The Obligation to Ensure the Conformity of International Treaties with the Constitution

Hikmahanto Juwana[1]

Ever since its Independence, Indonesia has acceded to numerous international treaties. Indonesia's accessions to international treaties are done by signature, and there are treaties which undergo a ratification process legalised by a Law (Undang-undang) or a Presidential Regulation (Peraturan Presiden). This article will review the various aspects related to the need of ensuring the conformity of international treaties with Indonesia's 1945 Consitution. Firstly, this paper will discuss why the conformity of international treaties acceded by Indonesia with Indonesia's 1945 Constitution needs to be ensured. Discussed next is Indonesia's practice in acceding to international treaties. Then, the paper will consider the possibility of instruments of ratifications both in the form of Law and Presidential Regulation being judicially reviewed by the Constitutional Court or the Supreme Court and its implications. Lastly, this paper will elaborate the steps Indonesia must take in the future. In practice, there are no actual process to ensure the conformity between an international treaty and the Constitution. The government should review every international treaty that would be acceded by Indonesia so that its conformity with the Constitution is ensured

Keywords: *international treaties, conformity, 1945 Constitution*

I. Introduction

Ever since its Independence, Indonesia has acceded to numerous international treaties. Indonesia's accessions[2] to international treaties are done by signature, and there are treaties which undergo a ratification process legalised by a Law (Undang-undang) or a Presidential Regulation (Peraturan Presiden). In deciding whether a ratification is done using a Law or a Presidential Regulation, reference must be made to Law Number 24 Year

[1] Professor of International Law at Universitas Indonesia. Obtained a Bachelor of Law degree (S.H.) from Universitas Indonesia (1987), a Master of Law degree (LL.M) from Keio University, Japan (1992), and a Doctor of Philosophy degree (Ph.D) from University of Nottingham, United Kingdom (1997).

[2] Accession and ratification are two terms differentiated in international law. Accession relates to the process of joining a certain international treaty, while ratification is an act performed by a state participating in an international treaty to legalise such treaty.

2000 concerning International Treaties (Undang-undang Nomor 24 Tahun 2000 tentang Perjanjian Internasional).[3]

From a number of international treaties acceded by Indonesia, a question arises as to the steps in ensuring the conformity of those treaties with the Republic of Indonesia's 1945 Constitution (Undang-undang Dasar 1945).

This article will review the various aspects related to the need of ensuring the conformity of international treaties with Indonesia's 1945 Consitution. Firstly, this paper will discuss why the conformity of international treaties acceded by Indonesia with Indonesia's 1945 Constitution needs to be ensured. Discussed next is Indonesia's practice in acceding to international treaties. Then, the paper will consider the possibility of instruments of ratifications both in the form of Law and Presidential Regulation being judicially reviewed by the Constitutional Court or the Supreme Court and its implications. Lastly, this paper will elaborate the steps Indonesia must take in the future.

II. Ensuring a Conformity

There are at least three reasons why it must be ensured that an international treaty which would be acceded by Indonesia must conform to Indonesia's Constitution.

First, considering that the Constitution is the highest norm in the hierarchy of the Indonesian legislation. Article 7(1) of Law Number 10 Year 2004 concerning the Formation of Legislations (Undang-undang Nomor 10 Tahun 2004) states that the types and hierarchy of Indonesia's legislations are:[4]

a. The Constitution of the Republic of Indonesia Year 1945 (Undang-undang Republik Indonesia Tahun 1945);
b. Law (Undang-undang) or Government Regulation in Lieu of Law (Peraturan Pemerintah Pengganti Undang-Undang);
c. Government Regulation (Peraturan Pemerintah);

---

[3] Law of the Republic of Indonesia Number 24 Year 2000 (Undang-undang Republik Indonesia Nomor 24 Tahun 2000), State Gazette Number 185 Year 2000 (Lembaran Negara Nomor 185 Tahun 2000).

[4] Law of the Republic of Indonesia Number 10 Year 2004 concerning the Formation of Legislations (Undang-undang Republik Indonesia Nomor 10 Tahun 2004 tentang Pembentukan Peraturan Perundang-undangan), State Gazette Year 2004 Number 53 (Lembaran Negara Tahun 2004 Nomor 53).

d. Presidential Regulation (Peraturan Presiden);
e. Regional Regulation (Peraturan Daerah).

In the hierarchy of legislations listed above, the position of international treaties which Indonesia accede to, either through ratification or else, is not specified.[5]

Second, ensuring the conformity of international treaties which would be acceded with the Constitution is crucial to ascertain a common perception between the people and the government when deciding to accede to an international treaty. A common perception between the government and the people is needed since the government and the people are deemed to have made an agreement as outlined in the Consitution. Therefore, an international treaty must be ensured to be in accordance and in conformity with the Consitution.

It needs to be understood that the Constitution must be deemed as an agreement between the people and the government. The people are seen as the party having sovereignty as well as the party ruled. Meanwhile, the government in a broad sense is the party receiving the mandate to execute sovereignty as well as the party ruling the people.

A constitution is an instrument to ensure that the government performs its duty to the people, and at least to attempt to help the prosperity, to educate, and to protect the people.

The people have various mechanisms to ensure that the government executes its agreement with the people. In the realm of people's democracy, the people can oversee the government through election, the media, and even through judicial reviews on legislations issued by the government.

In this context, when the President and the People's Representative Council form a Law, the perception that these two bodies have as reflected by the content on the Law may undergo a Judicial Review by the people. The people may submit a Judicial Review on a provision in a Law to the Constitutional Court (Mahkamah Konstitusi). The same applies to legislations in a lower hierarchy than Law, which would be able to be reviewed by the Supreme Court (Mahkamah Agung).

Lastly, the conformity of an international treaty that would be acceded by Indonesia with the Constitution aims to prevent veiled interventions

[5] Nevertheless, in literatures on Introduction to Legal Studies or Introduction to Indonesian Law, international treaties are stated as a source of law in Indonesia. See: L.J. van Apeldoorn, *Pengantar Ilmu Hukum* (Jakarta: Noor Komala, 1962), 131-133. However, it is debatable whether a judge is enabled to apply international treaties in its original form or whether a judge is only bound if the substances of such international treatics have been incorporated into national legislations.

made by other states towards Indonesia's sovereignty, including Indonesia's sovereignty with regards to its law. This contention is made bearing in mind that international treaties are often utilised as a political instrument by a state towards another.[6]

III. Indonesia's Practice in Acceding to an International Treaty

Law Number 24 Year 2000 sets out the procedures to legalise or ratify an international treaty that would be acceded by Indonesia. This matter is laid out in Article 10 of Law Number 24 Year 2000, where it is stated that whether an international treaty is legalised through a Law or a Presidential Regulation depends on its content.[7]

However, there are three kinds of practices conducted by Indonesia in acceding to an international treaty when associated to the question whether ratification is needed or not.

First is the practice where international treaties, although requiring ratification using a Law as laid out in Law Number 24 Year 2000, do not go through a ratification process as the treaty itself does not call for an instrument of ratification. These international treaties even use terms such as Letter of Intent (LoI) or Memorandum of Understanding (MoU), which do not reflect them as international treaties.

As an example is the LoI signed by the government and the International Monetary Fund (IMF) during Indonesia's monetary and economic crisis.[8] Although the substance governed in the letter may potentially breach the state's sovereignty or sovereign rights considering that the LoI contained provisions on the formation of policies or legislations, a legalisation of this LoI was not done through the People's Representative Council. The LoI obliged Indonesia to amend its Bankruptcy Law (Undang-undang Kepailitan) and Law on Business Competition (Undang-undang Persain-

[6] Hikmahanto Juwana, "Hukum Internasional Sebagai Instrumen Politik: Beberapa Pengalaman Indonesia Sebagai Studi Kasus," 1 Jurnal Hukum Internasional No.1 (Oktober 2003).

[7] According to Article 10, the ratification of an international treaty must be made through Law when the treaty concerns: a. the state's politics, peace, defence, and security; b. the alteration or determination of the boundaries of the Republic of Indonesia; c. the state's sovereignty or sovereign rights; d. human rights and the environment; e. the formation of a new legal principle; f. a foreign loan and/or grant. Meanwhile, Article 11 sets out that the legalisation of international treaties not concerning the matters laid out in Article 10 are conducted using a Presidential Regulation (formerly known as Presidential Directive).

[8] The format of the LoI between the Government of Indonesia and IMF was not in the form of an international treaty but rather in the form of a letter from the Government of Indonesia to IMF containing items promised by the Government of Indonesia. These items needing to be performed by Indonesia were discussed beforehand with IMF and were not merely the plans of the government.

gan Usaha).[9]

Another example is the *Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of Malaysia on the Recruitment and Placement of Indonesian Domestic Workers*, made in 2006.[10]

Substance-wise, it was crucial for this MoU to be legalised through the People's Representative Council taking into account that it contains the aspect of protection of citizens which needs to be performed by the government. However, since the MoU did not contain a stipulation requiring ratification and the government as the party deciding whether ratification is needed or not did not necessitate so, the MoU was not ratified.

Second is the practice where international treaties are ratified albeit the fact that the treaties themselves do not explicitly require an instrument of ratification.

Bilateral treaties on the matter of defence can be taken as an example. Amongst them is the Agreement between the Republic of Indonesia and Australia on the Framework for Security Cooperation[11] dated 13 November 2006. Article 10(1) of the Agreement sets out that, "[t]he Agreement shall enter into force on the date of receipt of the last notification by which the Parties notify each other that their internal requirements for the entry into force of this Agreement have been fulfilled." Ratification was made based on the words "that their internal requirements for the entry into force", and was conducted using a Law.[12]

A similar occurrence can be found in agreements between Indonesia and other states in the field of economics. An example is the Agreement between Japan and the Republic of Indonesia for an Economic Partnership[13] dated 20 August 2007. Article 153 of the Agreement states that, "[t]his Agreement shall enter into force on the thirtieth day after the date on which the Governments of the Parties exchange diplomatic notes informing each

[9] *Letter of Intent of the Government of Indonesia to International Monetary Fund* (October 31, 1997), available at: //www.imf.org/external/np/loi/ 103197.htm (last accessed on 4 Mei 2011).

10 Available at: http: //pstalker.com/ilo/resources/Malaysia%20Indonesia%20MOU%20&%20 Appendix%20A-B.pdf (last accessed on 17 Mei 2011).

[11] Available at: http://www.dfat.gov.au/geo/indonesia/ind-aus-sec06.html (last accessed on 11 Mei 2011).

[12] Law of the Republic of Indonesia Number 36 Year 2008 (Undang-undang Republik Indonesia Nomor 36 Tahun 2008), Presidential Regulation concerning the Legalisation of the Agreement between the Republic of Indonesia and Japan for An Economic Partnership (Peraturan Presiden tentang Persetujuan antara Republik Indonesia dan Jepang mengenai suatu Kemitraan Ekonomi), State Gazette Year 2008 Number 74 (Lembaran Negara Tahun 2008 Nomor 74).

[13] Available at: http://www.mofa.go.jp/region/asia-paci/indonesia/epa0708/agreement.pdf (last accessed on 11 Mei 2011).

other that their respective legal procedures necessary for entry into force of this Agreement have been completed." The words "their respective legal procedures necessary for entry into force" were interpreted as being a requirement to perform ratification, and ratification was made using a Presidential Regulation.[14]

Although the matter has been governed in Law Number 24 Year 2000, the government still decides whether ratification must be made through the People's Representative Council or if ratification through the President would be sufficient.

The third practice appears where the international treaties require an instrument of ratification to be applicable in Indonesia. This sort of international treaty explicitly requires an instrument of ratification. The instrument may be deposited to a certain appointed state or an international organisation as a ratification depository.

One example is the *International Covenant on Civil and Political Rights* (ICCPR).[15] Article 49(2) sets out that, "[f]or each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession." Indonesia became a state party to the ICCPR by depositing an instrument of ratification.[16]

From the three abovementioned practices, it is not within the writer's knowledge that a process to ensure the conformity between the international treaties and the Constitution was ever performed. Therefore, in this regard, there was no course of action taken to scrutinise whether a certain international treaty has the potential to not be in line with the Constitution.

The clashes between a norm in the Constitution and an international treaty are only discoverable after the treaty has been acceded to.

For international treaties acceded by Indonesia where a process of le-

[14] Peraturan Presiden Republik Indonesia, No. 47 Tahun 2007, Undang-undang tentang Pengesahan Perjanjian antara Republic Indonesia dan Australia tentang Kerangka Kerja Sama Keamanan (Agreement between the Republic of Indonesia and Australia on the Framework for Security Cooperation), 167 Lembaran Negara 2007.

[15] Avail able at: http://www.austlii.edu.au/au/other/dfat/treaties/1980/23.html (last accessed on 11 Mei 2011).

[16] The ratification instrument deposited by Indonesia was the Law legalising ICCPR, which is Law of the Republic of Indonesia Number 12 Year 2005 concerning the Legalisastion of the International Convenant of Civil and Political Rights (Undang-undang Republik Indonesia Nomor 12 Tahun 2005 tentang Pengesahan Kovenan Internasional tentang Hak-hak Sipil dan Politic), State Gazette Year 2005 Number 119 (Lembaran Negara Tahun 2005 Nomor 119).

galisation was not done, there are no reviews available relating to those international treaties. Encompassed in this category are the LoI between Indonesia and IMF and the MoU between Indonesia and Malaysia. Both international treaties are deemed to have entered into force once signed.

Meanwhile, for international treaties requiring ratification by Law, academic papers accompany such Laws. However, academic papers do not accompany Presidential Regulations used to ratify an international treaty.

Unfortunately, in the academic papers accompanying Laws legalising international treaties, there are no elaborations on the conformity of the relevant international treaty with the Constitution.

Academic papers are usually made very simply. Contained in such documents are reasons why Indonesia needs to accede to an international treaty and the summary of the content of the international treaty.

If scrutinised further, there are no indications in a Law legalising an international treaty that steps have been taken to ensure the conformity between the relevant international treaty and the norms contained in the Constitution. In the General Explanation (Penjelasan Umum) of such Laws, as any other Laws, an elaboration is not made on the question of whether the international treaty is in line with the Constitution. The General Explanation section merely contains a succinct summary of the substance of the international treaty.

Meanwhile, in the case of ratification by a Presidential Regulation, an academic paper and an explanation section does not accompany the Regulation. This means that international treaties ratified by Presidential Regulations have no elaboration whatsoever regarding the conformity of an international treaty with the Constitution.

IV. The Potential for a Judicial Review

The instruments of ratification of international treaties which have undergone ratification have the potential to undergo a judicial review by the Constitutional Court or the Supreme Court. This potential is based on the provisions in Law Number 4 Year 2004 (Undang-undang Nomor 4 Tahun 2004 concerning Judicial Authority).[17]

Based on Article 12(1)(a) Law Number 4 Year 2004, the Constitutional Court has the power to adjudge on the first and last level, which decision is

[17] Law of the Republic of Indonesia Number 4 Year 2004 concerning Judicial Authority (Undang-undang Republik Indonesia Nomor 4 Tahun 2004 tentang Kekuasaan Kehakiman), State Gazette Year 2004 Number 8 (Lembaran Negara Tahun 2004 Nomor 8).

final, to review Laws and its accordance to the Constitution of the Republic of Indonesia 1945.[18] Meanwhile, according to Article 11(2)(b) of the same Law, the Supreme Court has the power to review legislations lower than Laws and its accordance with Laws.[19]

Since an instrument of ratification may be in the form of Law or Presidential Regulation, an instrument of ratification is able to undergo a judicial review before the Constitutional Court or Supreme Court.

There are two possibilities of outcome in the event that an instrument of ratification undergoes a judicial review before the Constitutional Court or Supreme Court.

First, the Constitutional Court or Supreme Court declares itself not having to power (*niet ontvantkelijk verklaard*) to revoke the instrument of ratification because it is in a form of *beschikking*. This is based on the fact that a Law or a Presidential Regulation may be an act of the government performed only one (*einmalig*) and is concrete, making it either a *beschikking* or having a regulatory nature (*regelling*).

An instrument to legalise an international treaty, either in the form of a Law or a Presidential Regulation, only contains two articles.[20] The first article is a provision containing the matter of legalisation, and the second article determines when the regulation enters into force. If that is the case, the instrument of ratification is categorised as a *beschikking*.

Although an instrument of ratification as seen by its purpose and format is considered a *beschikking*, a legalised international treaty, especially a law making treaty, is considered having a regulatory nature (*regelling*). To discern the substance of an international treaty, an international treaty is distinguished in two categories, namely a law making treaty and a treaty contract.

A law making treaty is an international treaty which has the conse-

---

18 Article 12(1)(a) Law Number 4 Year 2004 states that "Mahkamah Konstitusi berwenang mengadili pada tingkat pertama dan terakhir yang putusannya bersifat final untuk menguji undang-undang terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945."

19 Article 11(2)(b) of Law Number 4 Year 2004 states that "Mahkamah Agung mempunyai kewenangan menguji peraturan perundang-undangan di bawah undang-undang terhadap undang-undang."

20 Ever since Indonesia's independence, Laws ratifying international treaties acceded by Indonesia contain two articles. Meanwhile, Presidental Directives or Presidential Regulations also generally contain two articles although in some cases they contain three articles instead of two. An example is Presidential Directive Number 88 Year 2004 concerning the Legalisation of the ASEAN Framework Agreement on Services (Keputusan Presiden Nomor 88 Tahun 2003 tentang Pengesahan ASEAN Framework Agreement on Services). The last article sets out that in the event of a discrepancy between the original text in English and the Indonesian translation, the text in its original language (English) shall be applicable.

quence of making a party to the treaty having to amend its national law or to introduce a new concept. ICCPR is an example of an international treaty in the law making treaty category. Meanwhile, treaties categorised as treaty contracts are treaties not requiring transformation into the national laws of a state, such as a treaty on state boundaries.

If an instrument of ratification cannot be revoked, arises the question of whether for an international law making treaty, the revocation of such can only be made after the provisions in the international treaty have been translated into national legislation.

The second possibility is if the Constitutional Court or the Supreme Court decides that they do in fact possess the power to revoke an instrument of ratification in the form of Law or Presidential Regulation, regardless it being a *beschikking*. In such situation, is Indonesia obliged to rescind the previously acceded international treaty?

At the time of the writing of this article, an application to revoke an international treaty was submitted to the Constitutional Court. The application was submitted by a number of bodies joined in the Alliance for Global Justice (Aliansi untuk Keadilan Global)[21], and it requests the revocation of Law Number 28 Year 2008 concerning the Legalisation of the Charter of the Association of Southeast Asian Nations.[22]

The applicants deem that the implementation of the ASEAN Charter provisions concerning free trade will harm the national industry and trade since Indonesia will have to abide by any decisions made on a regional level, namely by ASEAN.[23] The substance of the Charter which was requested to be reviewed is Article 1(5) and Article 2(2)(n). Article 1(5) governs the single market and production base principle, which means that the execution of trading agreements must be homogenous. The article is deemed to be ASEAN's basis to carry out free trade with states outside the region.[24]

If the Constitutional Court or Supreme Court revokes an instrument of ratification or annuls a provision which resulted from the transformation of an international treaty, what would be the legal consequences?

First, if the Constitutional Court or Suprement Court revokes an instru-

[21] See: "UU Ratifikasi Piagam ASEAN diuji ke MK," Hukumonline, 5 Mei 2011, available at http://hukumonline.com/berita/baca/lt4dc2cf078aa3e/uu-ratifikasi-piagam-asean-diuji-ke-mk- (last accessed on 17 May 2011).

[22] Law of the Republic of Indonesia Number 38 Year 2008 (Undang-undang Nomor 38 Thahun 2008 tentang Pengesahan Charter of the Association of Southeast Asian Nations (Piagam Perhimpunan Bangsa-bangsa Asia Tenggara)), State Gazette Year 2008 Number 165 (Lembaran Negara Tahun 2008 Nomor 165).

[23] *Ibid.*

[24] *Ibid.*

ment of ratification, Indonesia would then have to rescind from a previously acceded international treaty. Yet, rescinding from an international treaty is not a simple matter.

Not every international treaty contains a provision on a state's withdrawal from a treaty. An example is the *Framework Agreement on Comprehensive Economic Co-operatioan between the People's Republic of China and the Association of South East Asian Nations*[25], which is the basis for the ASEAN-Chine Free Trade Agreement (ACFTA).

Even if there is an article governing the matter of withdrawal, a withdrawal from an international treaty is not as simple as governed by a withdrawal clause. Sociologically, a withdrawing state will face pressure from the other parties to the treaty. Often times, state parties to a treaty would pressure the withdrawing state to not follow through with its withdrawal from the treaty. As an example, when North Korea was about to withdraw from the Non Proliferation Treaty[26], other state parties such as the United States and Japan tried to refrain North Korea from doing so.

This may happen to Indonesia if the Law legalising the agreement establishing WTO is revoked by the Constitutional Court.[27] Many developed countries have the interest to keep Indonesia as a member of the WTO since the Indonesian market is very promising for the producers in developed countries. Therefore, those developed countries will try to keep Indonesia as a member of WTO.

If this happens, Indonesia will be in a dilemmatic position. On a domestic level, the government is being asked to rescind an international treaty, but on an international level, Indonesia is asked to remain being a member to the treaty.

Second, if the Constitutional Court revokes the an article in its legislation that resulted from a transformation of an international treaty, as a consequence Indonesia can be deemed to not fulfil its obligation under the treaty. In this case, Indonesia may potentially have to face issues brought up by other states parties to the treaty.

From the two scenarios elaborated above, it can be seen that the revocation of an instrument of ratification in the form of Law or Presidential Regulation by the Constitutional Court or Supreme Court can have a wide-ranging impact. This differs from the revocation of provisions in a Law or

[25] Document is available at: http://www.asean-cn.org/Item/1065.aspx, (last accessed on 2 May 2011).

[26] Treaty on the Non-Proliferation of Nuclear Weapons, 1968.

[27] Agreement Establishing the World Trade Organization. Available at: http://www.wto.org/english/docs_e/legal_e/legal_e.htm (last accessed on 17 Mei 2011).

other legislations lower than Law done by the Constitutional Court or Supreme Court. In such context, a revocation would not entail complications and complexities on an international level. The revoked provisions can be revised in accordance with the existing procedures.

Bearing in mind that the revocation of an instrument of revocation has international consequences, judges of the Constitutional Court or Supreme Court which have to revoke an instrument of ratification have to consider the impact of such revocation, especially as seen from an international dimension.

However, such prudence by the judges of the Constitutional Court and Supreme Court cannot be abused or used as a shield by the government and the People's Representative Council to neglect the obligation to ensure the conformity of international treaties with the Constitution.

V. The Future

In the future, the mindset of the Indonesian government when acceding to an international treaty has to be altered. The government and the People's Representative Council simply must ensure the conformity of international treaties that would be acceded with the Constitution.

There are at least three things that need to be done in the future. First, if the government has the opportunity to play a role in formulating the provisions in a draft text or the text of an international treaty, the government must ensure that such text is in conformity with the Constitution.

Second, when preparing an academic paper for an instrument of ratification in the form of a Law, the government needs to conduct a comprehensive review which specifically deals with the conformity between the relevant international treaty and the Constitution.[28]

The same applies for the People's Representative Council as the party being asked by the government to approve an instrument of ratification. The People's Representative Council needs to ensure that the international treaty proposed to be approved by the government is in conformity with the Constitution. If not, the People's Representative Council has the right to refuse legalising the treaty into national law.

This also applies for ratification using a Presidential Regulation. Al-

[28] Even though according to Law Number 10 Year 2004 a Draft Law (Rancangan Undang-undang) is not obliged to be accompanied by an academic paper, such practice is customary for the government and the People's Representative Council. A Draft Law accompanied by an academic paper will acquire a priority in being reviewed.

though an academic paper is not compulsory, a review on the conformity between an international treaty and the Constitution must be set out in an official document.

It is for a fact that the approval of an instrument of ratification is a procedural issue. The question is: what is the basis or the threshold to approve an instrument of ratification? Is it merely done based on national interest, sociological and philosophical considerations? Or are juridical matters taken into consideration?

If juridical considerations are taken into account, what is the threshold? A review on the substance governed by an international treaty is needed in the context of this question. An international treaty must not conflict with the Constitution. If there is indeed a conflict and the provisions in the treaty conflicting with the Constitution cannot be reserved, the relevant treaty must not be approved and legalised.

The purpose of such action is to ensure that in the future, if an instrument of ratification undergoes a judicial review, there is a strong argumentation that the international treaty acceded had been ensured to not conflict with the Constitution.

To bear in mind are international treaties not requiring to be ratified according to the treaties themselves or Article 10 of Law Number 10 Year 2000. In such situation, two issues arise. First is whether in preparing to accede to an international law, a forum is conducted to ensure the treaty's conformity with the Constitution. Second is whether the people can apply for a judicial review on international treaties not requiring to be ratified. If not, are the people's rights to supervise the government when acceding to an international treaty abolished?

Lastly, in the future, the government needs to exercise added caution when acceding to an international treaty. The government should not accede to an international treaty merely on the basis of building an image or that budgets have been allocated for that purpose.[29]

If an international treaty contains materials that would be beneficial to be applied by Indonesia but conflicts with the Constitution, the government should simply adopt the relevant materials into national law rather than ratify the treaty.[30]

[29] As an example, Indonesian President BJ Habibie once prided in the fact that Indonesia had ratified seven core ILO Conventions while the United States had only ratified two. However, the conditions of worker in Indonesia cannot be said to be better than in the United States.

[30] For example, many principles in ICCPR is adopted in Law Number 39 Year 1999. Based on this Law, Indonesia is not bound by all the obligations laid out in ICCPR, such as to report every progress in the field of human rights considering that such progress is slow-moving. Despite that

Adopting only certain materials means that the government has the liberty to choose which provisions in the international treaty are to be applied and which are not.

VI. Conclusion

Reviewing the conformity of international treaties that would be acceded by Indonesia and the Constitution is a matter of great importance.

In practice, there are no actual process to ensure the conformity between an international treaty and the Constitution.

Any revocation by the Constitutional Court or Supreme Court of an instrument of ratification or a legislation that resulted from the transformation of an international treaty would generate complexities in an international dimension.

To prevent such complexities, the government should review every international treaty that would be acceded by Indonesia so that its conformity with the Constitution is ensured.

fact, Indonesia ratified ICCPR even though Law Number 39 Year 1999 had not been implemented optimally by the government.