

## **Understanding the Concept of Method of Entry through the Treaty Ratification, Accession and Reservation**

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**ABSTRACT:** *International agreements are agreements in which the subject of international agreements are all subject to international law. In the Vienna Conference in 1969 which included a discussion of an international agreement in which the commission of international law provides a general overview of the understanding of international agreements, treaties held by two or more countries that aims to carry out the legal consequences, resulting in the international treaty governing the agreement between states as legal subjects. international. Namely ratification of a treaty ratification by countries that signed the agreement under the provisions of the constitution of the country concerned, so often the context of the ratification in the various countries have different mechanisms. Enforcement of a treaty in a State usually known only by the method of Ratification, but in reality there are other ways to enforce an international treaty that is the method of Accession and Reservations. The choice of method the application of an international treaty provides for a State's freedom to choose the pattern enforcement of international agreements to which the country is best fitted.*

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### **I. PRELIMINARY**

#### **1. Background**

International agreements are agreements in which the subject of international agreements are all subject to international law. In the Vienna Conference in 1969 which included a discussion of an international agreement in which the commission of international law provides a general overview of the understanding of international agreements, treaties held by two or more countries that aims to carry out the legal consequences, resulting in the international treaty governing the agreement between states as legal subjects. international. According to some experts, it is an international agreement between:

##### **a. Oppenheimer-Leuterpacht**

The international agreements are agreements between countries that give rise to rights and obligations between the parties that made it.

##### **b. G. Schwarzenberger**

International agreement is an agreement between subjects of international law which creates binding obligations under international law. International agreements may be bilateral or multilateral.

##### **c. 1969 Vienna Conference**

International agreement is an agreement that is held by two or more countries, which aims to make certain legal consequences. This means that international treaties regulate the agreement between states as subjects of international law.

From some sense, as mentioned above, there is often confusion in the application and enforceability of any international agreement, as most of us do not understand how an international treaty created and declared effective within a State.

## **II. FORMULATION OF THE PROBLEM**

An international agreement shall apply for a State generally through several stages including:

- Negotiations (negotiation)
- The signing (signature)
- Parliament's approval (the approval of parliament)
- Ratification (ratification)

According to Law No. 20 of 2004 stages an international agreement are:

- Exploration
- negotiations
- The formulation of the text of the agreement
- Sign
- Ratification of the treaty text

Of the two stages of an international agreement as mentioned above, then the application of an international treaty to a State applies once a State ratified. Conducted through the steps of ratification or authorization, but in practice, there are several ways in pemberlakuan an international agreement for a State that is through Ratification, Accession and Reservations.

To the authors tried to focus on the patterns of the imposition of an international treaty, to add to our knowledge, that an understanding of the ways the imposition of an international agreement for a State considered important to add to our knowledge of all, the problem is formulated as follows:

1. How can an international agreement shall be effective within a State ?.
2. What is the pattern enforcement of a treaty through Ratification, Accession and Reservations ?.

## **III. DISCUSSION**

### **A. RATIFICATION**

#### **1. Introduction Ratification**

Basically it is not as simple ratification interpret it as a mere attestation or signature by the head of state after parliamentary approval. In general, an international treaty which is translated differently then ratifikasipun experience different things and different versions, The emphasis on understanding the ratification of the foregoing is the final ratification of the treaty injunction granted by each party to the draft agreement they had agreed dibabak- round joint conclusions required some commentary notes include exchange of draft documents that have been approved. Oppenheim Lauterpacht in the formulation of this only involves three important points, namely; Last ratification, comment required and change of the document. In terms of ratification is not only about these things, but more than that is the effect of the treaty itself.<sup>1</sup>

#### **2. Ratification in the context of national law**

Ratification namely the ratification of an international treaty by countries that signed the agreement under the provisions of the constitution of the country concerned<sup>2</sup> so often the context of the ratification in the various countries have different mechanisms, in England for example ratification by deeds ratification by the British Throne (queen, king) while according to the US Constitution Ratification is done by the president.<sup>3</sup> Thus apparent that the ratification process is completely out of the national law of each country according to the provisions of the constitution of each. For a country that require ratification in order to ratification of a treaty can be said really diperlukankah, before the countries concerned are bound to the agreement.<sup>4</sup>

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<sup>1</sup>FO Wilcox, Harvard Law School, AJIL- Annual Journal of International Law, Vol. 29, 1935

<sup>2</sup> Dorr Oliver, Kirsten Shamelenbach, "Vienna Convention on the Law of Treaties: A Commentary", (Germany: Springer, 2012) Pg 197

<sup>3</sup>Ibid. 187 pp.

<sup>4</sup>Chairul Anwah, International Law: An Introduction to the Law of Nations, (Jakarta: Penerbit Djambatan, 1988), p. 75.

Regarding the ratification of this something that can be questioned is whether there is a legal obligation between ratification as an international treaty agreed and signed.<sup>5</sup> There are opinions that suggested that although international agreements have been signed, there are no legal obligation to ratification of the agreement, while there is only a moral kewajinan.

In general, international agreements effective on the date the agreement was ratified. But there are international agreements that have been effective on the date the agreement was signed, without obtaining ratification as Anglo Japanese Treaty of 1905 and the European Peace Agreement in 1947.

As stated in the various theories that in addition to the ratification process confusing and many are undergoing a collision that is of national importance (national interest) countries. Although the agreement between the state there is a willingness to cede a bit of sovereignty for the common good.<sup>6</sup>

There are at least two important consequences that must be observed before ratifying the treaty. First, Indonesia should translate transform right or obligation under international treaties into national law. This means that the various national products contrary to the provisions in international treaties required to be amended.<sup>7</sup> This transformation is to ensure that there are no provisions that collide (conflicting) between national laws with international treaties that have been ratified. Second, the consequences that must be considered is the obligation of Indonesia provide a report to an institution specified in international treaties. A number of multilateral treaty obligations for participating countries to report on progress (progress) has been done. Before ratifying international treaties need to know the capacity of law enforcement officers. This is because if an international agreement has been translated into national law but was not able to be enforced by the authorities, the same as Indonesia did not keep its commitments.

Problems of implementation of international agreements also related to whether, after the country ratified the international agreement should be made the implementing regulations (implementing legislation) to implement international obligations inherent in the treaty, or the ratification process already has the legal effect that the international obligation should already be implemented without or their implementing regulations (implementing legislation).

### **3. Ratification of the Vienna Convention on the Law of Treaties**

In Article 2, paragraph (1) b of ratification is defined as:

"The international act so named whereby a State establishes 9 on the international plane its consent to be bound by a treaty "<sup>8</sup>

Ratification is a unilateral statement he states to declare themselves bound by the treaty internasional, which is done by using the instrument of ratification of a country. International Court of Justice or the International Court of Justice in the case of indirect *Ambatielos* explain the concept of ratification as follows: Ratification of an agreement that ratified, like the 1926 Agreement, was an absolute requirement to bring it into operation. Therefore, it is not a mere formal action, but a very important action. "<sup>9</sup>

Basically Article 14 of the Vienna Convention does not specifically regulate the form of a ratification instrument. It is left entirely to the national laws of each country.<sup>10</sup> Traditionally instrument of ratification signed by a head of state or head of government. There was also where ratification agreed by heads of state and government related.<sup>11</sup>

In practice in many countries, there are two major practices regarding the ratification by the various countries, the first practice is often known as "Westminister Practice" (UK, Australia, Canada, Israel) where the ratification process became the prerogative of the monarch and parliament was not too involved in the process

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<sup>5</sup> Damos Dumoli Agusman, *International Contract Law Studies Theory and Practice of Indonesia*, (Jakarta: Refika Aditama, 2014), p 48.

<sup>6</sup> SM Noor Op Cit, hlm.64.

<sup>7</sup> Damos Dumoli Agusman. Op Cit. p. 48

<sup>8</sup> Article 2 (1) b, the Vienna Convention on the Law of Treaties, 1969

<sup>9</sup> ICJ ruling related *Ambatielos Case (Greece v United Kingdom) (Preliminary Objections) [1952] ICJ Rep 28, 43.*

<sup>10</sup> Dorr Oliver, Kirsten Shamelenbach, Op Cit. pp 197

<sup>11</sup> *ibid*,

of ratification. In this practice the executive has a role in the consultation and decision-making.<sup>12</sup> Whereas the second practice rooted in the class of Continental Europe and the United States where parliamentary approval is instrumental in the process of ratification of an international AGREEMENTS. Also in some countries in Europe and even use the referendum system for several international treaties to be ratified.<sup>13</sup>

Although it has been described in the foregoing discussion, it is still often their misconceptions about the ratification process and the constitutional process of each country. Anthony Aust in his book explains that basically consists of two elements ratification<sup>14</sup>

Based on the explanation Aust then Ratification not only be seen as a one act alone but consist of execution of the instruments of ratification of the executive, in this case is in the form of consent to bind to a treaty, the foregoing discussion has described the mechanism of internal ratification may be approved by the king or parliament, depending on Constitutional Law in each country. While the second element is degan exchange of instruments of ratification between the two countries if the international agreement is a bilateral agreement, or enter the instrument of ratification to the depositary if the treaty is an agreement where it is multilateral. The main reason of disyaratkannya ratification after the execution of the adoption and signing of the international treaty-making process prior to the international agreements binding on a country. There is some reasons,

#### **4. Terms Ratification**

Article 14 paragraph (1) b, describes a situation where an international treaty must be ratified an agreement (atau aseptasi or approval) or can be set up others. In addition to the need for a ratification intentions in an international agreement can also be raised by the state in the negotiating process.<sup>15</sup> In the constitutional practice of a State party to an international agreement.

(A) the treaty so Provides. This is the norm when ratification is required, and usually follows the signature, though an express provision for the signature is not always included;<sup>16</sup>

(B) if it is not determined that the Negotiating countries are Agreed that ratification must be needed. Today will be unusual: if a treaty is silent about the question of ratification, it is assumed that it is not Necessary .;<sup>17</sup>

(C) signatures are declared as subject to ratification for conditional signs. However, unlike the signature of a referenduttP ad the approval of the country to be bound will only take effect from the date of ratification. But for a while the signature will have various legal effects, or<sup>18</sup>

If the agreement is clearly stated that the signing should be followed in the presence of ratification, the delegation contracts do not need to explain more about the agreement is subject to ratification.<sup>19</sup> In addition, it frequently makes the occurrence of a misconception is that when an international agreement has been ratified such agreement immediately and automatically bind the countries that have ratified the treaty.<sup>20 21</sup> The situation is different when where an international agreement binding on the state. With a declared state would be tied to an international treaty does not automatically make the treaty binding on a country. A binding international agreement will apply if the country has become a party to the agreement.<sup>22</sup> Whether ratification would result in the state when bound by an international treaty depends on klausla settings on each agreement.

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<sup>12</sup>Ibid, p. 187.

<sup>13</sup> Anthony Aust, *Modern Treaty Law and Practice*, (Cambrifge: Cambridge University Press, 2000)

<sup>14</sup>Ibid, p. 81

<sup>15</sup> *ibid*, p. 190

<sup>16</sup> Vienna Convention on the Law of Treaties, Ibid, Article 14 (1) a

<sup>17</sup> Vienna Convention on the Law of Treaties, Ibid, Article 14 (1) b

<sup>18</sup> Vienna Convention on the Law of Treaties, Ibid, Article 14 (1) c

<sup>19</sup> Anthony Aust, *Op Cit*. p. 82.

<sup>20</sup> Damos Dumoli Agusman, *Op Cit*. p. 48.

<sup>21</sup> Ibid, p. 83

<sup>22</sup> Vienna Convention on the Law of Treaties, Ibid, Article 2 (1) (g).

## **5. Ratification period**

In most international agreements generally do not include the deadline to ratify. Even in some multilateral treaties can be ratified or acceded decades after the agreement was binding on the parties. One example is the United States not to ratify the Genocide Convention of 1948 higger forty years since the agreement entry into force.<sup>23</sup> Followed by the breakup of the Soviet Union, then the fractional many countries to ratify the treaty that has been in force for fifty years.<sup>24</sup> Some examples show that in order to ratify an international agreement is no time limit.

## **6. Ratification Instruments**

Ratification instrument is to be signed by an authorized representative of a participating country, in international practice, this is done by the provision of full powers (power of attorney) given by the head of government, head of state or foreign ministers *negari* depending on the conditions of each country.<sup>25</sup> Ratification by the deputy foreign ministers or other state organs can not be acceptable if it is not accompanied by the full powers. Similarly, if the agreement is signed by the other ministers, can not be accepted despite international agreements fall within the scope of its authority but can not be licensed without it having full power.<sup>26</sup>

## **7. Form and Content of Ratification Instruments**

Basically, the form and content of an instrument of ratification is not governed by this Convention. In Article 2 (1) (2) explaining that the ratification of an international action that each nation determines its own way how to show that it would be subject to the treaty. Such instruments should be clearly and unambiguously stated that the country is bound to an international treaty. It is not enough simply to say that the ratification has been done. Instruments of ratification shall be:

(1) identify the treaty by its title and the date when and place where it was concluded; (2) give the name and title of the person signing the instrument of ratification; and (3) state when and where the instrument was issued.

Instruments of ratification may take the form of letters, and had been signed, what if these instruments have not signed it can not be accepted, but in practice there are exceptions, the Secretary-General of the United Nations be able to receive a letter from the permanent representative of a country to the UN accompanied by fax instrument of ratification of the signed stating that the instruments of the original is in the process delivery.<sup>27</sup> But the instrument of ratification of the signed original is not accepted by the UN secretary general a few days after the receipt of the fax instrument of ratification, the UN secretary general can not assume that the state is bound in an international treaty.

Basically, there are no specific requirements regarding the language in use of an instrument of ratification, but in practice to simplify the language used was an official language used in the depositary, but still if the instrument of ratification is not in the official language used in the depositary of instruments of ratification have remained acceptable. However depositary receipts can not be issued until the ratification is translated, it is to know what is in the contents of ratification.

## **8. Ratification Instrument storage**

Ratification instruments must be stored in a country that has the depositary, or also the agreement made by an international organization, the instruments of ratification shall be stored at the headquarters of international organizations. The ceremony will be made if the agreement is very important from a political aspect, if it does not have a significant impact on the political aspects, such agreement can be directly delivered to the depositary. Delivery Instruments of ratification may be mailed, but if the instrument of ratification was considered related to a very important point, the shipment can be made directly by the foreign minister.

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<sup>23</sup> Dorr Oliver, *Op Cit*, p 223.

<sup>24</sup> *ibid*,

<sup>25</sup> Damos Dumoli Agusman, *Op Cit*. p 56

<sup>26</sup> *Ibid*. p 24.

<sup>27</sup> Rosda, "Book: Indonesian Law Treaties Under an executive Summary by Damos Dumoli Agusman", *Journal of opinio Juris*, Vol. January 17th April, the Directorate General of Law and International Treaties Ministry of Foreign Affairs of the Republic of Indonesia, 2015.

After the instrument of ratification is received by either the state or the depository storage section di an international organization, then the states are on the ratification instrument should be notified and informed that countries already bound by an international treaty it has ratified.

## **B. ACCESSION**

### **1. Functions and Objectives Accession**

accessionis when the text of the treaty has been adopted and the deadline for the signing of an agreement has been exceeded.<sup>28</sup> In these conditions an agreement internasinal has been in effect and binding on member countries prior to adhere to a treaty International, then there is a new country which wants to become parties to the treaty, countries that want to become parties after the entry into force of an agreement can not enter through the ratification procedure but must through the accession procedure.<sup>29</sup> Although basically for acceding to an international treaty is not a right granted under international law, but depends on the parties to an international agreement if it is possible to make an agreement that closed or open.<sup>30</sup>

On Basically inclusion (accession), signature, ratification, acceptance and permufakataan.<sup>31</sup> Inclusion does not always require ratification, except where so provided in the agreement.<sup>32</sup> Ratification is not equal to accession, but the equivalent of a signature for ratification. Rules on the deposit of its instrument of ratification (or acceptance or approval) also applies to the instrument of accession, and, unless the agreement provides otherwise, like the right to sign, the right to accede may be restricted to certain categories of certain countries, and can be made in accordance with the conditions or approval.<sup>33</sup>

### **2. The provisions of Article 15 of Vienna Convention**

Accession is a unilateral act that in practice the instrument of accession in a different form.<sup>34</sup> The instrument that is commonly used is the document that was signed on the high state representatives, or by the use of the state emblem.<sup>35</sup> Accession can be said to have occurred when the instrument of accession has been exchanged between countries that want to accede, deposited or notified by the state or if the participants have agreed upon.<sup>36</sup> Basically there is no country that can do Accession if other countries in the treaty does not approve the treaty or impossible to undertake accession.<sup>37</sup> In the development of this time almost all multilateral agreements to include chapters that can be done accession treaty.

### **3. Entry Accession**

An agreement with international accession can be prohibited if stipulated in a clause of a treaty, such as for example is Article 22 of Enviroinmental Protocol to the Antarctic Treaty, provides that after the deadline for the signing of the protocol is only open to countries that have become parties to the Antarctic Treaty. A bilateral agreement can also be a multilateral agreement to allow a third country to accede to the agreement stipulated in the article, if so, for example, is in agreement Franco -German Convention on the Construction and Operation of a Very High Flux Reactor in 1967

Basically the same accession or level with the signing of an instrument of ratification, many occur misconceptions of the accession sendenvy. The setting of the deposit of its instrument of ratification (or acceptance or approval) also applies to the deposit of instruments of accession, unless specifically an international treaty set up another, in the position of accession have the same effect with the ratification, where

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<sup>28</sup>Dorr Oliver, Kirsten Shamelenbach, Op Cit. pp 197

<sup>29</sup>*Ibid* ..

<sup>30</sup>*Ibid*, p 198.

<sup>31</sup>Budiman Kusumohamidjojjo, "A Study on Operational Aspects: The Vienna Convention of 1969 on the Law of Treaties, Publisher Binacipta, Bandung: 1985 Pg 8.

<sup>32</sup>Budiman Kusumohamidjojjo, Op Cit, p 9.

<sup>33</sup>Dian Utami Mas Grill, "Testing Constitutional Law Treaty Ratification of International", Journal Yuridika: Vol. 29 No. 3, September-December 2014. Pg 284

<sup>34</sup>Dorr Oliver, Kirsten Shamelenbach, Op Cit. pp 200

<sup>35</sup>*Ibid*, p. 203

<sup>36</sup>As stipulated in Article 16, Vienna Convention on the Law of Treaties, 1969

<sup>37</sup>Anthony Aust, "Modern Treaty Law and Practice", Op Cit. p 89

if a country binds itself through accession, after yes declared strain on an international treaty. And all the provisions of the international agreement on the substance of the provisions of articles ranging up to termination of attachment to a treaty.

#### **4. Accession Against International organization with**

Accession to the International Organization of accession may differ slightly in terms of regular multilateral agreements stipulated in Article 15 of the Vienna Convention. In practice many International Organizations not allowed to accession only by depositing an instrument of accession to international organizations who are the main source of an international agreement. It basically allows for an international treaty acceded to an international treaty, one example is the European Community to become parties to the international treaties, the possibility also sought a pihat of the international organization that has a certain specificity field.

### **C. RESERVATION**

#### **1. definition Reservations**

Reservations mean, "a unilateral statement, made the State, when signing, ratifying, accepting, approving or acceding to the treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the agreement. Before the adoption of the Convention, some other definitions have been used in practice and discussed in the literature. this definition, however, is largely similar to the definition given in the Vienna Convention this.<sup>38</sup>

#### **2. Interest Reservations**

Interest Reserve is to create flexibility in terms of international treaty obligations in the system, to allow entry of the country, who are unable or unwilling to accept all the obligations contained in the agreement .. On the other hand, such an approach tends to facilitate the obligation, which may be included in the agreement international, unintended consequences in the case of an objective regime.<sup>39</sup>

Reservations must be distinguished "interpretative declarations" in which the state can make it at the time of signing or ratifying international treaties. "Interpretative Declarations" are not necessarily binding, but can be used when interpreting a treaty.<sup>40</sup> Typical criteria reservation than state action unilaterally (one side) others, which the country signed or ratified the adoption of the current international agreement is the legal effect and formally modify the treaty obligations.

## **IV. CONCLUSION**

Enforcement of a treaty in a State usually known only by the method of Ratification, but in reality there are other ways to enforce an international treaty that is the method of Accession and Reservations. The choice of method the application of an international treaty provides for a State's freedom to choose the pattern enforcement of international agreements to which the country is best fitted. In general, a treaty comes into force on the date of the agreement obtained the ratification. But there are international -perjanjian agreements already entered into force on the date the agreement was signed, without obtaining the Anglo-Japanese Treaty ratification eg 1905. The ratification process, Accession or reservations vary for each country where technically it is adapted to the constitution or the law applicable to each country. At the core of the discussion of the three methods of applying for an international treaty to a State either Ratification, Accession or Reserve provides an option for States that would impose an international agreement, in which the pattern and the method would also be tailored to the needs in the country.

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<sup>38</sup> For reference, see RK € uhner Vorbehalte zu multilateralen v € olkerrechtlichen Vertr € Agent (1986) 9 et seq; → Article 2 (d)

<sup>39</sup> Dorr Oliver and Kirsten Schmalenbach, op.cit., Pp. 240.

<sup>40</sup> Ch Tomuschat admissibility and Legal Effects of Reservations to Multilateral Treaties (1967) 27 Za ORV € 463, 464-465.

### **Suggestion**

With the existence of several methods of applying for an international treaty that makes it easier to submit. With the existence of some of these methods are expected to further contribute positively to building a life between nations, in order to create arrangements and bilateral and multilateral cooperation is getting better future.

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