

# The Legal Challenges to Implement Treaties in The Democratic State: A Contextual of Indonesia

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## Abstract

International relations is a multifaceted field that examines the interactions between various actors on the global stage. The ratification of international treaties poses significant legal and democratic challenges that can impede effective international cooperation into national action. This essay will discuss the legal challenges in the implementation of treaties in the democratic state in Indonesia. In the ratification (internal process), the roles to check and balance towards the government action in the result of negotiation in the international forum may be filtered before applying the rights and obligations to the national legal system. The aim of this essay will discuss the legal challenges to apply the legal provision of treaties in the national legal system as the transformation process and the implementation need to follow the democratic state requirement



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constitutionally. This essay investigates the practice of Indonesia in implementing its rights and obligations in the international forum, the position of treaties under the national legal system, and the challenges to implement treaties to be accepted to the public. This essay uses doctrinal and normative legal research, and uses the conceptual approach to analyse the discussion. The result of this essay shows that the legal challenges appear when the implementation of democratic principle limits the executive powers action, which influences the implementation of international provisions as long as the limitation is considered as not relevant to democratic principles which are constitutionally recognised.

## **Keywords**

*treaties, democratic state, international relations*

## **I. Introduction**

International relations is a multifaceted field that examines the interactions between various actors on the global stage. Traditionally, states have been considered the primary actors in international relations, wielding sovereign power and engaging in diplomacy, conflict, and cooperation with other states. However, the landscape of international relations has evolved significantly over time, leading to the emergence of non-state actors as influential participants alongside traditional state actors.

International treaties, traditionally focused on fostering cooperation among state actors, have evolved to recognize the role of non-state actors in addressing complex global challenges. Treaties now frequently include provisions that engage non-state entities, reflecting the multifaceted

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nature of contemporary global governance. For example, Multilateral Environmental Agreements (MEAs) address pressing environmental issues such as climate change and biodiversity loss by incorporating both governmental bodies and NGOs that advance sustainable development goals. In the realm of trade, modern agreements often go beyond tariff regulation to include labor standards, enforced through partnerships with civil society organizations that represent workers' rights on a global scale. Human rights conventions similarly acknowledge the significant contributions of NGOs advocating for marginalized communities while promoting governmental accountability in addressing human rights violations. This shift underscores the expanding role of non-state actors and their integration into frameworks of international cooperation.

The ratification of international treaties poses significant legal and democratic challenges that can impede effective international cooperation. As states navigate the complex interplay of domestic politics and international obligations, the ratification process often becomes a contentious battleground. The increasing polarization within domestic political landscapes has led to a scenario where treaties may face considerable opposition, resulting in delays or outright rejection. For instance, the U.S. has frequently been criticized for its lag in ratifying treaties despite being a leader in their formulation, which has implications for its soft power and international credibility (Kelley & Pevehouse, 2015).

The case of the Kyoto Protocol exemplifies how federalism can complicate decision-making processes, as local and state governments may have divergent interests that conflict with national objectives (Fisher, 2015). Moreover, the institutional frameworks within which treaties are ratified can significantly influence outcomes. Countries with stringent constitutional requirements may not necessarily be less likely to ratify treaties, as evidenced by studies indicating that high constitutional hurdles do not directly correlate with lower ratification rates for multilateral environmental

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agreements (Spilker & Koubi, 2014). This suggests that while legal frameworks are critical, the political will and the strategic interests of states play a more decisive role in the ratification process. In newly democratized states, parliamentary debates often reflect a complex negotiation of national interests and international commitments, highlighting the importance of legislative bodies in shaping treaty outcomes (Milewicz & Elsig, 2013).

The dynamics of international relations further complicate treaty ratification. Powerful states may exert influence over weaker nations, either by promoting or undermining treaty commitments through various strategies, including coercive diplomacy or economic incentives (Schneider, 2012). This interplay of power can lead to a situation where the ratification of treaties is less about legal obligations and more about political maneuvering. Additionally, the role of international organizations and the expectations they set can create pressures that affect domestic ratification processes, as states may seek to align their policies with international norms to enhance their global standing (Bernauer et al., 2010).

International treaties play a crucial role in shaping Indonesia's engagement in global forums, reflecting its commitment to international norms and cooperation. As a member of various international organizations, Indonesia has ratified significant treaties, including the Paris Agreement, which underscores its dedication to addressing climate change and promoting sustainable development. The ratification of such treaties is not merely a legal obligation but also a strategic move to enhance Indonesia's standing in the international community and to attract foreign investment by demonstrating its commitment to environmental sustainability (Sandria, 2023). The transition towards New Renewable Energy (NRE) in Indonesia, although gradual, is supported by these international commitments, showcasing the interplay between domestic policy and global expectations (Sandria, 2023).

Indonesia's active participation in global forums, such

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as the G20, further illustrates its strategic approach to international diplomacy. The G20 serves as a platform for Indonesia to advocate for the interests of developing nations, thereby enhancing its role as a regional power with global aspirations (Putri, 2020; Yuniarto, 2023; Sushanti, 2019). By hosting the G20 summit, Indonesia not only showcases its leadership capabilities but also positions itself as a mediator in international conflicts, as seen in its efforts to address the Russia-Ukraine conflict (Purwati et al., 2023). This engagement is pivotal for Indonesia, as it seeks to balance its national interests with the demands of the global economy, particularly in light of ongoing geopolitical tensions (Purwati et al., 2023).

Moreover, Indonesia's foreign policy is characterized by a "free and active" stance, which allows it to navigate complex international relations while promoting peace and stability in the region (Simatupang & Panggabean, 2022). This approach is evident in its participation in multilateral forums like the Indian Ocean Rim Association (IORA), where Indonesia leverages its maritime diplomacy to strengthen regional cooperation (Amri & Zahidi, 2023). The emphasis on inclusivity and collaboration in these forums aligns with Indonesia's broader goals of fostering economic growth and enhancing its global image (Prasetyo, 2023; Yuniarto, 2023; Sushanti, 2019).

This essay will discuss the legal challenges in the implementation of treaties in the democratic state in Indonesia. In the ratification internal process, the roles to check and balance the government action in consenting the international forum result may be filtered before applying to the national legal system. The aim of this essay will discuss the legal challenges to apply the legal provision of treaties in the national legal system as the transformation process and the implementation need to follow the democratic state requirement constitutionally. This essay investigates the practice of Indonesia in implementing its rights and obligations in the international forum.

This essay proceeds in two parts. Section 1 discusses

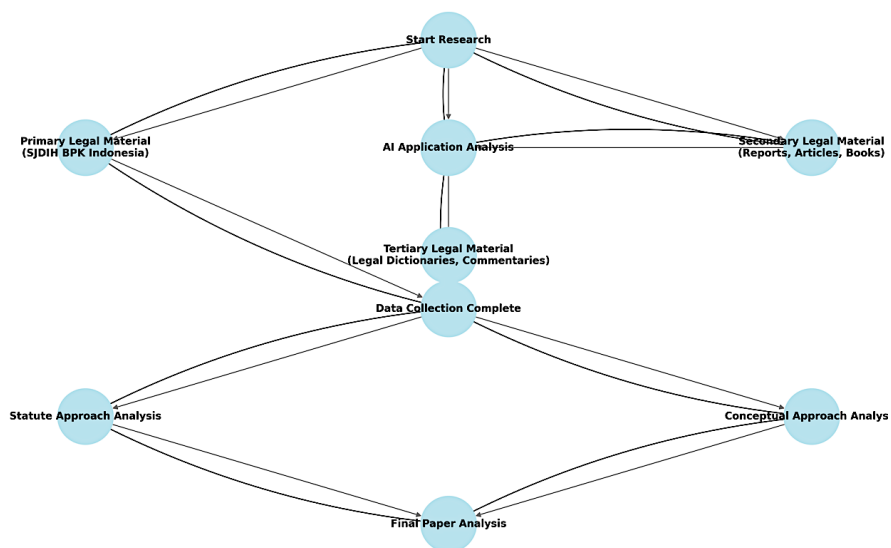
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the Concept of Ratification of International Treaties in Indonesia's Perspective. Section 2 discusses Position of International Treaties under National Laws and Regulations. Section 3 discusses Legal Challenges in the Implementation of Treaties. The last is the conclusion.

## II. Method

This research is a doctrinal and normative legal research. The research uses a thorough legal research strategy with an eye on secondary data analysis as the study methodology. This approach uses a methodical online library research process whereby main legal resources come mostly from Legal Network and Documentation System of BPK Indonesia. Accessing legislation texts, rules, and other significant legal instruments relevant to the research can be done from this authoritative repository in this database. The focus on main legal materials guarantees that the research is based on official regulatory systems, giving the analysis legal accuracy and credibility through Indonesia hierarchy of legislations. Apart from main legal resources, the study also includes secondary legal materials comprising research reports, academic publications, journal articles, books on topics of international treaties, sources of law, and sovereignty ideas. Reputable online libraries and publishing sites grant access to these sources, therefore offering thorough views on the corpus of current knowledge. Moreover, the study makes use of cutting-edge artificial intelligence tools (Research Rabbit) to pinpoint current publications and provide a comprehensive examination of the interactions among several academic works. Using AI techniques not only improves the effectiveness of the literature review procedures but also helps

to spot trends, patterns, and holes in the present legal debate. At last, tertiary resources are seen as adding extra background and improving the depth of the investigation. Legal dictionaries, commentaries, and encyclopedic entries helping to clarify difficult legal terms and concepts could be among these resources. Following the gathering of all pertinent evidence, it is closely examined applying both the conceptual and legislative approaches. Analysing legal books and rules helps one to understand their meaning, application, and relevance inside the parameters of study. Concurrently, the conceptual approach helps to explore theoretical frameworks and ideas behind the topic of the research, thereby promoting a complex knowledge of the interplay between legal rules and academic viewpoints. This methodological mix guarantees a strong and multifarious analysis that supports the conclusions and results of the paper.



*Figure 1 -Research flow*

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### III. Result and Discussion

#### *Understanding the Concept of Ratification of International Treaties in Indonesia's Perspective*

International treaties play a crucial role in shaping Indonesia's engagement in global forums, reflecting its commitment to international norms and cooperation. As a member of various international organizations, Indonesia has ratified significant treaties, including the Paris Agreement, which underscores its dedication to addressing climate change and promoting sustainable development. The ratification of such treaties is not merely a legal obligation but also a strategic move to enhance Indonesia's standing in the international community and to attract foreign investment by demonstrating its commitment to environmental sustainability (Sandria, 2023). The transition towards New Renewable Energy (NRE) in Indonesia, although gradual, is supported by these international commitments, showcasing the interplay between domestic policy and global expectations (Sandria, 2023).

International treaties are formal agreements between sovereign states or between states and international organizations. They are legally binding under international law and serve as a primary source of international legal obligations. The definition of a treaty is often grounded in the Vienna Convention on the Law of Treaties (VCLT), which outlines the essential characteristics that distinguish treaties from other types of international agreements. According to the VCLT, a treaty is defined as "an international agreement concluded between states in written form and governed by international law" Fitzmaurice (2018). This definition

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emphasizes the necessity for treaties to be formalized in writing and to be governed by international legal principles, which underscores their significance in the realm of international relations.

Treaties can cover a wide range of subjects, including peace, trade, human rights, environmental protection, and more. The process of creating a treaty typically involves negotiation, adoption of the text, signature, ratification or accession by the parties involved, and entry into force. Once in force, treaties obligate the parties to adhere to their terms and conditions. In the context of Indonesia, the relationship between international treaties and domestic law is framed by the concepts of dualism and monism. Dualism posits that international law and domestic law are separate systems, meaning that international treaties must be explicitly incorporated into national legislation to have legal effect. Conversely, monism asserts that international law automatically becomes part of domestic law upon ratification, without the need for further legislative action (Thilakarathna & Jayarathna, 2021). Indonesia's legal framework exhibits a dualistic tendency, requiring parliamentary approval for the ratification of treaties, which can complicate and delay the process of integrating international obligations into domestic law (Aprianto, 2022). This dichotomy highlights the challenges faced by Indonesia in balancing its international commitments with the legislative processes required for implementation.

**Table 1 - the relationship between international treaties and domestic law in Indonesia, with a comparison of dualism and monism**

Aspect	Dualism	Monism	Indonesia's Practice
Definition	International and domestic laws are separate systems.	International and domestic laws form a unified system.	Primarily follows a dualist approach.
Integration of Treaties	Treaties require transformation into national law to be effective domestically.	Treaties, once ratified, are directly applicable without additional legislation.	Treaties must be ratified through national laws or regulations.
Legislative Requirement	Needs domestic legislative approval to implement treaties.	No additional legislative action needed after ratification.	Requires DPR (legislative) approval and subsequent ratification through a law or regulation.
Sovereignty	Protects national sovereignty by ensuring control over how treaties affect domestic law.	May limit national control as international law can automatically apply domestically.	Maintains national control over treaty implementation.
Application in Courts	Courts cannot apply international law directly; domestic law must incorporate it.	Courts can apply international law directly once ratified.	Courts require domestic legislation for enforcement of treaties.
Example in Practice	Human rights treaty signed requires specific national law to be enforceable.	A human rights treaty becomes enforceable once ratified without further legislation.	Indonesia incorporates treaties through specific laws or presidential regulations.

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Annisa Feni, et al (2024) summarised that in the dualism perspective, international law and national law are not united and are seen as two legally independent and separate entities, and the legal binding of international law is based on the state's approval in legal formation (positivism perspective). While the monistic perspective sees international law and national law as part of integral law as a whole, which means these laws are components of a broader legal system.

Indonesia predominantly follows a dualist approach, this means that international treaties do not automatically become part of Indonesian domestic law upon ratification; instead, they require specific legislative action to be incorporated into national legislation. This approach ensures that there is a clear distinction between international obligations and domestic legal frameworks. However, there are instances where elements of monism may be observed in Indonesia's legal practices when certain international norms are directly applied without requiring additional legislative measures. From an international perspective, ratification is the formal process by which a state expresses its consent to be bound by a treaty after signing it. It signifies that the state has completed its internal procedures necessary for compliance with the treaty's provisions. This process often involves depositing an instrument of ratification with an appropriate authority or depositary designated by the treaty.

On the other hand, from a national perspective, ratification involves domestic processes that vary depending on each country's constitutional framework. In many countries like Indonesia with dualist systems, this includes obtaining approval from legislative bodies such as parliaments or congresses before an instrument of ratification can be deposited internationally. This ensures that any necessary

changes to domestic laws are made to comply with treaty obligations before they become binding at the international level.

Moreover, Indonesia's foreign policy is characterized by a "free and active" stance, which allows it to navigate complex international relations while promoting peace and stability in the region (Simatupang & Panggabean, 2022). This approach is evident in its participation in multilateral forums like the Indian Ocean Rim Association (IORA), where Indonesia leverages its maritime diplomacy to strengthen regional cooperation (Amri & Zahidi, 2023). The emphasis on inclusivity and collaboration in these forums aligns with Indonesia's broader goals of fostering economic growth and enhancing its global image (Prasetyo, 2023; Yuniarto, 2023; Sushanti, 2019). In conclusion, Indonesia's commitment to international treaties and its active participation in global forums are significant for its national interests and international relations. By ratifying key treaties and engaging in multilateral diplomacy, Indonesia not only addresses pressing global issues but also enhances its economic prospects and geopolitical influence. This dual approach of adhering to international norms while pursuing national interests exemplifies Indonesia's strategic positioning in the global arena.

### ***Position of International Treaties under National Laws and Regulations***

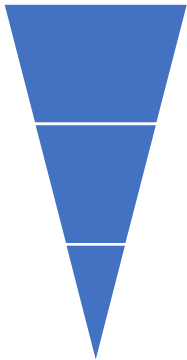
Indonesia is known as the state that is based on rule of law under Article 1 of the 1945 Constitution of the Republic of Indonesia. It can be understood that every action, rights and obligations must be based on the rule of laws. Practically, there are several rule of law are recognised in Indonesia, can be categorised as follows:

Type	Details
Laws ( <i>Undang-Undang</i> )	Formal legislative products enacted by the House of Representatives (DPR) and approved by the President. They serve as primary legal sources regulating various areas of law and governance.
Customary Law ( <i>Hukum Adat</i> )	Recognized as a complementary legal source, provided it does not conflict with higher-level laws.
Jurisprudence	Decisions from the Supreme Court ( <i>Mahkamah Agung</i> ) and Constitutional Court ( <i>Mahkamah Konstitusi</i> ) that serve as references for future cases.
International Treaties and Agreements	Binding after ratification or incorporation into national law.
Doctrinal Opinions	Legal scholars' opinions (doctrines) may influence the interpretation and application of laws.

Based on the Indonesian Constitution, there is a distribution of power to ensure the check and balances in the democratic state of Indonesia, namely the distribution of executive, legislative, and judicative powers. These three bodies implement their powers under the national laws and regulations. In the specific establishment of laws and regulations, the executive has rights to submit draft Law to the legislative (Article 5), issue Government and Presidential Regulations, as well Ministerial Regulations, etc. The Legislative body has rights to establish Laws (Article 20). Beside, judicial bodies have authority to interpret laws and regulations, and conduct Constitutional/Judicial Review.

Following the understanding of law making authorities, under Law Number 12/2011 concerning the Establishment of Laws and Regulations has mentioned the type and hierarchy of laws and regulations in Indonesia as shown below.

<b>Hierarchy of Indonesia Regulations</b>	
<b>Legal Source</b>	<b>Description</b>
Indonesia 1945 Constitution	The supreme law of Indonesia, forming the foundation for all other legal sources.
Laws and Government Regulations in Lieu of Laws	Passed by the DPR and the President, these regulate major legal and political frameworks. Perppu are temporary laws issued in urgent circumstances by the President.
Government Regulations	Regulations issued by the President to implement specific laws.
Presidential Decrees	Issued by the President to regulate issues under presidential authority or to implement laws or government regulations.
Provincial Regulations	Local regulations enacted by provincial governments in cooperation with provincial legislative bodies.
Regional/ Regency/ Municipal Regulations	Local laws enacted at the regency or municipal level, implemented with the local DPRD (Regional People's Representative Council).



Regulations Issued by Ministries and State Institutions	Legal sources specific to particular ministries or state agencies to regulate their functions and domains.	
Village Regulations	Regulations at the village level created by the village head and village consultative bodies.	

Laws and regulations can be defined as a written regulation that contains generally binding legal norms and is formed or determined by a state institution or authorized official through procedures set out in the laws and regulations (Article 1 (2) Law 12/2011). In the hierarchy of laws and regulations in Indonesia, there is no position of international treaties. It means the treaties cannot create a direct binding norm to society until they become internally ratified under the provision of Law Number 24 of 2000 concerning International Treaties. Under this regulation, the enactment of Law/Presidential Regulations in Ratification of International Treaties are the form to transform the treaties to enacted with national procedure context.

Law Number 24 of 2000 on International Treaties sets the framework for the ratification and implementation of international treaties in Indonesia, ensuring that such processes align with national interests and legal norms. This law defines international treaties as formal agreements made in written form between the Government of Indonesia and one or more countries or international organizations, which create binding obligations under international law.

The law covers a range of treaties, including those related to political matters, peace, defense, security,

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economics, the environment, socio-cultural issues, and other areas that impact national interests. The ratification process outlined in the law can be conducted through two primary methods: by law (*Undang-Undang*) or by presidential decree (*Keputusan Presiden*). Treaties that have significant implications for national sovereignty, defense, territorial boundaries, human rights, and financial obligations requiring state budget allocation must be ratified by law and receive approval from the House of Representatives (DPR). For treaties that do not involve these critical areas, ratification can be done through a presidential decree.

The ratification process begins with the negotiation and signing of the treaty by an authorized representative of the Indonesian government. For treaties requiring legislative ratification, the DPR's approval must be obtained before the treaty can be formally passed into law. Following approval, the President issues instruments of ratification either through a law or a presidential decree, depending on the treaty's nature.

Once ratified, an international treaty becomes legally binding, and its provisions must be implemented accordingly. To ensure compliance, adjustments to relevant national laws may be necessary to align with treaty obligations. If national interests require, Indonesia retains the right to withdraw from or terminate participation in a treaty, provided this follows the conditions specified in the treaty itself. For treaties ratified through legislative approval, withdrawal or termination must be reported to the DPR.

The Ministry of Foreign Affairs plays a crucial role in the ratification process by notifying other treaty parties and relevant international bodies of Indonesia's ratification or

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withdrawal. Additionally, relevant ministries and agencies are tasked with monitoring compliance and reporting progress to guarantee that the treaty's provisions are adhered to effectively. In summary, Law Number 24 of 2000 provides a comprehensive legal structure for ratifying and implementing international treaties in Indonesia, balancing constitutional mandates with the need to protect and promote national interests.

### *Legal Challenges in the Implementation of Treaties*

To ensure that Indonesia can be effectively bound to international treaties and minimize potential legal challenges in applying its commitments, several strategies must be considered. First, it is essential to establish a clear legal framework that facilitates the seamless integration of international treaties into domestic law. Indonesia's dualistic approach, which requires explicit incorporation of treaties into national legislation, can lead to delays and complications in ratification. By streamlining the legislative process and ensuring that the necessary legal instruments are in place, Indonesia can enhance its capacity to comply with international obligations while reducing the risk of legal disputes arising from conflicting domestic laws.

Moreover, fostering a robust dialogue between the government, legislative bodies, and civil society is crucial for building consensus around treaty ratification and implementation. Engaging stakeholders in discussions about the implications of international treaties can help address concerns related to national sovereignty and economic interests, which often hinder the ratification process. By creating a more inclusive environment for debate, Indonesia

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can better align its international commitments with national priorities, thereby minimizing the likelihood of legal challenges stemming from public dissent or political opposition.

Additionally, Indonesia should prioritize the development of legal capacity and institutional frameworks that support the effective implementation of international treaties. This includes training legal professionals and government officials on international law and treaty obligations, as well as establishing specialized agencies to oversee compliance and enforcement. Strengthening the legal infrastructure will not only facilitate adherence to international commitments but also enhance Indonesia's ability to navigate potential legal disputes that may arise from treaty obligations.

Ardhiwisatra (2003) in Situngkir, Daniel (2018) differentiates International treaties into two functions: 'treaty contracts', which are contracts in the private law sector that give rights and obligations to the parties, and 'law-making treaties', which are categorized as international treaties that provide provisions or legal rules for the global community as a whole.

Treaties are made by states' consensus and bind the states under provisions of the Vienna Convention of states' consensus. According to Article 11 of the Vienna Convention of 1969, means of expressing consent to be bound by a treaty are expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval, or accession, or by any other means if so agreed. It means that to follow up on the consensus, the state parties may determine the means for consent to be bound in the matters they have

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discussed and consented to. In this matter, the principle of *pacta sunt servanda* is acknowledged as the fundamental principle in treaty-making. Article 26 of the Vienna Convention 1969 emphasized using the *pacta sunt servanda* principle, which means every treaty in force is binding upon parties to it and must be performed by them in good faith. This application results from the party's willingness to consent to be bound.

The discussions can be divided into several aspects regarding the legal challenge to implementing the treaties in Indonesia. First, in Indonesia's legal system, treaties are regulated under the Constitution of 1945 and Law Number 24 of 2000, which mandated legislative approval. In this context, Indonesia recognized internal ratification by enacting Laws or Presidential Regulations. Second, the question is whether the treaties can be reviewed by the Courts once the public feels they are not suitable to be applied in Indonesia. However, Article 27 of the 1969 Vienna Convention has emphasized that A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This means, the matter of legal challenge to apply the treaties cannot be the reason that the state cannot implement its obligations. The cancellation of bound towards the treaties is only regulated as there was an authorized persons to conclude treaties, as like as mentioned in Article 46 as follows:

*Article 46*

*Provisions of internal law regarding competence to conclude treaties*

1. *A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as*

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*invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.*

*2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.*

In this situation, the binding state towards treaties is based on the consent to be bound by them with the application of *pacta sunt servanda* principles. Indonesia's commitment to bilateral, regional, or multilateral forums is shown by how it may be able to implement its rights and obligations within treaties themselves. Indonesia must keep its national interest. However, Indonesia must also see the legal obligations bound to the state.

As the fence to the executive powers in treaty-making, the amendment of the 1945 Constitution is the beginning of the reformation era in Indonesia. Indonesia is entering a democratization process to mature a democratic state based on the philosophy of nations (Sumartini, Siti, 2016) In the context of increasing international cooperation, the democratic state needs to be based on the constitutionality aspect that can limit the government's prerogative rights to treaty-making. Before the amendment, the President was the only one who had these rights (*Ibid*). This is to amend Article 11 of the 1945 Constitution before amendment and Presidential Letter Number 2826/HK/the Year 1960.

In this globalization era, to encounter every matter in a state, requires advanced government action to welfare its people. States are binding to each other with the treaties as the form of interaction and the mutualism needed for resolving the problems. Then, to apply the commitment in Indonesia, the application of international treaties under the national legal

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system is a significant need. Then, Indonesia needs to have comprehensive legal procedures to make the government apply its obligations. Law Number 24 of 2000 has been considered not to accommodate all these changes as a whole, and need to be revised. Along with this, Constitutional Court Decision Number 13/PUU-XVI/2018 has decided aArticle 10 unconstitutional when only the subject issues mentioned in Article 10 that must be ratified by the enactment of Law (as it is unconstitutional with Article 11 (2) of the 1945 Indonesian Constitution).

Indeed, there is no explanation of legislative approval under Article 11 of the 1945 Indonesia Constitution. Law Number 24 of 2000 regulates the mechanism of consultation to legislative and ratification by Law that in the establishment of Law will discuss and gain the approval of legislative. It can be seen as the recheck of international treaties before to be applied in the national legal system in the representative states.[6] Article 14 of the 1969 Vienna Convention gives the requirement of the treaties to be ratified, as the treaty provide for such consent to be expressed by means of ratification, states agreed that ratification should be required, the representatives of the State has signed the treaty subject to ratification; or the intention appears in the full powers or was express during negotiation.

In legislative perspective, the ratification in internal process may involve the public participation as regulated under Law Number 12/2011. Then, the public may give opinion and advice before directly binding the whole state. Yet, the problem of whether the internal ratification can cancel the international consent on negotiation is another problem, as the ratification of external perspective might be different. This

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makes a legal gap in the implementation of the treaties under the national legal system.

Indonesia is a state based on rule of law under Article 1 point (3) of the 1945 Constitution. From this norm, the implementation of government action, the rights and obligations of society, and governance of Indonesia has to be based on rule of law. As acknowledge to rule of law state, it makes the state empirically with behaviour of government and society based on rule of law, and also normatively there is a recognition towards the legal supremacy principle.[7] Under Indonesian national laws and regulations hierarchy as mentioned in Article 7 point (1) Law Number 12/2011, it shows the supremacy of constitution as the top of supremacy of law.

International treaties are categorised as source of law under the Article 38 point (1) of Statute of International Court of Justice. As the source of law, once binding Indonesia, the treaties will give effects to the national law. However, the challenge is the norm conflict between national law and international law still happens. For example, the Public encourages the Constitutional Review to not bind by the ASEAN Charter. In this case, the norm revocation under international law cannot directly be conducted as Indonesia needs to follow general rules in the 1969 Vienna Convention Article 27.

The process of ratification of Treaties involve executive and legislative roles. It is based on Article 11 The 1945 Constitution. Towards, the ratification with the enactment of Law has strong connection with the legislative function in law making and it will follow the provision of Law Number 12/2011. The involvement of legislative is considered as

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related to the function of legislative in representing the people's interests, and it is significant in the democratic state.

## **IV. Conclusion**

The result of this essay shows that the legal challenges appear when the implementation of democratic principle limits the executive powers action, which influences the implementation of international provisions as long as the limitation is considered as not relevant to democratic principles which are constitutionally recognised. Ratification and the implementation of treaties in Indonesia currently follow the provision under the Constitution and Law of Treaties. To ensure that Indonesia can be effectively bound to international treaties and minimize potential legal challenges in applying its commitments, several strategies must be considered. First, it is essential to establish a clear legal framework that facilitates the seamless integration of international treaties into domestic law. Indonesia's dualistic approach, which requires explicit incorporation of treaties into national legislation, can lead to delays and complications in ratification. By streamlining the legislative process and ensuring that the necessary legal instruments are in place, Indonesia can enhance its capacity to comply with international obligations while reducing the risk of legal disputes arising from conflicting domestic laws.

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