its process, because the view on the position of the Constitution in the European Union is prioritized. This raises concerns that national law will be weakened and will not work in accordance with the Indonesian nation. However, due to developments in the international world, it is possible that Indonesia will enter into agreements with international bodies and other countries, so there must be changes to domestic laws or cause things that are difficult for or burden the people, but they must be approved by the DPR. The difference between Article 11 before and after the amendment is the inclusion of provisions on international treaties which explicitly influence international law.

#### **Article 24C**

Article 24C is the legal basis for the existence of a constitutional court in Indonesia. This institution theoretically started from Hans Kelsen's idea regarding the judicial review which is also congruent with the proposal expressed by Muhammad Yamin in the trial of the Indonesian Independence Preparatory Agency (BPUPKI). However, the proposal was not adopted in the 1945 Constitution, which was later added through amendment.

### **4. The Fourth Amandment**

The fourth amendment to the 1945 Constitution was carried out at the 2001 MPR Annual Session on 1-11 August 2002. The results of this amendment have the following international law influences:

#### **Article 23B**

Articles that discuss the types and prices of these currencies have been recognized internationally. On the other hand, the word rupiah has become a kind of trade mark or identity in the nation-state in the monetary system, even within the international monetary framework. Based on this, international recognition affects this article, although not explicitly and makes this article an organic law.

#### **Article 23D**

This article on the central bank arises because of several opinions regarding evidence or data from international which show a positive correlation for countries that have an independent central bank and usually have better inflation control performance. So with this view, which is implicitly influenced, it is hoped that it will help the Indonesian economy with international economic standards.

#### **Article 31**

This article discusses education, which is one of Indonesia's shortcomings. As an international community that has participated in various international collaborations, Indonesia has reflected on the development of education among other countries. This is what raises the need for guarantees regarding education in Indonesia so that in the future it can catch up and can also cooperate with other countries based on better capacities. This article is indirectly influenced by international law.

#### **Article 32**

Article 32 is an article on Indonesian Culture which is generally always related to education. With this connection, if the education of the Indonesian people is better, it will also advance the Indonesian national culture which will also open up opportunities for international culture. Of course, by not forgetting and leaving the old culture of Indonesia, it is hoped that it will be able to exist and advance in the midst of international civilization.

#### **Article 33**

This article is related to the Indonesian economy which was amended in the fourth stage. Boediono's opinion on who was the Minister of Finance at the time of the fourth amendment session was that considering the changes both domestically and internationally, it was important that changes be made. This is intended to clarify the concepts regarding the basis of Indonesia's national economy. The concept of the economy must be explicit because of several practices faced, both at the regional and international levels, so that the national economy is not fragmented. As well as Indonesia's experience, which has experienced economic downturn in the international world, makes sure to clarify the concept of the Indonesian economy that is suitable for the nation to compete among international economies.



#### 4. CONCLUSION

International and national law have a close relationship and are known to be two major schools with different perspectives, namely the flow of monoism and dualism. The linkages between international law and national law give rise to each other's influence, including in the process of amending the 1945 Constitution of the Republic of Indonesia. Not all articles are affected by international law, but at each stage of the amendment there are several articles which are influenced either directly or indirectly. Despite the influence of international law on Indonesian National Law, it does not mean that internationalization makes national law weak. Rather, it can develop the State of Indonesia through this influence without letting go of the soul of the nation.

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